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Electronically Filed
Feb 19 2015 01:38 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

V.

Respondent.

APPELLANT'S APPENDIX VOLUME I PAGES 001-224

Attorney for Appellant

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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Case No. 65856

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FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

May 21 12 00 PM '13

THE STATE OF NEVADA,

Plaintiff, ~~JUSTICE COURT~~
LAS VEGAS NEVADA

DEPUTY

CASE NO: 13F08033X

DEPT NO: 5

-VS-

JAMES MANNING, aka,
James Daevon Manning #1994553,

Defendant.

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of ROBBERY (Category B Felony - NRS 200.380); BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400) and ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 193.167, 200.380), in the manner following, to-wit: That the said Defendant, on or between March 27, 2013 and March 29, 2013, at and within the County of Clark, State of Nevada,

COUNT 1 - ROBBERY

did on or about March 27, 2013 then and there wilfully, unlawfully, and feloniously take personal property, to-wit: a cellular telephone, from the person of SHERRI WASHINGTON, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said SHERRI WASHINGTON.

COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

did on or about March 27, 2013 then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: SHERRI WASHINGTON, with intent to commit robbery, by pushing the said SHERRI WASHINGTON.

COUNT 3 - ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER

did on or about March 29, 2013 then and there wilfully, unlawfully, and feloniously take personal property, to-wit: money, from the person of THOR BERG being 60 years of age or older, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said THOR BERG.

13F08033X
CRM
Criminal Complaint
2521781




PAWPDOCS\COMPLT\FCOMP\2013\080\20130803301.DOC

1 COUNT 4 - BATTERY WITH INTENT TO COMMIT A CRIME

2 did on or about March 29, 2013 then and there wilfully, unlawfully, and feloniously
3 use force or violence upon the person of another, to-wit: THOR BERG, with intent to
4 commit robbery, by pushing the said THOR BERG to the ground.

5 All of which is contrary to the form, force and effect of Statutes in such cases made
6 and provided and against the peace and dignity of the State of Nevada. Said Complainant
7 makes this declaration subject to the penalty of perjury.

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11 5/21/2013
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26 13F08033X/md
27 LVMPD EV# 1303270636;
28 1303293226
(TK5)

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes



13F08033X State of Nevada vs. Manning, James Daevon

Lead Atty: Public Defender

5/22/2013 8:00:00 AM Arraignment

Result: Matter Heard

PARTIES
PRESENT: Attorney Guymon, Gary L.
Defendant Manning, James Daevon
Judge: Cruz, Cynthia
Prosecutor: Hayes, Trevor
Court Reporter: Nelson, Bill
Court Clerk: Fisher, Shauna

PROCEEDINGS

Attorneys: **Guymon, Gary L.** Manning, James Daevon Added
Public Defender Manning, James Daevon Added

Hearings: 6/5/2013 10:00:00 AM: Preliminary Hearing

Events: **Remand - Cash/Surety** Amount: 60000.0000

Count 1 - \$20,000/20,000

Counts 2 & 4 - \$20,000/20,000 per count

Arraignment Completed

Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

Public Defender Appointed

Las Vegas Justice Court: Department 05

LVJC_Criminal_MinuteOrder

Case 13F08033X Prepared By: fishers

5/24/2013 6:07 AM

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes



13F08033X State of Nevada vs. Manning, James Daevon

Lead Atty: Public Defender

6/5/2013 10:00:00 AM Preliminary Hearing

Result: Matter Heard

PARTIES Attorney Guymon, Gary L.
PRESENT: Defendant Manning, James Daevon

Judge: Cruz, Cynthia
Prosecutor: Edwards, Michelle
Court Reporter: Silvaggio, Rene
Court Clerk: Fisher, Shauna
Pro Tempore: Federico, Michael A

PROCEEDINGS

Hearings: 6/19/2013 10:00:00 AM: Preliminary Hearing

Events: Comment

Defendant not transported due to being placed in disciplinary holding

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes



13F08033X State of Nevada vs. Manning, James Daevon

Lead Atty: Public Defender

6/19/2013 10:00:00 AM Preliminary Hearing

Result: Bound Over

PARTIES
PRESENT: Attorney Pensabene, Marissa
Defendant Manning, James Daevon

Judge: Cruz, Cynthia
Prosecutor: Trippiedi, Hagar
Court Reporter: Silvaggio, Rene
Court Clerk: Fisher, Shauna

PROCEEDINGS

Attorneys: Pensabene, Marissa Manning, James Daevon Added

Events: **Motion to Exclude Witnesses - Defense**

granted

State Calls Witnesses

#1 -Thor Berg - witness id defendant

State Rests

Defense Rests

Defendant Advised of Rights

to Make a Statement, to Waive Making a Statement and/or of the Right to Call Witnesses

Motion to Dismiss

objection by State - denied

Bound Over to District Court as Charged

Review Date: 6/20/2013

District Court Appearance Date Set

July 3, 2013 @ 1:30pm

In Custody

Case Closed - Bound Over

Plea/Disp: **001: Robbery [50137]**

Disposition: Dismissed

002: Battery to commit mayhem/robbery/grand larc [50151]

Disposition: Dismissed

003: Robbery, e/vop [50139]

Disposition: Bound Over to District Court as Charged (PC Found)

004: Battery to commit mayhem/robbery/grand larc [50151]

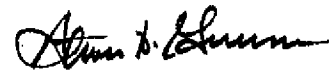
Disposition: Bound Over to District Court as Charged (PC Found)

**Justice Court, Las Vegas Township
Clark County, Nevada**

Las Vegas Justice Court: Department 05

LVJC_Criminal_MinuteOrder

6/19/2013 1:41 PM


CLERK OF THE COURT

1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 HAGAR TRIPPIEDI
6 Deputy District Attorney
7 Nevada Bar #010114
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 I.A. 07/03/13
13 1:30 P.M.
14 PD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16
17 Plaintiff,

Case No: C-13-290624-1
Dept No: XI

18 -vs-

19 JAMES MANNING, aka,
20 James Daevon Manning, #1994553
21 Defendant.

INFORMATION

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
25 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

26 That JAMES MANNING, aka, James Daevon Manning, the Defendant(s) above
27 named, having committed the crimes of **ROBBERY, VICTIM 60 YEARS OF AGE OR**
28 **OLDER (Category B Felony - NRS 193.167, 200.380) and BATTERY WITH INTENT**
TO COMMIT A CRIME (Category B Felony - NRS 200.400), on or about March 29,
2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of
statutes in such cases made and provided, and against the peace and dignity of the State of
Nevada,

COUNT 1 – ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER

did then and there wilfully, unlawfully, and feloniously take personal property, to-

1 wit: money, from the person of THOR BERG being 60 years of age or older, or in her
2 presence, by means of force or violence, or fear of injury to, and without the consent and
3 against the will of the said THOR BERG.

4 COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

5 did then and there wilfully, unlawfully, and feloniously use force or violence upon
6 the person of another, to-wit: THOR BERG, with intent to commit robbery, by pushing the
7 said THOR BERG to the ground.

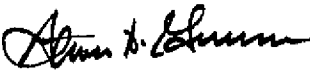
8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

11 BY /s/HAGAR TRIPPIEDI
12 HAGAR TRIPPIEDI
13 Deputy District Attorney
Nevada Bar #010114

14 Names of witnesses known to the District Attorney's Office at the time of filing this
15 Information are as follows:

16	<u>NAME</u>	<u>ADDRESS</u>
17	BARLOW, DAWN	DISTRICT ATTORNEY INVESTIGATOR
18		301 E CLARK AVE STE 700
19	BERG, THOR	LV NV 89101
20		c/o CCDA'S OFFICE
21	BORLEY, CALLIE	200 LEWIS AVE 3RD FLR
22		LV NV 89155
23	COBB, BENJAMEN	RTC
24	CUSTODIAN OF RECORDS	LV NV
25	CUSTODIAN OF RECORDS	LVMPD P#14099
26	CUSTODIAN OF RECORDS	CCDC
27	EMBRY, CHAD M.	LVMPD/COMMUNICATIONS
28	KOVON, SCOTT J.	LVMPD/RECORDS
		LVMPD P#6223
		LVMPD P#4131

1	MCGUIRE, CURTIS	LVMPD P#9637
2	SCOTT, NINA	RTC/VEOLIA TRANSP SUPERVISOR
3		LV NV
4	STEINBACH, ROBERT A.	LVMPD P#13989
5	WASHINGTON, SHERRI	c/o CCDA'S OFFICE
6		200 LEWIS AVE 3RD FLR
7		LV NV 89155
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26	DA#13F08033X/pm/L-2	
27	LVMPD EV#1303270636;	
28	1303293226	
	(TK5)	


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: JAMES MANNING, aka, James Daevon Manning, Defendant; and

TO: 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 in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS	CAT BUS
CUSTODIAN OF RECORDS	RTC
RAUCHFUSS, J.	CITY OF LV MARSHALS/#790 200 LEWIS AVE LV NV 89101

These witnesses are in addition to those witnesses endorsed on the Information and

///

///

1 any other witness for which a separate Notice has been filed.

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar # 001565

5 BY

6 /s/HAGAR TRIPPIEDI
7 HAGAR TRIPPIEDI
8 Deputy District Attorney
9 Nevada Bar # 010114

10 CERTIFICATE OF FACSIMILE TRANSMISSION

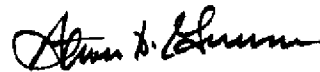
11 I hereby certify that service of NOTICE OF WITNESSES, was made this 17th day
12 of July, 2013, by facsimile transmission to:

13 PUBLIC DEFENDER'S OFFICE
14 ATTORNEY FOR DEFENDANT
15 FAX #366-9684

16 /s/P. Manis
17 Secretary for the District Attorney's
18 Office
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28 pm/L-2

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


CLERK OF THE COURT

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)

12 JAMES DAEVON MANNING,)

13 Defendant.)

CASE NO. C-13-290624-1

DEPT. NO. XI

DATE: August 12, 2013

TIME: 9:00 a.m.

14 **DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF BRADY MATERIAL**

15 COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through MARISSA
16 A. PENSABENE, Deputy Public Defender and hereby requests that, pursuant to Brady v.
17 Maryland, 373 U.S. 83 (1963), this Court order the State to produce all discovery material that it
18 actually or constructively possesses.

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

DATED this 30th day of July, 2013.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: /s/ Marissa A. Pensabene
24 MARISSA A. PENSABENE, #13006
25 Deputy Public Defender
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1 **I. THE STATE MUST TURN OVER ALL EVIDENCE THAT IS MATERIAL,**
2 **FAVORABLE TO THE ACCUSED, RELEVANT TO GUILT OR PUNISHMENT,**
3 **AND WITHIN THE STATE'S ACTUAL OR CONSTRUCTIVE POSSESSION.**

4 Brady material is evidence which is: (1) material, (2) favorable to the accused, (3) relevant
5 to guilt or punishment, and (4) within the actual or constructive possession of anyone acting on
6 behalf of the State. Brady, 373 U.S. at 87. Each of these requirements will be discussed briefly.

7 **A. Evidence is material if there exists a reasonable possibility that it would affect**
8 **the judgment of the trier of fact.**

9 The defense may request Brady material in a specific manner or in a general or broad
10 manner. The only significant difference between a "general" and a "specific" request for Brady
11 material is the standard of review on appeal for the State's failure to disclose the information. The
12 fact that a general request, rather than a specific request, has been made, however, does not relieve
13 the State of its absolute obligation to turn over favorable evidence.

14 Furthermore, this is an area of Brady law where Nevada law differs from federal law.
15 Nevada law concerning the "materiality" of Brady material is more favorable than federal law. In
16 Nevada, when the defense makes a specific request for Brady material and the State does not
17 provide such material, the Nevada Supreme Court has held that there are grounds for reversal of a
18 conviction "if there exists a reasonable possibility that the claimed evidence would have affected
19 the judgment of the trier of fact, and thus the outcome at trial." Roberts v. State, 110 Nev. 1121,
20 1132 (1994) (emphasis added); see also Lay v. State, 116 Nev. 1185, 1194 (2000) (same); Jimenez
21 v. State, 112 Nev. 610, 619 (1996) (same); State v. Bennett, 119 Nev. 589, 600 (2003) (same).

22 Even when a specific request was not made, reversal is warranted "if there is a reasonable
23 probability that, had the evidence been disclosed to the defense, the result of the proceeding would
24 have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985) (emphasis added); Pennsylvania v.
25 Ritchie, 480 U.S. 39, 57 (1986) (same). According to this heightened standard of appellate review,
26 "evidence is material if there is a reasonable probability that the result would have been different if
27 the evidence had been disclosed." Jimenez, 112 Nev. at 619. A "reasonable probability" is a
28 probability sufficient to undermine confidence in the outcome of the proceeding. Id. The defense
need not show that disclosure would have resulted in an acquittal. Kyles, 514 U.S. at 434. In the
federal courts, this is the one and only standard employed—regardless of whether the defense

1 request is specific, general, or no request is made at all. See id.; see also Strickler v. Greene, 527
2 U.S. 263, 280 (1999) (“the duty to disclose such evidence is applicable even though there has been
3 no request by the accused”).

4 Simply stated, the State’s obligation to turn over favorable evidence to an accused in no
5 way depends upon the specificity of the request. Indeed, the State remains obligated to provide
6 favorable evidence even in the case where a defendant makes no pretrial request at all. Where a
7 specific request for certain evidence is made, however, Nevada law considers the evidence
8 “material” if there is a reasonable possibility that it could affect the fact finder’s judgment.

9 **B. Evidence favorable to the accused is not limited strictly to exculpatory
evidence.**

10 The Nevada Supreme Court has defined what evidence is considered “favorable to the
11 accused” and, therefore, qualifies as Brady material. In Mazzan v. Warden, 116 Nev. 48 (2000),
12 the Court stated:

13 Due process does not require simply the disclosure of “exculpatory” evidence.
14 Evidence also must be disclosed if it provides grounds for the defense to attack the
15 reliability, thoroughness, and good faith of the police investigation, to impeach the
16 credibility of the state’s witnesses, or to bolster the defense case against
17 prosecutorial attacks. Furthermore, “discovery in a criminal case is not limited to
investigative leads or reports that are admissible in evidence.” Evidence “need not
have been independently admissible to have been material.”

18 Id. at 67. (citations omitted).

19 Thus, Brady material is defined broadly, and would include, but not be limited to, the
20 following evidence: forensic testing which was ordered, but not done, or which was completed but
21 did not inculcate the defendant; any medical or psychological treatment of any victim or witness;
22 criminal records or other evidence concerning State’s witnesses which might show their bias (e.g.,
23 civil litigation) or otherwise impeach their credibility; evidence that the alleged victim has been the
24 alleged victim of an unusual number of crimes; investigative leads or ordinarily appropriate
25 investigation which were not followed-up on or completed by law enforcement; any information
26 relating to the credibility of any witness including law enforcement officers or other agents of the
27 state; and, of course, anything which is inconsistent with any prior or present statements of a
28 State’s witness, including the failure to previously make a statement which is later made or

1 testified to. In addition, traditionally exculpatory evidence such as that which could show that
2 someone else committed the charged crime or that no crime was in fact committed would also
3 qualify as Brady material.

4 **C. Evidence that is relevant to punishment must be disclosed.**

5 Brady material encompasses not only evidence which deals with Mr. Manning's guilt, but
6 also includes evidence which could serve to mitigate Mr. Manning's sentence if he were to be
7 convicted. Brady, 373 U.S. at 87.

8 One example of this kind of evidence might be where the victim of a robbery who
9 identified the defendant as one of two people who robbed him also indicated that the defendant
10 tried to keep the co-defendant from further injuring him. Although the victim's statements would
11 actually help establish the defendant's guilt for the charged offense, they would also be Brady
12 material, since they could help mitigate the defendant's sentence. Other examples of this kind of
13 evidence could be evidence of a diminished mental state, even if not rising to a legal defense,
14 evidence that the defendant has mental health issues, evidence that the defendant was using drugs
15 or alcohol at the time of the offense, evidence that the defendant was under some kind of duress or
16 mistaken belief, evidence that the defendant tried to turn himself in, evidence that the defendant
17 tried to seek help, evidence that the defendant was remorseful, evidence that the defendant was
18 cooperative with law enforcement, and any similar type of evidence.

19 In essence, anything which could convince the Court to impose something less than a
20 maximum sentence would be relevant to punishment, and must be disclosed under Brady.

21 **D. The State must disclose evidence that it actually or constructively possesses.**

22 A prosecutor is responsible for turning over Brady material in his possession and in the
23 possession of any other State agents. Jimenez at 620. It is anticipated that the prosecution may
24 assert that it has an "open file" policy, and that if the requested material is not available in its file,
25 the State is under no obligation to produce it. This argument is unavailing.

26 In Strickler v. Greene, 527 U.S. 263, 284 (1999), the United States Supreme Court
27 explicitly held that a prosecutor's open file policy in no way substitutes for or diminishes the
28 State's obligation to turn over Brady material. The Nevada Supreme Court agrees: "[i]t is a

1 violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for
2 doing so is immaterial.” Jimenez at 618 (citation omitted).

3 **1. Prosecutors are responsible for seeking out Brady material, even if they**
4 **are initially unaware of its existence.**

5 In Kyles v. Whitley, the United States Supreme Court made it clear that the prosecutor has
6 an affirmative obligation to obtain Brady material and provide it to the defense, even if the
7 prosecutor is initially unaware of its existence. In so finding, the Supreme Court noted that “[t]he
8 prosecution’s affirmative duty to disclose evidence favorable to a defendant can trace its origins to
9 early 20th century strictures against misrepresentation and is of course most prominently associated
10 with this Court’s decision in Brady v. Maryland” 514 U.S. at 432. The Kyles Court also
11 made clear that this obligation exists even in the absence of a request for such evidence. Id.

12 The Kyles Court additionally made the following observations, worth quoting at length, in
13 finding that the State had breached its duty to Kyles:

14 This in turn means that the individual prosecutor has a duty to learn of any
15 favorable evidence known to the others acting on the government’s behalf in the
16 case, including the police. But whether the prosecutor succeeds or fails in meeting
17 this obligation (whether, that is, a failure to disclose is in good faith or bad faith),
the prosecution’s responsibility for failing to disclose known, favorable evidence
rising to a material level of importance is inescapable.

18 The State of Louisiana would prefer an even more lenient rule. It pleads that some
19 of the favorable evidence in issue here was not disclosed even to the prosecutor
20 until after trial, and it suggested below that it should not be held accountable under
21 Bagley and Brady for evidence known only to police investigators and not to the
22 prosecutor. To accommodate the State in this manner would, however, amount to a
serious change of course from the Brady line of cases. In the State’s favor it may
be said that no one doubts that police investigators sometimes fail to inform a
prosecutor of all they know.

23 But neither is there any serious doubt that “procedures and regulations can be
24 established to carry [the prosecutor’s] burden and to insure communication of all
25 relevant information on each case to every lawyer who deals with it.” Since then,
26 the prosecutor has the means to discharge the government’s Brady responsibility if
27 he will, any argument for excusing a prosecutor from disclosing what he does not
28 happen to know about boils down to a plea to substitute the police for the
prosecutor, and even for the courts themselves, as the final arbiter’s of the
government’s obligation to ensure fair trials.

Kyles at 437-438 (citations omitted).

1 2. **Prosecutors are deemed to have constructive knowledge of Brady**
2 **material, even if the State agency is withholding the evidence from the**
3 **prosecutor.**

4 Constructive knowledge is imputed to the prosecutor even if the Brady evidence is being
5 withheld by other agencies. The Nevada Supreme Court made this obligation clear in Jimenez v.
6 State: "even if the detectives withheld their reports without the prosecutor's knowledge, 'the state
7 attorney is charged with constructive knowledge and possession of evidence withheld by other
8 state agents, such as law enforcement officers.'" Jimenez at 620 (citation omitted). "Exculpatory
9 evidence cannot be kept out of the hands of the defense just because the prosecutor does not have
10 it, where an investigating agency does." U.S. v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995).

11 3. **Prosecutors are responsible for Brady material, even if it is in the**
12 **possession of an out-of-State agency cooperating with local law**
13 **enforcement.**

14 Furthermore, even if the evidence is being held by an out-of-jurisdiction agent that is
15 cooperating with local law enforcement, the prosecutor is deemed to have constructive knowledge.
16 As the Court noted in State v. Bennett, 119 Nev. 589 (2003), where a Utah police detective was
17 aware of the evidence, "[w]e conclude that it is appropriate to charge the State with constructive
18 knowledge of the evidence because the Utah police assisted in the investigation of this crime. . . ."
19 Id. at 603. Similarly, other state agents, such as probation and parole officers, welfare workers,
20 employees of Child Protective Services, employees of Department of Motor Vehicles, jail
21 personnel, out-of-state police agencies, and similar agents of the State are also State agents from
22 whom the prosecution must affirmatively collect Brady material.

23 There can be little question, therefore, that despite its "open file policy," the prosecution
24 has an affirmative duty to seek out the previously discussed Brady material, regardless of whether
25 such material is in the hands of the prosecutor or in the hands of some other entity acting on behalf
26 of the State. Indeed, the prosecution must seek out Brady material from other state agents such as
27 probation and parole officers, Child Protective Service workers and their agents, jail personnel,
28 law enforcement personnel, and similar agents of the State. Simply put, prosecutors are obligated

1 to provide Defendant with far more than their "open file." Disclosure of discovery materials
2 cannot be limited or restricted to materials in the possession of the District Attorney's Office.

3 **II. MR. MANNING'S SPECIFIC BRADY REQUESTS.**

4 Based on the foregoing law and analysis, Mr. Knecht specifically requests that the State
5 produce the following Brady material without delay:

- 6 1. Any information on any criminal history or any material or information which
7 relates to specific instances of misconduct of any material witness in the case from
8 which it could be inferred that the person is untruthful and which may be or may
9 lead to admissible evidence. This includes, but is not limited to, any juvenile
10 record, misdemeanors, out-of-state arrests and convictions, outstanding arrest
11 warrants or bench warrants, and cases which were dismissed or not pursued by the
12 prosecuting agency or any other information that would go to the issue of
13 credibility and bias, whether or not the information is admissible as evidence.
- 14 2. Disclosures of all statements (where tangible or intangible, recorded or unrecorded)
15 made by any State witness, or any other person, at any time, that are in any manner
16 inconsistent with the written and/or recorded statements previously provided to the
17 defense. This includes material or information which would tend to exculpate Mr.
18 Manning of the charges, that might mitigate the punishment should he be convicted,
19 or that may lead to information which would tend to impeach or affect the
20 credibility of a State witness, including, but not limited to, any oral statements made
21 to the prosecutor or any other State employee during pre-trial conferences or other
22 investigative meetings.
- 23 3. Any and all notes or recordings of interviews of any witness or potential witness in
24 this case. Any and all statements, written or recorded, of any witness or potential
25 witness in this case.
 - 26 a) Specifically including those provided by Thor Berg.
 - 27 b) Specifically including those provided by City of Las Vegas Marshall, J.
 - 28 Rauchfuss.

- 1 4. Any inconsistent statements made by the subject or any material witness in the case.
2 This includes any inconsistent statements made to any employee or representative
3 of the District Attorney's office.
- 4 5. Any photographs or physical evidence that was collected from the scene on
5 March 29, 2013.
- 6 6. Requests for and/or results of all crime scene analysis and/or testing performed on
7 any of the physical or biological evidence in this case, including, but not limited to,
8 the results of any DNA comparisons, blood analysis and/or medical examinations
9 performed on the complaining witness.
- 10 7. All relevant reports of chain of custody. All reports of any destruction of any
11 evidence in the case.
- 12 8. Photocopies or other reproduction of all handwritten or otherwise memorialized
13 notes kept by the investigating police officers in this case (sometimes known as
14 "Case Monitoring Forms"), including, but not limited to, any notes documenting
15 alternate suspects, investigative leads that were not followed up on, or any other
16 matter bearing on the credibility of any State witness.
- 17 9. Details of any compensation or any other benefit that any of the State's witnesses
18 received in exchange for their cooperation with this prosecution, including, but not
19 limited to, any information concerning any expectation of any benefit of any kind to
20 be received, or already received, by any State witness. This includes, but is not
21 limited to, any express or implied promise made to any witness to provide
22 counseling and/or treatment as a result of his/her participation in the prosecution of
23 this case.
- 24 10. Any information which tends to show that Mr. Manning did not commit the alleged
25 crimes, including, but not limited to, any information suggesting a possible suspect
26 other than Mr. Manning, including investigative leads to other suspects.
- 27 11. Any notes of any statements by the defendant, to include any notes of patrol
28 officers or other agents of the State who have had contact with the defendant, if not

1 given already in discovery. This includes any and all notes and reports of any
2 polygraph done by the State, including all of the raw data and graphs, preliminary
3 reports and printouts from such polygraph(s).

4 a) Specifically, any and all transcripts, audio recording, video recording, or
5 notes from the defendant's interview with police on May 18, 2013.

6 12. Copies of all video or audio recording of any form collected by the investigating
7 officers or any other agent of the State during the course of the investigation,
8 including 911 or 311 recordings, or calls to CAT Bus dispatch regarding the present
9 offense from March 29, 2013, as well as the video surveillance from the CAT bus
10 on March 29, 2013.

11 13. A copy of any and all line-up photos shown to the any witnesses in this case,
12 including any line-ups used in this case before Mr. Manning was developed as a
13 suspect. As well as any statements they may have written following their
14 observance of the line-up photos.

15 14. Any information on whether any investigation was conducted regarding the
16 defendant's alleged co-conspirator, "Baby Insane", aka Nicholas D. Thompson.
17 This includes, but is not limited to copies of reports generated, statements, or
18 interviews regarding Mr. Thompson's involvement with the instant offense.

19 15. Any information regarding the confidential source of information which identified
20 the defendant. This includes, but is not limited to any information related to the case
21 given to any police department or crime tip organization such as Crime Stoppers,
22 and any reward or benefit received for such a tip.

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Relief Requested

For the foregoing reasons, Mr. Manning asks the Court to compel the State to produce
Brady material.

DATED this 30th day of July, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Defendant's Motion to Compel Disclosure of Brady Material on for hearing before the Court on the 12th day of August, 2013, at 9:00 a.m.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE BY ELECTRONIC TRANSMISSION

By: /s/ Annie McMahan
Employee of the Public Defender's Office


CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING,
#1994553

Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

**RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF
BRADY MATERIAL**

DATE OF HEARING: 08/12/13
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Compel Disclosure of Brady Material.

This Response 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.

POINTS AND AUTHORITIES

It is the position of the Clark County District Attorney's Office to permit discovery and inspection of any relevant material pursuant to the appropriate discovery statutes (NRS

1 174.235) and any exculpatory material as defined by the United States Supreme Court in
2 Brady v. Maryland, 373 U.S. 83 (1963). However, the District Attorney's Office will not
3 permit discovery to be used as a vehicle wherein the State of Nevada is required to
4 investigate and prepare the defendant's case.

5 All statements and reports submitted by the Las Vegas Metropolitan Police
6 Department, which includes witness statements and transcripts of interviews, as well as
7 scientific reports and analysis have been or will be provided to the defense in this case.
8 Everything in the State's file, with the exception of any deputy's personal work product or
9 that of an investigator in preparation for the trial of this matter, will be and have been made
10 available to defense counsel. Indeed, it is the undersigned's belief that everything in the
11 prosecutor's file has already been provided and continues to be provided to defense counsel.
12 Nevertheless, the State objects to an Order for Discovery beyond that contemplated by
13 Nevada law.

14 Under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, the defense cannot
15 require that the prosecution conduct further investigation to uncover purported exculpatory
16 evidence that it does not possess. The defendant is not entitled to all evidence known or
17 believed to exist which is or may be favorable to the accused, or which pertains to the
18 credibility of the prosecution's case. In United States v. Gardner, 611 F.2d 770, 774-775 (9th
19 Cir. 1980), the court stated that the prosecution:

20 . . . does not have a constitutional duty to disclose every bit of information that
21 might affect the jury's decision; it need only disclose information favorable to
the defense that meets the appropriate standard of materiality.

22 See also, United States v. Sukumolachan, 610 F.2d 685, 687 (9th Cir. 1980) (prosecution not
23 required to create exculpatory material).

24 Under federal law, Brady does not create any pretrial discovery privileges not
25 contained in the Federal Rules of Criminal Procedure (which served as the model for Nevada
26 law). United States v. Flores, 540 F.2d 432, 438 (9th Cir. 1980).

27 In short, citation to Brady does not relieve a defendant of the obligation of doing his
28 own investigation. The Defendant is free to seek the material he claims to want; he is not,

1 however free to seek it from the prosecution.

2 The prosecution holds an indispensable legal duty to not only disclose to the
3 defendant all inculpatory evidence in its possession pursuant to statute, *see e.g.* NRS 174.233
4 et seq., but also to disclose to the defendant all material evidence in its possession that is
5 favorable to an accused because it is either exculpatory or has impeachment value
6 (hereinafter, such favorable evidence shall be referred to as "*Brady* material"). *Brady v.*
7 *Maryland*, 373 U.S. 83 (1963); *U.S. v. Bagley*, 473 U.S. 667, 676 (1985). While the former
8 requirement derives explicitly from statute, the latter requirement is of constitutional
9 dimension. *Brady*, 373 U.S. at 87. This duty to disclose applies to the prosecution without
10 regard to whether a defendant makes a request for discovery. *U.S. v. Agurs*, 427 U.S. 97, 107
11 (1976). A prosecutor's obligation to provide discovery to a defendant, however, is limited to
12 only that information required by statute or *Brady*. *See Weatherford v. Busey*, 429 U.S. 545,
13 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and
14 *Brady* did not create one... 'the Due Process Clause has little to say regarding the amount of
15 discovery which the parties must be afforded...' [citation omitted]); *Kyles v. Whitley*, 514
16 U.S. 419, 436-37 (1995) ("We have never held that the Constitution demands an open file
17 policy..."). In Nevada, NRS 174.235 outlines specifically the affirmative pretrial discovery
18 obligations of the State:

19 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the
20 request of a defendant, the prosecuting attorney shall permit the defendant to
21 inspect and to copy or photograph any: (a) Written or recorded statements or
22 confessions made by the defendant, or any written or recorded statements
23 made by a witness the prosecuting attorney intends to call during the case in
24 chief of the State, or copies thereof, within the possession, custody or control
25 of the State, the existence of which is known, or by the exercise of due
26 diligence may become known, to the prosecuting attorney; (b) Results or
27 reports of physical or mental examinations, scientific tests or scientific
28 experiments made in connection with the particular case, or copies thereof,
within the possession, custody or control of the State, the existence of which is
known, or by the exercise of due diligence may become known, to the
prosecuting attorney; and (c) Books, papers, documents, tangible objects, or
copies thereof, which the prosecuting attorney intends to introduce during the

1 case in chief of the State and which are within the possession, custody or
2 control of the State, the existence of which is known, or by the exercise of due
3 diligence may become known, to the prosecuting attorney.

4 2. The defendant is not entitled, pursuant to the provisions of this section, to
5 the discovery or inspection of: (a) An internal report, document or
6 memorandum that is prepared by or on behalf of the prosecuting attorney in
7 connection with the investigation or prosecution of the case. (b) A statement,
8 report, book, paper, document, tangible object or any other type of item or
9 information that is privileged or protected from disclosure or inspection
10 pursuant to the Constitution or laws of this state or the Constitution of the
11 United States.

12 3. The provisions of this section are not intended to affect any obligation
13 placed upon the prosecuting attorney by the Constitution of this state or the
14 Constitution of the United States to disclose exculpatory evidence to the
15 defendant.

16 Beyond state statute, *Brady v. Maryland* also requires disclosure by the prosecution of
17 only that "evidence favorable to an accused... where the evidence is material either to guilt
18 or to punishment..." 373 U.S. at 87.

19 In interpreting the prosecution's discovery obligations under *Brady* and discovery
20 statutes, this Court has recognized the limited nature of the prosecution's duty to disclose.

21 First, this Court has held in no uncertain terms that the prosecution need not disclose
22 information immaterial to the defense, writing that "*the State is under no obligation to*
23 *accommodate a defendant's desire to flail about in a fishing expedition...*" *Sonner v. State*,
24 112 Nev. 1328, 1340-41 (1996) (emphasis added). In other words, the prosecution need not
25 "compile information or pursue an investigative lead simply because it could conceivably
26 develop evidence helpful to the defense." *Evans v. State*, 117 Nev. 609, 627 (2001). In
27 *Sonner*, citing Nevada's criminal discovery statute and *Brady*, the defendant sought
28 disclosure of personnel records of the victim, a Nevada Highway Patrolman, "to rebut State
evidence of [the victim's] value as a law enforcement officer and an individual." *Id* at 1340.
In affirming the district court's denial of the defendant's discovery request, this Court held
that:

///

1 [a] defendant must advance some factual predicate which makes it reasonably
2 likely the requested file will bear information material to his or her defense. A
bare assertion that a document "might" bear such fruit is insufficient.

3 *Id* at 1340-41 (quotations and citations omitted). Because Sonner's discovery request "was
4 based on nothing more than the assertion of a general right to search for whatever mitigating
5 evidence might be found in [the victim's] records," it was in excess of the prosecution's
6 discovery obligations. *Id*; see also *Evans*, 117 Nev. 609 at 627.

7 Second, this Court has held that the prosecution does not violate its discovery
8 obligations when it does not disclose information that is not "favorable" to the defense or
9 "material either to guilt or to punishment." *Lay v. State*, 116 Nev. 1185, 14 P.3d 1256
10 (2000). Under *Brady*, evidence is "favorable" to an accused when it is information that is
11 exculpatory or has impeachment value, *Brady*, 373 U.S. at 87; *Bagley*, 473 U.S. at 676, and
12 is "material" if its nondisclosure would undermine confidence in the outcome of the trial.
13 *Lay*, 116 Nev. at 1194. The determination of the "character of a piece of evidence" as
14 material and favorable to the defendant "will often turn on the context of the existing or
15 potential evidentiary record," and it initially falls to the prosecutor to determine whether
16 evidence should be disclosed. *Lay v. State*, 116 Nev. 1185, 1194 (2000).

17 Third, although a prosecutor must "learn of any favorable evidence known to the
18 others acting on the government's behalf in [the] case, including the police," a prosecutor is
19 under no duty to investigate potential *Brady* material not known to the prosecution and
20 which exists outside the possession of investigative agents acting on the government's behalf
21 in the case. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). In interpreting *Kyles*' mandate to
22 learn of favorable evidence, the Supreme Court of California has noted that "[c]ourts have...
23 consistently declined to draw a distinction between different agencies under the same
24 government, focusing instead upon the 'prosecution team' which includes both investigative
25 and prosecutorial personnel." *In re Brown*, 17 Cal.4th 873, 879 (1998) quoting *United States*
26 *v. Auten*, 632 F.2d 478, 481 (5th Cir.1980); see e.g. *Smith v. Secretary Dept. of Corrections*,
27 50 F.3d 801, 824 (10th Cir.1995) ("the prosecution" extends to law enforcement personnel
28 and other arms of the state involved in investigative aspects); *Moon v. Head*, 285 F.3d 1301,

1 1309 (11th Cir. 2002) (*Brady* applies only to favorable evidence possessed by the
2 "prosecution team", meaning "the prosecutor or anyone over whom he has authority"
3 (citations omitted)). In other words, only if a prosecutor is in the "*unique position* to obtain
4 information known to other agents of the government" should a district court order the State
5 to obtain and disclose such information. See *Carriger v. Stewart*, 132 F.3d 463 (9th Cir.
6 1997) (emphasis added). As this Court has held, the State bears no burden "to disclose
7 evidence which is available to the defendant from other sources, including diligent
8 investigation by the defense." *Steese v. State*, 114 Nev. 479, 495 (1998); *U.S. v. Davis*, F.2d
9 1501, 1505 (11th Cir. 1986).

10 The State will address each of Defendant's requests specifically below:

- 11 1. Information on misconduct of material witnesses that goes to their untruthfulness.

12 State's Response: If the State becomes aware of any felony convictions or convictions
13 involving crimes of honesty, with respect to any witness, the State will disclose them to
14 Defendant. Additionally, if the State becomes aware of any disciplinary action taken against
15 any of the Las Vegas Metropolitan Police Department employee witnesses that would reflect
16 upon their honesty, the State will inform the defendant immediately.

- 17 2. All statements made by any State witness inconsistent with previously provided
18 statements.

19 State's Response: If the State becomes aware of such statements, they will be provided to
20 the defense.

- 21 3. Notes of recordings of interviews of witnesses. Written or recorded statements

22 State's Response: The State does not believe such notes or exist but if the State becomes
23 aware of any notes, they will be provided to the defense. The State will provide any related
24 written or recorded statements of material witnesses to the defense.

- 25 4. Inconsistent statements made by witnesses or to the DA's office

26 State's Response: If the State becomes aware of such statements, they will be provided to
27 the defense.

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1 5. Photographs or physical evidence from the scene on March 29, 2013

2 State's Response: The State has already provided via email on July 25, 2013 color
3 photographs to the defense. If any physical evidence has been collected by metro, the State
4 has no objection to viewing such evidence along with the defense. The State will make itself
5 available at a time convenient to the defense.

6 6. Results of any crime scene analysis performed

7 State's Response: All LVMPD documents, records, photographs, audio and video
8 recordings related to this case, either have been, or will be given to the defense.

9 7. All relevant reports of chain of custody or destruction of any evidence.

10 State's Response: All LVMPD records, photographs, audio and video recordings related to
11 this case, either have been, or will be given to the defense.

12 8. Notes kept by investigating officers relating to this case

13 State's Response: The State is not aware of any such notes exist but if they are, the State
14 will turn them over to the defense.

15 9. Details of any compensation or benefit witnesses received in exchange for
16 cooperation with the prosecution.

17 State's Response: The State has no objection to this request

18 10. Any information to show that Mr. Manning did not commit the crimes or that leads to
19 any other suspect

20 State's Response: The State has no objection to this request

21 11. Notes of statement by the defendant, notes of patrol officers that have contacted the
22 defendant, transcripts, audio recording, video recording

23 State's Response: The State has no objection to this request

24 12. Copies of all video or audio collected by investigating officers during the course of the
25 investigation.

26 State's Response: The State is not yet in possession of 311 or 911 calls from this incident
27 but as soon as it is received the State will turn it over. The items have been sub'd and are
28 expected to be in the State's possession soon. The State has a copy of video surveillance

1 from the March 27, 2013 incident and will provide that to the defense. The State is not in
2 possession of video surveillance from the March 29, 2013 incident and does not believe any
3 exists. The State has turned over, via email, color photographs of the incident to the defense.

4 13. Copy of any line-up photos shown to the witnesses in this case.

5 State's Response: The State has provided the defense with all the lineups it has received
6 by metro. If the State becomes aware of any additional lineups, we will turn those over to the
7 defense immediately.

8 14. Any information regarding investigation to the alleged co-conspirator

9 State's Response: The State is not aware of any investigation regarding co-conspirator but
10 if it becomes aware of any exculpatory information it will turn that over to the defense as
11 soon as possible.

12 15. Any information regarding the confidential source which identified the defendant.

13 State's Response: The State does not believe it is required to turn over such information.
14 This Court must determine whether the Defendant has provided sufficient reason to force the
15 State to disclose the identity of the informant. Initially, this Court must acknowledge that
16 the Nevada Legislature has sought to protect the identity of informants. See NRS 49.335,
17 49.345, and 49.365. The issue therefore is whether this Court determines that absent the
18 concerned citizen's identity, the Defendant would be denied a fair trial.

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1 In this case, the State submits that the Defendant has not provided that absent the
2 confidential source's identity the Defendant would be denied a fair trial. Without such
3 showing, the State should not be required to provide the confidential source's identity to the
4 defense.

5 DATED this 9th day of August, 2013.

6 Respectfully submitted,

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

10 BY /s/HAGAR TRIPPIEDI
11 HAGAR TRIPPIEDI
12 Deputy District Attorney
13 Nevada Bar #010114

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of Response to Defendant's Motion to Compel Disclosure
16 of Brady Material, was made this 9th day of August, 2013, by facsimile transmission to:

17 MARISSA PENSABENE
18 DEPUTY PUBLIC DEFENDER
19 FAX#(702) 366-9684

20 BY: /s/P. Manis
21 P. Manis
22 Employee of the District Attorney's Office
23
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28 HT/pm/L-2


CLERK OF THE COURT

1 NOTC
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

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

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 v.)

13 JAMES DAEVON MANNING,)

14 Defendant.)

CASE NO. C-13-290624-1

DEPT. NO. XI

DATE: September 24, 2013

TIME: 9:00 a.m.

15 **DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)**

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 You, and each of you, will please take notice that the Defendant, JAMES DAEVON
18 MANNING, intends to call the following expert witness in his case in chief:

19 **Dr. Jennifer Rennels, Ph.D** (CV Attached)

20 This witness will testify regarding the reliability of eyewitness identifications, specifically
21 involving cross-racial identifications.

22 DATED this 23rd day of September, 2013.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 By /s/ Marissa A. Pensabene
26 MARISSA A. PENSABENE, #13006
27 Deputy Public Defender
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By: /s/ Annie McMahan
Employee of the Public Defender's Office

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JENNIFER L. RENNELS (formerly RAMSEY)

jennifer.rennels@unlv.edu

work	University of Nevada, Las Vegas Department of Psychology 4505 Maryland Parkway, Box 455030 Las Vegas, NV 89154-5030 (702) 895-0648 (702) 895-0195 fax	home 1919 Coralino Dr. Henderson, NV 89074 (702) 263-0139
education	<i>Ph.D., Psychology, Developmental, minor in Statistics, The University of Texas at Austin, August 2003</i> Dissertation: Infant Attention to Male Faces; Supervisor: Judith Langlois <i>M.A., Psychology, The University of Texas at Austin, August 1999</i> Thesis: Effects of the "Beauty is Good" Stereotype on Children's Memories; Supervisor: Judith Langlois <i>B.S., Cum Laude, Psychology-Business, Ithaca College, May 1991</i>	
additional training	<i>Facial Action Coding System Certified, Paul Ekman, Wallace V. Friesen, Joseph C. Hager, August 2013</i> <i>Nonlinear Methods for Psychological Science, American Psychological Association Advanced Training Institute, University of Cincinnati, June 11-15, 2007</i> <i>Regents' Academy Faculty Development Program, Nevada State Board of Regents, May 31-June 2, 2007</i>	
professional positions	<i>Associate Professor, Department of Psychology, University of Nevada, Las Vegas, July 2010 to present</i> Department Chair: Mark Ashcraft, Ph.D. <i>Assistant Professor, Department of Psychology, University of Nevada, Las Vegas, August 2003 to June 2010</i>	
externally funded research grants	<i>Asymmetries in Infant Face Processing—The Role of Individual Differences & Stimulus Characteristics, National Science Foundation Award BCS-1148049 (\$399,999), June 2012 to May 2015</i> Principal Investigator: Jennifer L. Rennels	

CAREER: Asymmetries in Infant Processing of Faces-Origins and Implications, National Science Foundation Faculty Early Career Development Award 0645761 (\$400,024), May 1, 2007 to April 31, 2013
Principal Investigator: Jennifer L. Rennels

Precursors to Appearance-Based Stereotypes, National Institute of Child Health and Human Development Grant R03 HD48467 (\$149,000), January 2005 to December 2007
Principal Investigator: Jennifer L. Ramsey

Research Supplement to Promote Diversity in Health-Related Research for Precursors to Appearance-Based Stereotypes, National Institute of Child Health and Human Development Grant R03 HD48467 (\$13,467), September 2005 to December 2006
Principal Investigator: Jennifer L. Ramsey

**internally
funded
research grants
& awards**

Sabbatical Leave, University of Nevada, Las Vegas, Fall 2012

Development of Perceptual Skills Across Domains, University of Nevada, Las Vegas Faculty Opportunity Award (\$28,770), July 2012-December 2013
Co-Principal Investigators: Erin E. Hannon and Jennifer L. Rennels

Infant Scanning of Female and Male Faces, College of Liberal Arts Center for Advanced Research Award, (\$1,000), 2006-2007
Principal Investigator: Jennifer L. Ramsey-Rennels

Individual and Situational Differences in Children's Facial Attractiveness Stereotyping, University of Nevada, Las Vegas New Investigator Award (\$9,300), 2004-2005
Principal Investigator: Jennifer L. Ramsey

University Faculty Travel Award, University of Nevada, Las Vegas, (\$395) Fall 2012; (\$500) Spring 2012; (\$500) Spring 2011; (\$720) Fall 2009; (\$250) Fall 2008; (\$1,000) Fall 2007; (\$598) Spring 2007; (\$1,000) Spring 2006; (\$665) Spring 2004

College of Liberal Arts Travel Award, University of Nevada, Las Vegas, (\$700) Spring 2013

**grants under
review**

Development of Perceptual Skills Across Domains, National Institute of Child Health and Human Development Grant, August 2013 to August 2016
Co-Principal Investigators: Jennifer L. Rennels & Erin E. Hannon
Grant submitted on 2/25/13.

- peer-reviewed journal articles** Cummings, A.J., & **Rennels, J.L.** (in press). How mood and task complexity affect children's recognition of others' emotions. *Social Development*.
- Rennels, J.L.**, & Cummings, A.J. (2013). Sex differences in facial scanning: Similarities and dissimilarities between infants and adults. *International Journal of Behavioral Development: Special Issue on Development of Face Processing*, 37(2), 111-117. doi: 10.1177/0165025412472411
- Rennels, J.L.**, & Davis, R.E. (2008). Facial experience during the first year. *Infant Behavior & Development*, 31, 665-678.
- Rennels, J.L.**, Bronstad, P.M., & Langlois, J.H. (2008). Are attractive men's faces masculine or feminine? The importance of type of facial stimuli. *Journal of Experimental Psychology: Human Perception and Performance*, 34(4), 884-893.
- Ramsey-Rennels, J.L.**, & Langlois, J.H. (2006). Infants' differential processing of female and male faces. *Current Directions in Psychological Science*, 15, 59-62.
- Hoss, R.A., **Ramsey, J.L.**, Griffin, A.M., & Langlois, J.H. (2005). The roles of facial attractiveness and facial femininity/masculinity in sex classification of faces. *Perception*, 34, 1459-1474.
- Ramsey, J.L.**, Langlois, J.H., & Marti, C.N. (2005). Infant categorization of faces: Ladies first. *Developmental Review*, 25, 212-246.
- Ramsey, J.L.**, & Fowler, M.L. (2004). "What do you notice?" Using posters containing questions and general instructions to guide preschoolers' science and mathematics learning. *Early Child Development and Care*, 174, 31-45.
- Ramsey, J.L.**, Langlois, J.H., Hoss, R.A., Rubenstein, A.J., & Griffin, A.M. (2004). Origins of a stereotype: Categorization of facial attractiveness by 6-month-old infants. *Developmental Science*, 7, 201-211.
- Ramsey, J.L.**, & Langlois, J.H. (2002). Effects of the "beauty is good" stereotype on children's information processing. *Journal of Experimental Child Psychology*, 81, 320-340.
- book chapters** **Rennels, J.L.** (2012). Physical attractiveness stereotyping. In T. Cash (Ed.), *Encyclopedia of Body Image and Human Appearance*. Oxford, UK: Elsevier.
- Ramsey-Rennels, J.L.**, & Langlois, J.H. (2007). How infants perceive and process faces. In M. Lewis & A. Slater (Eds.), *Introduction to Infant Development*, 2nd ed. (pp. 191-215). New York: Oxford University Press.

Ramsey-Rennels, J.L., & Langlois, J.H. (2007). Infants' differential processing of female and male faces. Reprinted in E.N. Junn & C.J. Boyatzis (Eds.), *Annual Editions: Child Growth and Development 08/09, 5th ed.* McGraw-Hill/Dushkin.

Ramsey, J.L., & Langlois, J.H. (2002). How infants perceive faces. In M. Lewis & A. Slater (Eds.), *Introduction to Infant Development* (pp. 167-191). New York: Oxford University Press.

**submitted
manuscripts**

Rennels, J.L., & Langlois, J.H. (under review). Children's classification and lexicalization of attractiveness, sex, and race concepts: Differential displays of these concepts and relatedness to bias and flexibility. Manuscript submitted to *Journal of Experimental Child Psychology* on 9/16/13.

Rennels, J.L., & Langlois, J.H. (under review for invited resubmission). Children's attractiveness, gender, and race biases: A comparison of their strength and generality. Manuscript resubmitted to *Child Development* on 8/1/13.

Rennels, J.L., & Cummings, A.J. (under revision for invited resubmission). Contextual factors affect infants' interest in female and male faces: Evidence of graded facial representations. Manuscript originally submitted to *Journal of Experimental Child Psychology* on 9/28/11.

**manuscripts in
progress**

Rennels, J.L., Kayl, A.J., Davis, R.E., & Langlois, J.H. Infants' preferences for and categorization of low masculine male faces: An overgeneralization of their female face expertise? Draft available.

Rennels, J.L., Kayl, A.J., & Zebrowitz, L.A. The trajectory of the positive expressivity-attractiveness association: Developmental and sex differences. Draft available.

Rennels, J.L., & Kayl, A.J. Differences in positive expressivity based on attractiveness: In the eye of the beholder or an expressive reality? Draft available.

**projects in
progress**

Rennels, J.L., & Glover, V. Improving infant recognition of males.

Rennels, J.L., Kayl, A.J., Cummings, A.J., & Glover, V. Infants' use of femininity cues and sex to categorize female and male faces.

Glover, V., & Rennels, J.L. Reducing explicit and implicit bias.

Kayl, A.J., & Rennels, J.L. Toddlers' visual preferences as related to self and gender knowledge.

Rennels, J.L., Juvrud, J., & Kayl, A.J. Hairstyle and face shape: Confounds or important cues to face perception?

Rennels, J.L., & Cummings, A.J. Correlations between facial scanning and recognition: A perceptual explanation for the other-race effect.

Rennels, J.L., & Cummings, A.J. Racial differences in infant scanning of female and male faces from familiar and unfamiliar races.

Rennels, J.L., Juvrud, J., & Kayl, A.J. The relationship between adults' health, sex-typed attributes, and facial appearance.

Rennels, J.L., & Glover, V. How infants and adults represent faces.

Rennels, J.L., Noles, E., & Kayl, A.J. How presentation and sex-stereotypicality impact infants' intermodal knowledge of women and men.

Cummings, A.J., & Rennels, J.L. The influence of person familiarity on children's social information processing.

Juvrud, J., & Rennels, J.L. The relationship between sex-typing and help-seeking behaviors in adults.

Hannon, E., & Rennels, J.L. Perceptual narrowing across domains.

Rennels, J.L., Herlitz, A., Gredebäck, G., & Juvrud, J. The role of caregiving in infant processing of female and male faces.

Rennels, J.L., Cummings, A.J., Juvrud, J., & Kayl, A. How individual differences and stimulus characteristics affect infant preferences for and recognition of female vs. male faces and familiar vs. unfamiliar race faces.

**peer-reviewed
conference
presentations**

Noles, E., & Rennels, J.L. (2014, February). *What's age got to do with it? Examining how the age of stimulus faces affects children's implicit racial bias*. To be presented at the annual meeting of the Society for Personality & Social Psychology, Austin, TX.

Rennels, J.L., Kayl, A.J., & Zebrowitz, L.A. (2013, June). *Facial Attractiveness During Childhood Predicts Females' Positive Expressivity During Adulthood*. Presented at the annual meeting of the Jean Piaget Society, Chicago, IL.

Rennels, J.L., & Langlois, J.H. (2013, April). *Differences in the Strength of Children's Attractiveness, Gender, and Race Biases and their Explicit Use of these Attributes*. Presented at the biennial meeting of the Society for Research in Child Development, Seattle, WA.

Glover, V., & **Rennels, J.L.** (2013, January). *Using a Learning Task to Alter Implicit Associations of African American Males*. Presented at the annual meeting of the Society for Personality & Social Psychology, New Orleans, LA.

Rennels, J.L., Kayl, A.J., & Davis, R.E. (2012, June). Symposium chair of *Asymmetries in Early Visual Experiences Affect Experience-Expectant and Experience-Dependent Face Processing Abilities* and presenter of *Age Differences in Infant Categorization of Male Faces: Cumulative Experience with Female Faces Shapes Male Categories*. Presented at the biennial meeting of the International Conference on Infant Studies, Minneapolis, MN.

Rennels, J.L., & Cummings, A.J. (2012, June). *The Dynamics of Infant Interest in Female and Male Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Minneapolis, MN.

Noles, E.N., Kayl, A.J., & **Rennels, J.L.** (2012, June). *Dynamic Presentation [Does Not] Augment Infants' Intermodal Knowledge of Males*. Presented at the biennial meeting of the International Conference on Infant Studies, Minneapolis, MN.

Kayl, A.J. & **Rennels, J.L.** (2012, April). *Toddlers' Visual Preferences for Adults: The Impact of Gender Knowledge and Real-World Experience*. Presented at the fifth Gender Development Research Conference, San Francisco, CA.

Rennels, J.L., Juvrud, J., & Kayl, A.J. (2011, July). *How Facial Appearance, Health, and Sex-typed Attributes are Related*. Presented at the Australasian Human Development Association conference, Dunedin, New Zealand.

Kayl, A.J., & **Rennels, J.L.** (2011, July). *Toddlers' Preferences for Same-Sex Adult Facial Stimuli*. Presented at the Australasian Human Development Association conference, Dunedin, New Zealand.

Cummings, A.J., & **Rennels, J.L.** (2010, August). *How Mood Affects Children's Recognition of Others' Emotions*. Presented at the 2010 American Psychological Association Annual Convention, San Diego, CA.

Rennels, J.L., & Kayl, A.J. (2010, May). *"Beauty is positive": The Relationship Between Attractiveness and Perceived Emotional Expression*.

Presented at the 2010 Association for Psychological Science Annual Convention, Boston, MA.

Rennels, J.L., Glover, V., Cummings, A.J., & Kayl, A. (2010, March). *How Infants Represent Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Baltimore, MD.

Glover, V., **Rennels, J.L.**, Kayl, A., & Cummings, A.J. (2010, March). *Improving Infant Recognition of Male Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Baltimore, MD.

Rennels, J.L., Kayl, A., Cummings, A.J., & Glover, V. (2010, March). *Infants Categorize Prototypical Faces by Sex but Rely on Femininity Cues to Categorize Less Prototypical Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Baltimore, MD.

Rennels, J.L., & Simmons, R.E. (2008, March). *Facial Experience During the First Year*. Presented at the biennial meeting of the International Conference on Infant Studies, Vancouver, B.C.

Rennels, J.L., & Cummings, A. (2008, March). *Differences in Infant Scanning of Novel- and Familiar-Gender Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Vancouver, B.C.

Ramsey-Rennels, J.L., & Kayl, A.J. (2007, May). *Faces Are Rated Similarly Regardless of Static or Dynamic Presentation*. Presented at the meeting of the Association for Psychological Science, Washington, DC.

Ramsey, J.L. (2006, June). *Infant Interest in Male Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Kyoto, Japan.

Ramsey, J.L., & Simmons, R.E. (2006, June). *Infant Categorization of Male Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Kyoto, Japan.

Simmons, R.E., & **Ramsey, J.L.** (2006, June). *Infants Have More Experience with Female than Male Faces*. Presented at the biennial meeting of the International Conference on Infant Studies, Kyoto, Japan.

Ramsey, J.L., Langlois, J.H., & Marti, C.N. (2004, May). *Infants Take Longer to Process Male than Female Faces in Comparable Looking Time Tasks*. Presented at the biennial meeting of the International Conference on Infant Studies, Chicago, IL.

Griffin, A.M., Hoss, R.A., **Ramsey, J.L.**, Langlois, J.H., & Rubenstein, A. (2004, May). *Antecedents of the "Beauty is Good" Stereotype: Infants Associate Facial Attractiveness with Positive and Negative Valence*. Presented at the biennial meeting of the International Conference on Infant Studies, Chicago, IL.

Ramsey, J.L., Bronstad, P.M., & Langlois, J.H. (2003, May). *Methodological Differences Explain Inconsistencies for Finding Feminine vs. Masculine Male Face Preferences*. Presented at the annual meeting of the American Psychological Society, Atlanta, GA.

Ramsey, J.L. (2003, April). *Infant Preferences for Masculine- or Feminine-Looking Male Faces Depend on the Attractiveness of the Face Pair*. Presented at the biennial meeting of the Society for Research in Child Development, Tampa, FL.

Ramsey, J.L. (2003, April). *The Robustness and Development of Infant Attractiveness Preferences for Male Faces*. Presented at the biennial meeting of the Society for Research in Child Development, Tampa, FL.

Bronstad, P.M., **Ramsey, J.L.**, & Langlois, J.H. (2002, June). *Sample Size Explains Discrepancies in Facial Attractiveness Research: Masculine Male Faces are More Attractive (formerly Femininity=Attractiveness but Masculinity and Attractiveness Merely Share Variance)*. Presented at the annual meeting of American Psychological Society, New Orleans, LA.

Ramsey, J.L., & Langlois, J.H. (2002, April). *Infant preferences for feminine male faces: Early detection of parental investment?* Presented at the biennial meeting of the International Conference on Infant Studies, Toronto, Ontario.

Ramsey, J.L., Hoss, R.A., Griffin, A.M., & Langlois, J.H. (2001, June). *Facial cues that aid children and adults in gender identification*. Presented at the annual meeting of the American Psychological Society, Toronto, Ontario.

Ramsey, J.L., Langlois, J.H., Hoss, R., & Rubenstein, A.J. (2000, July). *Origins of a stereotype: Cognitive categorization of attractive and unattractive faces by young infants*. Presented at the biennial meeting of the International Conference on Infant Studies, Brighton, England.

Ramsey, J.L., & Langlois, J.H. (1999, April). *The effects of physical attractiveness stereotypes on children's memories*. Presented at the biennial meeting of the Society for Research in Child Development, Albuquerque, NM.

**other
conference or
preconference
presentations**

Rennels, J.L., Cummings, A.J., & Juvrud, J. (2012, October). *Sex Differences in Facial Scanning: Similarities and Dissimilarities Between Infants and Adults*. Presented at Novel Methods in Developmental Research Conference, Uppsala, Sweden.

Rennels, J.L. *Infants' Representation of Facial Knowledge*. (2012, February). Presented at The University of Texas at Austin's Psychology Department Reunion, Austin, TX.

Rennels, J.L., & Glover, V. (2009, April). *Increased Facial Experience Improves Infant Recognition of Male Faces*. Presented at the biennial meeting of the Society for Research in Child Development Face Processing Preconference, Denver, CO.

Rennels, J.L. (2007, March). *Infants Use Different Cues to Categorize Female and Male Faces*. Presented at the biennial meeting of the Society for Research in Child Development Face Processing Preconference, Boston, MA.

**undergraduate
conference
presentations**

Rennels, J.L., Glover, V.A., Cummings, A.J., Kayl, A.J., Orlewicz, M., Tiongson, R.J., & Ditzler, B.A. (2011, April). *How experience influences infants' recognition of male and female faces*. Poster presented at the Festival of Communities, Las Vegas, NV.

Rennels, J.L., Cummings, A., Cornejo, P., & Sandoval, A. (2010, November). *Infants' scanning of faces: Developmental differences, gender, and race effects*. Poster session presented at the University of Nevada, Las Vegas Undergraduate Research Conference, Las Vegas, NV.

Rennels, J.L., Glover, V.A., Cummings, A.J., Orlewicz, M., & Corpuz, E. (2010, November). *How experience influences infants' recognition of male and female faces*. Poster presented at the Psi Chi Research Conference, Las Vegas, NV.

media coverage

National Science Foundation CAREER Award Winners: Jennifer Rennels, Psychology. Article in UNLV Innovation, Fall 2012.
Infant scanning of familiar and unfamiliar race faces. Aired on Discovery Channel Canada's Daily Planet on 11/17/09.
Are babies faces the key to unlocking stereotypes? Aired on KVBC News on 9/4/09.
Researchers go ga-ga for stereotyping. Article in The Rebel Yell, 8/27/09.
Hey good-lookin'! Aired on Fox News on 1/18/07.
Is your baby biased? Article in Las Vegas Review Journal, 11/27/06

**talks/
colloquium**

Uppsala University BabyLab, Uppsala, Sweden, September 2012

Title: Infants' Representation and Manifestation of Facial Knowledge

Karolinska Institutet Unit of Psychology, Stockholm, Sweden, September 2012

Title: Infants' Representation and Manifestation of Facial Knowledge

Psychology Department's Experimental Proseminar, University of Nevada, Las Vegas, April 2012

Title: Infants' Representation and Manifestation of Facial Knowledge

Psychology Department's Experimental Proseminar, University of Nevada, Las Vegas, November 2008

Title: How Female Familiarity Affects Stereotype Development: A Theory

3rd Annual Nevada State Psychological Association Career Paths in Psychology, Las Vegas, Nevada, April 2006

Informal talk regarding a Psychology career in academia.

Nevada Chapter of the American Statistical Association, Las Vegas, Nevada, February 2006

Title: How Facial Attractiveness Stereotypes Develop

New Investigator Award Open Forum, University of Nevada, Las Vegas, December 2004

Title: Individual and Situational Differences in Children's Facial Attractiveness Stereotyping

Psychology Department's Experimental Proseminar, University of Nevada, Las Vegas, September 2004

Title: How Facial Attractiveness Stereotypes Develop: Target Gender Differences

Dean Frey's Advisory Council at the UNLV Research Foundation, University of Nevada Las Vegas, January 2004

Title: Origins of Appearance-Based Stereotypes

teaching

Courses Taught

PSY 330 (formerly 430 & 440) Developmental Psychology: Infant & Child – taught in the classroom and via distance education

PSY 495/765 Promoting Social Justice Through Psychology

PSY 495 Advanced Topics Seminar –team taught with 7 other professors

PSY 705 Developmental Psychology

PSY 713 Developmental Research

PSY 740 Topics in Developmental Psychology: Stereotype Development

PSY 768/496/498 Independent Research/Independent Study

mentoring

Current Graduate Students

Veronica Glover
Joshua Juvrud
Andrea Kayl
Erica Noles

Former Graduate Students

Andrew Cummings

Thesis Committee Chair

Joshua Juvrud: *The Relationship Between Sex-Typing and Health-Seeking Behaviors* (defense Summer 2013)

Andrea Kayl: *Toddlers' Visual Preferences as Related to Self and Gender Knowledge* (defense Spring 2012)

Veronica Glover: *Reducing Explicit and Implicit Racial Prejudice* (defense Fall 2010)

Andrew Cummings: *How Mood Affects Children's Recognition of Others' Emotions* (defense Spring 2009)

Rhea Watson: *Defining Standards of Attractiveness for African-American Females* (supervised Spring-Fall 2005)

Thesis Committee Member

Rachel Schafer: *The Relationship Between the Functions of School Refusal Behavior and Family Environment* (defense Summer 2011)

Kendra Tracy: *The Initial Development of Child-Focused Interventions in the Treatment of Maternal Substance Abuse and Child Neglect* (defense Spring 2011)

Marisa Hendron: *Problematic School Absenteeism in Community Settings* (defense Fall 2010)

Aaronell Matta: *Inferring Rules from Sound: The Role of Domain-Specific Knowledge in Speech and Music Perception* (defense Summer 2010)

Armeda Stevenson: *Defining Sibling Relationships of those in the Foster Care System: A Qualitative Approach* (defense Spring 2010)

Rachel (Simmons) Davis: *Diversity Issues in Recruitment and Retention of*

Clients for Parenting Classes (defense Summer 2009)

Nina Braithwaite: *Studying Personality in Juvenile Prostitutes: Aren't all Delinquents the Same?* (defense Fall 2008)

Sarah Akhter: *Exploring Adolescent Inner Experience* (defense Fall 2007)

Gillian Chapman: *School Refusal Behavior: The Relationship Between Family Environment and Parenting Style* (defense Fall 2007)

Chandler Marrs: *Cognitive and Affective Correlates of Reproductive Hormones* (defense Fall 2005)

Corinne Townsend: *Immediate Recall Condition Affects Comprehension and Memory for Health Information in Older and Younger Adults* (proposal Fall 2005)

Qualifying Paper Committee Chair

Andrea Kayl: *A Dynamic Systems Approach to Understanding Infant Looking Behavior* (defense anticipated Fall 2013)

Veronica Glover: *Examining Measures of Racial Stereotyping and Prejudice in Childhood and the Functional Salience of Race* (defense Summer 2013)

Erica Noles: *What's Death Got to Do With It? Examining Implicit Contributions to Children's Racial Stereotyping And Prejudice* (defense Spring 2011)

Andrew Cummings: *The Influence of Emotion on Children's Affective Attributions* (defense Spring 2010)

Qualifying Paper/Comprehensive Exam Committee Member

Matthew Rosenthal: *Sensory Knowledge and Sensory Integration in Dyslexia* (defense Summer 2013)

Amanda Haboush: *The Challenge of Culturally Appropriate Measurement of Emotional Regulation* (defense Spring 2010)

Rebecca Thomas: *The Effect of Purchase Type, Materialism and Socioeconomic Status on Happiness, Life Satisfaction and Self-Esteem* (defense Fall 2009)

Jan Klaassen-Conway: (comprehensive exam Fall 2007/Spring 2008)

Chandler Marrs: *Perinatal Mental Illness: Epidemiology, Etiology and Recent Findings* (defense Spring 2006)

Dissertation Committee Chair

Veronica Glover: *Assessing Race Functionality among Measures of Implicit Racial Stereotyping* (proposal anticipated Fall 2013)

Erica Noles: *What's age got to do with it? Examining how the age of stimulus faces affects children's implicit racial bias* (proposal Fall 2012)

Andrew Cummings: *The Influence of Person Familiarity on Children's Social Information Processing* (defense Summer 2013)

Dissertation Committee Member

Kim Claudat: *Objectification Theory and Eating Pathology in Latina College Students: Testing a Culture-Specific Model* (proposal Fall 2013)

Rachel Davis: *Investigating Potential Factors that Influence Recruitment for Parenting Skills Classes* (defense Fall 2013)

Amie Lemos-Miller: *The Effects of Trauma Experiences in Maltreated Adolescents with Respect to Familial and Cultural Variables* (defense Summer 2008)

Jennifer Vecchio: *The Treatment of Selective Mutism: A Case Control Alternating Treatments Design* (defense Summer 2007)

Chandler Marrs: *Cognitive and Affective Correlates of Reproductive Hormones During the First Postpartum Year* (defense Spring 2007)

Honors Thesis Faculty Advisor

Mysty Cain: *Deadbeat Dads: A Study of How Stereotypes Affect Child Support Delinquency* (Spring-Fall 2006)

McNair Scholars Summer Research Institute Faculty Mentor

Jennifer Bolick: *The Effect of Experience on Infants' Visual Preferences* (Summer-Fall 2013)

Kathie English: *Toddlers' Visual Preferences as Related to Self and Gender Knowledge* (Summer-Fall 2009)

Michelle Sernas: *Improving Infant Recognition of Males Through Increased Experience with Faces* (Summer 2009)

Julio Luna: *How Infants Categorize Faces* (Summer-Fall 2008)

Faculty Advisor for Outreach Undergraduate Mentoring Program

Mentored students traditionally underrepresented in the field of Psychology who were interested in attending graduate school (Fall 2005-Spring 2007)

**editorial
activities**

Reviewer

Animal Cognition
Canadian Journal of Behavioural Sciences
Child Development
Cognition
Developmental Psychology
Developmental Review
Developmental Science
Infancy
Infant & Child Development
International Journal of Behavioral Development
Journal of Experimental Psychology: Human Perception & Performance
Journal of Experimental Child Psychology
Journal of Experimental Social Psychology
Journal of Reproductive and Infant Psychology
Pediatrics
Perception
Psychonomic Bulletin & Review
Social Cognition
Social Psychology

grant reviewer

US-Israel Binational Science Foundation, Spring 2012
National Science Foundation, Fall 2009
Social Sciences and Humanities Research Council of Canada, Spring 2009

service grants

Diversity Training, University of Nevada Las Vegas Planning Initiative
Award (\$8,000), 2005-2007
Principal Investigator: Jennifer L. Ramsey

**professional
service**

Community Service

Expert witness for Clark County, Fall 2011-present

University Service, UNLV

Lynn Bennett Early Childhood Education Center Research Advisory Council
Member, 2004-present
Faculty Senate Academic Freedom & Ethics Committee Member, 2004-2006
Library Focus Group Member, March 2004

College of Liberal Arts Service, UNLV

Executive Committee, Fall 2010-Spring 2012

Department of Psychology Service, UNLV

Associate Coordinator of Experimental Psychology Doctoral Program, Fall

2009-present

Faculty Mentor for Dr. Colleen Parks, Fall 2008-present

Developmental Emphasis Committee Chair, Spring 2008-present

Cognitive Emphasis Committee Member, Spring 2008-present

Personnel Committee Member, Spring 2011-Spring 2012, Spring 2013-present

Listening to Departments II Committee Member, Spring 2013

Developmental Search Committee Chair, Fall 2012-Spring 2013

Diversity Committee Member, 2004-2005; Chair, 2005-2007

Senior Faculty Search Committee Member, 2008-2009

Developmental Neuroscience Search, Co-Chair, 2006-2007

Experimental Track Recruitment Committee Member, 2004-2007

Dissertation Award Committee Member, Spring 2006

Experimental Track Steering Committee Member, 2003-2005

Visiting Cognitive Faculty Search Committee Member, Summer 2005

Chair Search Committee Member, 2004-2005

Subject Pool Supervisor, Summer Session III 2004

APS Observer Department Profile Writer, Spring 2004

Experimental Track Development Committee Member, Spring 2004

Experimental Track Retreat Food Coordinator, February 2004

**professional
associations**

Association for Psychological Science, member

International Society on Infant Studies, member

Society for Personality & Social Psychology, member

Society for Research in Child Development, member


CLERK OF THE COURT

0208
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

JAMES DAEVON MANNING,
Defendant.

CASE NO. C-13-290624-1
DEPT. NO. XI
DATE: October 9, 2013
TIME: 9:00 a.m.

MOTION TO SUPPRESS PHOTOGRAPHIC LINE-UP AND SUBSEQUENT IN-COURT IDENTIFICATIONS.

COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through
MARISSA A. PENSABENE, Deputy Public Defender and hereby to suppress photographic line-up

This Motion is made based upon all the papers and pleadings on file herein, the
attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral
argument at the time set for hearing this Motion.

DATED this 27th day of September, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS

EXECUTED this 27th day of September, 2013.

/s/ Marissa Pensabene
MARISSA A. PENSABENE

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FACTS

On March 29, 2013 Defendant James Manning allegedly robbed Thor Berg on a CAT bus. According to the Information and Police Report, Mr. Manning was pick pocketing the victim, Thor Berg, when Berg fell to the ground. Between \$10 and \$12 dollars was taken from the victim's pocket. The police report includes Berg's description of the perpetrator as a "black male adult, thin build, 5'7"-5'10", short hair, 25-35 years of age, wearing a blue/grey shirt and dark jeans." (Police Report, 3). After investigating this offense, police did not have any known suspects. Police contacted the media and requested the public's assistance in identifying the unknown perpetrators. Sometime during May, 2013, an unidentified confidential source contacted Crime Stoppers and identified the unknown perpetrator as Mr. Manning.

Armed with this information, police compiled a line-up with six photos, only one of which had a man with facial features distinctively different from the rest. The content of the photo line-up, an unconstitutionally overly suggestive line-up, is the basis for this motion. Mr. Manning has exceptionally high cheek bones, a distinctive jaw line with a pointed chin, and small eyes. The other five photos in the line-up feature men with more rounded, fleshy faces, without protruding cheek bones. In fact, out of the six photos, only Mr. Manning's cheek bones are visible. Further, none of the other photos showcase a person with a chiseled jaw similar, Manning. Featuring Manning as the only individual with such distinctive facial features is overly suggestive, and violates Mr. Manning's due process rights.

The faulty overly-suggestive photo lineup used by police impermissibly tainted the State's only eyewitness, Berg. Berg's previous identification of Mr. Manning must be suppressed as they were rendered meaningless by the unfairly suggestive process. Any subsequent in-court identifications of Mr. Manning must be precluded at trial as the process has poisoned the reliability of these witnesses for purposes of identification.

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ARGUMENT

I. JAMES MANNING'S DUE PROCESS RIGHT UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION EIGHTEEN OF THE NEVADA CONSTITUTION WERE VIOLATED BY THE UNDULY SUGGESTIVE IDENTIFICATION PROCEDURE.

The Due Process clause of the Fourteenth Amendment requires fair pre-trial identification procedures for the Defendant. Manson v. Brathwaite, 432 U.S. 98, 113 (1977). The U.S. Supreme Court also looks to the totality of the circumstances to determine whether the State violated the defendant's due process rights. Stovall v. Denno, 388 U.S. 293, 302 (1967). The Nevada Supreme Court adopted this position in Jones v. State, 95 Nev. 613, 600 P.2d 247 (1978), when it held an identification process that is so suggestive and unfair that it causes irreparable mistaken identification is a violation of the Defendant's due process, and such identification must be suppressed. See, Gherke v. State, 96 Nev. 581, 584; 613 P.2d 1029 (1980) and Manson v. Braithwaite, 432 U.S. 98 (1977). The inquiry is two-fold: 1) whether the procedure is unnecessarily suggestive and 2) if so, whether, under all the circumstances, the identification is reliable despite an unnecessarily suggestive identification procedure. Banks v. State, 94 Nev. 90, 94; 575 P.2d 592, 595 (1978). 05 Nev. at 871, 784 P.2d at 964

A. The pretrial identification procedure was unnecessarily suggestive.

The instant case is largely centered around an identification made from a photo line-up, followed by identification of the defendant at the preliminary hearing when Mr. Manning was seated, in jail garb, next to his lawyer, without any other corroborating evidence whatsoever. Thus, it is critical that the line-up used have sufficient indicia of reliability to be valid. Plucking random photographs of six people who match the generic description of the robber – a young black man in his late 20's to early 30's, with a thin build– is hardly reliable unless there is something solid to lead to the inclusion of any one person. Otherwise, the likelihood of a mistaken identification is enormous, and the consequences for the individual who had the misfortune of having his photograph wind up in the line-up and selected as a pick-pocket is huge. Furthermore, once the photograph is selected, it is now this photograph that is seared in the witness's memory. Each time he sees the

1 person who matches the photograph that he selected, he becomes positive that he has selected the
2 right person.

3 *B. The pre-trial identification is not admissible because the identification was unreliable.*

4 The consequences surrounding a conviction on the remaining felony counts of Robbery and
5 Battery with Intent to Commit Robbery are very serious. Before a person is convicted, the Court
6 should be satisfied that the methods used to identify the Defendant were free from taint or undue
7 suggestibility, and that fair pre-trial identification procedures were followed in order to guarantee the
8 Defendant the Constitutional safeguards of due process. However, a pre-trial identification which is
9 unnecessarily suggestive may still be admitted if the identification evidence is reliable. Gehrke
10 supra; citing Manson and Jones supra. Factors to consider in determining the totality of the
11 circumstances and the likelihood of misidentification include 1) the opportunity of the witness to
12 view the criminal at the time of the crime, 2) the witness degree of attention, 3) the accuracy of the
13 witness's prior description of the criminal, 4) the level of certainty demonstrated by the witness at
14 the confrontation and 5) the length of time between the crime and the confrontation. Neil v. Biggers,
15 409 U.S. 188, 199-200 (1972).

16 In this case, the pre-trial identification does not meet the standard for reliability. First, the
17 witness, Berg, had little opportunity to view the perpetrator *at the time* of the crime. Berg testified at
18 preliminary hearing that the entire incident happened very quickly, he did not see anyone coming
19 prior to the robbery, and that he was not paying attention to his surroundings prior to the robbery.
20 (PHT, 20-21). The testimony reveals that Mr. Berg was facing away from the pick pocketer, when
21 the perpetrator came from behind and reached into his pocket, immediately thereafter Berg fell to the
22 ground, and there is no indication that he was focused on the perpetrator's face as he fell or while on
23 the ground. (PHT, 20-21). This left Berg hardly any opportunity to view the perpetrator. Secondly,
24 Berg most certainly endured a traumatic event, and his degree of attention is greatly compromised
25 by such an experience. The witness stated by his own admission that he was not paying attention to
26 what was occurring on the bus moments before the incident, and he certainly could not have been
27 acutely focused as the event transpired because he was falling to the ground (PHT 20-21). Third, the
28 accuracy of the description provided by Berg was general and lacked detail. Berg described the pick

1 pocketer as a "black male adult, thin build, 5'7"-5'10", short hair, 25-35 years of age, wearing a
2 blue/grey shirt and dark jeans." (Police Report, 3). Although Mr. Berg's level of certainty, 96%-97%
3 appears compelling, closer inspection casts doubt on this certainty. (Photo-lineup Witness
4 Statement) Mr. Berg goes on to say, "[T]he person in position #4 *appears to be the most likely*
5 *suspect* based on facial features" (emphasis added) (Photo-lineup Witness Statement). As
6 previously mentioned, the suggestive nature of including only one person with a distinctive and
7 unique set of facial features makes any degree of certainty of the confrontation highly suspect.
8 Moreover, the victim never previously described the pick pocketer as having distinctive facial
9 characteristics. It is only when one out of six photos feature a man with distinctively unique facial
10 features- small eyes, protruding cheek bones, a pointed chin, and chiseled jaw line- that Berg relies
11 on facial features as an identifying marker.

12 CONCLUSION

13 Based on the above and foregoing, Mr. Manning respectfully requests that this Court grant
14 his motion, suppress the alleged identification in this case, and preclude the State from allowing an
15 unconstitutional in-court identification of Mr. Manning.

16 DATED this 27th day of September, 2013.

17 PHILIP J. KOHN
18 CLARK COUNTY PUBLIC DEFENDER

19
20 By: /s/ Marissa Pensabene
21 MARISSA A. PENSABENE, #13006
22 Deputy Public Defender
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YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Suppress will be heard on 9th day of October, 2013, at 9:00 a.m. in Department No. XI of the District Court.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Egda Ramirez
Employee of the Public Defender's Office


CLERK OF THE COURT

0208
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

JAMES DAEVON MANNING,

Defendant.

CASE NO. C-13-290624-1

DEPT. NO. XI

DATE: October 9, 2013
TIME: 9:00 a.m.

**MOTION TO SUPPRESS STATEMENTS MADE BY DEFENDANT FOLLOWING HIS
ILLEGAL ARREST, OR IN THE ALTERNATIVE REQUEST FOR AN EVIDENTIARY
HEARING**

COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through
MARISSA A. PENSABENE, Deputy Public Defender and hereby suppress any and all evidence
and/or statements made by Defendant following his illegal arrest by the Deputy City Marshal's
Department.

This Motion is made based upon all the papers and pleadings on file herein, the
attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral
argument at the time set for hearing this Motion.

DATED this 27th day of September, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

EXECUTED this 27th day of September, 2013.

/s/ Marissa Pensabene
MARISSA A. PENSABENE

FACTS

On March 29, 2013 Defendant James Manning allegedly robbed Thor Berg on a CAT bus. According to the Information and Police Report, Mr. Manning was pick-pocketing the victim, Thor Berg, when Berg fell to the ground. Between \$10 and \$12 dollars was taken from the victim's pocket. Mr. Berg described the perpetrator as a "black male adult, thin build, 5'7"-5'10", short hair, 25-35 years of age, wearing a blue/grey shirt and dark jeans." (Police Report, 3). After investigating this offense, police did not have any known suspects. Police contacted the media and requested the public's assistance in identifying the unknown perpetrators. Sometime during May, 2013, an unidentified confidential source contacted Crime Stoppers and identified the unknown perpetrator as Mr. Manning.

On May 18, 2013 Las Vegas City Marshal Deputy Officer Rauchfuss woke Mr. Manning when he was sleeping in Doolittle Park. The marshal did not arrest or cite Mr. Manning for sleeping in a park. They did however, run a records check. The records check revealed that police detectives wanted to question Mr. Manning for the CAT bus incident. Mr. Manning was thereafter taken into custody and transported for questioning. As the detective's report accurately describes it, "Kavon received a call from Officer Rauchfuss who stated that he had James Manning in *custody*" and "Officer Rauchfuss transported Manning to the Clark County Detention Center and *turned custody of Manning over to Detective Kavon*" (emphasis added) (Police Report, page 3). The illegal arrest, and subsequent voluntary statement derived from the arrest is the basis for this motion.

ARGUMENT

I. MANNING WAS PLACED UNDER ARREST BY OFFICER RAUCHFUSS

An arrest takes place when the police "use a 'show of official authority such that a reasonable person would have believed he was not free to leave.'" U.S. v. Edwards, 242 F.3d 928, 934 (10th Cir. 2001) (quoting U.S. v. Ritchie, 35 F.3d 1477, 1481 (10th Cir. 1994)). The test for determining whether an arrest has occurred is not dependent on whether the person is formally placed under arrest. See U.S. v. Hardnett, 804 F.2d 353, 356 (6th Cir. 1986). There is no bright-line rule to determine when a person is considered to be under arrest. See Washington v. Lambert, 98 F.3d 1181, 1185 (9th Cir. 1996). Courts employ a "totality of the circumstances" test to determine

1 when a detention by the police should be considered an arrest and the final decision is fact-specific.
2 *See id.* In analyzing the totality of the circumstances, courts "consider both the intrusiveness of the
3 stop, i.e., the aggressiveness of the police methods and how much [a person's] liberty was restricted,
4 and the justification for the use of such tactics, i.e., whether the officer had sufficient basis to fear for
5 his safety to warrant the intrusiveness of the action taken." *Id.* (citations omitted). "In determining
6 the severity of the intrusion and the aggressiveness of the police action" the Ninth Circuit Court of
7 Appeals has held that "handcuffing substantially aggravates the intrusiveness. . . . Similarly, if the
8 police draw their guns it greatly increases the seriousness of the stop. . . . Finally, whether the police
9 physically restrict the suspect's liberty is an important factor in analyzing the degree of intrusion
10 effected by the stop." *Id.* at 1188-89.

11 Here, based on the totality of the circumstances, it is clear that Mr. Manning was under arrest
12 at the Doolittle Park. Mr. Manning waited while the officer conducted a records check and was
13 thereafter transported for questioning, via marshal patrol car, to the Clark County Detention Center,
14 (Police Report, 3). Interestingly, detectives did not come to Manning's location to speak with him.
15 Also telling, Manning was brought to the detention center for questioning, not a police station or the
16 Detective's office. Mr. Manning complied with all orders and offered no resistance because he
17 believed he was under arrest. While the police report is not clear regarding whether Mr. Manning
18 was cuffed, we do know that when Mr. Manning arrived at the detention center he was likely
19 searched and treated as an inmate. An evidentiary hearing would shed more light on whether
20 Manning was cuffed, however, even without that information; the few facts available make it
21 abundantly clear that Mr. Manning was under arrest.

22 Notably, the facts surrounding the detention of Mr. Manning are similar to the facts
23 surrounding the detention U.S. v. Edwards, 242 F.3d 928, 934, which held that the defendant was
24 under arrest when he was handcuffed and placed in the back of a police car. In short, the totality of
25 the circumstances in this case unequivocally show that Mr. Manning was under arrest at the time he
26 placed inside the back of the officer's marshal car, and transported to the Clark County Detention
27 Center.

1 II. NO PROBABLE CAUSE EXISTED AT THE TIME OF ARREST

2 If a warrantless arrest is not supported by probable cause, it is unconstitutional. *See*
3 Edwards, 242 F.3d at 934 (quoting U.S. v. Vazquez-Pulido, 155 F.3d 1213 (10th Cir. 1998). Thus,
4 if the officer did not have probable cause at the time Mr. Manning was arrested at Doolittle Park, his
5 arrest was unlawful. The U.S. Supreme Court has stated that probable cause to justify an arrest
6 means “facts and circumstances within the officer’s knowledge that are sufficient to warrant a
7 prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the
8 suspect has committed, is committing, or is about to commit an offense.” Michigan v. DeFillippo,
9 443 U.S. 31, 37 (1979); *see also* Bigford v. Taylor, 834 F.2d 1213, 1218 (5th Cir 1988) (“[P]robable
10 cause standard is not entirely toothless. It requires not merely a reasonable suspicion that a crime
11 has been committed, but a reasonable basis under the circumstances for reaching that conclusion and
12 for action on it.”).

13 To determine whether probable cause existed at the time of arrest, courts must analyze the
14 “totality of the circumstances.” Kuehl v. Burtis, 173 F.3d 646, 650 (8th Cir. 1999). The Eighth
15 Circuit Court of Appeals has stated that the totality of the circumstances includes:

16 [E]vidence that tends to negate the possibility that a suspect has committed a crime is
17 relevant to whether the officer has probable cause. An officer contemplating an arrest
18 is not free to disregard plainly exculpatory evidence, even if substantial inculpatory
19 (standing by itself) suggests that probable cause exists. In this sense, the Fourth
 Amendment requires that we analyze the weight of all the evidence—not merely the
 sufficiency of the incriminating evidence. . . .

20 Id. (citations omitted); *see also* Henry v. U.S., 361 U.S. 98, 102 (1959) (“[G]ood faith on the part of
21 the arresting officers is not enough.”). Here, the officer had the following information in his
22 possession at the time they detained Mr. Manning from the park: Mr. Manning “was wanted by
23 Detective Embry” (Police Report, page 3). It is not clear whether Detective Embry wanted Mr.
24 Manning for an interview as a potential witness or eyewitness, victim, or suspect. Officer Rauchfuss
25 had no idea why detectives wanted Mr. Manning, and thus had no probable cause. Further, Officer
26 Rauchfuss did not have any other evidence in his possession to support probable cause. He did not
27 have any third-party eyewitness statements, physical evidence, admissions/confessions by Mr.
28 Manning or other witness, or any audio/video recordings evidencing a crime had been committed.

1 The only information Officer Rauchfuss had at the time of the arrest was just merely that a database
2 indicated a detective wanted to speak with Mr. Manning. Furthermore, the officer did not cite or
3 arrest Mr. Manning for any offense; he was arrested for the sole purpose of questioning. It is clear
4 that at the point Mr. Manning was placed under arrest at the Doolittle Park Officer Rauchfuss did not
5 have probable cause to arrest him.

6 III. CITY MARSHAL OFFICER RAUCHFUSS WAS ACTING BEYOND HIS SCOPE
7 OF AUTHORITY WHEN HE ARRESTED MR. MANNING

8 The arrest of James Manning was fatally flawed from the start as the City of Las Vegas
9 Marshal, a specialized law enforcement unit,¹ did not have jurisdiction to arrest Manning. Municipal
10 Code 2.28.080 delineates the scope of a city marshal, it states:

11 "The authority and jurisdiction and authority of a City Marshal is limited to:

12 (A) The issuance of citations in accordance with the provisions of NRS
13 171.17751;

14 (B) The enforcement of State laws and City and County ordinances on real
15 property owned, leased or otherwise under the control of the City of Las
16 Vegas;

17 (C) The service of warrants of arrest issued pursuant to NRS 5.060; and

18 (D) The removal of abandoned vehicles as authorized by NRS 487.230."

19 In this case, Officer Rauchfuss's encounter with Manning did not include any of the
20 enumerated authorities extended by the municipal code. First, Officer Rauchfuss did not issue
21 Manning a citation within the provisions of NRS 171.17751. Secondly, the encounter did not resolve
22 a real property dispute. Next, there is no information to indicate that the Officer was serving an
23 arrest warrant on Manning. In fact, the police report implies there was no warrant for James
24 Manning in the system, "Officer Rauchfuss awoke Manning and conducted a records check on him
25 which revealed he was wanted by Det. Embry." (Police Report, page 3). Finally, Officer Rauchfuss
26 and Manning were not engaged in an issue related to an abandoned vehicles. Not only did Officer
27

28 ¹ The Las Vegas Deputy City Marshals refer to themselves as a "specialized law enforcement unit" on their government
website: <http://www.lasvegasnevada.gov/information/4170.htm>.

1 Rauchfuss effectuate an arrest with no probable cause, he also acted outside the scope of his
2 authority when he arrested Manning. Officer Rauchfuss did not have jurisdiction over Manning.

3 IV. EXCLUSION IS THE PROPER REMEDY FOR THE UNLAWFUL ARREST

4 Finally, because Mr. Manning was placed under arrest without probable cause, the proper
5 remedy is that any and all statements made by Mr. Manning and physical evidence seized directly or
6 indirectly from the unlawful arrest, must be suppressed as fruits of the illegal arrest. The U.S.
7 Supreme Court has been crystal clear about the proper remedy in cases where there has been an
8 illegal search or seizure:

9 The exclusionary rule has traditionally barred from trial physical, tangible materials
10 obtained either during or as a direct result of an unlawful invasion. . . . [T]he Fourth
11 Amendment may protect against the overhearing of verbal statements as well as
12 against the more traditional seizure of 'paper and effects.' Similarly, testimony as to
13 matters observed during an unlawful invasion has been excluded in order to enforce
14 the basic constitutional policies. Thus, verbal evidence which derives so immediately
15 from an unlawful entry and an unauthorized arrest as the officers' action in the
16 present case is no less the 'fruit' of official illegality than the more common tangible
17 fruits of the unwarranted intrusion. Nor do the policies underlying the exclusionary
18 rule invite any logical distinction between physical and verbal evidence.

19 Wong Sun v. U.S., 371 U.S. 471, 485-86 (1963). Thus, here, any statements made by Mr. Manning
20 to Detective Kavon must be suppressed as it is evidence seized as a direct result of the illegal arrest.

21 **CONCLUSION**

22 Based on the foregoing reasons, Mr. Manning respectfully submits that after reviewing all
23 the evidence adduced at a hearing on this Motion, together with the foregoing Points and
24 Authorities, this Honorable Court will be impelled to grant his Motion to Suppress.

25 DATED this 27th day of September, 2013.

26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

28 By: /s/ Marissa Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

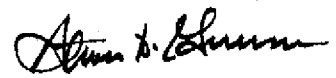
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YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Suppress will be heard on 9th day of October, 2013, at 9:00 a.m. in Department No. XI of the District Court.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Egda Ramirez
Employee of the Public Defender's Office



CLERK OF THE COURT

0071
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

JAMES DAEVON MANNING,

Defendant.

CASE NO. C-13-290624-1

DEPT. NO. XI

DATE: October 9, 2013
TIME: 9:00 a.m.

**MOTION IN LIMINE TO PRECLUDE ALL REFERENCES OF HEARSAY STATEMENTS
IN VIOLATION OF THE CONFRONTATION CLAUSE**

COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through
MARISSA A. PENSABENE, Deputy Public Defender, and hereby moves this Court to preclude the
use of hearsay statements in violation of the Confrontation Clause.

This Motion is made and based upon all the papers and pleadings on file herein, the
attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral
argument at the time set for hearing this Motion.

DATED this 27th day of September, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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FACTS

On March 29, 2013 Defendant James Manning allegedly robbed Thor Berg on a CAT bus. According to the Information and Police Report, Mr. Manning reached into Berg's pocket, causing Berg to fall to the ground. Between \$10 and \$12 dollars was taken from Berg's pocket. After investigating this offense, police did not have any known suspects. Police contacted the media and requested the public's assistance in identifying the unknown perpetrators. Sometime during May, 2013, an unidentified confidential source contacted Crime Stoppers and identified the unknown perpetrator as Mr. Manning. The conversation between the unknown caller and Crime Stoppers personnel is the only basis for developing Mr. Manning as a suspect in this case. The content of the statement made by the anonymous caller is the basis for this motion.

Based on these factual allegations, the State of Nevada charged Mr. Manning with the following: Robbery (Category B Felony- NRS 205.380), and Battery with the Intent to Commit a Crime (Category B Felony- NRS 200.400). On May 18, 2013 City Marshals stopped Mr. Manning for the offense of sleeping in the park. A records check revealed that police detectives wanted to question Mr. Manning for the CAT bus incidents. Mr. Manning was thereafter placed in custody and transported for questioning. Defense counsel will not be afforded an opportunity to cross-examine the anonymous caller whose statements were allegedly made to Crime Stoppers, and will no doubt be used by the State's as a pivotal piece of evidence in its case-in-chief.

ARGUMENT

- I. ALL STATEMENTS MADE BY ANONYMOUS WITNESS SHOULD BE DECLARED INADMISSIBLE PURSUANT TO THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Sixth Amendment to the United States Constitution guarantees, in pertinent part, that, "...in all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him..." U.S. Const. Amend XI. In 2004, the Supreme Court of the United States decided Crawford v. Washington, 541 U.S. 36 (2004), wherein it overruled the 24 year precedent of Ohio v. Roberts, 448 U.S. 36 (1980). Roberts held that the Confrontation Clause was not violated if a statement from a declarant, not subject to cross-examination, were admitted against a defendant, so

1 long as the statement bore "adequate indicia of reliability." Id. at 66. In overruling Roberts, the
2 Crawford Court held that it was the intention of the Framers of the Bill of Rights to prevent
3 prosecutions utilizing out-of-court "testimonial statements" against a defendant if the defendant has
4 no opportunity to cross-examine the declarant. Id. at 53-4. The Court defined testimonial
5 statements as "statements that were made under circumstances which would lead an objective
6 witness reasonably to believe that the statement would be available for use at a later trial."
7 Crawford, 514 U.S. at 52.

8 In the instant matter, the anonymous caller contacted Crime Stoppers after the police
9 requested assistance from the public. It would have been abundantly clear to the anonymous tipster
10 contacting Crime Stoppers that the police were investigating a robbery, and that any statements
11 made by the caller would be used for forthcoming prosecution. Accordingly, the anonymous caller
12 was more than aware that his or her statements would have legal consequences for Mr. Manning and
13 would quite obviously become the subject of police investigation. Thus, the anonymous caller's
14 statements are "testimonial" within the meaning articulated by the Crawford Court, as they were
15 provided to law enforcement full-well with the knowledge that they would likely be sought for use
16 by the State in a criminal prosecution in the future.

17 Prohibiting the anonymous caller's statement in the instant case is a clear cut example of the
18 sort of out of court prosecution the Framers intended to prevent. The Crawford opinion discusses the
19 historical origins of the Confrontation Clause at length. Perhaps the most notable example of the ills
20 of permitting the statements and conclusions of those not presented in court for the purposes of
21 allowing defense counsel to cross-examine them was illustrated by the Crawford Court's reference
22 to the 1603 treason case against Sir Walter Raleigh. The Court mentioned that Sir Walter Raleigh's
23 alleged accomplice implicated Raleigh in an apparent effort at self-preservation by way of written
24 statements. Crawford, 514 U.S. at 44. Those statements were submitted to the jury even though
25 Raleigh's counsel was never afforded an opportunity on cross-examination to explore and expose
26 the possible motives and biases of the declarant. Crawford, 514 U.S. at 44.

27 Much like the disadvantage suffered by the defense's inability to cross-examine Raleigh's
28 alleged co-conspirator in his treason case, defense counsel in the instant case was not afforded an

1 opportunity to explore the possible motives and biases of the anonymous caller who implicated Mr.
2 Manning in the instant offense. For instance, perhaps the anonymous caller thought Mr. Manning
3 had information regarding the robbery. The anonymous caller may have had a vendetta with Mr.
4 Manning and hoped that calling crimes stoppers and implicating Mr. Manning would result in his
5 arrest and incarceration. Defense counsel had no opportunity to cross-examine the anonymous caller
6 to explore these motives or biases or to challenge the accuracy of the statement. Out-of-court
7 statements of this nature are precisely the type of statements that both the Framers and the Crawford
8 Court sought to preclude from admission against the accused at trial.

9 **CONCLUSION**

10 Accordingly, the defense respectfully requests that this Court order the State and its
11 witnesses not to make any reference to any quotations or summarizations of statements made by any
12 anonymous person(s) who are not testifying at trial on the grounds that such a statement that doing
13 so would violate the defendant's Sixth Amendment rights.

14 DATED this 27th day of September, 2013.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17 By /s/ Marissa Pensabene
18 MARISSA A. PENSABENE, #13006
19 Deputy Public Defender
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion in Limine will be heard on 9th day of October, 2013, at 9:00 a.m. in Department No. XI of the District Court.

DATED this 27th day of September, 2013.

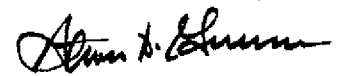
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Marissa Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing Motion in Limine was served via electronic e-filing to the Clark County District Attorney's Office at PDMotions@ccdadv.com on this 27th day of September, 2013.

By: /s/ Egda Ramirez
Employee of the Public Defender's Office



CLERK OF THE COURT

1 EXMT
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 HAGAR TRIPPIEDI
6 Deputy District Attorney
7 Nevada Bar #010114
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff
12
13
14

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES MANNING, aka,
13 James Daevon Manning, #1994553
14 Defendant.

CASE NO. C-13-290624-1

DEPT NO. XI

15 EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS

16 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
17 District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and moves this
18 Honorable Court for an Order Releasing evidence which includes protected health
19 information being held by CLARK COUNTY FIRE DEPARTMENT ENGINE 17
20 consisting of any and all medical records for patient: THOR BERG, DOB: 02/12/1951,
21 concerning diagnosis, prognosis and/or treatment given or provided on or about March 29,
22 2013, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the
23 purpose of prosecuting the above referenced case charging the crimes of COUNT 1 -
24 ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS
25 193.167, 200.380) and COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME
26 (Category B Felony - NRS 200.400).

27 Pursuant to 45 CFR 164.512(f), Movant represents that the information sought is
28 relevant and material to a legitimate law enforcement inquiry; that the request is specific and

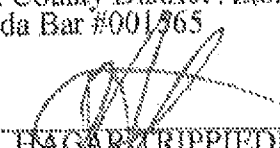
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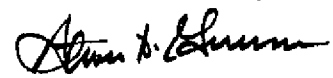
1 limited in scope to the extent reasonably practicable in light of the purpose for which the
2 information is sought; and that de-identified information could not reasonably be used.

3 DATED this 24th day of September, 2013.

4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001365

7 BY

8 
9 HAGAR TRIPPIEDI
10 Deputy District Attorney
11 Nevada Bar #010114
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CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 HAGAR TRIPPIEDI
6 Deputy District Attorney
7 Nevada Bar #010114
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA
15

16 THE STATE OF NEVADA,

17 Plaintiff,

18 -vs-

19 JAMES MANNING, aka,
20 James Daevon Manning, #1994553
21 Defendant.
22

CASE NO. C-13-290624-1

DEPT NO. XI

23 ORDER RELEASING MEDICAL RECORDS

24 Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark
25 County District Attorney, by and through HAGAR TRIPPIEDI, Deputy District Attorney,
26 that certain records containing protected health information are necessary for the prosecution
27 of the above-captioned criminal case are being held in the custody of CLARK COUNTY
28 FIRE DEPARTMENT ENGINE 17; that said information is relevant and material to a
legitimate law enforcement inquiry; that the application was specific and limited in scope to
the extent reasonably practicable in light of the purpose for which the information is sought;
and that de-identified information could not reasonably be used;

NOW THEREFORE, pursuant to 45 CFR 164.512(f), and GOOD CAUSE
APPEARING, CLARK COUNTY FIRE DEPARTMENT ENGINE 17, shall release to a
representative of the DISTRICT ATTORNEY'S OFFICE, any and all medical records

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09-27-13A11:37 RCVD

1 concerning diagnosis, prognosis, and/or treatment of THOR BERG, whose date of birth is
2 02/12/1951, for the time period March 29, 2013.

3 IT IS HEREBY ORDERED.

4 DATED this 22 day of September, 2013.

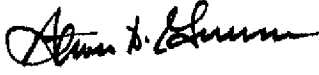
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7 DISTRICT JUDGE
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9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 NEVADA BAR #001565

12 BY 

13 EAGAR TRIPPIEDI
14 Deputy District Attorney
15 Nevada Bar #010114
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CLERK OF THE COURT

EXMT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO. C-13-290624-1

DEPT NO. XI

EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and moves this Honorable Court for an Order Releasing evidence which includes protected health information being held by MEDIC WEST UNIT 725 consisting of any and all medical records for patient: THOR BERG, DOB: 02/12/1951, concerning diagnosis, prognosis and/or treatment given or provided on or about March 29, 2013, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case charging the crimes of COUNT 1 - ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 193.167, 200.380) and COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400).

Pursuant to 45 CFR 164.512(f), Movant represents that the information sought is relevant and material to a legitimate law enforcement inquiry; that the request is specific and

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09-27-13A11:37 RCVB

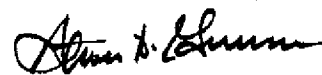
limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and that de-identified information could not reasonably be used.

DATED this 24th day of September, 2013.

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

BY

HAGAR TRIPPLE
Deputy District Attorney
Nevada Bar #010114



CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 HAGAR TRIPPIEDI
6 Deputy District Attorney
7 Nevada Bar #010114
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

CASE NO. C-13-290624-1

13 JAMES MANNING, aka,
14 James Daevon Manning, #1994553

DEPT NO. XI

15 Defendant.

16 ORDER RELEASING MEDICAL RECORDS

17 Upon the ex parte application and representation of STEVEN B. WOLFSON, Clark
18 County District Attorney, by and through HAGAR TRIPPIEDI, Deputy District Attorney,
19 that certain records containing protected health information are necessary for the prosecution
20 of the above-captioned criminal case are being held in the custody of MEDIC WEST UNIT
21 725; that said information is relevant and material to a legitimate law enforcement inquiry;
22 that the application was specific and limited in scope to the extent reasonably practicable in
23 light of the purpose for which the information is sought; and that de-identified information
24 could not reasonably be used;

25 NOW THEREFORE, pursuant to 45 CFR 164.512(f), and GOOD CAUSE
26 APPEARING, MEDIC WEST UNIT 725, shall release to a representative of the DISTRICT
27 ATTORNEY'S OFFICE, any and all medical records concerning diagnosis, prognosis,

28 ///

09-27-13A11:38 RCVD

1 and/or treatment of THOR BERG, whose date of birth is 02/12/1951, for the time period
2 March 29, 2013.

3 IT IS HEREBY ORDERED.

4 DATED this 30 day of September, 2013.

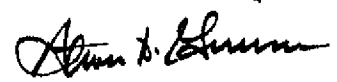
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DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
NEVADA BAR #001365

BY

HAGAR TRIPPLEDI
Deputy District Attorney
Nevada Bar #010114

pm/L-2



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

**OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS PHOTOGRAPHIC
LINE-UP AND SUBSEQUENT IN-COURT IDENTIFICATIONS**

DATE OF HEARING: 10/09/13
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress Photographic Line-Up and Subsequent In-Court Identifications.

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

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POINTS AND AUTHORITIES

Statement of Facts

On May 27, 2013, Thor Berg was on the bus returning home from the Sunset Station Hotel & Casino. (Preliminary Hearing Transcript, hereinafter "PHT", 9). Berg is sixty-two years old. (PHT 11). Berg got on the bus that day at around 4:00 p.m. and had with him in his pocket his identification card, his casino player's card, and some money. (PHT 10).

Berg was standing on the bus when he was suddenly knocked to the ground by the Defendant. (PHT 13-14). Berg landed on his back and felt a hand going into his pocket. (PHT 14). Berg was able to look directly at the Defendant and testified that he was 100% sure it was the Defendant that pushed him and took his possessions. (PHT 15).

The specific items taken from Berg during the robbery included his CAT card, his Clark County card, his badge from Amazon, several casino player's cards, and approximately \$10-\$12 cash. (PHT 16).

The Metropolitan Police Department responded to the scene and an in-person show up was conducted to see if Berg could identify the person that robbed him. (PHT 17). Berg was unable to positively identify any of the individuals during the show-up. (PHT 17). Berg was eventually shown a photo line-up that contained a photograph of the Defendant and at that point he was able to positively identify the Defendant as the person that robbed him. (PHT 17).

Argument

1. The Photographic Line-Up As Well as the In Court Identification of the Defendant by the Victim are Admissible

In Odoms v. State, 102 Nev. 27, 714 P.2d 568 (1986), the Nevada Supreme Court reiterated the applicable due process standard regarding photographic lineups, "[C]onvictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." Id. at 31.

1 In Odoms, defendant sought to suppress a photographic lineup that was "so
2 impermissibly suggestive as to give rise to a substantial likelihood of misidentification." Id.
3 at 30. The Court's review of the record, however, revealed that the six photographs used in
4 the line-up matched the general description of the assailant which was provided by the
5 witnesses. Id. at 31. Further, the witnesses independently reviewed the six photographs. Id.
6 Finally, the officer conducting the line-up did nothing to suggest to either eyewitness which
7 photograph to select or which photograph was the defendant. Id. Thus, the Court found that
8 the photographic lineup and the identification procedure were not impermissibly suggestive.
9 Id. citing French v. State, 95 Nev. 586, 600 P.2d 218 (1979). See also U.S. v. Barrett, 703
10 F.2d 1076 (9th Cir. 1982) (photographic spread not impermissibly suggestive where all men
11 in display are remarkably similar in appearance and the only noticeably difference was that
12 Barrett wore darker photosensitive glasses); U.S. v. Carbajal, 956 F.2d 924 (9th Cir. 1991)
13 (photographic line-up allowed where Defendant had facial bruises, but all men Hispanic,
14 about the same range, similar skin, eye, hair coloring, hair length.); U.S. v. Collins, 559 P. 2d
15 561 (9th Cir. 1977) (photographic line-up allowed where all six black males in photos
16 similar in age range, five or six had similar hair style as Defendant and half of photos
17 depicted person with a beard and all had facial hair).

18 In the instant case, the photographic lineup was not impermissibly suggestive. The
19 photographs in the line up all match the general description of the suspect as provided by the
20 victim and any witnesses. The description was that the suspect was a black male adult with
21 light skinned complexion with short curly hair and was unshaven. If you look at the photo
22 line up that was conducted with victim Thor Berg, it is clear that every single one of the
23 photographs depicts a black male with short hair that is unshaven. (See Thor Berg's Photo
24 Line-Up attached hereto as State's Exhibit 1). Additionally, none of the six individuals in the
25 line-up have any distinct facial features or noticeable differences from each other that would
26 render the line-up impermissibly suggestive. Lastly, there is no evidence that the officer
27 conducting the line-up did anything to suggest to the witness which photograph to select or
28 which photograph was the defendant.

1 The victim, Thor Berg, wrote in a statement attached to the line-up "the person in
2 position #4 appears to be the most likely suspect based on facial features I remember from
3 the Bus. Sure to 96% 97%." During the Preliminary Hearing, Thor Berg testified that during
4 the robbery he was pushed to the ground onto his back and at that point he looked up and
5 saw the Defendant. He specifically stated, "when I fell and hit the ground I saw him." (PHT
6 15). When asked by the prosecutor, "so you actually looked at him during the assault and are
7 100 percent sure", Thor Berg responded, "I'm more than sure that's him, that's correct."

8 In this case there is simply no evidence that the photographic line up in this case was
9 so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable
10 misidentification. Thor Berg saw the suspect during the incident and identified him during
11 the photographic line-up. It is important to note also that shortly after the incident, Thor was
12 taken to do an in person show up to see if he would recognize a suspect and he was at that
13 time NOT able to positively identify a suspect. PHT 17. This indicates that he did not
14 simply select someone because he felt he had to choose one of the individuals in the line up,
15 he waited until he actually saw a photograph of the correct suspect before making a
16 selection. The photographic line up in this case was therefore not improper and should not be
17 suppressed.

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1 Conclusion

2 Since Defendant is unable to show that the photographic line up in the instant case
3 was impermissibly suggestive or gave rise to a likelihood of irreparable misidentification,
4 the Motion to Suppress Photographic Line-Up and Subsequent in Court Identification lacks
5 merit and should be denied.

6 DATED this 2nd day of October, 2013.

7 Respectfully submitted,

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

10 BY

11 /s/HAGAR TRIPPIEDI
12 HAGAR TRIPPIEDI
13 Deputy District Attorney
Nevada Bar #010114

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of Opposition to Defendant's Motion to Suppress
16 Photographic Line-Up and Subsequent In-Court Identifications, was made this 3rd
17 day of October, 2013, by facsimile transmission to:

18 MARISSA PENSABENE
19 DEPUTY PUBLIC DEFENDER
20 FAX#366-9684

21 BY: /s/P. Manis

22 P. Manis
23 Employee of the District Attorney's Office

24
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28 HT/pm/L-2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: <u>Thor Berg</u>	EVENT #: <u>130329-3226</u>	INTERVIEWED BY: <u>C. Embry</u>
ADDRESS: <u>1813 S. 13th Street Las Vegas, NV 89104</u>	LOCATION: <u>Sehara / Maryland Parkway</u>	
PHONE NUMBER: <u>(702) 455-7830</u>	DATE & TIME: <u>05/01/2013 1100</u>	

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Thor Berg

DATE & TIME: 5/1/13 1100

STATEMENT:

THE PERSON IN POSITION #4 APPEARS to be the
most likely SUSPECT based on facial features I remember
from the Bus. Sure to 96% 97%

SIGNED: Thor Berg

DATE & TIME: 5/1/13 1115

OFFICER'S NAME & PF: C. EMBRY 10223

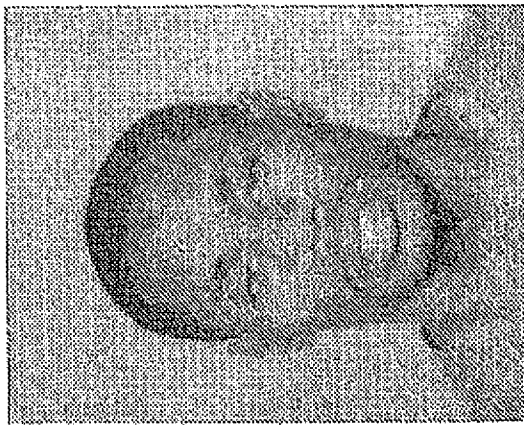
LMFIC 104 (Rev. 09/07) WORD 2010

EXHIBIT * 1

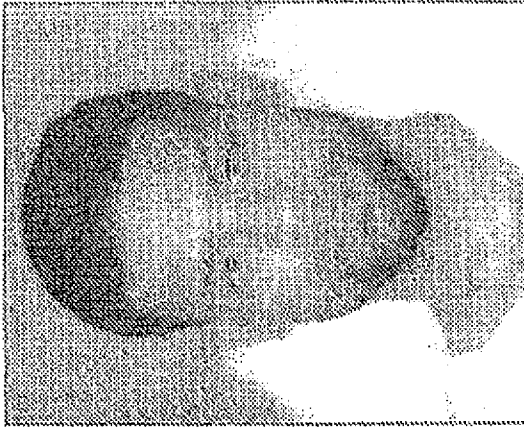
Las Vegas Metropolitan Police Department

Lineup ID: 29706

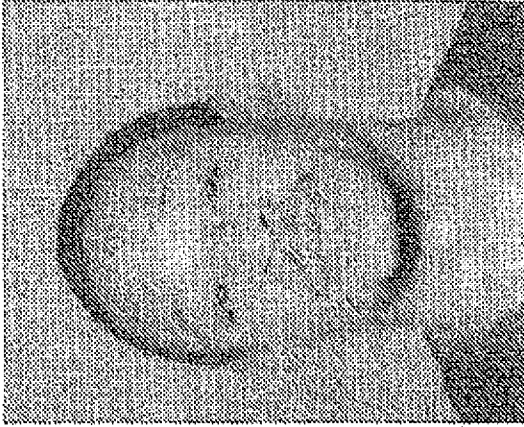
01 May 2013



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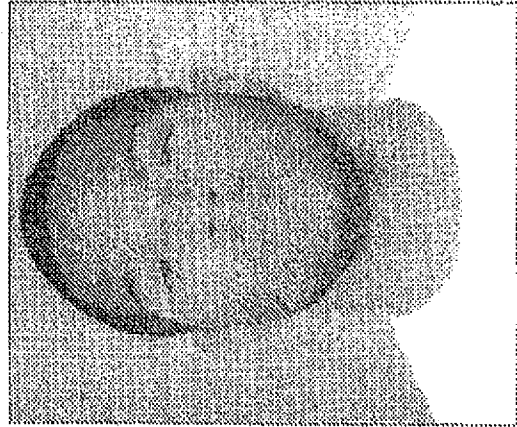
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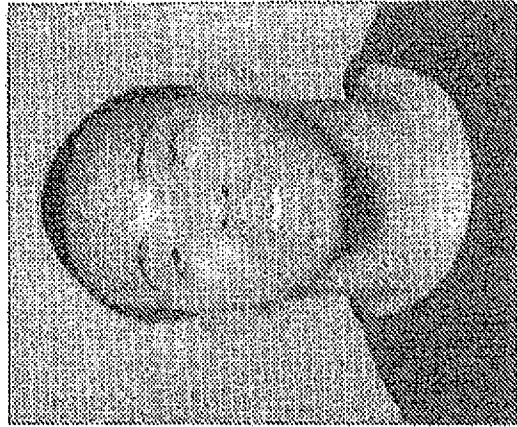
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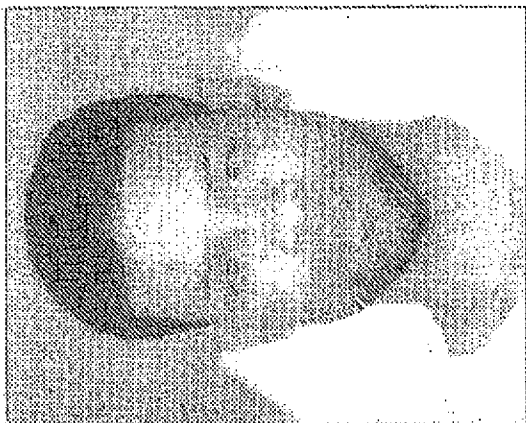
Las Vegas Metropolitan Police Department

Lineup ID: 29706

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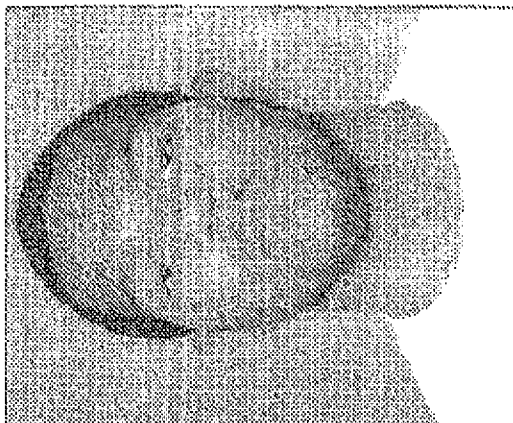
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2 EDWELL, JONATHAN



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3 EVANS, JOHN



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4 MANNING, JAMES



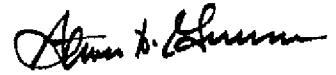
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5 PORTIE, DAWSON



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6 SHARPE, CHRISTOPHER

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CLERK OF THE COURT

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

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 THE STATE OF NEVADA,)

8 Plaintiff,)

CASE NO. C-13-290624-1

9 v.)

DEPT. NO. XI

10 JAMES DAEVON MANNING,)

11 Defendant.)

DATE: December 30, 2013
TIME: 9:00 a.m.

12
13 **DEFENDANTS SUPPLEMENTAL MOTION FOR DISCLOSURE OF**
14 **BRADY MATERIAL**

15 COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through MARISSA
16 A. PENSABENE, Deputy Public Defender and hereby requests this Honorable Court grant this
17 motion for discovery.

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

DATED this 11th day of December, 2013.

20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22
23 By: /s/ Marissa A. Pensabene
24 MARISSA A. PENSABENE, #13006
25 Deputy Public Defender
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ARGUMENT

This motion is intended to supplement defendant's original discovery motion which was heard on August 14, 2013 in District Court Department XI. All law and argument are incorporated into this motion as well. The purpose of this supplement is to ensure that the State is doing its duty to obtain and turn over discovery and to request additional discovery. The State has a continual duty to turn over discovery. The defense therefore is requesting any new information, reports, or otherwise discoverable material that the State has not turned over. Specifically, in addition to any discovery that must be turned over, the defense is concerned and requests special attention be paid to the following items:

- 1) A color copy of the Las Vegas Metro Police Department Media Release dated April 20, 2013 for case #130329-3226.
- 2) A recording of the 911 call in this case.
- 3) Information on any reward paid in exchange for the crime stoppers tip naming James Manning as a suspect in this case.
- 4) Any contact law enforcement had with Mr. Manning regarding this case, prior to his arrest on May 18, 2013. Specifically, any contact on April 7, 2013 outside the Urban League. Including, but not limited to, any conversations with Mr. Manning, or pictures taken of Mr. Manning by law enforcement.

DATED this 11th day of December, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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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 Defendant's Supplemental Motion for Disclosure of Brady Material on for hearing before the Court on the 30th day of December, 2013, at 9:00 a.m. in Department 11 of the District Court.

DATED this 11th day of December, 2013.

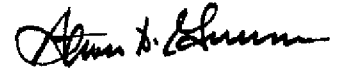
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

CERTIFICATE OF SERVICE BY ELECTRONIC TRANSMISSION

I hereby certify that service of the foregoing Defendant's Supplemental Motion for Disclosure of Brady Material was made on the 11th day of December, 2013, by electronic service to the District Attorney's Office with a courtesy copy to District Court Department 11.

By: /s/ Annie McMahan
Employee of the Public Defender's Office



CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

RESPONSE TO DEFENDANT'S SUPPLEMENTAL MOTION FOR DISCLOSURE OF
BRADY MATERIAL

DATE OF HEARING: 12/30/13
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplemental Motion for Disclosure of Brady Material.

This Response 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.

POINTS AND AUTHORITIES

This motion is intended to supplement the State's response to Defendant's original discovery motion which was heard on August 14, 2013 in District Court Department 11. All

1 law and argument are incorporated into this motion. The State will address each of the
2 Defendant's supplemental requests below:

- 3 1. Color copy of the las vegas metro police department media release – this was
4 emailed to defense attorney Marissa Pensabene on December 19, 2013.
- 5 2. A recording of the 911 call in this case – this was emailed to defense attorney
6 Marissa Pensabene on December 19, 2013.
- 7 3. Information on any reward paid in exchange for the crime stoppers tip in this case
8 – the State is not aware of any such information.
- 9 4. Any contact law enforcement had with Defendant regarding this case prior to his
10 arrest on May 18, 2013 – the State is not aware of any contact between Defendant
11 and law enforcement regarding this case other than what was detailed in the
12 discovery that was provided.

13 DATED this 19th day of December, 2013.

14 Respectfully submitted,

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

17 BY /s/HAGAR TRIPPIEDI
18 HAGAR TRIPPIEDI
19 Deputy District Attorney
Nevada Bar #010114

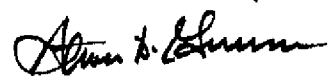
20 CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of Response to Defendant's Supplemental Motion for
22 Disclosure of Brady Material, was made this 20th day of December, 2013, by facsimile
23 transmission to:

24 MARISSA PENSABENE
25 DEPUTY PUBLIC DEFENDER
FAX#366-9684

26 BY: /s/P. Manis
27 P. Manis
Employee of the District Attorney's Office

28 HT/pm/L-2


CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE ALL
REFERENCES OF HEARSAY STATEMENTS IN VIOLATION OF THE
CONFRONTATION CLAUSE

DATE OF HEARING: 01/06/14
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion in Limine to Preclude All References of the Hearsay Statements in Violation of the Confrontation Clause.

This Response 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.

///

1 POINTS AND AUTHORITIES

2 Statement of Facts

3 On May 27, 2013, Thor Berg was on the bus returning home from the Sunset Station
4 Hotel & Casino. (Preliminary Hearing Transcript, hereinafter "PHT", 9). Berg is sixty-two
5 years old. (PHT 11). Berg got on the bus that day at around 4:00 p.m. and had with him in
6 his pocket his identification card, his casino player's card, and some money. (PHT 10).

7 Berg was standing on the bus when he was suddenly knocked to the ground by the
8 Defendant. (PHT 13-14). Berg landed on his back and felt a hand going into his pocket.
9 (PHT 14). Berg was able to look directly at the Defendant and testified that he was 100%
10 sure it was the Defendant that pushed him and took his possessions. (PHT 15).

11 The specific items taken from Berg during the robbery included his CAT card, his
12 Clark County card, his badge from Amazon, several casino player's cards, and
13 approximately \$10-\$12 cash. (PHT 16).

14 Around April 20, 2013, the detective investigating the case completed a media release
15 using still photographs from the incident. On April 22, 2013, detectives received a crime
16 stoppers tip naming Defendant James Manning as the person in the media release
17 photographs.

18 Based on the crime stoppers tip, a photo line up was shown to Berg and Berg was able
19 to positively identify the Defendant as the person that robbed him.

20 On May 18, 2013, Detectives learned that Defendant James Manning was in custody
21 at Doolittle Park. Defendant was found sleeping on the slide at the park. According to the
22 arrest report in this case, officers awoke Defendant, ran a records check on him, and learned
23 he was wanted in connection to the Robbery of Thor Berg. The recorded interview with
24 Defendant at CCDC followed.

25 Argument

26 "Hearsay" is generally defined as "a statement offered in evidence to prove the truth
27 of the matter asserted." NRS 51.035.

28 United States Courts of Appeals have held that where the purpose of testimony is to

1 provide background information and to explain how and why agents even came to be
2 involved with a particular defendant, such testimony is admissible because it does not
3 constitute hearsay. FRE 801(c). In United States v. Brown, 110 F.3d 605, 609 (8th Cir.,
4 1997), the court allowed testimony that a confidential informant provided information
5 regarding the defendant simply to explain to the jury why the investigation centered around
6 the defendant. Similarly, in United States v. Aguwa, 123 F.3d 418, 421 (6th Cir., 1997), the
7 court admitted testimony of statements made by an informant regarding the activities of a
8 suspect to explain how and why the agents came to be involved with the defendant. In both
9 cases, the courts held that statements made to explain the basis for an officer's belief that the
10 defendant was involved in the crime committed did not constitute hearsay and their
11 admission did not constitute an abuse of discretion. Brown, 110 F.3d at 610; Aguwa, 123
12 F.3d at 421.

13 Likewise, in the instant case any information provided by a confidential informant
14 will be offered to explain to the jury how the investigation regarding the Robbery came to
15 center on Defendant. A still photograph of an individual that robbed Thor Burg was released
16 to the media. A tip received by Crime Stoppers identified Defendant James Manning as the
17 individual that was depicted in the still photograph. Detectives conducted a photo line up
18 with the victim, Thor Burg, and placed a photo of James Manning in the line up. Burg was
19 able to positively identify Defendant Manning as the person that robbed him.

20 The State submits that it intends to simply introduce evidence that a confidential
21 informant told Detectives that James Manning was the subject of the media release. There
22 will be no statements provided and no details of the call other than the fact that James
23 Manning was named as the person that was the subject of the media release. This evidence
24 will not constitute hearsay because it will not be offered to prove the truth of the matter
25 asserted, rather it will be offered to provide why the investigation came to center around

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1 Defendant Manning. For the foregoing reasons, the information should be deemed
2 admissible as there is no basis for its exclusion.

3 DATED this 26th day of December, 2013.

4 Respectfully submitted,

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

8 BY /s/BRIAN J. KOCHEVAR for
9 HAGAR TRIPPIEDI
10 Deputy District Attorney
11 Nevada Bar #010114

12 CERTIFICATE OF FACSIMILE TRANSMISSION

13 I hereby certify that service of Response to Defendant's Motion in Limine to Preclude
14 All References of Hearsay Statements in Violation of the Confrontation Clause, was made
15 this 26th day of December, 2013, by facsimile transmission to:

16 MARISSA PENSABENE
17 DEPUTY PUBLIC DEFENDER
18 FAX#366-9684

19 BY: /s/P. Manis
20 P. Manis
21 Employee of the District Attorney's Office
22
23
24
25
26
27

28 HT/pm/L-2


CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 HAGAR TRIPPIEDI
6 Deputy District Attorney
7 Nevada Bar #010114
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES MANNING, aka,
13 James Daevon Manning, #1994553

14 Defendant.

CASE NO: C-13-290624-1

DEPT NO: XI

15 OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS MADE BY
16 DEFENDANT FOLLOWING HIS ILLEGAL ARREST, OR IN THE ALTERNATIVE
17 REQUEST FOR AN EVIDENTIARY HEARING

18 DATE OF HEARING: 01/06/14

19 TIME OF HEARING: 9:00 A.M.

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress
23 Statements Made by Defendant Following his Illegal Arrest, or in the Alternative Request
24 for an Evidentiary Hearing.

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

28 ///

1 POINTS AND AUTHORITIES

2 Statement of Facts

3 On May 27, 2013, Thor Berg was on the bus returning home from the Sunset Station
4 Hotel & Casino. (Preliminary Hearing Transcript, hereinafter "PHT", 9). Berg is sixty-two
5 years old. (PHT 11). Berg got on the bus that day at around 4:00 p.m. and had with him in
6 his pocket his identification card, his casino player's card, and some money. (PHT 10).

7 Berg was standing on the bus when he was suddenly knocked to the ground by the
8 Defendant. (PHT 13-14). Berg landed on his back and felt a hand going into his pocket.
9 (PHT 14). Berg was able to look directly at the Defendant and testified that he was 100%
10 sure it was the Defendant that pushed him and took his possessions. (PHT 15).

11 The specific items taken from Berg during the robbery included his CAT card, his
12 Clark County card, his badge from Amazon, several casino player's cards, and
13 approximately \$10-\$12 cash. (PHT 16).

14 Around April 20, 2013, the detective investigating the case completed a media release
15 using still photographs from the incident. On April 22, 2013, detectives received a crime
16 stoppers tip naming Defendant James Manning as the person in the media release
17 photographs.

18 Based on the crime stoppers tip, a photo line up was shown to Berg and Berg was able
19 to positively identify the Defendant as the person that robbed him.

20 On May 18, 2013, Detectives learned that Defendant James Manning was in custody
21 at Doolittle Park. Defendant was found sleeping on the slide at the park. According to the
22 arrest report in this case, officers awoke Defendant, ran a records check on him, and learned
23 he was wanted in connection to the Robbery of Thor Berg. The recorded interview with
24 Defendant at CCDC followed.

25 Argument

26 **1. A Hearing is Necessary to Determine Whether the Statement Made by Defendant**
27 **was Voluntarily Made.**

28 Before the accused's statements are brought before the jury there must be a hearing in

1 front of the judge, outside the presence of the jury, pursuant to Jackson v. Denno, 378 U.S.
2 368, 84 S.Ct. 1774 (1964). At the hearing, the judge hears what the suspect told the police
3 and the circumstances under which the suspect made the statements. Then the judge decides
4 (1) whether the statements were "voluntary" using the totality of the circumstances and (2)
5 whether the statements were given after proper Miranda warnings, or whether Miranda was
6 violated, or applicable.

7 If the statement was involuntary, it ceases to exist legally and can not be used for any
8 purpose. See Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). The prosecution has
9 the burden of proving by a preponderance of the evidence (1) the voluntariness of a
10 confession, as well as (2) the waiver of a suspect's Fifth Amendment Miranda rights as being
11 voluntary, knowingly, and intelligently made. Falcon v. State, 110 Nev. 530, 874 P.2d 772
12 (1994). The "totality of the circumstances" test is the standard for determining voluntariness
13 of a statement. Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996); Passama v. State, 103
14 Nev. 212, 735 P.2d 321 (1987).

15 With regard to analyzing a waiver of Miranda rights, the test is whether the waiver
16 was "knowingly and intelligently made." Tomarchio v. State, 99 Nev. 572, 576, 665 P.2d
17 804 (1983); Edwards v. Arizona, 451 U.S. 477, 483, 101 S.Ct. 1880 (1981). The Nevada
18 Supreme Court has stated:

19 . . . Moreover, the Miranda waiver validity must be determined in each case through an examination of the
20 particular facts and circumstances surrounding that case, including the background, experience and conduct of
21 the accused. Anderson v. State, 109 Nev. 1129, 1133, 865 P.2d 318 (1993) ("after reviewing the totality of the
22 circumstances, we conclude that there was sufficient evidence to indicate that Anderson knowingly and
23 intelligently waived his rights.").

24 In this case, the State respectfully submits that a hearing outside the presence pursuant
25 to Jackson v. Denno, would be appropriate and helpful to enable this Honorable Court to
26 decide whether the statements made by Defendant Manning are admissible. The Defendant's
27 voluntary statement was transcribed and provided to the defense. Page 2 indicates that
28 Defendant was in fact read his Miranda rights. The detective on the case can certainly testify

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1 and verify that Miranda rights were in fact read to the Defendant before he provided a
2 statement and that Defendant voluntarily waived his rights.

3 **2. A Hearing is Required to Determine Whether the Stop of Defendant was Valid and**
4 **Whether the Arrest of the Defendant was Justified by Probable Cause**

5 Under Nev. Rev. Stats. § 171.123(1), "[a]ny peace officer may detain any person
6 whom the officer encounters under circumstances which reasonably indicate that the person
7 has committed, is committing, or is about to commit a crime." This rule is a codification of
8 the rule delineated by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968).

9 Under this rule, "[a]n officer may stop and question an individual if the officer
10 reasonably believes, in light of his or her experience and based upon specific, articulable
11 facts, that criminal activity is afoot." Franklin v. State, 96 Nev. 417, 418, 610 P.2d 732, 733
12 (1980). When police possess these facts, "taken together with rational inferences from those
13 facts," a detention does not rise to the level of a Fourth Amendment violation. Terry, 392
14 U.S. 1, 21; see also Florida v. Royer, 460 U.S. 491, 498 (1983).

15 "Reasonable suspicion is a less demanding standard than probable cause not only
16 because reasonable suspicion can be established with information that is less in quantity than
17 that required to show probable cause, but also from information that is less reliable than
18 needed for probable cause." U.S. v. Perrin, 45 F.3d 869, 872 (4th Cir. 1995).

19 Furthermore, under NRS 171.124, [A] peace officer . . . may, without a warrant, arrest
20 a person:

- 21 (c) When a felony or gross misdemeanor has in fact been committed, and he
22 has reasonable cause for believing the person arrested to have committed it.

23 Here, in regards to whether the actual stop of Defendant at Doolittle park was
24 justified, the State would request a hearing to determine the actual details of the incident on
25 May 18, 2013. The State however submits that the arrest report in this case details that
26 Defendant was found sleeping on a slide at a public park. A hearing on the matter would
27 provide more details regarding the stop. However, if it is found that Defendant was
28 committing a crime and/or violating a city ordinance or code then the stop of Defendant

1 would be permissible and in that case it would have been appropriate to run a records check
2 on Defendant.

3 Upon learning that Defendant was wanted in connection with the Robbery of Thor
4 Berg, there was certainly probable cause at that point to arrest Defendant and under NRS
5 171.124, a peace officer may arrest a person when he has probable reasonable cause to
6 believe that a person committed a felony.

7 At that point, the victim had identified Defendant as the person that robbed him. The
8 arrest report provides that "Berg was extremely sure of his identification of Manning." There
9 were also still photographs from the Robbery that matched the description of Defendant.
10 Based on this information, there was certainly sufficient probable cause at that point to arrest
11 Defendant Manning for the Robbery that occurred.

12 The State would request that a hearing take place to determine the factual details of
13 the stop at Doolittle part. If the stop is determined to be valid, the State submits that the
14 arrest that followed was valid as well because it was based on probable cause that Defendant
15 committed the Robbery. Accordingly, the Statement made by Defendant would be
16 admissible since it was made voluntarily after being read his Miranda Rights and after his
17 valid, lawful arrest for Robbery.

18 Conclusion

19 Based on the foregoing, the State respectfully requests that the Defendant's Motion to
20 Suppress Statements be denied by this Court. The State requests that a hearing be held prior
21 to trial to determine whether the statement should be suppressed.

22 DATED this 26th day of December, 2013.

23 Respectfully submitted,

24 STEVEN B. WOLFSON
25 Clark County District Attorney
Nevada Bar #001565

26 BY /s/BRIAN J. KOCHER for

27 HAGAR TRIPPIEDI
28 Deputy District Attorney
Nevada Bar #010114

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CERTIFICATE OF FACSIMILE TRANSMISSION

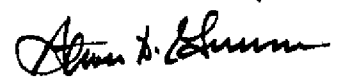
I hereby certify that service of Opposition to Defendant's Motion to Suppress Statements Made by Defendant Following his Illegal Arrest, or in the Alternative Request for an Evidentiary Hearing, was made this 26th day of December, 2013, by facsimile transmission to:

MARISSA PENSABENE
DEPUTY PUBLIC DEFENDER
FAX#366-9684

BY: /s/P. Manis

P. Manis
Employee of the District Attorney's Office

HT/pm/L-2


CLERK OF THE COURT

1 NOTC
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

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

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JAMES DAEVON MANNING,

14 Defendant.

CASE NO. C-13-290624-1

DEPT. NO. XI

DATE: January 8, 2014
TIME: 9:00 a.m.

15 **DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234**

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 You, and each of you, will please take notice that the Defendant, JAMES DAEVON
18 MANNING, intends to call the following witness in his case in chief:

- 19 1. Robert Maddox, Investigator
20 Clark County Public Defender's Office
21 309 South Third Street
22 Las Vegas, NV 89155
- 23 2. James Daevon Manning
24 c/o Clark County Public Defender's Office
25 309 South Third Street
26 Las Vegas, NV 89155

27 DATED this 6th day of January, 2014.

28 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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3 **CERTIFICATE OF ELECTRONIC SERVICE**

4 A COPY of the above and foregoing DEFENDANT'S NOTICE OF WITNESSES,
5 PURSUANT TO NRS 174.234 was served via electronic e-filing to the District Attorney's Office on
6 this 6th day of January, 2014.

7 By /s/ Patty Barber-Bair
8 An employee of the Clark County Public
9 Defender's Office
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26 Case Name: James Daevon Manning

27 Case No.: C-13-290624-1

28 Dept. No.: XI

PINU

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

JAN 15 2014

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Carol Green
CAROL GREEN, DEPUTY

STATE OF NEVADA

Plaintiff(s),

-vs-

CASE NO. C290624
DEPT. NO. 3

JAMES MANNING

Defendant(s).

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 16th day of January, 2014.

Steven D. Grierson, Clerk of the Court

By: Carol Green
Carol Green, Deputy Clerk

INSTRUCTION NO. _____

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2 You are instructed that because the State failed to gather the video surveillance from the bus
3 in this incident, that said evidence of the surveillance video is irrebuttably presumed to be favorable
4 to the defense.¹
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28 ¹ Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

INSTRUCTION NO. ____

The reasonable doubt standard requires the jury to reach a subjective state of near certitude on the facts in issue.²

² Randolph v. State, 117 Nev. 970, 980-81, 36 P.3d 424, 431 (2001). See also Holmes v. Nevada, 114 Nev. 1357, 972 P.2d 337, 342-43 (1998)

INSTRUCTION NO. ____

If the evidence is susceptible of two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, it is your duty to adopt that interpretation which points to the defendant's innocence, and reject the other which points to his guilt.³

³ Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976); Mason v. State, 118 Nev. 554, 51 P.3d 521 (2002)

1 INST

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

JAN 15 2014

BY Carol Green
CAROL GREEN DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 JAMES MANNING,

12 Defendant.

CASE NO: C-13-290624-1

DEPT NO: III

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.

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2 If, in these instructions, any rule, direction or idea is repeated or stated in different
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that
4 reason, you are not to single out any certain sentence or any individual point or instruction
5 and ignore the others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others.

7 The order in which the instructions are given has no significance as to their relative
8 importance.
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An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about March 29, 2013, the Defendant committed the offenses of **ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony - NRS 193.167, 200.380)** and **BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400)**, in the following manner, to-wit:

COUNT 1 - ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER

did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: money, from the person of THOR BERG being 60 years of age or older, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of the said THOR BERG.

COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: THOR BERG, with intent to commit robbery, by pushing the said THOR BERG to the ground.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, to prevent or overcome resistance to the taking, or to facilitate escape, in either of which cases the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

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2 The value of property or money taken is not an element of the crime of Robbery, and
3 it is only necessary that the State prove the forcible taking of some property or money.
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INSTRUCTION NO. 6

Any individual identified as a victim who is 60 years of age or older on the date of the alleged crime, satisfies the element of being a victim 60 years of age or older.

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INSTRUCTION NO. 6

Any individual identified as a victim who is 60 years of age or older on the date of the alleged crime, satisfies the element of being a victim 60 years of age or older.

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INSTRUCTION NO. 7

Battery means any willful and unlawful use of force or violence upon the person of another.

Any person who commits a battery upon another with the specific intent to commit a robbery is guilty of the offense of Battery With Intent to Commit a Crime.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 10

The State has the burden of proving beyond a reasonable doubt every material element of the crime charged. The defendant does not have to prove his innocence. Accordingly, the defendant does not have to call witnesses to testify on his behalf.

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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

During the course of the trial, you have heard evidence pertaining to allegations that the Defendant engaged in some other wrongs or bad conduct, other than those for which he is on trial. Evidence that the defendant committed offenses or engaged in bad conduct, other than that for which he is on trial, if believed, was not received and may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose(s) of proving the defendant's motive and/or intent regarding the events in this case; and/or to prove that the events in this case were part of a common scheme or plan; and/or to prove that the events in this case were not a result of any mistake or accident.

You must weigh this evidence in the same manner as you do all other evidence in the case.

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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.

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When evaluating an eyewitness's identification, you should consider the believability of the eyewitness as well as other factors such as, the opportunity of the witness to observe the criminal at the time of the act, the witness's degree of attention, the accuracy of the witness's description of the criminal, and the length of time between the crime and the identification.

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2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 17

If you find that the state has failed to prove beyond a reasonable doubt any material element of a crime charged, you must find the defendant not guilty of that crime.

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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

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2 When you retire to consider your verdict, you must select one of your member to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into
6 evidence, these written instructions and forms of verdict which have been prepared for your
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his/her counsel.

7 Readbacks of testimony are time-consuming and are not encouraged unless you deem
8 it a necessity. Should you require a readback, you must carefully describe the testimony to
9 be read back so that the court reporter can arrange his/her notes. Remember, the court is not
10 at liberty to supplement the evidence.
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INSTRUCTION NO. 21

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

1 VER

2 FILED IN OPEN COURT
3 STEVEN D. GRIERSON
4 CLERK OF THE COURT

5 JAN 15 2014

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

BY

Carol Green
CAROL GREEN, DEPUTY

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -VS-

11 JAMES MANNING,
12 Defendant.

CASE NO: C-13-290624-1

DEPT NO: III

13 VERDICT

14 We, the jury in the above entitled case, find the Defendant JAMES MANNING as
15 follows:

16 COUNT 1 - ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER

17 (please check the appropriate box, select only one)

- 18 ☐ Guilty of ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER
19 ☒ Not Guilty

20 COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

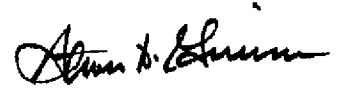
21 (please check the appropriate box, select only one)

- 22 ☒ Guilty of BATTERY WITH INTENT TO COMMIT A CRIME
23 ☐ Not Guilty

24 DATED this 15th day of January, 2014

25 *[Signature]*

26 *LEON T. KERRAN*
27 FOREPERSON
28


CLERK OF THE COURT

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-13-290624-1
)	
v.	)	DEPT. NO. III
)	
JAMES DAEVON MANNING,	)	DATE: February 4, 2014
	)	TIME: 9:00 a.m.
Defendant.)	

**MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, MOTION
FOR NEW TRIAL**

COMES NOW, the Defendant, JAMES DAEVON MANNING, by and through MARISSA A. PENSABENE, Deputy Public Defender and hereby asks this Honorable Court for an order setting aside part of the verdict returned in this case on January 15, 2014, and to enter a judgment of acquittal on Count 1, pursuant to NRS 175.381(2) and 176.515.

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

DATED this 24th day of January, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

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DECLARATION

MARISSA A. PENSABENE makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 24th day of January, 2014.

/s/ Marissa A. Pensabene
MARISSA A. PENSABENE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF RELEVANT FACTS**

3 The following facts are taken from the events that occurred during the jury trial in the
4 instant matter. Having no access to transcripts at this time, all facts are the recollections of defense
5 counsel, and as such, are stated on information and belief.

6 Jury trial in the case of State of Nevada v. James D. Manning commenced in the Eighth
7 Judicial District Court, Clark County, Department III on January 13, 2014. This was the third trial
8 setting.

9 Defendant Manning was facing two counts:

10 Count I: Robbery, Victim over 60 years of Age

11 Count II: Battery with the Intent to Commit Robbery

12 The parties presented their cases in chief in a trial rife with conflicting testimony. Some
13 things, however, were certain. Because there was no video surveillance evidence and because the
14 testimony elicited from the responding patrol officer and the lead police detective in the case
15 showed that the Metropolitan Police Department performed only a cursory and amateurish
16 investigation at best, the jury at the close of evidence was left with the only conflicting eyewitness
17 testimony.

18 The jury retired to deliberate at approximately 2 p.m. on January 15, 2014. Both the
19 Deputy District Attorney and defense counsel were notified approximately 3:30 p.m. on January
20 15, 2014 that the jury had reached a verdict. The jury found Mr. Manning not guilty on robbery
21 with a victim over 60 years of age, but guilty of battery with the intent to commit robbery.

22 The defense believes that the evidence of Mr. Manning's guilt in this case was insufficient
23 to support the conviction by the jury.

24 **LEGAL ARGUMENT**

25 This motion is timely. Pursuant to N.R.S. 175.381(2), a motion to set aside the verdict
26 must be made within 7 days after the jury is discharged. Rule 1.14(a) of the Rules for Practice for
27 the Eighth Judicial District Court for the State of Nevada states in pertinent part:
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1 “(a) In computing any period of time prescribed or allowed by these rules, by order of
2 court, or by any applicable statute, the day of the act, event or default from which the
3 designated period of time begins to run must not be included....When the period of time
4 prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-
5 judicial days must be excluded in the computation.”

6 Rule 1.14: Time; judicial days; service by mail. (Emphasis added)

7 NRS 175.381 (2) states in pertinent part that “the Court may, on a motion of a defendant or
8 on its own motion, which is made after the jury returns a verdict of guilty, set aside the verdict and
9 enter a judgment of acquittal if the evidence is insufficient to sustain a conviction.” The Nevada
10 Supreme Court held that “where there is truly insufficient evidence to convict, a defendant must be
11 acquitted.” State v. Purcell, 110 Nev. 1389, 887 P. 2d 276 (1994). The Court clarified that “in
12 contrast to conflicting evidence, insufficiency of the evidence occurs where the prosecution has not
13 produced minimum threshold of evidence upon which a conviction may be based, even if such
14 evidence were believed by the jury.” *Id.* at 1394.

15 The argument in this case is two-fold. First, the evidence presented was insufficient to
16 support the charges on which the jury returned a verdict of guilty because the facts, assuming
17 arguendo that the jury’s verdict represented its arrival at the truth, do not comport with any sort of
18 logic or reasonableness. How can it be said that the defendant battered Mr. Berg with the intent to
19 commit robbery, but did not robb Mr. Berg? Did the jury believe one part of Berg’s testimony but
20 not another? Did it not believe any of his testimony, but take pity on him because he was an
21 elderly frail gentleman and decides to fill in the gaping holes in her testimony themselves? Was the
22 panel convinced that one incident happened but not the other? Or, how can this Court, “...in good
23 conscience,”¹ sentence the defendant based on a verdict that suggests that Manning battered Berg
24 according to his testimony, but that during an overlapping period of time when Berg’s money and
25 players cards went missing, not have robbed Mr. Berg. These nonsensical guilty verdicts indicates
26 compromise and/or “reverse jury nullification” by the jury panel that could neither acquit outright,

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¹ *Id.* at 1394

1 which was what should have been the outcome in light of such an anemic case by the State, nor
2 come to any sort of consensus about Manning's actions.

3 Second, the defense believes that the evidence was conflicting in that the victim and an
4 eyewitness's testimony was the State's only real evidence. On cross-examination the defense
5 brought out inconsistencies in both Berg and Bordlay's testimonies, focused on the lack of
6 investigation conducted by Officer Steinbach and Detective Embry, including the failure to secure
7 the video surveillance in this case.

8 CONCLUSION

9 Defendant JAMES D. MANNING submits that sufficient evidence was not presented by
10 the State to support any of the convictions in this case, requiring that this Honorable Court set
11 aside the verdict on count two. Alternatively, he submits that the evidence was conflicting at best
12 and that as such, he is entitled to a new trial for those counts on which the jury found him guilty.

13 Mr. Manning respectfully requests that this Court grant his motion for judgment of
14 acquittal or grant the motion for a new trial.

15 DATED this 24th day of January, 2014.

16 PHILIP J. KOHN
17 CLARK COUNTY PUBLIC DEFENDER

18
19 By: /s/ Marissa A. Pensabene
20 MARISSA A. PENSABENE, #13006
21 Deputy Public Defender
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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 4th day of February, 2014, at 9:00 a.m. in District Court Department 3.

DATED this 24th day of January, 2014.

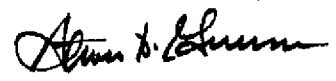
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Marissa A. Pensabene
MARISSA A. PENSABENE, #13006
Deputy Public Defender

CERTIFICATE OF SERVICE BY ELECTRONIC TRANSMISSION

I hereby certify that service of the foregoing Motion for Judgment of Acquittal, or in the Alternative, Motion for New Trial was made on the 24th day of January, 2014, by electronic service to the District Attorney's Office with a courtesy copy to District Court Department 3.

By: /s/ Annie McMahan
Employee of the Public Defender's Office


CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HAGAR TRIPPIEDI
Deputy District Attorney
Nevada Bar #010114
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-

JAMES MANNING, aka,
James Daevon Manning, #1994553
Defendant.

CASE NO: C-13-290624-1

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR JUDGMENT OF
ACQUITTAL, OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

DATE OF HEARING: 02/04/14
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through HAGAR TRIPPIEDI, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Judgment of Acquittal, or in the Alternative, Motion for New Trial.

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

POINTS AND AUTHORITIES

Statement of the Case

On May 21, 2013, a Criminal Complaint was filed against Defendant James Manning

1 (hereinafter, "Defendant") charging one (1) count of Robbery, two (2) counts of Battery with
2 Intent to Commit a Crime, and one (1) count of Robbery, Victim 60 Years of Age or Older.
3 On June 19, 2013, a Preliminary Hearing was held before Justice of the Peace Cynthia Cruz
4 and after testimony by witnesses, Defendant was held to answer on one (1) count of Battery
5 with Intent to Commit a Crime and one (1) count of Robbery, Victim 60 Years of Age or
6 Older. On July 3, 2013, the Defendant was arraigned and pled not guilty to both charges. A
7 trial was set in this matter for August 19, 2013. On August 14, 2013 the trial date was
8 continued and a new trial date was set for January 13, 2014.

9 On January 13, 2014, the trial commenced and lasted a total of three (3) judicial days.
10 The State called the following witnesses to testify: 1) Thor Berg (victim), 2) Callie Borlie
11 (eyewitness), 3) Las Vegas Metropolitan Police Officer Robert Steinback and 4) Las Vegas
12 Metropolitan Police Officer Chad Embry. The defense called one witness to testify: 1)
13 Defendant James Manning.

14 On January 15, 2014, after close of testimony and closing arguments by the State and
15 Defense, the jury retired to deliberate. Shortly thereafter, a verdict was returned as follows:
16 Not Guilty of the charge of Robbery, Victim Over 60 and Guilty of the charge of Battery
17 with Intent to Commit a Crime.

18 On January 24, 2014, the Defendant filed a Motion for Judgment of Acquittal, or in
19 the Alternative, Motion for New Trial. The State's response follows.

20 Argument

21 **I. This Court should Deny the Motion for Judgment of Acquittal, or in the**
22 **Alternative, Motion for New Trial Because the State Presented Sufficient**
23 **Evidence to Sustain a Conviction.**

24 The Defendant asserts that a judgment of acquittal, or alternatively, a new trial is
25 warranted, on the basis that there was insufficient evidence to sustain a conviction and that
26 the jury's verdict does not comport with any sort of logic or reasonableness.

27 NRS

28 NRS 175.381 provides as follows:

1 1. If, at any time after the evidence on either side is closed, the court deems the evidence
2 insufficient to warrant a conviction, it may advise the jury to acquit the defendant, but the
3 jury is not bound by such advice.

4 2. The court may, on a motion of a defendant or on its own motion, which is made after
5 the jury returns a verdict of guilty, set aside the verdict and enter a judgment of acquittal
6 if the evidence is insufficient to sustain a conviction. The motion for a judgment of
7 acquittal must be made within 7 days after the jury is discharged or within such further
8 time as the court may fix during that period.

9 3. If a motion for a judgment of acquittal after a verdict of guilty pursuant to this section
10 is granted, the court shall also determine whether any motion for a new trial should be
11 granted if the judgment of acquittal is thereafter vacated or reversed. The court shall
12 specify the grounds for that determination. If the motion for a new trial is granted
13 conditionally, the order thereon does not affect the finality of the judgment. If the motion
14 for a new trial is granted conditionally and the judgment is reversed on appeal, the new
15 trial must proceed unless the appellate court has otherwise ordered. If the motion is
16 denied conditionally, the defendant on appeal may assert error in that denial, and if the
17 judgment is reversed on appeal, subsequent proceedings must be in accordance with the
18 order of the appellate court.

19 Inconsistency in verdicts between multiple counts is not a sufficient reason to have a
20 conviction set aside. *United States v. Powell*, 469 U.S. 59, 105 S.Ct. 471, 474; 83 L.Ed.2d
21 461 (1984); *Bollinger v. State*, 111 Nev. 1110, 1116, 901 P.2d 671 (1995).

22 In *U.S. v. Rodriguez-Gonzales*, 358 F.3d 1156 (9th Cir. 2004), the United States Court
23 of Appeals for the Ninth Circuit held that "each count in an indictment [or an information] is
24 regarded as if it were a separate indictment, and must be sufficient in itself. Further, each
25 count must stand or fall in its own allegations without reference to other counts not expressly
26 incorporated by reference." 358 F.3d at 1159 quoting *Dunn v. U.S.*, 284 U.S. 390, 393
27 (1932) and *Walker v. U.S.*, 176 F.2d 796, 798 (9th Cir. 1949).

28 In *Dunn v. U.S.*, the Court stated that, "consistency in the verdict is not necessary.
284 U.S. 390, 393 (1932). When the jury reaches seemingly inconsistent verdicts, people
may begin to speculate as to how the jury reached its conclusion, "but that does not show
that they were not convinced of the defendant's guilt." *Id.* "That the verdict may have been
the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts
cannot be upset by speculation or inquiry into such matters." *Id.* at 394.

1 In Bollinger v. State, 11 Nev. 1110, 901 P.2d 671 (1995), the Court declined to
2 provide relief for inconsistent verdicts because the defendant is given the benefit of acquittal
3 and, therefore, he must "accept the burden of conviction on the counts on which the jury
4 convicted." Id. at 1117, 901 P.2d at 675 (quoting United States v. Powell, 469 U.S. 57, 69
5 (1984)). The Bollinger Court recognized that a jury can extend clemency by acquitting a
6 defendant of a murder charge while convicting him of conspiracy to commit murder. See id.
7 (applying the rationale to the jury's finding of aggravating factors in the murder of one
8 victim but not the other).

9 In this case, the witness testimony that was presented by the State along with
10 Defendant's own statements, demonstrate that there was in fact sufficient evidence to sustain
11 the conviction.

12 Battery is defined under NRS 200.400 as any willful and unlawful use of force or
13 violence upon the person of another. Robbery is defined under NRS. 200.380 as the unlawful
14 taking of personal property from the person of another, or in the person's presence, against
15 his or her will, by means of force or violence or fear of injury, immediate or future, to his or
16 her person or property. If a person commits a Battery with the Intent to Commit a Robbery
17 he can be found guilty of Battery with Intent to commit a Robbery pursuant to NRS 200.400.

18 Here, the victim in this case, Thor Berg, testified that he was knocked to the ground
19 by the Defendant. Berg further testified that he felt Defendant's hand in his pocket and that
20 his personal items were taken from his pocket. Additionally, Callie Borly, the eye witness in
21 this case, testified that she saw money or some sort of wallet sticking out of the Defendant's
22 pocket. She then stated that she saw the Defendant going towards the victim's pocket and
23 that the Defendant knocked the victim down.

24 There was therefore sufficient evidence based on the victim and eyewitness testimony
25 to convict the Defendant on the charge of Battery with Intent to Commit Robbery.

26 The fact that the jury verdict in this case may have been inconsistent is not a basis for
27 judgment of acquittal or to grant a new trial. As stated above, the law permits inconsistency
28 in a jury verdict. There are a number of reasons why the jury may have reached the verdict

1 that it did and it is not counsel's job to interpret or speculate on the jury's verdict. So long as
2 the evidence presented was sufficient to sustain the conviction, the verdict is valid and
3 should not be overturned.

4 Conclusion

5 Since Defendant Manning has failed to meet the statutory requirements contained in
6 NRS 175.381 necessary to justify relief on these issues, the Motion for Judgment of
7 Acquittal, or in the Alternative, Motion for New Trial should be denied. Defendant
8 Manning's conviction must therefore remain intact.

9 DATED this 30th day of January, 2014.

10 Respectfully submitted,

11 STEVEN B. WOLFSON
12 Clark County District Attorney
Nevada Bar #001565

13
14 BY /s/HAGAR TRIPPIEDI
15 HAGAR TRIPPIEDI
16 Deputy District Attorney
Nevada Bar #010114

17 CERTIFICATE OF FACSIMILE TRANSMISSION

18 I hereby certify that service of State's Opposition to Defendant's Motion for
19 Judgment of Acquittal, or in the Alternative, Motion for New Trial, was made this 30th
20 day of January, 2014, by facsimile transmission to:

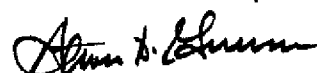
21
22 MARISSA A. PENSABENE
23 DEPUTY PUBLIC DEFENDER
FAX#(702) 366-9684

24 BY: /s/P. Manis
25 P. Manis
26 Employee of the District Attorney's Office

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28 HT/pm/L-2

JOC

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05/15/2014 07:29:52 AM



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C-13-290624-1

DEPT. NO. III

JAMES MANNING, #1994553,
Aka James Daevon Manning
Defendant.

JUDGMENT OF CONVICTION
(JURY TRIAL)

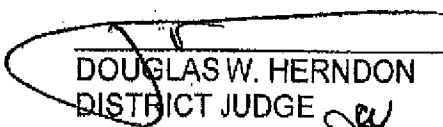
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY, VICTIM 60 YEARS OF AGE OR OLDER (Category B Felony – NRS 193.167, 200.380) and COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony – NRS 200.400); and the matter having been tried before a jury and the Defendant having been found guilty of the crime of COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony) in violation of NRS 200.400; thereafter, on the 13th day of May, 2014, the Defendant was present in court for sentencing with his counsel MARISSA PENSABENE, Deputy Public Defender, and

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

1 good cause appearing,

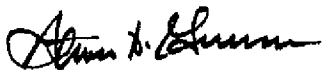
2 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
3 the jury's verdict and, in addition to the \$25.00 Administrative Assessment fee, a
4 \$150.00 DNA analysis fee, including testing to determine genetic markers, \$250.00
5 Indigent Defense Civil Assessment fee, and \$1,614.62 in RESTITUTION payable to
6 Victims of Crime; Defendant SENTENCED to a MINIMUM of TWENTY-FOUR (24)
7 MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of
8 Corrections (NDC); with THREE HUNDRED SIXTY-TWO (362) DAYS credit for time
9 served.
10
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12 DATED this 14th day of May, 2014.

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16 DOUGLAS W. HERNDON
17 DISTRICT JUDGE
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msf

NOAS
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR No. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-13-290624-1
)	
v.	)	DEPT. NO. III
)	
JAMES DAEVON MANNING,)	
)	
Defendant.)	
<hr/>		<u>NOTICE OF APPEAL</u>

TO: THE STATE OF NEVADA
STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
NEVADA and DEPARTMENT NO. III OF THE EIGHTH JUDICIAL
DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK.

NOTICE is hereby given that Defendant, James Daevon Manning, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from the judgment entered against said Defendant on the 15th day of May, 2014, whereby he was convicted of Ct. 2 - Battery With Intent to Commit a Crime and sentenced to \$25 Admin. fee; \$150 DNA analysis fee; genetic testing; \$250 Indigent Defense Civil Assessment fee; \$1,614.62 in restitution payable to victims of crime; 24-60 months in prison; 362 days CTS.

DATED this 10th day of June, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ William M. Waters
WILLIAM M. WATERS, #9456
Deputy Public Defender

DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 10th day of June, 2014, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. James Daevon Manning, Case No. C-13-290624-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to James Daevon Manning, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. That there is a regular communication by mail between the place of mailing and the place so addressed.

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

EXECUTED on the 10th day of June, 2014.

/s/ Carrie M. Connolly
An employee of the Clark County
Public Defender's Office

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 10th day of June, 2014, by Electronic Filing to:

District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 03, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

July 03, 2013 1:30 PM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Shelly Landwehr

RECORDER: Kiara Schmidt

REPORTER:

PARTIES	Adams, Danae K.	Attorney
PRESENT:	Jacob, Maria N.	Attorney
	Manning, James	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. MANNING ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter SET for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

08/14/13 9:00 AM CALENDAR CALL

08/19/13 1:00 AM TRIAL BY JURY (DC 11)

PRINT DATE: 07/03/2013

Page 1 of 1

Minutes Date: July 03, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 12, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

August 12, 2013 9:00 AM Deft's Motion to Compel Disclosure of Brady Material

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Giordani, John	Deputy District Attorney
	Manning, James	Defendant
	Pensabene, Marissa	Deputy Public Defender
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court inquired whether transcripts of 911 and 311 tapes have been done. Mr. Giordani advised all he has is a surveillance tape which he handed to Ms. Pensabene in open court. Ms. Pensabene stated she is not sure whether this tape is from March 29th, and her concern that the State's response indicates there is no surveillance from that date as she has the snapshots. Mr. Giordani advised this is Deputy District Attorney Hagar Trippiedi's case. Court DIRECTED counsel to follow up with the video, and ORDERED, matter CONTINUED to Calendar Call, August 14th.

CUSTODY

8-14-13 9:00 AM DEFT'S MOTION TO COMPEL DISCLOSURE OF BRADY
MATERIAL...CALENDAR CALL

PRINT DATE: 08/12/2013

Page 1 of 1

Minutes Date: August 12, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 14, 2013

C-13-290624-1

State of Nevada

vs

James Manning

August 14, 2013

9:00 AM

All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Carole D'Aloia

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Manning, James	Defendant
	Pensabene, Marissa	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff
	Trippiedi, Hagar	Attorney
	Waters, William	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF BRADY MATERIAL

William Waters, Dep. P.D., also present on behalf of Defendant. Ms. Pensabene advised this matter is also on for her motion to compel disclosure of Brady material. Statements by Ms. Pensabene regarding the history of this matter, noting there were originally two (2) incidents, one (1) on 3/27/13 and the other on 3/29/13, and advised the incident on 3/27/13 has been dismissed, however, the State handed her two (2) videos today from the incident on 3/27/13 which have no bearing in this matter. Ms. Pensabene further advised she received still photos from Ms. Trippiedi of the 3/29/13 incident but has not received a video. Upon Court's inquiry, Ms. Trippiedi advised she double checked with the detective who informed her there is no video, adding that she did forward those still photos as soon as they were received. Upon Court's inquiry as to whether the source of the still photos is known, counsel advised they came from the CAT bus camera. Court directed Ms. Pensabene to subpoena CAT regarding a video surveillance tape. Ms. Pensabene further advised it is

PRINT DATE: 08/21/2013

Page 1 of 3

Minutes Date: August 14, 2013

her understanding there is an "alleged confession" and requested a transcript. Ms. Pensabene also requested statements from the list of witnesses provided by the State in addition to photos from a line-up. Colloquy regarding Defendant's alleged statement. Ms. Trippiedi advised she does not have a transcript of that statement and advised Metro does not always record them. Ms. Trippiedi further advised she will, again, contact Metro regarding Defendant's statement and, if there is one, get it to Ms. Pensabene today. Matter TRAILED.

Matter RECALLED and, upon Court's inquiry, Ms. Trippiedi advised the State is ready to proceed to trial. Ms. Pensabene advised she is not comfortable proceeding to trial without having reviewed all the discovery in this matter. Ms. Pensabene further advised, that if the matter is continued, it should not reflect it was continued because the defense was not ready to proceed when they did not have all the discovery requested. Ms. Pensabene advised as to Defendant's statement, she would request it be excluded all together and then the State would not have to provide a transcript. Ms. Trippiedi advised she is not in agreement with excluding the statement. Court inquired of Ms. Trippiedi if she knows if there is a transcript of the statement or not and Ms. Trippiedi advised she does not know. Ms. Pensabene requested that, if the trial is continued, Defendant be granted an own recognizance (O.R.) release with House Arrest since he has now waived his speedy trial rights. Following CONFERENCE AT BENCH, the State requested a short continuance and assured Court it will have all material requested to defense by the end of this week. Mr. Trippiedi opposed Defendant's request for an O.R. COURT ORDERED, trial date VACATED and RESET to 8/26/13. Ms. Pensabene advised she will be out of the jurisdiction as she is getting married 8/31/13. Again, Ms. Pensabene advised that if the State agrees to exclude Defendant's statement, she can be ready for trial next week. COURT ORDERED, the statement by Defendant, if there was one, will not be admitted to the extent the officer's report includes notes of his interview with the Defendant, noting that report and notes have been available to the defense. Court advised the officer can testify if a determination is made prior to trial that the statements by Defendant were voluntary. Matter TRAILED.

Matter RECALLED and Ms. Trippiedi advised she just spoke to the detective who checked the evidence vault at Metro and there is no video surveillance of the 3/29/13 incident, noting CAT has changed companies. Ms. Trippiedi further advised she did receive an e-mail of Defendant's statement from the detective and has forwarded it to Ms. Pensabene. Upon further inquiry of the Court, Ms. Pensabene advised she will not be ready to proceed to trial on Monday as she may want to file a motion regarding whether or not the video surveillance was preserved or not preserved and, therefore, requested matter be continued. Court inquired if Defendant now agrees to waive his speedy trial rights to which he responded yes. COURT ORDERED, trial date VACATED and RESET. Court directed Ms. Pensabene to file the appropriate motion prior to trial if she feels there are any issues with Defendant's statement before she leaves on vacation.

CUSTODY

10/9/13 9:00 AM CALENDAR CALL

10/14/13 1:00 PM JURY TRIAL

PRINT DATE: 08/21/2013

Page 2 of 3

Minutes Date:

August 14, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

October 07, 2013 9:00 AM Deft's Request: Address Competency

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea; Ying Pan (YP)

RECORDER: Jill Hawkins

PARTIES Keeler, Brett O.
PRESENT: Manning, James
 Pensabene, Marissa

Deputy District Attorney
Defendant
Public Defender for Deft.

JOURNAL ENTRIES

Ms. Pensabene indicated she had filed the appropriate document in Department 7. COURT ORDERED, matter REFERRED to Competency Court, Trial Date and all pending Motions are VACATED, and matter SET for Status Check.

CUSTODY

11/1/13 9:30 AM FURTHER PROCEEDINGS: COMPETENCY (DEPT 7)

11/25/13 9:00 AM STATUS CHECK: RESETTING TRIAL

PRINT DATE: 10/07/2013

Page 1 of 1

Minutes Date: October 07, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 01, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

November 01, 2013 9:30 AM Further Proceedings: Competency

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 03F

COURT CLERK: Aaron Carbajal

RECORDER: Renee Vincent

PARTIES Harris, Belinda T.
PRESENT: Manning, James
 Pace, Barter G
 State of Nevada

Public Defender for Defendant
Defendant
Deputy District Attorney
Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Christina Greene of the Specialty Courts present.

Court NOTED Drs. Lenkeit and Krelstein indicate competent; therefore, FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him/her and is able to assist counsel in his/her defense and ORDERED, matter TRANSFERRED back to the originating court for further proceedings.

CUSTODY

11-13-13 9:00 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT (DEPT. 11)

PRINT DATE: 11/07/2013

Page 1 of 1

Minutes Date:

November 01, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 13, 2013

C-13-290624-1

State of Nevada

vs

James Manning

November 13, 2013 9:00 AM

Further Proceedings

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Tia Everett; Dulce Romea / dr

RECORDER: Jill Hawkins

PARTIES**PRESENT:**

Keeler, Brett O.
Manning, James
Pensabene, Marissa
State of Nevada
Waters, William

Deputy District Attorney
Defendant
Deputy Public Defender
Plaintiff
Deputy Public Defender

JOURNAL ENTRIES

- Court noted trial has not been set. Deft advised he has a motion that he would like to be placed on calendar, and requested the record reflect "they" are detrimental to his case. Mr. Waters stated Deft would not allow counsel to review his motion. Court ORDERED photocopies be made and given to the Deputies for review and for filing, if appropriate; otherwise, counsel to discuss issues with Deft. Colloquy regarding trial setting and resetting of pending motions. COURT ORDERED, matter SET for trial on January 13, 2014. Motions RESET on January 6, 2014.

CUSTODY

12-9-13 9:00 AM STATUS CHECK: TRIAL READINESS

1-6-14 9:00 AM DEFENDANT'S MOTION IN LIMINE TO PRECLUDE ALL REFERENCES OF HEARSAY STATEMENTS IN VIOLATION OF THE CONFRONTATION CLAUSE...DEFENDANT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFENDANT FOLLOWING HIS ILLEGAL ARREST, OR, IN THE ALTERNATIVE REQUEST FOR AN EVIDENTIARY HEARING...DEFENDANT'S MOTION TO SUPPRESS PHOTOGRAPHIC LINE-UP AND SUBSEQUENT IN-COURT IDENTIFICATIONS

PRINT DATE: 11/14/2013

Page 1 of 2

Minutes Date:

November 13, 2013

1-8-14 9:00 AM CALENDAR CALL

1-13-14 1:00 PM JURY TRIAL

CLERK'S NOTE: 11/25/13 Status Check Resetting Trial VACATED. / dr

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 09, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

December 09, 2013 9:00 AM Status Check: Trial Readiness

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dania Batiste

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Manning, James	Defendant
	Pensabene, Marissa	Deputy Public Defender
	Schwartzner, Michael J.	Deputy District Attorney

JOURNAL ENTRIES

- Ms. Pensabene advised the defense is ready to proceed with trial, and noted she intends to file a supplemental Discovery Motion by the end of the week; as that is the remaining outstanding issue the defense has.

Court DIRECTED counsel to file any supplements as soon as possible, and ORDERED, trial date STANDS.

CUSTODY

1/6/2014 9:00 am MOTION TO SUPPRESS.....MOTION IN LIMINE

PRINT DATE: 12/09/2013

Page 1 of 1

Minutes Date: December 09, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 30, 2013

C-13-290624-1 State of Nevada
 vs
 James Manning

**December 30, 2013 9:00 AM Deft.'s Supplemental Motion for
Disclosure of Brady Material**

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea; Dania Batiste/db

RECORDER: Sandra Pruchnic

PARTIES

PRESENT:	Burns, J Patrick	Deputy District Attorney
	Manning, James	Defendant
	Pensabene, Marissa	Deputy Public Defender

JOURNAL ENTRIES

- Ms. Pensabene advised the State has provided 2 of the 4 requested items. Mr. Burns stated this case is assigned to Deputy D.A. H. Trippiedi, and there are no notes in the file; therefore, he has no representations to make before this Court today.

COURT ORDERED, matter CONTINUED for Ms. Trippiedi's presence.

CUSTODY

CONTINUED TO: 1/6/2014 9:00 am

PRINT DATE: 12/31/2013

Page 1 of 1

Minutes Date:

December 30, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2014

C-13-290624-1

State of Nevada

vs

James Manning

January 06, 2014

9:00 AM

All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea / dr ; Katrina Hernandez

RECORDER: Jill Hawkins

PARTIES**PRESENT:**

Manning, James

Defendant

Pensabene, Marissa

Deputy Public Defender

State of Nevada

Plaintiff

Trippiedi, Hagar

Deputy District Attorney

JOURNAL ENTRIES

- DEFT'S MOTION IN LIMINE TO PRECLUDE ALL REFERENCES OF HEARSAY STATEMENTS IN VIOLATION OF THE CONFRONTATION CLAUSE...

...DEFT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFT FOLLOWING HIS ILLEGAL ARREST, OR, IN THE ALTERNATIVE, REQUEST FOR AN EVIDENTIARY HEARING...

...DEFT'S MOTION TO SUPPRESS PHOTOGRAPHIC LINE-UP AND SUBSEQUENT IN-COURT IDENTIFICATIONS...

...DEFT'S SUPPLEMENTAL MOTION FOR DISCLOSURE OF BRADY MATERIAL

DEFT'S MOTION IN LIMINE TO PRECLUDE ALL REFERENCES OF HEARSAY STATEMENTS IN VIOLATION OF THE CONFRONTATION CLAUSE: Argument in support of the motion by Ms. Pensabene noting the State's opposition does not go past the first part of analysis. Argument in opposition by Ms. Trippiedi stating information is not hearsay. COURT ORDERED, motion GRANTED to the extent the tip will be introduced into evidence as the substance of the tip; to the extent it is sought to be used as information that the Department operated on in order to continue its investigation, motion is DENIED.

DEFT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFT FOLLOWING HIS ILLEGAL ARREST, OR, IN THE ALTERNATIVE, REQUEST FOR AN EVIDENTIARY HEARING: Following

PRINT DATE: 01/08/2014

Page 1 of 2

Minutes Date:

January 06, 2014

brief argument as to citation issue, COURT ORDERED, matter SET for Jackson v. Denno hearing.

DEFT'S MOTION TO SUPPRESS PHOTOGRAPHIC LINE-UP AND SUBSEQUENT IN-COURT IDENTIFICATIONS: Arguments by counsel as to fairness of the line-up and victim's confidence at identifying the person who robbed him. COURT ORDERED, motion DENIED as it does not appear to be unnecessarily suggestive.

DEFT'S SUPPLEMENTAL MOTION FOR DISCLOSURE OF BRADY MATERIAL: Ms. Pensabene stated the only issue out of the 4 items is the request for information of Deft's contact with law enforcement on this case prior to his arrest in May. Ms. Trippiedi advised they are not aware of any contact Deft had with law enforcement in April. Statement by Deft regarding contact on May 14th. Ms. Pensabene requested leave to amend the request to look into the May 14th date. COURT SO ORDERED. Court ADMONISHED Deft to remain silent as he has counsel. Ms. Trippiedi further advised State's detective is not aware of any awards as requested in Deft's supplement. Court so noted, and ORDERED, matter CONTINUED to Wednesday, January 8th.

CUSTODY

1-8-14 9:30 AM DEFT'S SUPPLEMENTAL MOTION FOR DISCLOSURE OF BRADY MATERIAL...DEFT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFT FOLLOWING HIS ILLEGAL ARREST, OR, IN THE ALTERNATIVE, REQUEST FOR AN EVIDENTIARY HEARING...JACKSON V. DENNO HEARING: DEFT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFT FOLLOWING HIS ILLEGAL ARREST...CALENDAR CALL

1-13-14 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 08, 2014

C-13-290624-1 State of Nevada
 vs
 James Manning

January 08, 2014 9:30 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Banks, Jeff	Deputy Public Defender
	Harris, Belinda T.	Deputy Public Defender
	Manning, James	Defendant
	Pensabene, Marissa	Deputy Public Defender
	State of Nevada	Plaintiff
	Trippiedi, Hagar	Deputy District Attorney

JOURNAL ENTRIES

- CALENDAR CALL...JACKSON V. DENNO HEARING: DEFENDANT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFENDANT FOLLOWING HIS ILLEGAL ARREST...DEFT'S MOTION TO SUPPRESS STATEMENTS MADE BY DEFT FOLLOWING HIS ILLEGAL ARREST, OR, IN THE ALTERNATIVE, REQUEST FOR AN EVIDENTIARY HEARING...DEFT'S SUPPLEMENTAL MOTION FOR DISCLOSURE OF BRADY MATERIAL

Parties announced ready. Colloquy regarding anticipated length of trial. Court noted another case set for trial in this Department on January 13, 2013, is expected to last longer; ORDERED, instant case REFERRED to Overflow. Colloquy between Court and counsel regarding overlapping issues and Public Defender's request for a general evidentiary hearing, which would be more appropriately titled as a Franks hearing. Joseph Rauchfuss, Chad Embry, and Scott Kavon, SWORN and TESTIFIED. Arguments by counsel. COURT stated findings, and ORDERED, Motion to Suppress DENIED as the City marshal had authority to detain Deft at Doolittle Park for violation of ordinance posted park rules. At Mr. Banks' request, Court further clarified, there was not an unconstitutional use of City of Las Vegas' police power. Defense counsel is DIRECTED to send a copy of anything related to constitutionality to City Attorney Brad Jerbic. Deft's Supplemental Motion for Disclosure of

PRINT DATE: 01/08/2014

Page 1 of 2

Minutes Date: January 08, 2014

Brady Material GRANTED as no further update was provided today.

CUSTODY

1-10-14 8:45 AM OVERFLOW: 3 DAYS; 4-6 WITNESSES; DEP DA HAGAR
TRIPPIEDI/DEP PD'S MARISSA PENSABENE & BELINDA HARRIS (DEPT XVII)

DISTRICT COURT
CLARK COUNTY, NEVADAFelony/Gross MisdemeanorCOURT MINUTESJanuary 10, 2014

C-13-290624-1 State of Nevada
 vs
 James Manning

January 10, 2014 8:45 AM Overflow

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Hagar Trippiedi, Dep DA, present on behalf of the State; Marissa Pensabene, Dep PD, and Belinda Harris, Dep PD, present on behalf of Deft. Manning, who is also present.

State and Defense announced ready; the trial is expected to take three (3) days. COURT ORDERED, matter REFERRED to Department III for Jury Trial. Court instructed both counsel to provide their proposed Jury Instructions to Chambers on the first day of trial. Any special instructions should include case citations.

CUSTODY

01/13/14 10:30 AM JURY TRIAL

PRINT DATE: 01/10/2014

Page 1 of 1

Minutes Date: January 10, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2014

C-13-290624-1

State of Nevada

vs

James Manning

January 13, 2014

10:30 AM

Jury Trial

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carol Green;

REPORTER: Sharon Howard

PARTIES Hagar Trippiedi, Deputy District Attorney, present on behalf of the State.

PRESENT: Defendant Manning present, represented by Marissa Pensabene and Belinda Harris,
Deputy Public Defenders.

JOURNAL ENTRIES

OUTSIDE PRESENCE OF THE PROSPECTIVE JURY PANEL. Ms. Pensabene requested that Bench Conference be recorded. Court stated that this is a reporting department so Bench Conferences are not reported, however, a record can be made at a recess or counsel can request a recess to make a record. Ms. Trippiedi requested that Page 2 of Information be corrected to and read "him" rather than "her". COURT ORDERED, Line 1, Page 2 of Information AMENDED BY INTERLINEATION to reflect "him".

PROSPECTIVE JURY PANEL PRESENT. Voir Dire of Panel. OUTSIDE PRESENCE OF THE PRESENCE OF PROSPECTIVE JURY PANEL. Both side passed panel for cause and proceeded with peremptory challenges. PROSPECTIVE JURY PANEL PRESENT. Jury selected and sworn.

OUTSIDE PRESENCE OF JURY PANEL. Colloquy regarding photo lineup exhibit and testimony to establish where photos were obtained. Discussion regarding other exhibits.

JURY PRESENT. Opening argument by Mr. Trippiedi and Ms. Harris. Witnesses sworn and testified per worksheets. Exhibits marked and admitted per worksheets. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 1/14/14 1:00 PM

PRINT DATE: 01/24/2014

Page 1 of 2

Minutes Date:

January 13, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 14, 2014

C-13-290624-1 State of Nevada
 vs
 James Manning

January 14, 2014 10:30 AM Jury Trial

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carol Green

REPORTER: Sharon Howard

PARTIES Hagar Trippiedi, Deputy District Attorney, present on behalf of the State.
PRESENT: Defendant Manning present, represented by Marissa Pensabene and Belinda Harris,
 Deputy Public Defenders.

JOURNAL ENTRIES

OUTSIDE PRESENCE OF THE JURY. Record made as to previous bench conferences.

JURY PRESENT. Continued testimony and exhibits per worksheets. State rests.

OUTSIDE PRESENCE OF THE JURY. Record made as to previous bench conferences.
Defendant given rights regarding testifying.

JURY PRESENT. Continued testimony and exhibits per worksheets.

OUTSIDE PRESENCE OF THE JURY. Argument by counsel as to questions being asked of Defendant regarding statements made by Defendant to detective. After noting that Defense should have filed a motion in limine, COURT ORDERED, questions by the State as to statements of Defendant will be allowed as similar in time, location, and manner, so they are admissible. Additionally, Court stated it is very clear that statements are relevant as to motive, intent and common scheme and plan. Statement marked and admitted as a Court exhibit. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 1/15/14 1:00 PM

PRINT DATE: 01/24/2014

Page 1 of 2

Minutes Date: January 14, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 15, 2014

C-13-290624-1 State of Nevada
 vs
 James Manning

January 15, 2014 10:30 AM Jury Trial

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carol Green

REPORTER: Sharon Howard

PARTIES Hagar Trippiedi, Deputy District Attorney, present on behalf of the State.
PRESENT: Defendant Manning present, represented by Marissa Pensabene and Belinda Harris,
 Deputy Public Defenders.

JOURNAL ENTRIES

OUTSIDE PRESENCE OF JURY. Instructions settled on the record.

JURY PRESENT. Instructions read. Closing argument by counsel. At 2:22 PM Jury left to deliberate

OUTSIDE PRESENCE OF JURY. Record made regarding Bench Conference.

JURY PRESENT. At 4:00pm Jury returned with verdict in accordance with written verdict FILED IN
OPEN COURT. Jury found Defendant as follows:

COUNT 1 - NOT GUILTY

COUNT 2 - GUILTY of BATTERY WITH INTENT TO COMMIT A CRIME (F)

Jury thanked and excused. COURT ORDERED, matter referred to the Division of Parole and
Probation (P & P) and set for sentencing.

CUSTODY

3/20/14 9:00 AM SENTENCING

PRINT DATE: 01/24/2014

Page 1 of 1

Minutes Date: January 15, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2014

C-13-290624-1 State of Nevada
 vs
 James Manning

**February 04, 2014 9:00 AM Defendant's Motion for Judgment of Acquittal, or in
the Alternative, Motion for New Trial**

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carol Green

REPORTER: Sharon Howard

PARTIES Hagar Trippiedi, Deputy District Attorney, present on behalf of the State.

PRESENT: Defendant Manning present, in custody, represented by Marissa Pensadene, Deputy
Public Defender.

JOURNAL ENTRIES

Counsel submitted on motion and opposition. Statements by the Court, noting that there was nothing improper about the verdict. COURT ORDERED, motion DENIED.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 20, 2014**

C-13-290624-1 State of Nevada
 vs
 James Manning

March 20, 2014 9:00 AM Sentencing

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Carol Green; Tia Everett/te

REPORTER: Sharon Howard

PARTIES Victoria Villegas, Deputy District Attorney, present on behalf of the State. Defendant
PRESENT: present in custody and represented by Marissa Pensabene, Deputy Public Defender.

JOURNAL ENTRIES

- Victoria Villegas, Deputy District Attorney, present on behalf of the State. Defendant present in custody and represented by Marissa Pensabene, Deputy Public Defender.

Court noted Ms. Pensabene contacted the Court indicating she would be requesting a continuance in order to look into the gang affiliation information in the Pre Sentence Investigation Report (PSI). Ms. Pensabene advised she has received and reviewed the field interview (FI) cards provided and believes a Somee hearing as she does not believe there is enough information to support the gang affiliation; however, defendant would like to proceed with sentencing this morning with the information being stricken from the PSI. Court stated based on the information on the FI cards the Court is not inclined to strike any of the information in the PSI regarding the gang affiliation. Conference at the bench. COURT ORDERED, matter CONTINUED to allow counsel to discuss the FI cards information with defendant.

CUSTODY

CONTINUED TO: 4/24/2014 9:00 AM

PRINT DATE: 03/21/2014

Page 1 of 1

Minutes Date:

March 20, 2014

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 13, 2014**

C-13-290624-1 State of Nevada
 vs
 James Manning

May 13, 2014 9:00 AM Sentencing

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Tia Everett

REPORTER: Robert Cangemi

PARTIES Hagar Trippiedi, Deputy District Attorney, present on behalf of the State. Defendant
PRESENT: present in custody and represented by Marissa Pensabene, Deputy Public Defender.

JOURNAL ENTRIES

- Hagar Trippiedi, Deputy District Attorney, present on behalf of the State. Defendant present in custody and represented by Marissa Pensabene, Deputy Public Defender.

Ms. Pensabene advised this matter previously continued in order to obtain the field interview cards (FI); however, the State has not received the information and Defendant would like to proceed with sentencing today. Court so noted. By virtue of a jury verdict, DEFT MANNING ADJUDGED GUILTY of COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME (F). Matter argued and submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA analysis fee, including testing to determine genetic markers, \$250.00 Indigent Defense Civil Assessment fee, and \$1,614.62 in RESTITUTION payable to Victims of Crime; Defendant SENTENCED to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); with THREE HUNDRED SIXTY-TWO (362) DAYS credit for time served.

NDC

PRINT DATE: 05/13/2014

Page 1 of 1

Minutes Date: May 13, 2014


CLERK OF THE COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES MANNING, aka,
12 James Daevon Manning,

13 Defendant.

) CASE NO. C-13-290624-1

) DEPT. III

) (ARRAIGNMENT HELD IN DEPT. LLA)

14
15 BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
16 WEDNESDAY, JULY 03, 2013

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**
18 **INITIAL ARRAIGNMENT**

19 **APPEARANCES:**

20 For the State:

DANAE ADAMS, ESQ.,
Chief Deputy District Attorney

21 For the Defendant:

MARIA JACOB, ESQ.,
Deputy Public Defender

22
23
24
25 RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 WEDNESDAY, JULY 03, 2013

2 * * * * *

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

4
5 THE COURT: State of Nevada versus James Manning, C290624. He is
6 present in custody. Ms. Jacob is here on his behalf. Counsel?

7 MS. JACOB: Mr. Manning is going to enter a plea of not guilty today. He
8 would like to invoke his right to a speedy trial, and we would like to reserve 21 days
9 for the filing of any writ.

10 THE COURT: Sir, you received a copy of the Information stating the charges
11 against you?

12 THE DEFENDANT: Yes.

13 THE COURT: You read through it and understood it?

14 THE DEFENDANT: Um --

15 THE COURT: I'm not asking whether you agree with it. I'm asking whether
16 you understand the charges against you.

17 THE DEFENDANT: Yes.

18 THE COURT: How do you plead?

19 THE DEFENDANT: Not guilty.

20 THE COURT: You do have a right to a trial within 60 days. It's my
21 understanding you want to invoke that right; is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Speedy trial.

24 THE CLERK: Calendar call, August 14th at 9:00 a.m. Jury trial, August 19th
25 at 1:00 p.m., District Court 11.

1 THE COURT: Counsel, pursuant to statute you have 21 days from today for
2 the filing of any writs. If the transcript has not been filed as of today, you have 21
3 days from the filing.

4 MS. JACOB: Thank you.

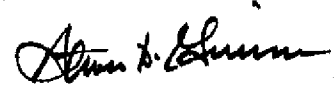
5 (Whereupon, the proceedings concluded.)

6 * * * * *

7 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
8 certify that this is a rough draft transcript, expeditiously prepared, not proofread,
corrected, or certified to be an accurate transcript.

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11 Kiara Schmidt, Court Recorder/Transcriber
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CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

)

CASE NO. C290624

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vs.

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DEPT. XI

10

JAMES MANNING, aka
JAMES DAEVON MANNING,

)

Transcript of Proceedings

11

Defendant.

)

12

)

13

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

14

**HEARING ON DEFENDANT'S MOTION TO COMPEL DISCLOSURE
OF BRADY MATERIAL**

15

16

MONDAY, AUGUST 12, 2013

17

APPEARANCES:

18

For the State:

JOHN GIORDANI, ESQ.

19

Deputy District Attorney

20

21

For the Defendant:

MARISSA PENSABENE, ESQ.

22

Deputy Public Defender

23

24

25

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, AUGUST 12, 2013, 9:10 A.M.

2 (Court was called to order)

3 MS. PENSABENE: Can we call Manning on page 7?

4 THE COURT: We can.

5 Good morning, sir.

6 THE DEFENDANT: How are you doing?

7 THE COURT: I'm well. Thank you.

8 This is the Brady motion.

9 MS. PENSABENE: Yes, Your Honor.

10 THE COURT: It sounds like most everything has been
11 produced. The issue I have is the 911 and 311 tapes.

12 Did we get the transcripts done?

13 MR. GIORDANI: All I have is the surveillance tape
14 that I'm handing to Ms. Pensabene.

15 MS. PENSABENE: Okay. My only concern was in the
16 State's response they said there was no video surveillance from
17 March 29th.

18 THE COURT: Yes, I see that.

19 MS. PENSABENE: I'm not sure if this is what -- if
20 this surveillance is from that date, because there's two
21 separate incidents. 'Cause I do believe the State -- the State
22 believes that there's no video surveillance from that date;
23 however, I have video snapshots from -- yeah, snapshots from
24 that date.

25 MR. GIORDANI: This is Ms. Trippiedi's case. I can

1 text her if it's something that has to be done right now.

2 MS. PENSABENE: As long as we get them handed over I'm
3 fine with it. It's just that I was concerned that the State
4 said that those -- that video did not exist when in fact I had a
5 still shot from the camera of that date.

6 THE COURT: Maybe we should follow up with the March
7 29th video.

8 MS. PENSABENE: That's what I'm concerned about.

9 MR. GIORDANI: Will do, Your Honor.

10 THE COURT: Anything else? Continue it a week?

11 MS. PENSABENE: Yep. That'd be great.

12 THE COURT: Or maybe not. How about we continue it to
13 Wednesday, which is calendar call.

14 THE CLERK: August 14 at 9:00 a.m.

15 THE COURT: We'll see you then, sir.

16 THE PROCEEDINGS CONCLUDED AT 9:12 A.M.

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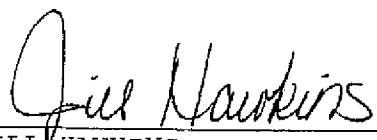
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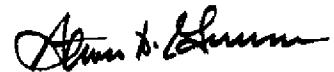
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.

23

24

25


JILL HAWKINS
Court Recorder/Transcriber


CLERK OF THE COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES MANNING aka JAMES
12 DAEVON MANNING,

13 Defendant.
14

CASE NO. C-13-290624-1

DEPT. XI

15 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT
16 JUDGE

17 WEDNESDAY, AUGUST 14, 2013
18 ROUGH DRAFT TRANSCRIPT
19 RECORDER'S TRANSCRIPT RE:
20 CALENDAR CALL

21 APPEARANCES:

22 For the State:

HAGAR TRIPPIEDI, ESQ.
Deputy District Attorney

23 For the Defendant:

MARISSA PENSABENE, ESQ.
Deputy Public Defender

24
25 ROUGH DRAFT TRANSCRIPT

1 RECORDED BY: JILL HAWKINS, COURT RECORDER

2 Las Vegas, Nevada, Wednesday, August 14, 2013 at 9:58 a.m.

3
4 THE COURT: Good morning sir.

5 THE DEFENDANT: Good morning.

6 MS. PENSABENE: Your Honor, this is on for a discovery motion for as
7 well as calendar call. I'd like to give you a little bit of a back story as to what is
8 happening in this case.

9 Originally there were four counts; two counts per victim. There
10 was an incident that occurred on March 27th and an incident that occurred on
11 March 29th. The incidents on March 27th have been dismissed; however the
12 State has handed me two videos of the March 27th incident that does not
13 matter in this case. So, in regards to my discovery motion request #12, no I'm
14 sorry, yeah 12, I am asking for the video surveillance from the only incident that
15 is still remaining in this case, March 29th.

16 The State has said in their motion that there is no video. However,
17 I have still photos from the camera on the bus from that date.

18 THE COURT: And we talked about this on Monday didn't we?

19 MS. TRIPPIED: Your Honor, perhaps I can shed a little bit of light.

20 THE COURT: I thought I ruled on all of this on Monday.

21 MS. TRIPPIED: On July 10th, I emailed the lead detective in the case.
22 Double checked with him that there is no video surveillance from that March
23 29th incident. He told me there is no video surveillance, but he does somehow
24 have still photos, which he emailed to me, and I immediately forward then to
25 the Defense Attorney, so at this point, we do not have video surveillance from

ROUGH DRAFT TRANSCRIPT

1 that second incident. We have it from the first incident. I provided it to the
2 Defense, but we do not have still – video surveillance from the second incident.

3 THE COURT: Do we know the source of the still photos?

4 MS. PENSABENE: A CAT camera on –

5 MS. TRIPPIED!: It's a bus. So --

6 MS. PENSABENE: -- on a bus. And Your Honor, it's our position if there --
7 if they were able to get still photos at some point, they had the video --

8 THE COURT: Not necessarily, counsel.

9 MS. PENSABENE: -- so I'm going to be --

10 THE COURT: Are you going to subpoena the CAT bus?

11 MS. PENSABENE: I will --

12 THE COURT: Okay.

13 MS. PENSABENE: -- if the State is unable to provide it to me.

14 THE COURT: Anything else?

15 MS. PENSABENE: Yes, Your Honor. I -- there has been alleged confession
16 in this case; however, I don't have transcripts of my client's confession to the
17 police. He informs me that the police did record his statement, so I'd like to
18 have that.

19 Additionally, the State has provided me with a list of witnesses. I'd
20 like to have statements from those witnesses as well.

21 Finally, there was also a line-up that occurred, and I do not have
22 copies of that line-up.

23 MS. TRIPPIED!: Ummm we do -- the line-up --

24 THE COURT: Trial is Monday.

25 MS. TRIPPIED!: The line-up was provided but color -- maybe not color

ROUGH DRAFT TRANSCRIPT

1 photos, so we'll get those.

2 MS. PENSABENE: I actually don't have it, if you could just give it to me
3 again.

4 THE COURT: Wait guys, it's really important; only one of you speak at a
5 time, and it would be helpful if you direct your comments to me. So, trial is
6 Monday. Is there a transcript of a statement that the Defendant gave that
7 somebody might call a confession?

8 MS. TRIPPIED: Your Honor, at this point, I'm not sure. I asked my
9 detective. I've given the Defense everything that's in our file and in Metro's
10 file, so you know, as far as we know, there wasn't one, but I can double check
11 again today. I know the detective is meeting me this afternoon, so I can get
12 everything.

13 THE COURT: Today is calendar call. It's too late.

14 MS. TRIPPIED: Well, we are ready to proceed.

15 THE COURT: So you're either ready or you're not.

16 MS. TRIPPIED: We're ready to proceed.

17 THE COURT: But, how can you be ready if you haven't turned – if you
18 don't know if there was a statement the Defendant made?

19 MS. TRIPPIED: We know he made a statement. That was in the arrest
20 report. We don't know if it was recorded. That, I can find out.

21 THE COURT: They always record them.

22 MS. TRIPPIED: Not necessarily, Your Honor.

23 THE COURT: They almost always recorded them.

24 MS. TRIPPIED: Not necessarily. Sometimes they do, sometimes they
25 don't. If it was, I can get it to her as soon as possible. If it wasn't, she will

ROUGH DRAFT TRANSCRIPT

1 not get one.

2 THE COURT: Don't you think it would be too late if you're getting it to
3 her Wednesday, after calendar call?

4 MS. TRIPPIED: To review a statement that she's already aware of? And
5 the police report?

6 THE COURT: I'm going to take a break right now. We'll be back.

7 [Case trailed at 10:03 a.m.]

8 [Case recalled at 10:05 a.m.]

9 THE COURT: Okay, go back to the calendar call on James Manning. So
10 is the State ready to proceed?

11 MS. TRIPPIED: Your Honor, I'm sorry if I offended you or this court, but
12 we are ready to proceed. We're going to try as hard as we can to get that
13 statement to her today right after I get out of court.

14 THE COURT: Counsel, its calendar call. You're either ready or you're
15 not. It's all I want to know. So are you ready?

16 MS. TRIPPIED: We're ready.

17 THE COURT: Okay.

18 MS. PENSABENE: Your Honor, I don't feel comfortable going to trial with
19 a lack of all this discovery. I really feel that it's in my client's best interest that
20 I review all the discovery thoroughly before I announce ready. However, I do
21 not think that there should be a Defense request for continuance, as I am
22 waiting on the discovery. It's --

23 THE COURT: And you've previously had the motion related to this
24 discovery discussed in an agreement by the State to produce the information.

25 MS. PENSABENE: That's correct.

ROUGH DRAFT TRANSCRIPT

1 THE COURT: And that occurred prior to calendar call.

2 MS. PENSABENE: And, Your Honor, if you would like, as far as the
3 transcripts of the statement goes, we could ask to exclude the statement
4 altogether, rather than have the State provide a transcript of his statement.

5 THE COURT: Ms. Trippiedi?

6 MS. TRIPPIEDI: We wouldn't be in agreement for that. Your Honor, I do
7 want to make it known -

8 THE COURT: Do you know if there's a recorded statement or not?

9 MS. TRIPPIEDI: There should be. I - I don't know if I have it or Metro
10 has it.

11 THE COURT: But it's calendar call. The question is, do you know?

12 MS. TRIPPIEDI: Right now I do not.

13 THE COURT: It's calendar call right now.

14 MS. TRIPPIEDI: Right now, I don't know. I don't know.

15 THE COURT: Okay. Anything else?

16 MS. PENSABENE: Your Honor, in the event that this case is going to be
17 continued, Mr. Manning would like me to request an OR or house arrest. He
18 has not waived his 60 days to trial. Had we been provided discovery, we
19 would be ready to proceed on Monday. So based on that, I believe that Mr.
20 Manning is being prejudiced by having to stay in custody further out from the
21 60 days.

22 MS. TRIPPIEDI: Your Honor, can we approach before you make a ruling
23 on that?

24 THE COURT: Absolutely.

25 [Bench Conference]
ROUGH DRAFT TRANSCRIPT

1 THE COURT: Did you guys want to say something?

2 MS. TRIPPIED: Your Honor, in response to the motion for OR, at this
3 time, we are opposing an OR release.

4 Your Honor, this is a violent offense. There were originally two
5 victims. It was two robberies that occurred both on buses. The victims were --
6 one of the victims was 60 years of age or older.

7 We could ask for a very brief continuance. We should have the
8 requested items to the Defense by the end of this week, and we'll be prepared
9 to go at a very short time, so we don't feel that an OR is appropriate at this
10 time, and we submit it.

11 THE COURT: Anything else?

12 MS. PENSABENE: And Your Honor, as I mentioned before, my client's 60-
13 day trial right is being jeopardized here. He is being prejudiced by this
14 continuance, and he has ties to the community. He has grown up in Las Vegas.
15 We believe an OR is appropriate at this time.

16 THE COURT: I'm going to continue the trial to August 26. That is within
17 the 60 days the Defendant has invoked to. The State needs to be diligent in its
18 preparation and disclosure of materials.

19 MS. PENSABENE: And Your Honor, I'm sorry. I'm going to be out of the
20 jurisdiction from August 26 until September 2nd.

21 THE COURT: And?

22 MS. PENSABENE: I'm not going to be able to go on August 26. I'm
23 actually getting married August 31st.

24 MR. WATERS: Court's indulgence, Judge.

25 MS. PENSABENE: Your Honor, in the event that the statement is kept out

ROUGH DRAFT TRANSCRIPT

1 of the trial, I can be prepared to go next week.

2 THE COURT: Okay.

3 MS. TRIPPIED!: We're not gonna agree to take out his statement, but we
4 can have it to her by the end of the day.

5 THE COURT: Anything else?

6 MS. TRIPPIED!: No, Your Honor.

7 THE COURT: Because the statement, the recorded statement has not
8 previously been produced by the State, if there was a recorded statement, it
9 will not be admitted. However, to the extent that the officer's report includes
10 his notes of his interview with the Defendant, that is something that has been
11 readily available to the Defense the entire time, so the officer can testify related
12 to his communications with the Defendant, if there is a determination prior to
13 the start of the trial that his communications with the officer were in fact
14 voluntary. Anything else?

15 MS. PENSABENE: No, Your Honor.

16 THE COURT: Is Mr. McCoy [phonetics] here?

17 MS. PENSABENE: Your Honor, I'm sorry. We're a little unclear on what
18 the date is.

19 THE COURT: The date is Monday, because you told me you couldn't go
20 when I was gonna move it to you, so you could have all this stuff that you
21 want.

22 MS. PENSABENE: Your Honor, can we just trail it for a moment --

23 THE COURT: Absolutely.

24 MS. PENSABENE: -- I'd like to discuss --

25 [Case trailed at 10:13]

ROUGH DRAFT TRANSCRIPT

1 [Case recalled at 10:37]

2 MS. PENSABENE: And Your Honor –

3 THE COURT: The date being Monday.

4 MS. PENSABENE: After speaking with my client and with my Co-Counsel,
5 I am just not going to be ready to go on Monday. At this point, I don't even
6 know if a video exists or if it does not exist. I may be litigating that issue in the
7 event that the video existed and was destroyed –

8 MS. TRIPPIED: I hate to interrupt, but I just did receive an email from the
9 detective. He checked the evidence vault, because I told them it was really
10 crucial that we have that video, and there was nothing impounded so – and he
11 went to CAT again, and there was no video. He said they changed companies
12 so –

13 THE COURT: They did. There was a contract dispute. Now they have
14 two companies.

15 MS. TRIPPIED: -- yeah, as of now, there's no video that was impounded
16 in this case, and also he did email me the statement, and I forwarded it to the
17 Defense just now.

18 MS. PENSABENE: And I understand the State's position; however, there
19 was video two days prior from another incident. I need to investigate this. My
20 office needs to look into this, because I may be litigating the issue in a motion
21 to dismiss for failure to preserve. So I understand the State's position, but I
22 am not going to be ready to go on Monday.

23 THE COURT: Okay. So, the State's ready, and the Defendant is
24 requesting a continuance, your client has previously invoked his right to a
25 speedy trial, I believe. Sir, do you understand what your attorney is asking?

ROUGH DRAFT TRANSCRIPT

1 She's asking me to continue your trial because she needs to do some more
2 investigation because she has some concerns about the evidence that's been
3 preserved or not preserved.

4 THE DEFENDANT: Yes.

5 THE COURT: Are you willing to waive your right to a speedy trial?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. So, the next available date after the ones we
8 already talked about are in October. I have the weeks of October 14, 21, and
9 28 available.

10 MS. PENSABENE: I'm available for all those dates.

11 MS. TRIPPIEDI: I'm available for all.

12 THE COURT: Do you have a preference?

13 MS. TRIPPIEDI: No, Your Honor.

14 THE COURT: Let's go with the 14th then. And since the statement has
15 now apparently been emailed, I am going to let you – if you think it is
16 appropriate, file a written motion related to that because now you have an
17 adequate time prior to trial to make a determination if there are any issues with
18 the statement.

19 MS. PENSABENE: Thank you, Your Honor.

20 THE COURT: If you don't get it though, will you please call her before
21 you go on your vacation?

22 MS. PENSABENE: I will.

23 THE COURT: Anything else?

24 MS. PENSABENE: That is all, Your Honor.

25 THE CLERK: Calendar call date is October 9th at 9 a.m., jury trial October
ROUGH DRAFT TRANSCRIPT

1 14th at 1 p.m.

2 MS. PENSABENE: Thank you, Judge.

3 [Proceedings concluded at 10:40 a.m.]

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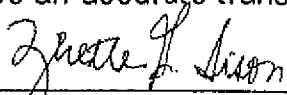
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10 ATTEST: Pursuant to Ryle 3C (d) of the Nevada Rules of Appellate Procedure, I
11 acknowledge that this is a rough draft transcript, expeditiously prepared, not
12 proofread, corrected, or certified to be an accurate transcript.

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Yvette G. Sison
Court Recorder/Transcriber

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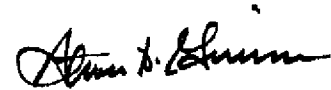
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ROUGH DRAFT TRANSCRIPT


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO. C290624
Plaintiff,)	
vs.	)	DEPT. XI
)	
JAMES MANNING, aka)	
JAMES DAEVON MANNING,	)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S REQUEST RE COMPETENCY

MONDAY, OCTOBER 7, 2013

APPEARANCES:

For the State: BRETT O. KEELER, ESQ.
 Chief Deputy District Attorney

For the Defendant: MARISSA A. PENSABENE, ESQ.
 Deputy Public Defender

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 7, 2013, 9:53 A.M.

2 (Court was called to order)

3 MS. PENSABENE: Good morning, Your Honor. If we could
4 call page 6, Manning.

5 THE COURT: I could.

6 MS. PENSABENE: Your Honor, I put this on calendar to
7 refer Mr. Manning to District Court VII.

8 THE COURT: Good morning, Mr. Manning. How are you
9 today?

10 THE DEFENDANT: Good morning. Fine.

11 MS. PENSABENE: And I've spoken with the District
12 Attorney, and we have agreed to have her file her opposition to
13 my motions once he comes back from District Court VII.

14 THE COURT: Okay.

15 MR. KEELER: That's my understanding, Your Honor.

16 THE COURT: All right. I'm going to refer the
17 defendant to Department VII.

18 THE CLERK: Okay. That will be November 1st at
19 9:30 a.m., Department VII.

20 THE COURT: Dulce, if you want to fill out the rest of
21 the form.

22 THE CLERK: Yes, Your Honor.

23 MR. KEELER: Your Honor, doesn't it vacate the trial
24 date, or are we going to keep that in place?

25 THE COURT: I'm going to vacate the trial date and set

1 a status check resetting the trial date for November 25th.

2 THE CLERK: November 25th at 9:00 a.m.

3 THE COURT: And that's just a status check.

4 MS. PENSABENE: Thank you, Your Honor.

5 MR. KEELER: Thank you.

6 THE COURT: And the motions are currently off
7 calendar.

8 THE PROCEEDINGS CONCLUDED AT 9:54 A.M.

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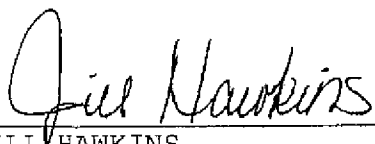
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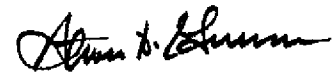
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.

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JILL HAWKINS
Court Recorder/Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

JAMES DAEVON MANNING,

Defendant.

CASE NO. C13-290624

DEPT. VII

THE HONORABLE JUDGE LINDA M. BELL, DISTRICT COURT JUDGE
FRIDAY, NOVEMBER 11, 2013

**RECORDER'S TRANSCRIPT OF
FURTHER PROCEEDINGS:
COMPETENCY**

APPEARANCES:

For the State:

BARTER PACE, ESQ.
Chief Deputy District Attorney

For the Defendant:

BELINDA HARRIS, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Friday - November 1, 2013 - 10:11 a.m.

2
3 THE COURT: Page 23, State of Nevada versus James Manning. Mr.
4 Manning is present in custody. Sir, you can go ahead and have a seat. He's
5 represented by Ms. Harris. State represented by Mr. Pace.

6 Mr. Manning was found competent by Dr. Lenkeit and Dr.
7 Krelstein. Any challenge to the finding?

8 MS. HARRIS: No challenge, Judge, at this time.

9 THE COURT: This will return to District Court Department 11.

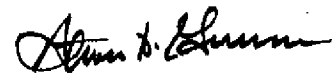
10 THE CLERK: November 13, 9:00 a.m., District Court 11.

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12 [Proceedings concluded at 10:11 a.m.]
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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio-visual recording of the proceeding in the above entitled case to the
20 best of my ability.

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24 Renee Vincent, Court Recorder/Transcriber
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO. C290624
Plaintiff,)	
vs.	)	DEPT. XI
)	
JAMES MANNING, aka)	
JAMES DAEVON MANNING,	)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT

WEDNESDAY, NOVEMBER 13, 2013

APPEARANCES:

For the State: BRETT O. KEELER, ESQ.
 Chief Deputy District Attorney

For the Defendant: WILLIAM M. WATERS, ESQ.
 MARISSA A. PENSABENE, ESQ.
 Deputy Public Defenders

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 13, 2013, 9:54 A.M.

2 (Court was called to order)

3 THE COURT: James Manning.

4 THE DEFENDANT: How are you doing, Your Honor?

5 THE COURT: I'm doing well. How are you, sir?

6 THE DEFENDANT: I'm fine. I would like to address the
7 Court real quick.

8 THE COURT: Hold on a second. Let me see if I can
9 figure out. Have I reset the trial, yet?

10 MS. PENSABENE: Not yet, Your Honor.

11 MR. KEELER: Not yet, Your Honor.

12 MS. PENSABENE: He just came back from DC7.

13 THE COURT: Okay. All right.

14 Yes, sir.

15 THE DEFENDANT: I have two handwritten motions that I
16 know aren't going to get honored today. I was just wondering if
17 the Court could put it on record that -- you know, because
18 they're very detrimental to my case. Very. And seeing --

19 THE COURT: The motions are?

20 THE DEFENDANT: Excuse me.

21 THE COURT: The motions are detrimental to your case?

22 THE DEFENDANT: Very. Very. And I think that if the
23 courts would -- you know, when it's come time to hear my motions
24 that my attorneys have already filed these would, you know, kind
25 of coincide, saying that I really couldn't get ahold of my

1 attorney. I've tried numerous times, but I've been in custody
2 the entire time, and have very limited resources --

3 MS. PENSABENE: If I --

4 THE DEFENDANT: -- when I'm locked down majority, I
5 mean. And I just -- it's really hard for me to get in touch
6 with my attorney, so I just figured I would let the Court know
7 as of right now. I mean, if the courts would just, you know,
8 consider them, I think they would see that they're -- it's very
9 not frivolous to my case.

10 THE COURT: Okay. I'm going to let your Public
11 Defender get the copies from you, and then she has to make the
12 determination.

13 THE DEFENDANT: Okay. I don't' have copies. These
14 are just the original --

15 THE COURT: Well, I'll get -- I'll let her have the
16 originals, and we have a copy machine in the back hallway, she
17 can go make a copy or we can have the law clerk do it so we got
18 a copy.

19 THE DEFENDANT: Okay.

20 THE COURT: But if --

21 THE DEFENDANT: Can --

22 MS. PENSABENE: And, Your Honor --

23 THE DEFENDANT: -- these get stapled to this? I'm
24 sorry I already stapled them, but I forgot by just reading over
25 that I needed to staple. I guess you would call them exhibits,

1 evidence.

2 THE COURT: Are they all together there?

3 THE DEFENDANT: This is a separate motion, and this is
4 a separate motion.

5 THE COURT: Yeah. We can staple them for you after we
6 copy them.

7 THE DEFENDANT: Okay.

8 MR. WATERS: Judge, here's the problem.

9 THE COURT: I'm not going to file them right now.

10 MR. WATERS: Okay.

11 THE COURT: I'm going to give them to you. I'm going
12 to make a copy --

13 MR. WATERS: He would not let her see them this
14 morning is the problem.

15 THE COURT: What?

16 MR. WATERS: He would not let his Public Defender see
17 those motions this morning.

18 THE COURT: No, I know.

19 THE DEFENDANT: Right. Because I wanted it on
20 record --

21 THE CORRECTIONS OFFICER: Stand up, sir.

22 THE DEFENDANT: Sorry.

23 MR. WATERS: He wants us to file them without --

24 MS. PENSABENE: Without --

25 MR. WATERS: -- even reviewing them.

1 THE DEFENDANT: I don't want them -- I just wanted it
2 on record.

3 THE COURT: Wait. Wait. Wait. Wait. Can I finish.
4 We're going to make copies, sir.

5 THE DEFENDANT: Yes.

6 THE COURT: Your PD's going to get the original,
7 you're going to get a copy back. That way if she thinks it's
8 appropriate to file it, she'll be able to file it for you.

9 THE DEFENDANT: Okay.

10 THE COURT: If she thinks there's an issue, she's
11 going to talk to you about it.

12 THE DEFENDANT: Okay.

13 THE COURT: Okay? All right.

14 MS. PENSABENE: And I just wanted to put on the
15 record, Your Honor, we're kind of at a crossroads here. This
16 morning Mr. Manning did not want me to see the motions, at the
17 same time he wants me to file them. I explained to him that if
18 I can't see the motions then he's going to have to file them on
19 his own and represent himself. Otherwise, strategically the
20 attorney is the one that reads the motions and generates the
21 motions and decides whether or not to file them if there's a
22 legal basis.

23 THE DEFENDANT: I didn't want you to not file them.
24 One of them is like I guess what you would call a conflict of
25 interest, is trying to dismiss you all. So, I mean --

1 THE COURT: It's okay, sir. We'll get them --

2 THE DEFENDANT: Right. Okay. I just wanted the Court

3 to know so just in case anything happens, and I get prejudiced

4 because something got lost magically.

5 THE COURT: Kris is going to come around get them,

6 make the copies.

7 THE DEFENDANT: Thank you.

8 THE COURT: The you'll have a copy.

9 THE DEFENDANT: Thank you.

10 THE COURT: The Public Defender will have the

11 original, and then something will happen with them, but you will

12 have a record that we talked about them --

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: -- and you gave the original to her and

15 you still have a copy.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: But I'm not filing them in open court,

18 because your counsel has to review them to make sure that it's

19 okay.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right.

22 MS. PENSABENE: I think we can move on and set the

23 trial, Your Honor.

24 THE COURT: All right. How long?

25 MS. PENSABENE: When is your next set?

1 THE COURT: January.

2 MS. PENSABENE: I think we can --

3 THE COURT: 6, 13, 21, 27, and February 6th. No,
4 February 3.

5 MS. PENSABENE: What was -- I'm sorry. Can you say
6 them again?

7 THE COURT: 6, 13, 21, 27, February 3.

8 MS. PENSABENE: 13th would work. I would also like to
9 reset my motions at this time.

10 THE COURT: Okay. Hold on a second. Let's see if we
11 can track down those motions real quick.

12 THE DEFENDANT: I have copies of them right here.

13 THE COURT: Hold on a second, sir. I've got to find
14 them for the clerk so that I can reference them for her from
15 another day so she can find them easier.

16 For some reason my computer is not cooperating, Dulce,
17 so if you find them before me --

18 There was a motion to suppress that was originally
19 scheduled for October 9th, motion in limine that was scheduled
20 for that same day. Those need to be reset.

21 When would you like them reset?

22 MS. PENSABENE: If we could do it about a week before
23 the trial.

24 THE COURT: Okay. And the motion to compel, which was
25 your Brady motion, has already been resolved. Are there any

1 further issues related to that?

2 MS. PENSABENE: There are not. Thank you.

3 THE COURT: Okay.

4 THE CLERK: Status check on trial readiness, December
5 9 at 9:00 a.m.; calendar call, January 8 at 9:00 a.m.; jury
6 trial, January 13 at 1:00 p.m., and the motions -- do you want
7 them on calendar call?

8 THE COURT: No. Put them on Monday the 6th.

9 THE CLERK: Okay. January 6 at 9:00 a.m.

10 MS. PENSABENE: Thank you.

11 THE COURT: Okay. Anything else?

12 So, sir, she's going to look at the motions that
13 you've written.

14 THE DEFENDANT: Okay.

15 THE COURT: We're going to give you a copy back so you
16 have a record of what you gave her.

17 THE DEFENDANT: Okay.

18 THE COURT: And then if she thinks that something
19 needs to be added or filed, or if she wants to file those with a
20 coversheet then she'll do so.

21 THE DEFENDANT: Okay. But, what if it's to
22 [inaudible] that conflict, and one of them is like to dismiss a
23 count.

24 THE COURT: Usually, if counsel thinks they have a
25 conflict based upon what you're raising, you may have seen that

1 they bring it up, and then we have a discussion about it. And
2 sometimes I do what is called a Faretta canvas.

3 THE DEFENDANT: So, I'm just saying, the Court's not
4 even going to hear -- I mean --

5 THE COURT: Not until she has a chance to review them.

6 THE DEFENDANT: So if she doesn't approve of them, the
7 Court won't hear them.

8 THE COURT: No, sir.

9 MR. WATERS: I think that's the --

10 THE COURT: That's not true.

11 MR. WATERS: That's the one motion he actually
12 probably could file as a fugitive pleading, but the problem is
13 we didn't even know what that was this morning.

14 THE COURT: I want you to read it first, and if it's
15 appropriate for it to be filed, you guys can file it, and then
16 I'll address it or you can just figure it out.

17 The problem is when you file it then the DA gets a
18 copy of it, and sometimes there's stuff in there that is not
19 appropriate for the DA to see and needs to be handled
20 appropriately. That's all I'm saying.

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

1 MR. WATERS: I agree.

2 MS. PENSABENE: Thank you.

3 THE COURT: Just me. Okay. So they're going to look
4 at it, sir, we're going to get you a copy back of that stuff in
5 a minute.

6 THE PROCEEDINGS CONCLUDED AT 10:01 A.M.

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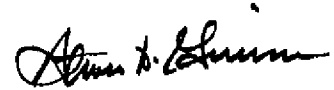
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JILL HAWKINS
Court Recorder/Transcriber


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO. C290624
Plaintiff,)	
vs.	)	DEPT. XI
)	
JAMES MANNING, aka)	
JAMES DAEVON MANNING,	)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK RE TRIAL READINESS

MONDAY, DECEMBER 9, 2013

APPEARANCES:

For the State: MICHAEL SCHWARTZER, ESQ.
Deputy District Attorney

For the Defendant: MARISSA A. PENSABENE, ESQ.
Deputy Public Defender

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 9, 2013, 9:07 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, sir. How are you today?

4 THE DEFENDANT: Good morning.

5 THE COURT: We have trial set on January 13th.

6 MS. PENSABENE: Your Honor --

7 THE COURT: And we've got a bunch of motions.

8 MS. PENSABENE: We do. And we will be ready to go
9 January 13th. I believe the motions will be argued on the 6th
10 of January.

11 THE COURT: That's when they're scheduled. Everything
12 else ready other than the motions?

13 MS. PENSABENE: I do anticipate filing a supplemental
14 discovery motion by the end of this week, if not earlier. But
15 that is the only issue.

16 THE COURT: Okay.

17 MR. SCHWARTZER: Ms. Trippiedi doesn't have any issues
18 regarding the trial setting, Your Honor.

19 THE COURT: All right. Get the motion filed sooner,

20 . . .

21 . . .

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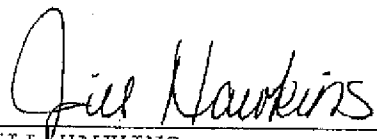
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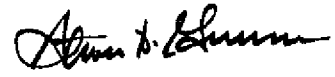
1 rather than later, so I can get it resolved.

2 All right. Sir, we're on track for trial, so we'll
3 see you then.

4 THE PROCEEDINGS CONCLUDED AT 9:08 A.M.
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JILL HAWKINS
25 Court Recorder/Transcriber


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO. C290624
Plaintiff,)	
vs.	)	DEPT. XI
)	
JAMES MANNING, aka)	
JAMES DAEVON MANNING,	)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANT'S SUPPLEMENTAL MOTION FOR DISCLOSURE
OF BRADY MATERIAL**

MONDAY, DECEMBER 30, 2013

APPEARANCES:

For the State: JOHN PATRICK BURNS, ESQ.
Deputy District Attorney

For the Defendant: BELINDA T. HARRIS, ESQ.
MARISSA A. PENSABENE, ESQ.
Deputy Public Defenders

RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 30, 2013, 10:58 A.M.

2 (Court was called to order)

3 THE COURT: Good morning, sir. How are you?

4 THE DEFENDANT: All right.

5 THE COURT: Supplemental motion for more discovery.

6 MS. PENSABENE: Yes, Your Honor. And two out of the
7 four discovery items that we requested have been provided to us.
8 The color Metro media release was emailed to me, as well as the
9 911 call. The State is saying they have no information on any
10 reward in this case, as well as no information about any law
11 enforcement contact that they would have had with Mr. Manning on
12 May 18th.

13 MR. BURNS: That's what my file appears to reflect,
14 Your Honor.

15 THE COURT: Well, they're asking if they had anything
16 on April 7th.

17 MR. BURNS: Your Honor, this is not my case, it's Ms.
18 Trippiedi's, and I don't see anything in the notes that would
19 indicate a position as to --

20 THE COURT: Perhaps Ms. Trippiedi -- when's Ms.
21 Trippiedi --

22 MR. BURNS: Well, she's -- there's one note that no
23 knowledge of the May 18th thing.

24 THE COURT: Well, no. It's really April 7th; right?

25 MR. BURNS: Well, it appears to refer to -- yeah.

1 That date "No knowledge" is written on the motion. So I would
2 assume no knowledge on the State's part as to that issue.

3 THE COURT: But remember, my definition of State is
4 that big State that includes Metro, not just you.

5 MR. BURNS: Absolutely. And I assume that this deputy
6 is taking into consideration those notions of constructive
7 possession.

8 THE COURT: And then we have the issue about the
9 reward. So maybe we could talk to Ms. Trippiedi, and one day
10 when she's actually here we could have this on calendar. When's
11 she scheduled to visit with us next?

12 MR. BURNS: Your Honor, I don't have that schedule in
13 front of me, but --

14 THE COURT: Come on, Mr. Burns. Don't you have it
15 memorized?

16 MR. BURNS: No. No. I should.

17 But if you just want to set it over, I can find out
18 the information and notate it in the file.

19 THE COURT: How about January 8th.

20 MR. BURNS: Okay.

21 THE COURT: Does that work?

22 MR. BURNS: Sounds good.

23 THE CLERK: January 8 at 9:00 a.m.

24 THE COURT: That's the calendar call; okay? We'll do
25 it that day.

1 We'll see you then, sir.

2 THE DEFENDANT: Are my motions going to get heard that
3 day, too?

4 MS. PENSABENE: He actually has having motions heard
5 on January 6th, if you'd like to put it over.

6 THE COURT: Oh. Why don't I do it on January 6th so
7 we have it with all the motions together.

8 THE CLERK: January 6 at 9:00 a.m.

9 THE COURT: I'm sorry. I saw that long list, and I
10 just didn't realize the date was the 6th. I thought it was the
11 8th, sir.

12 MS. PENSABENE: Thank you.

13 THE COURT: Good catch, guys.

14 THE PROCEEDINGS CONCLUDED AT 11:03 A.M.

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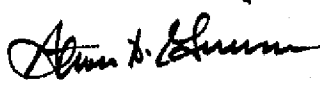
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JILL HAWKINS
Court Recorder/Transcriber


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO. C290624
Plaintiff,)	
vs.	)	DEPT. XI
)	
JAMES MANNING, aka)	
JAMES DAEVON MANNING,	)	Transcript of Proceedings
)	
Defendant.)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANT'S MOTIONS

MONDAY, JANUARY 6, 2014

APPEARANCES:

For the State: HAGAR TRIPPIEDI, ESQ.
Deputy District Attorney

For the Defendant: MARISSA A. PENSABENE, ESQ.
Deputy Public Defenders

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 6, 2014, 10:39 A.M.

2 (Court was called to order)

3 MS PENSABENE: Your Honor, if you could call Manning,
4 page 7?

5 THE COURT: I can.

6 Good morning, sir.

7 THE DEFENDANT: Good morning.

8 THE COURT: Okay. Let's start with the motion in
9 limine related to hearsay statements. It doesn't seem to be an
10 issue.

11 MS. PENSABENE: Excuse me, Your Honor?

12 THE COURT: Motion related to hearsay statements.

13 MS. PENSABENE: Thank you. What I'd like to first
14 point out is that in the State's opposition they never really
15 get past the first basis of analysis. They just state that it's
16 not hearsay, never actually going to the violation of the
17 confrontation clause. I would argue that -- first of all, that
18 Crime Stoppers tip is testimonial in nature. Crawford is really
19 clear about what "testimonial" means. Basically, if it's
20 obvious to the witness that this may be used at a later
21 prosecution of the defendant, the statement is testimonial.
22 Here when you call a tip in to Crime Stoppers it's pretty
23 obvious -- it's abundantly clear that the tip is going to be
24 used for prosecution at a later time.

25 So first of all, I believe that this is testimonial in

1 nature; and secondly, if this tip is allowed to be used at the
2 trial that's coming up next week, the defendant is going to be
3 at a severe disadvantage, because we're not going to be able to
4 cross-examine whoever provided this tip. We're not going to
5 know -- we're not going to have the opportunity to explore what
6 the bias is, what the motives might be for giving this tip.
7 Perhaps the tipster was the actual culprit, perhaps the tipster
8 has a vendetta against Mr. Manning. Maybe the tipster -- there
9 might be motives biased that -- there's a lot of things that the
10 defense is going to be at a disadvantage for not being able to
11 cross-examine that statement, which is going to adversely affect
12 Mr. Manning.

13 THE COURT: Thank you.

14 Ms. Trippiedi.

15 MS. TRIPPIEDI: Your Honor, it's our position, as
16 stated in our response to this, that this information is not
17 hearsay. It's offered to provide information on why the
18 investigation came to be centered around the defendant. We're
19 not planning on giving any details, only to, you know, state for
20 the jury that this person became a suspect somehow through a
21 Crime Stoppers tip. We're not going to go into details on what
22 specifically was said, what specifically was stated, who the
23 person was that gave the tip, and it's not hearsay. So I don't
24 think any of the other stuff comes into play.

25 THE COURT: To the extent that the tip would be

1 introduced in evidence as the substance of the tip the motion is
2 granted. To the extent it is sought to be used as information
3 that the Department operated on in order to continue its
4 investigation the motion is denied, because it is not
5 testimonial in nature.

6 All right. If we could go to the motion to suppress
7 statements by the defendant.

8 MS. PENSABENE: Sorry, Your Honor. I'm a little
9 unorganized here.

10 THE COURT: Sounds like I need a Jackson versus Denno
11 hearing, is what I wrote.

12 MS. PENSABENE: Your Honor, and I would take it a step
13 further. I would say that we wouldn't even need a hearing at
14 this point, we need to just suppress the statements.

15 First and foremost, this was an arrest. Mr. Manning
16 was stopped by a marshal, Marshal Rauchfuss. He was detained
17 while they ran his name, and then he was transported via patrol
18 car to CCDC, where he was treated as an inmate, he was put in
19 the blue garb, searched, and placed in CCDC. So this is
20 absolutely an arrest. Furthermore, he's been there since that
21 time, which was May of 2012.

22 Secondly, there is no probable cause for this arrest.
23 The information in the police report, and I quoted it in my
24 motion, that he was wanted by Detective Embry, that he was
25 wanted for questioning. That's basically it. That's all we

1 have, that he's wanted for questioning. We don't know if he's
2 wanted for questioning as a suspect, wanted for questioning as a
3 witness, an eye witness, a victim. We don't know why he's
4 wanted. We just know that he's wanted. Basically, they just
5 had a piece of information that was spat out from a database.
6 That's it. So there's no probable cause for this arrest. And,
7 Your Honor, even if you find that there was probable cause for
8 this arrest, I would argue that the City Marshal officer was
9 acting outside his scope.

10 The City Marshal -- it's pretty clear that there's
11 only four reasons a City Marshal may arrest someone. And
12 court's indulgence. Okay. It's under Municipal Code 2.28080,
13 and basically there's four reasons, the issuance of a citation
14 -- there was no citation issued here -- the enforcement of
15 property law or ordinances on real property leased or otherwise
16 under control of City of Las Vegas -- clearly that's not at
17 issue here -- the service of arrest warrant, there was no arrest
18 warrant in this case; all we had was a database spitout that
19 said that he's wanted for questioning, and the rule for
20 abandoned vehicles. So those -- that's the four criteria in
21 which a City Marshal officer can detain someone, can arrest
22 someone. So basically, Officer Rauchfuss was working outside
23 the scope of his authority. So we have here -- we have an
24 arrest, we have an arrest without probable cause, an illegal
25 arrest, an arrest made by an officer who was acting outside the

1 scope of his authority.

2 So based on those things we would be asking that -- we
3 don't even need a Jackson hearing right now. We just need that
4 the statement that came following this illegal arrest be
5 suppressed.

6 THE COURT: Anything else, Ms. Trippiedi?

7 MS. TRIPPIEDI: Your Honor, we'll just oppose that on
8 the basis that, you know, there is no issue here as far as we're
9 concerned. The defendant was in violation of a City Ordinance,
10 he was stopped by the City Marshal, they ran his name and they
11 learned that he was wanted in connection with the two robberies
12 in this case, and then everything that came after that was
13 completely voluntary in nature. He was read Miranda rights and
14 he voluntarily made his statements. So we'll submit it on that.

15 MS. PENSABENE: But, Your Honor, there was no citation
16 issued in this case for sleeping on --

17 MS. TRIPPIEDI: And we're happy to have a Jackson v.
18 Denno hearing, if necessary. We can have the marshal come in.

19 THE COURT: Okay. So we're going to have a Jackson
20 versus Denno hearing. Can we do it on Wednesday?

21 MS. TRIPPIEDI: We can, Your Honor.

22 MS. PENSABENE: Yes, Your Honor.

23 THE COURT: All right.

24 THE CLERK: January 8 at 9:00 a.m.

25 THE COURT: Put it at 9:30 so it's not on the same

1 part of the calendar.

2 Okay. If I could go to your motion to suppress
3 photographic lineup.

4 MS. PENSABENE: Thank you, Your Honor.

5 Now in regards to the photographic lineup the due
6 process clause is pretty clear. If there is an unfair, overly
7 suggestive pretrial lineup, the procedure -- or the correct
8 remedy is to suppress that lineup. And the analysis is two-
9 fold, basically, was the procedure unnecessarily suggestive,
10 and, if so, is the ID reliable despite that unnecessarily
11 suggestive identification.

12 Now, the State relies on the fact that the men in the
13 lineup match the description given by the victim in this case,
14 black male, short hair, unshaven. Now, that's all true. All
15 the men are black males, short hair, unshaven. However, out of
16 those six men the only man with distinctive features is Mr.
17 Manning. Out of that six pack he is the only one with a very
18 chiseled jaw line and high cheek bones. Additionally, he is a
19 little bit more light skinned then the rest of the men in the
20 lineup. So first of all we have an unnecessarily suggestive
21 lineup.

22 Secondly, to determine whether or not that this lineup
23 was reliable there's a number of factors that the courts look
24 at. First of all the opportunity to view the criminal at the
25 time of the offense. We heard at the preliminary hearing

1 transcript that -- we heard in the preliminary hearing that the
2 victim had no idea what was happening, someone came up behind
3 him, and he fell to the ground. He had a matter of seconds to
4 look at the defendant -- or the criminal, I should say.

5 The degree of attention is another factor. Again,
6 like we stated, the victim in this case did not know what was
7 going on, he was standing up, getting off the bus when someone
8 came up behind him. He didn't notice anyone coming up to him
9 beforehand, suddenly he's on the ground. The degree of
10 attention is very small.

11 Again, the third factor, accuracy of the witnesses --
12 accuracy of the witness and their description. The description
13 here is pretty vague, it's pretty general, black male, short
14 hair, unshaven. That's a pretty standard -- I mean, that could
15 describe half the people in this room.

16 So the last factor that I'd like to point out is the
17 length of time between the actual incident and the confrontation
18 -- or the -- I'm sorry. The lack of time -- the length of time
19 between the crime and the actual lineup. And what happened here
20 was one month past. So we have only a matter of seconds for
21 someone to be looking at the perpetrator, we have an entire
22 month that passes, and we have a lineup that has one person
23 who's more distinctively looking than the rest.

24 So based on that I'll submit it.

25 THE COURT: Thank you.

1 Ms. Trippiedi.

2 MS. TRIPPIEDI: Your Honor, it's our position that the
3 lineup was not in any way impermissibly suggestive. We feel
4 that there were no distinctive, noticeable features between the
5 six people in the lineup.

6 It's also important to note that the victim did at the
7 preliminary hearing state that he did take a good look at the
8 defendant and he saw him. That's page 15 of the transcript. He
9 states he took -- he got a good look at him when this was
10 happening. He also said he was 100 percent confident that this
11 was the person that robbed him on the bus.

12 Your Honor, it's also important to note that
13 immediately after this happened the victim was taken to do an
14 in-person show up, and he didn't choose anyone. So it's not a
15 case where, you know, he looked and he felt like he had to pick
16 someone. He didn't choose anybody at the show up. Later, when
17 they were able to, you know, do a photographic lineup and put
18 the defendant in that lineup, he then said he was 96 to 97
19 percent sure it was the person that robbed him. And later at
20 the preliminary hearing, when seeing him face to face, he said
21 he was 100 percent certain, and he did say he got a good look at
22 him. So I just don't think there's any evidence.

23 THE COURT: Thank you. The motion's denied. It does
24 not appear to be unnecessarily suggestive.

25 If we could go to the follow up motion on Brady. Is

1 there anything else you need?

2 MS. PENSABENE: And, Your Honor, we did --

3 THE COURT: You asked for four more things.

4 MS. PENSABENE: And out of the four additional items
5 we asked for we did receive two of them. The only issue that we
6 have is we are of the belief that Mr. Manning came into contact
7 with law enforcement previously to his arrest in May, sometime
8 in April. We're asking for any information about that. I think
9 the last time we were here, last week, Mr. Burns didn't really
10 have any information on that.

11 MS. TRIPPIEDI: Your Honor --

12 THE COURT: He said he was going to check.

13 MS. TRIPPIEDI: Yeah. I asked the detective about
14 that, and he's not aware of any information of any type of
15 contact with law enforcement in April. He's not aware of it. I
16 told the Public Defender that if she gives me an event number I
17 can certainly look it up, but, you know, without -- you know,
18 without knowing specifically any details we can't say for
19 certain.

20 THE COURT: But you checked the April 7th date with
21 the officers and nobody knew anything?

22 MS. TRIPPIEDI: He didn't know anything. Yes, that's
23 correct.

24 THE DEFENDANT: May 14th.

25 THE COURT: Well, it says April 7th in the motion,

1 sir.

2 THE DEFENDANT: I'm just saying that I'm pretty sure
3 they'll find in the police records that they shut down an
4 elementary school on Doolittle and J, they shut down the Welfare
5 office, they shut down the Urban League pursuing me for this
6 whole issue with no warrant or anything, but chasing me like a
7 wild animal --

8 MS. TRIPPIEDI: And I think --

9 THE DEFENDANT: -- like I was a slave or something. I
10 mean, I'm pretty sure if you all looked that up, a ghetto bird,
11 or if that's what you want to call it, a helicopter was over the
12 -- H and Owens was shut down.

13 THE COURT: But it wasn't on April 7th, sir, because
14 that's the date --

15 THE DEFENDANT: It was on May 14th. I'm just saying
16 if you all look into it, the police was after me for no reason
17 with no warrant or anything.

18 MS. TRIPPIEDI: I think he might be referring to the
19 actual stop on May 18th in Doolittle Park.

20 THE DEFENDANT: Just look into May 14th and go to the
21 Welfare office on J and Owens, and you will see that it was shut
22 down to the elementary school, Mack Kelley, on J and Doolittle,
23 May 14th it was shut down, they shut it down trying to catch me
24 for no reason, for nothing. They had nothing. But yet, I
25 mean --

1 MS. PENSABENE: And, Your Honor, if we --
2 THE DEFENDANT: -- I was arrested for a different
3 crime --
4 MS. PENSABENE: Mr. Manning.
5 THE DEFENDANT: -- I wasn't even arrested for this
6 right here right now.
7 MS. PENSABENE: If we could possibly amend our
8 discovery requests just to look in the May 14th to be clear --
9 THE COURT: Can we look at May 14th, too, just for
10 fun.
11 MS. TRIPPIEDI: I sure will.
12 THE DEFENDANT: Please.
13 THE COURT: That'd be great.
14 THE DEFENDANT: Please.
15 THE COURT: All right.
16 MS. PENSABENE: And there's one more item on the
17 discovery -- supplemental discovery requests, which was just any
18 information pertaining to a reward that may have been given for
19 the Crime Stoppers tip. The media request does say that a
20 reward would be likely.
21 THE DEFENDANT: And any information on him having
22 any --
23 THE COURT: Sir.
24 THE DEFENDANT: -- describing me in any other --
25 THE COURT: Sir. Please. You have counsel for a

1 reason.

2 THE DEFENDANT: I don't --

3 THE COURT: I'm not -- sir, do you want to participate
4 in the hearings, or do we want to have a different method of you
5 being present? If you would please be quiet so I can have your
6 counsel address the issues.

7 MS. PENSABENE: In the media request it stated there
8 was a possible reward if it led to an arrest or conviction. So
9 we're just asking, because there was a tip in this case, if a
10 reward was paid out.

11 MS. TRIPPEDI: And my detective's not aware of any
12 such reward being paid out. I've asked him numerous times about
13 that.

14 THE COURT: So the State is affirmatively saying that
15 they are not aware of a reward being paid.

16 MS. TRIPPEDI: Yes.

17 THE COURT: Thank you.

18 MS. PENSABENE: Thank you. That's all.

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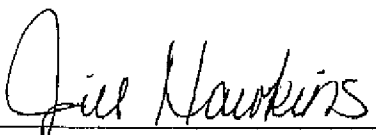
25 . . .

1 THE COURT: All right. So the motion will be
2 continued to Wednesday, and we'll talk about whether you find
3 something on that May 14th date, as will Ms. Trippiedi.

4 So we'll see you for the Jackson versus Denno hearing
5 on Wednesday.

6 THE PROCEEDINGS CONCLUDED AT 10:53 A.M.
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21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled
23 case to the best of my ability.

24 
25 JILL HAWKINS
Court Recorder/Transcriber

