
CLERK OF THE COURT

1 **REQT**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
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 JONATHAN QUSANO,
13 #5991702

14 Defendant.

CASE NO: C-13-294266-1

DEPT NO: XXI

15 STATE'S REQUEST FOR WITNESSES TO APPEAR BY SIMULTANEOUS
16 AUDIOVISUAL TRANSMISSION EQUIPMENT

17 DATE OF HEARING: JUNE 3, 2014
18 TIME OF HEARING: 9:30 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
19 through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and hereby requests
20 that this Honorable Court allow witnesses listed *infra* to appear by simultaneous audiovisual
21 transmission equipment.

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

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1 **POINTS AND AUTHORITIES**

2 **LEGAL ARGUMENT**

3 Part IX-B, of the Rules of the Nevada Supreme Court governing appearance by
4 audiovisual transmission equipment is defined as follows:

5 **(B) RULES GOVERNING APPEARANCE BY SIMULTANEOUS**
6 **AUDIOVISUAL TRANSMISSION EQUIPMENT FOR**
7 **CRIMINAL PROCEEDINGS**

8 **Rule 1. Definitions.**

9 In these rules, unless the context or subject matter otherwise requires:

- 10 1. "Simultaneous audiovisual transmission equipment" means transmission
11 accomplished through the use of:
- 12 (a) One or more cameras at a location other than the courtroom that
13 depict the witness in real time so that the parties, their counsel, the
14 court, and the jury, if any, can see the witness to the same or
15 greater extent than they would see if the witness was present in the
16 courtroom; and
- 17 (b) One or more cameras in the courtroom that depict the parties, their
18 counsel, the court, and the jury, if any, in real time on a screen
19 visible to the witness who is at another location.
- 20 2. "Court" means a proceeding before a judicial officer, magistrate, judge,
21 or master for all criminal proceedings in the State of Nevada.
- 22 3. "Party" shall include the plaintiff, defendant, petitioner, respondent,
23 applicant, and adverse party and also apply to such party's attorney of
24 record.
- 25 4. "Witness" shall mean a party or other person testifying in the court
26 proceeding.
- 27 5. "Shall" is mandatory, and "may" is permissive.

28 [Added; effective January 1, 2013.]

**Rule 2. Policy favoring simultaneous audiovisual transmission
equipment appearances.**

The intent of this rule is to promote uniformity in the practices and procedures relating to simultaneous audiovisual transmission appearances. To improve access to the courts and reduce litigation costs, courts shall permit parties, to the extent feasible, to appear by simultaneous audiovisual transmission equipment at appropriate proceedings pursuant to these rules.

[Added; effective January 1, 2013.]

1 **Rule 3. Application.**

2 **These rules apply to all criminal cases except juvenile and appellate proceedings. A**
3 **court may follow the procedures set forth in these rules or in NRS 50.330 or NRS 171.1975.**

4 [Added; effective January 1, 2013.]

5 **Rule 4. Personal appearances; appearance by simultaneous**
6 **audiovisual transmission equipment.**

- 7 1. Except as set forth in Rule 3 and Rule 4(2), a party or witness may request
8 to appear by simultaneous audiovisual transmission equipment in all
9 other criminal proceedings or hearings where personal appearance is
10 required. Parties may stipulate to appearance by simultaneous
11 audiovisual transmission equipment, but the stipulation must be approved
12 by the court.
- 13 2. Except as provided in NRS 50.330, the personal appearance of a party or
14 a party's witness is required at trial unless:
- 15 (a) The parties stipulate to allow the party or the party's witness to
16 appear by simultaneous audiovisual transmission equipment, the
17 defendant expressly consents to the use of simultaneous
18 audiovisual transmission equipment, and the court approves the
19 stipulation; or
- 20 (b) The court makes an individualized determination, based on clear
21 and convincing evidence, that the use of simultaneous audiovisual
22 transmission equipment for a particular witness is necessary and
23 that all of the other elements of the right of confrontation are
24 preserved.
- 25 3. Court discretion to modify rule.
- 26 (a) Applicable cases. In exercising its discretion under this
27 provision, the court should consider the general policy favoring
28 simultaneous audiovisual transmission equipment appearances in
criminal cases.
- (b) Court may require personal appearances. Upon a showing of
good cause either by motion of a party or upon its own motion, the
court may require a party or witness to appear in person at a
proceeding listed in Rule 4(1) if the court determines on a hearing-
by-hearing basis that a personal appearance would materially
assist in the resolution of the particular proceeding or that the
quality of the simultaneous audiovisual transmission equipment is
inadequate.
- (c) Subsequent personal appearance. If at any time during a
proceeding conducted by simultaneous audiovisual transmission
equipment the court determines that a personal appearance is
necessary, the court may continue the matter and require a
personal appearance by the party or witness.

1 4. Notice by party; opportunity to object.

2 (a) A party (or a witness for a party) wishing to appear at a criminal
3 proceeding by simultaneous audiovisual transmission equipment
4 under this rule shall, not later than 10 days before that proceeding,
5 file a request that the court allow the party (or a witness for a party)
6 to appear (or testify) at the proceeding through the use of
7 simultaneous audiovisual transmission equipment. A party who
8 requests that the court allow a party (or a witness for a party) to
9 appear (or testify) through the use of simultaneous audiovisual
10 transmission equipment shall provide written notice of the request
11 to all other parties at or before the time of filing the request by
12 personal delivery, fax transmission, express mail, electronic
13 service through the court's online docketing system, if available,
14 or by other means reasonably calculated to ensure delivery to the
15 parties no later than the close of the next business day. Copies of
16 any exhibits that the party participating by simultaneous
17 audiovisual transmission equipment intends to present at the
18 proceeding shall be delivered to the court and all other parties at
19 least by noon on the court day prior to the proceeding.

20 (b) Not later than 7 days after receiving notice of a request that the
21 court allow a party (or a witness for a party) to appear (or testify)
22 at the identified proceeding through the use of simultaneous
23 audiovisual transmission equipment, any opposing party may file
24 an objection to the request. If an opposing party fails to file a
25 timely objection to the request, that party shall be deemed to have
26 consented to the granting of the request. If an opposing party
27 timely files an objection to the request, the court shall hold a
28 hearing and shall make specific findings on the facts and
circumstances of the request.

(c) If a party who has requested a simultaneous audiovisual
transmission equipment appearance for the party or a witness
subsequently chooses to appear in person, that party must so notify
the court and all other parties at least 2 days before the appearance.

5. Notice by court. After a party has requested a simultaneous audiovisual
transmission equipment appearance for the party or a witness, if the court
requires the personal appearance of the party (or a witness for a party),
the court must give reasonable notice to all parties before the proceeding
and may continue the proceeding if necessary to accommodate the
personal appearance. The court may direct the court clerk or a party to
provide the notification.

6. Private vendor; charges for service. A court may provide simultaneous
audiovisual transmission equipment for court appearances by entering
into a contract with a private vendor. The contract may provide that the
vendor may charge the party appearing by simultaneous audiovisual
transmission equipment a reasonable fee, specified in the contract, for its
services. The court or the vendor may impose a cancellation fee to a party
that orders services and thereafter cancels them on less than 48 hours'
notice. A court, by local rule, may designate a particular audiovisual
provider that must be used for audiovisual transmission equipment
appearances.

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1 greatly if he was required to make a personal appearance in court anytime during the month
2 of June.

3 The district attorney out of state witness desk has informed the undersigned that
4 because of limited flight schedules, as well as the time difference between Hawaii and Las
5 Vegas, that a minimum of three days of travel time is required to have someone testify from
6 Hawaii. To that end, the State believes that this Court, in light of the Nevada Supreme Court's
7 general policy favoring simultaneous audiovisual transmission appearances in criminal cases,
8 should exercise its discretion and allow these witnesses to testify via audiovisual transmission.
9 The specific witnesses that this request directly affects are: Steven Choy, or designee; Chad
10 Kojima, or designee; Iwaniani Lum, or designee; Jason Ninomiya, or designee; Erin S.
11 Tanaka, or designee; and Carol Titcomb, or designee. In addition, although the State is NOT
12 aware at this time of any other State witnesses who may also need to testify via audiovisual
13 transmission, to the extent that conditions change as trial draws near, the State includes in this
14 notice the remaining noticed State witnesses to comport with the requirements of Rule 4(a) of
15 Part IX-A.

16 CONCLUSION

17 Based on the foregoing, the State, respectfully requests that this Honorable Court allow
18 the appearance of State witnesses by audiovisual transmission equipment.

19 DATED this 27th day of May, 2014.

20 Respectfully submitted,

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

24 BY

25  for
26 MICHAEL V. STAUDAHER
27 Chief Deputy District Attorney
28 Nevada Bar #008273

CERTIFICATE OF SERVICE

I certify that on the 27th day of May, 2014, I e-mailed a copy of the foregoing State's Request For Witnesses To Appear By Simultaneous Audiovisual Transmission Equipment, to:

NANCY M. LEMCKE
PHILIP J. KOHN
Public Defenders Office
pdclerk@clarkcountyNV.gov

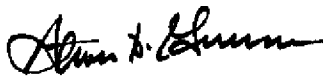
BY



R. JOHNSON
Secretary for the District Attorney's Office

MVS/rj/M-1

OPPM
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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JONATHAN QUISANO,

Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014
TIME: 9:00 a.m.

**OPPOSITION TO PROSECUTION'S MOTION TO ADMIT
EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS**

COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY M. LEMCKE and NORMAN REED, Deputy Public Defenders, and hereby opposes the prosecution's Motion to Admit Evidence of Other Crimes, Wrongs or Acts. This Opposition is made and based upon all the papers and pleadings on file herein and oral argument at the time set for hearing this Motion.

DATED this 29th day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

I. STATEMENT OF FACTS

On June 6, 2013, three year-old Khayden Quisano died as the result of blunt force trauma to the head. I PHT p. 18-41. Khayden lived with his mother, Christina Rodrigues; his father, Jonathan Quisano; his little brother, Khaysen; and his maternal grandmother, Lynn Rodrigues. I PHT p. 233. On the morning of June 6, Jonathan left for work just before dawn, in keeping with his usual work schedule. I PHT p. 239-24. Christina woke Khayden and Khaysen around 6:30. I PHT p. 240. She dressed them and drove them to her grandparents' home, after which she drove to work for her 8:30-5:00 shift at cardiovascular specialist's office. I PHT p. 239-241. As typically happened, Christina's grandparents drove Khayden and Khaysen home after Jonathan returned home from work, sometime in the afternoon. I PHT p. 233-40. At approximately 5:10 that evening, as Christina was driving home from work, she received a phone call from Jonathan. I PHT p. 241-42. Jonathan told her to hurry home. I PHT p. 243. A few minutes later, Christina called Jonathan back and asked why he needed her to hurry home. I PHT p. 243. Jonathan explained that Khayden fell off of the back of the couch in the tile-floored living room¹ and hit his head. I PHT p. 243-44; 261. Jonathan told Christina that Khayden was not opening his eyes and was spitting up. I PHT p. 244; 256. Christina hung up and called 911. I PHT p. 244.

Emergency personnel responded and found Khayden unresponsive and lifeless. I PHT p. 155. Paramedics immediately initiated life-saving measures, including CPR/chest compressions. I PHT p. 163-64; 176-79. When asked what happened to Khayden, Jonathan told paramedic Timothy Kline that Khayden fell from a living room chair onto the tile floor. I PHT p. 160-61. Notably, the living room housed a love seat, two recliner chairs, and a three-seat couch. I PHT p. 237; 245-46. Jonathan similarly told paramedic Patrick Burkhalter that Khayden fell backwards off of a chair/recliner onto the floor. I PHT p. 210-12. Jonathan later clarified that he did not actually witness the fall; that he only saw Khayden playing on top of the chair when he fell. I PHT p. 213. Las Vegas Fire Department Captain Mickey Pedrol also asked Jonathan how Khayden sustained his injuries. I PHT p. 192-93. Jonathan purportedly told Capt. Pedrol that both of his sons were playing on a bar when Khayden fell off, hitting his head on the floor. I PHT p. 193.

¹ Jonathan later reiterated this version of events to Christina when the couple drove to the hospital. PHT p. 244-49.

1 Notably, when asked, Christina Rodriguez could not identify anything in the home approximating
2 a 'bar,' nor was she aware of anything to which Jonathan referred as a 'bar' other than a barstool
3 located in the kitchen area. I PHT p. 257.

4 Christina arrived home to find paramedics already tending to Khayden. I PHT p. 249.
5 Suspicious of Jonathan's accounting of Khayden's injury(ies), Capt. Pedrol alerted LVMPD
6 officials. I PHT p. 190. Khayden was transported to UMC Hospital where doctors determined
7 him to be clinically brain dead. I PHT p. 38. Khayden died not long thereafter.

8 LVMPD detectives responded to the hospital and, ultimately, to Khayden's home to
9 investigate. I PHT p. 253-54. Investigating officers directed Jonathan to leave the hospital and
10 return home for further investigation of the incident. I PHT 253-54; II PHT p. 101. Initially,
11 LVMPD Abuse/Neglect detectives responded to the hospital and Jonathan's home. II PHT p. 101-
12 03. Once it appeared as though Khayden would succumb to his injuries, LVMPD officers
13 summoned homicide detectives. II PHT p. 101-03. Homicide Detectives Dolphis Boucher and
14 Tate Sanborn responded. II PHT p. 101-03.

15 Investigating officials obtained a warrant to search Jonathan's residence. II PHT p. 102. By
16 the time Dets. Boucher and Sanborn arrived at Jonathan's home, Jonathan had returned to the
17 residence, and numerous other LMVPD officials, including CSAs and LVMPD Child
18 Abuse/Neglect detectives, were (or had been) present in the home investigating. II PHT p. 103.

19 Dets. Boucher and Sanborn interrogated Jonathan in his kitchen. II PHT p. 77-100. They did
20 not *Mirandize* him. Jonathan told Det. Boucher that Christina's grandparents dropped Khayden
21 and Khaysen off at home at approximately 4:30 in the afternoon. II PHT p. 77. Jonathan indicated
22 that the children appeared to be fine. II PHT p. 77. Jonathan told Det. Boucher that everyone took
23 a nap for a short while, after which the kids played. II PHT p. 78. At some point, the kids were
24 playing on the living room sofa while Jonathan sat in one of the recliner chairs watching TV. II
25 PHT p. 78. Jonathan indicated that, at some point, he looked over at his kids and saw Khayden
26 falling over the back of the couch onto the tile floor. II PHT p. 127-28. Jonathan indicated to
27 detectives that he did not see the beginning of the fall; only the "split second" when Khayden was
28 going over the couch. II PHT p. 78-82; 127-28.

Jonathan explained that he immediately went to tend to Khayden, and found him lying on his back, parallel to the couch. II PHT p. 85. Jonathan described Khayden as being "frozen up," making some type of noise. II PHT p. 87. Jonathan indicated he picked Khayden up, thinking he had been knocked out from the fall. II PHT p. 87. Not seeing any blood, Jonathan tried to revive Khayden by splashing water on his face. II PHT p. 88. Khayden did not respond to the cold water and began to vomit, at which point Jonathan called Christina, a medical assistant in a doctor's office, urging her to hurry home. II PHT p. 88. Shortly after his interrogation, investigating officers arrested Jonathan and charged him with murder.

Dr. Lisa Gavin performed an autopsy on Khayden. III PHT p. 4-10. Dr. Gavin found that Khayden suffered a stellate skull fracture to the back of his head, slightly to the right of the midline. III PHT p. 14. Dr. Gavin also found subgaleal and subdural hemorrhaging in this area. III PHT p. 12-16; 52. Dr. Gavin noted a significant amount of bleeding on the left side of Khayden's brain, along with some hemorrhaging around the eyes, as well. III PHT p. 19-20; 24; 52. Consistent with imaging performed at the hospital, Dr. Gavin observed a midline shift of the brain of a few millimeters. III PHT p. 51-52. Neuropathologic testing further revealed diffuse cerebral edema, as well as early-onset hypoxic ischemia and diffuse axonal injury. III PHT p. 40-42; 52.

Dr. Gavin opined that Khayden died as the result of blunt force trauma to the head. III PHT p. 53. However, Dr. Gavin did not classify Khayden's death as a homicide. III PHT p. 55-56. Rather, she could not determine the manner of Khayden's death. III PHT p. 55-56. Dr. Gavin explained that she could not rule out the possibility that Khayden's death was the result of an accident. III PHT p. 55-56.

Prosecutors now seek to admit evidence regarding the death of Jonathan's first child with Christina, Jayden Quisano. Prosecutors further seek to admit evidence that, over three years before Khayden suffered the fatal head injury at issue here, a routine chest x-ray revealed rib fractures. A follow-up skeletal survey disclosed a femoral fracture, as well. Khayden was three months old at the time. Jonathan was never charged in connection with those fractures.

///

1 *Jayden Quisano's death*

2 Jayden Quisano was the first child born to Jonathan and Christina. On the day of his death
3 at only 2-3 months old, Christina awoke in the pre-dawn hours to feed and change him. Motion to
4 Admit Evidence of Other Crimes, Wrongs, or Acts, Exhibit 2, DA Bates Stamp 000100. Jonathan
5 was asleep. Jayden ate as usual and, after changing him, Christina returned him to his crib. When
6 Christina checked on him a short time later, she found Jayden unresponsive, pale, and not
7 breathing. Christina immediately woke Jonathan and the couple rushed Jayden to the hospital.
8 Jonathan drove while Christina held Jayden in the back seat. Hospital physicians tried
9 unsuccessfully to revive Jayden. Shortly after he was admitted, hospital officials pronounced him
10 dead. Motion, Exhibit 2, DA Bates Stamp 000101. A subsequent autopsy revealed that he died as
11 the result of an unspecified pneumonic condition. Motion, Exhibit 2, DA Bates Stamp 000101. In
12 the days/hours preceding his death, Jayden exhibited no signs of illness or distress. Motion,
13 Exhibit 2, DA Bates Stamp 000101. Jonathan and Christina were cleared of any wrongdoing in
14 connection with Jayden's death. Motion, Exhibit 2, DA Bates Stamp 000101.

15 *Khayden Quisano's fractures/failure to thrive.*

16 When Khayden was approximately 3 months old, he began running a fever and had a
17 cough and runny nose. Motion, Exhibit 2, DA Bates Stamp 000100. After a few days, Christina
18 took him to the pediatrician. Given Jayden's pneumonic-related death, Khayden's pediatrician, Dr.
19 Ninomiya, referred Jayden for a chest xray. Motion, Exhibit 2, DA Bates Stamp 000100. The
20 xray revealed the presence of several healing rib fractures. Motion, Exhibit 2, DA Bates Stamp
21 000100. Khayden was then admitted to Kapiolani Hospital for Women and Children for further
22 evaluation and treatment.

23 A subsequent skeletal survey revealed a distal femur fracture, as well. Khayden's treating
24 doctors indicated that the location of the rib fractures on the posterior part of the rib(s) suggested
25 "the possibility of squeezing of thoracic cavity or shaken baby syndrome." Motion, Exhibit 2, DA
26 Bates Stamp 000103. However, doctors noted that the fractures could have resulted from
27 conditions such as "osteogenesis imperfecta, rickets, endocrinologic-hypo, hyperparathyroid, renal
28 disease affecting calcium and/or phosphorous metabolism." Motion, Exhibit Exhibit 2, DA Bates

1 Stamp 000103. While the treating doctors at the hospital indicated that Khayden was small for his
2 age, thereby prompting a diagnosis of symmetric failure to thrive (FTT), the doctors also noted
3 that Khayden was small for his gestational age (SGA) at birth. Motion, Exhibit 2, DA Bates
4 Stamp 000126; 000129. Indeed, at Khayden's 2 month checkup just over a month prior to his
5 hospitalization for the fractures, his treating pediatrician, Dr. Ninomiya, found that he was
6 "growing well with normal development for his age."

7 As a result of Khayden's rib/femur fractures, Jonathan and Christina were referred to the
8 Hawaii Department of Family Services (HDFS) for further investigation. While HDFS ultimately
9 identified "both parents as perpetrators of harm," it appears as though the referenced 'harm'
10 included neglect. See generally, Exhibit 1, Motion to Admit Evidence of Other Crimes, Wrongs or
11 Acts. Notably, HDFS determined that only Christina posed a threat of abuse to Khayden.
12 Specifically, the department found that: "Allegations of medical neglect, threat of neglect, *and*
13 *threat of physical abuse* by his mother, Christina Rodriguez, are confirmed." Motion, Exhibit 1,
14 DA Bates Stamp 000076-77 (emphasis added). By contrast, the HDFS confirmed only allegations
15 of medical neglect, and threat of neglect" as to Jonathan. Motion, Exhibit 1, DA Bates Stamp
16 000077. When interviewed by Clark County Department of Family Services (CCDFS) following
17 Khayden's death, HDFS Supervisor Barbara Haia related that: "...Something was off about mom;
18 and we actually thought it was her [who caused Khayden's rib fractures] but we couldn't prove it."
19 Ultimately, neither Christina nor Jonathan were charged criminally in connection with Khayden's
20 maladies. Accordingly, neither parent was adjudicated guilty of abusing or otherwise injuring
21 Khayden.

22 II. POINTS AND AUTHORITIES

23 NRS 48.045(2) states:

24 Evidence of other crimes, wrongs or acts is not admissible to prove the character of
25 a person in order to show that he acted in conformity therewith. It may, however,
26 be admissible for other purposes, such as proof of motive, opportunity, intent,
preparation, plan, knowledge, identity, or absences of mistake or accident.

27 The Nevada Supreme Court regards prior bad acts with disfavor, describing this evidence as
28 frequently "irrelevant and prejudicial." Rhymes v. State, 107 P.3d 1278, 1281-82 (Nev. 2005)

1 (citing Richmond v. State, 118 Nev. 924, 932 (2002)). Accordingly, "[a] presumption of
2 inadmissibility attaches to all prior bad act evidence." Ledbetter v. State, 129 P. 3d 671, 677 (Nev.
3 2006) (quoting Rosky v. State, 111 P.3d 690, 697 (2005)). "The principle concern with admitting
4 this type of evidence is that the jury will be unduly influenced by it and convict a defendant simply
5 because he is a bad person." Ledbetter, supra, at 677 (quoting Walker v. State, 116 Nev. 442, 445
6 (2000)). The presumption of inadmissibility may be overcome only after a finding by the trial
7 court, outside the presence of the jury and prior to the admission of the evidence, that the bad act
8 evidence is: (1) relevant; (2) clear and convincing; and (3) more probative than prejudicial.
9 Ledbetter, at 677.

10 1. Clear and convincing evidence.

11 a. Jayden Quisano

12 Jayden Quisano, the first child born to Christina and Jonathan, died as result of a pneumatic
13 condition sometimes described as SIDS (sudden infant death syndrome). Despite this, prosecutors
14 have tried to portray Jayden's death as something more insidious, telling this Court that his death
15 was "secondary to pneumonia and *lack of medical attention*." Motion to Admit Evidence of Other
16 Crimes, Wrongs, Acts, p. 10 (emphasis added). Trying to lay blame for Jayden's death at
17 Jonathan's feet, prosecutors assert: "In this case, in 2008, Jayden Quisano, the Defendant's first
18 child with Christina Rodriguez, died due to complications from pneumonia on the very same day
19 he was finally taken for medical treatment. Notably, Christina is the parent who finally took the
20 child to the doctor and there is no indication Defendant went with her. *This event indicates*
21 *Defendant, at a minimum, lacked awareness of the severity of Jayden's medical condition and*
22 *failed to seek timely medical treatment.*" Motion, p. 19 (emphasis added).

23 This is false. Jayden exhibited no signs or symptoms of pneumonia in the time preceding his
24 death. To the contrary, he ate, slept, and behaved like a normal 3-month-old infant. On the
25 morning of his death, Christina fed and changed him while Jonathan slept. Jayden ate as usual.
26 Christina returned him to his crib/bassinet. When she checked on him a short time later, she found
27 him unresponsive, pale, and not breathing. Christina and Jonathan immediately rushed Jayden to
28 the hospital. Attempts to revive him proved unsuccessful, and hospital officials pronounced him
dead. A subsequent autopsy revealed that Jayden died as the result of an unspecified pneumatic
condition.

Accordingly, Jayden's death was never attributed to a 'lack of medical attention,' as
prosecutors claim. Jayden exhibited no signs of illness prior to his death. He was not admitted to

1 the hospital alive and with an untreated condition that, with earlier medical intervention, would not
2 have been fatal. Additionally, despite prosecutors' claim to the contrary, Jonathan accompanied
3 Christina and Jayden to the hospital. Jonathan and Christina were cleared of any wrongdoing in
4 connection with Jayden's death. Thus, the prosecution's recitation of facts surrounding Jayden's
5 death are patently false, and skewed in a manner intended to convince this Court that Jonathan
6 neglected Jayden to the point of facilitating his demise. Accordingly, prosecutors failed to
7 establish by clear and convincing evidence that Jonathan, through any act or omission, neglected
8 and/or abused Jayden in any manner thereby contributing to his death.

8 *b. Khayden Quisano's fractures/failure to thrive.*

9 Again, Khayden's fractures were discovered when he was approximately 3 months old. In the
10 time preceding discovery of the fractures, Christina was Khayden's primary caretaker as Jonathan
11 worked outside the home. When Christina returned to work as a medical assistant, Khayden was
12 with a babysitter.

13 While Khayden's injuries were certainly suspicious for abuse, the treating physicians noted
14 that they could also have resulted from any one of several biological/genetic disorders. While
15 HDFS ultimately identified "both parents as perpetrators of harm," records suggest that the
16 referenced 'harm' included neglect. Notably, HDFS determined that only Christina posed a threat
17 of abuse to Khayden, HDFS *did not confirm allegations of abuse as to Jonathan*. Indeed,
18 investigators believed that Christina was responsible for Khayden's injuries. Absent more, this
19 evidence fails establish that Jonathan abused Khayden, thereby causing the fractures identified in
20 the skeletal surveys.

21 The same is true of the 'failure to thrive' allegation. Prosecutors claim that Khayden's treating
22 doctors at Kapiolani Hospital diagnosed him as FTT. But prosecutors failed to mention that the
23 doctors noted, in conjunction with the FTT concerns, that Khayden was small for his gestational
24 age at birth. Khayden's pediatrician since birth, Dr. Ninomya, the person most capable of making
25 the FTT diagnosis, found Khayden's growth and development at 2 months old – only a few weeks
26 before hospital doctors noted the FTT issue – to be perfectly normal. Thus, the evidence fails to
27 establish that Khayden was failing to thrive due to some act of omission or commission by
28 Jonathan.

1 2. Relevance.

2 a. *Jayden's death.*

3 Prosecutors argue that Jayden's death is relevant to the instant proceedings because "[t]he jury
4 should be aware that the Defendant had, at a minimum, previously neglected his children's
5 medical needs to such a degree that Jayden died from medical complications related to
6 pneumonia." Motion, p. 20. This claim is facially defective as Jayden did not die as the result of
7 any medical neglect. Prior to his death, Jayden did not exhibit signs of illness or distress. When
8 Christina discovered Jayden's dire circumstances, both parents immediately rushed him to the
9 hospital. Efforts to resuscitate him failed. Christian and Jonathan were cleared of any
10 wrongdoing. Thus, there is no 'prior neglect' evidence to present to the jury.

11 Not surprisingly, prosecutors failed to present any authority authorizing the admission of
12 evidence of such as that sought here involving Jayden. Jonathan is not charged with failing to
13 timely call 911 to secure medical help for Khayden. And even if he was, Jayden's sudden demise
14 due to natural causes would not bear on the issue of whether Jonathan abused Khayden and/or
15 failed to properly secure medical attention for him. Thus, evidence of Jayden's death is irrelevant
16 to the proceedings at bar.

17 b. *Khayden's prior injuries.*

18 Prosecutors argue that "The jury should also know that as a result of Khayden's non-accidental
19 injuries, the Defendant was found to have perpetrated harm against Khayden and required to
20 complete counseling and other services to learn how to care for his children and provide for their
21 needs. Notwithstanding the history of negative consequences and services for neglecting his
22 children's care and non-accidental injuries, the Defendant failed to call 911 to summon medical
23 assistance for Khayden after Khayden's condition clearly and dramatically changed." Motion, p.
24 20-12. Aside from the fact that HDFS did not confirm allegations of abuse as to Jonathan,
25 prosecutors have not charged Jonathan with failing to timely summon medical help in the instant
26 case. They have charged Jonathan with abusing Khayden by inflicting blunt force trauma to his
27 head. So the evidence of Khayden's prior injuries and the HDFS intervention that followed bears
28 no relevance to whether Jonathan inflicted the fatal injuries here.

1 The prosecution cites Bludsworth v. State, 98 Nev. 289 (1982) and Estelle v. McGuire, 502
2 U.S. 62 (1991) in support of the proposition that neither Nevada law nor federal constitutional
3 principles prohibit admission of the bad act evidence pertaining to Khayden. But both cases are
4 distinguishable from the case at bar. In both cases, prosecutors sought to negate a defense claim of
5 accidental injury by demonstrating that the deceased child at issue in each matter was a 'battered
6 child.' In Bludsworth, prosecutors charged Judi Bludsworth and her husband, Curt, in connection
7 with the death of Judi's son, Eric. The defendants maintained that Eric died when Curt
8 accidentally dropped him. Prosecutors presented evidence that Eric's death was not the result of
9 an accident but, rather, the fact that he was a 'battered child.' In support of this, prosecutors
10 introduced evidence that Eric had several bruises to his head and a bite mark on his scrotum.
11 Similarly, in McGuire, prosecutors admitted evidence that, in addition to her fatal injuries, the
12 defendant's 6-month-old daughter, Tori, suffered 65 blue marks around her ears, rectal tearing, and
13 partially healed rib fractures which were approximately 7-weeks old. This, prosecutors contended,
14 established 'battered child syndrome.' The Nevada Supreme Court and the U.S. Supreme Court
15 held that nothing in either Nevada law or the Federal Due Process Clause, respectively, precluded
16 admission of the battered child evidence.

17 Here, prosecutors have not alleged that Khayden was a battered child. Indeed, there is no
18 evidence to support this claim. Khayden's purported rib and/or femoral fracture(s) were
19 discovered when Khayden was 3 months old, over 3 years before Khayden's death. The evidence
20 fails to disclose that Khayden suffered chronic abuse during his lifetime. Thus, neither Bludsworth
21 nor McGuire authorizes the admission of the evidence of Khayden's isolated, 3-year old fractures
22 and/or FTT concerns.

23 Prosecutors also cite State v. Toennis, 758 P.2d 539 (Wash. App. 1988). Like the other
24 authority discussed above, Toennis is distinguishable from the case at bar. Toennis was another
25 'battered child syndrome' case in which prosecutors sought to establish that the defendant
26 chronically abused the 4-year old decedent in the time preceding his death. Under Washington
27 law, prosecutors had to prove that Toennis "knowingly inflicted grievous bodily harm" upon the
28 decedent in order to convict Toennis of the predicate assault charge underlying the felony-murder

1 allegation. Since Toennis' defense was that he did, indeed, strike the child but not with the intent
2 to grievously injure him, the Washington Supreme Court upheld the admission of the 'battered
3 child syndrome' evidence.

4 Here, prosecutors need not prove the same *mens rea*. Prosecutors need only prove that
5 Khayden suffered a non-accidental injury at the hands of Jonathan. They need not prove that
6 Jonathan intended to injure or harm Khayden. Additionally, the instant prosecutors have not
7 alleged that Khayden was the subject of 'battered child syndrome' of which his fatal injuries were
8 a part. The evidence of Khayden's isolated fractures over three years before his death do not
9 mirror the 'battered child syndrome' evidence present in Toennis and the other authority discussed
10 above.

11 State v. Teuscher, 883 P.2d 922 (Utah App. 1994) and State v. Widdison 4, P.3d 100 (Utah
12 App. 2000) share similar factual distinctions from the case at bar. The Teuscher defendant was a
13 daycare provider who was charged with killing one of the children in her care. The Teuscher
14 Court upheld the admission of evidence that, on prior occasions, other children had been injured
15 while in the defendant's care; much of that evidence involved eyewitness accounts of the
16 defendant violently shaking and grabbing some of the children to whom she was entrusted. In
17 Widdison, prosecutors charged a mother and step-father with the death of B.L., an infant. In her
18 short life, B.L. sustained many bruises and broken bones; she eventually died after having
19 contracted pneumonia. Prosecutors charged that B.L.'s collective injuries occasioned her death.
20 Under Utah law, prosecutors had to prove that the defendants knowingly "inflict[ed] upon a child
21 serious physical injury or, having the care of custody of such child, caus[ed] or permit[ted] another
22 to inflict serious physical injury upon a child..." Accordingly, the Widdison Court upheld the
23 admission of testimony from B.L.'s older sister that she witnessed both defendants spank B.L., and
24 that she saw B.L.'s step-father hit her in the nose and hit her with a belt.

25 Again, unlike the case at bar, both Teuscher and Widdison involved ongoing, chronic
26 patterns of abuse in the time immediately preceding the lethal injuries at issue in each case.
27 Additionally, the bad act evidence admitted in Teuscher and Widdison included direct, eyewitness
28 accounts of the respective defendants having committed other abusive acts. This is exceedingly

1 different from the bad act evidence proffered here. Khayden's years-old rib fractures were never
2 attributed to Jonathan. Thus, neither Teuscher nor Widdison authorizes the admission of evidence
3 of isolated rib/femur fracture(s) discovered and treated over three years prior to the death at issue.

4 Similar factual differences separate the instant matter from State v. Kuehn, 728 N.W.2d 589
5 (Neb. 2007), as well. Prosecutors charged Kuehn, a daycare provider, with intentionally abusing
6 10-month old Cameron Lampert, one of the children for whom she cared. Cameron sustained head
7 trauma that resulted in subdural hematomas and retinal hemorrhaging. This left Cameron blind
8 and disabled. Kuehn claimed that Cameron sustained the head trauma when he hit his head on the
9 side and bottom of a playpen when she tried to lift him out. However, in the month and a half
10 preceding this incident, Cameron sustained at least two other injuries while in the defendant's care.
11 He sustained a bump and bruise to his head, after which he vomited for 10 days. When asked
12 about bump/bruise to the head, the defendant told Cameron's parents that he hit his head when
13 leaned forward while sitting on the floor. On another occasion, the defendant called a nurse and
14 reported that Cameron had gone limp and that his eyes were rolling back in his head. When his
15 mother picked him up that day, she noticed that Cameron was pale and dryheaving. The Nebraska
16 Supreme Court affirmed the admission of evidence of the bump/bruise to the head, as well
17 evidence of the later limpness/eye-rolling/dry-heaving.

18 But, again, unlike the case at bar, Kuehn involved chronic abuse in the time immediately
19 preceding the injuries that left the infant victim permanently disabled. Additionally, unlike here,
20 those injuries were directly attributable to the defendant, as they all occurred while the victim was
21 in the defendant's sole care/custody. Thus, like the other cases cited by the prosecution, Kuehn is
22 not dispositive of the bad acts issue here.

23 Finally, prosecutors cited State v. Smith, 634 P.2d 1 (Ariz. App. 1981) as authorizing the
24 admission of Khayden's rib/femur fractures. The Smith defendants were charged with 'recklessly'
25 subjecting their children to unsanitary and unsafe living conditions. Prosecutors admitted evidence
26 that the children had, on a prior occasion, been removed from the home due to unsanitary
27 conditions. The Smith court summarily upheld the admission of this evidence, noting that it
28

1 established that the defendants acted 'recklessly' by allowing their children to continue to exist in
2 such conditions.

3 But Smith bears no relation to the instant case. There is no charge of reckless conduct in this
4 case. There is no charge or allegation of unsanitary living conditions. Thus, the Smith case can be
5 distinguished from the case at bar as the allegations are completely different in Jonathan's
6 situation.

7 In sum, the cases cited by prosecutors involve: (1) repeated injuries/abusive acts that (2)
8 occurred within the time immediately preceding the charged injury; and (3) are directly
9 attributable to each defendant -- i.e., witnessed by others or occurred when each victim was in the
10 sole care of the charged defendant. None of those factors exist here. Jayden's death, over four
11 years before Khayden's, was not due to any injury or neglect. He died of natural causes despite
12 the best efforts of Jonathan and Christina to obtain immediate medical help. Khayden's fractures
13 and purported FTT issue(s) preceded his death by over 3 years. They were not part of any ongoing
14 pattern of abuse. And there is no proof that Jonathan caused the fractures identified on the skeletal
15 imaging. Thus, the cases cited by prosecutors do not authorize the admission of the bad act
16 evidence sought here.

17 3. Probative v. prejudicial value.

18 Since no proof exists that Jonathan did anything to harm Jayden or Khayden, the probative
19 value of the bad act evidence pertaining to each child is zero. But the prejudice occasioned by the
20 evidence is great. Prosecutors claim that the bad act evidence, in essence, shows (1) that Jonathan
21 should have known to call 911 right away, and (2) that Khayden's head injuries were not the result
22 of an accident. Again, Jonathan is not charged with failing to timely secure medical assistance.
23 And any argument that the bad acts show that Khayden's head injuries were not the result of an
24 accident is simply a poorly disguised propensity argument. Ultimately, prosecutors want the
25 incredibly compelling but insidious inference generated by the bad act evidence -- that lightning
26 doesn't strike three times in the same place -- unless Jonathan Quisano is child abuser and, now, a
27 murderer. In a case in which the prosecution's own experts concede that Khayden could have
28 sustained his fatal head injury from the fall described by Jonathan; and in which the medical

1 examiner, because of this, refused to declare Khayden's death a homicide, prosecutors need every
2 propensity inference they can get. And the evidence sought here gives them precisely that.
3 Accordingly, the bad act evidence sought in the case at bar is far more prejudicial than probative
4 and should be excluded as such.


5
6 **III. CONCLUSION**

7 Based on the foregoing, the Defendant, JONATHAN QUISANO, respectfully requests that
8 this Honorable Court deny the prosecution's Motion to Admit Evidence of Other Crimes, Wrongs
9 or Acts from the upcoming trial of this matter.

10 DATED this 29th day of May, 2014.

11 PHILIP J. KOHN
12 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

13
14 By: 
15 NANCY M. LEMCKE, #5416
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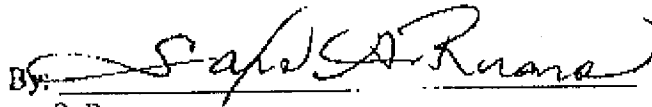
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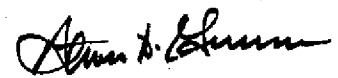
CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of OPPOSITION TO PROSECUTION'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS, was made this 29TH day of May, 2014, by Electronic Filing to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 **THE STATE OF NEVADA,**
12 **Plaintiff,**

13 **-vs-**

14 **JONATHAN QUISANO,**
15 **#5991702**

16 **Defendant.**

Case No. C-13-294266-1

Dept No. XXI

17
18 **OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE EXPERT WITNESSES**

19 **DATE OF HEARING: JUNE 3, 2014**
20 **TIME OF HEARING: 9:00 A.M.**

21 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,**
22 **through MICHAEL V. STAUDAHER and MICHELLE Y. JOBE, Chief Deputy District**
23 **Attorneys, and files this Opposition to Defendant's Motion to Exclude Expert Witnesses.**

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

27 **//**

28 **//**

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS REGARDING DEATH OF KHAYDEN QUISANO

3 Thursday, June 6, 2013, started out like a normal day; Christina Rodrigues woke up her
4 two sons with the Defendant, Khayden and Khaysen Quisano, around 6:30 a.m., got ready for
5 work and prepared the boys ready for their day. (PHT Vol. 1, 240:11-12). That morning both
6 Khayden and Khaysen were acting normal; happy, smiling, watching television and getting
7 dressed. (PHT Vol. 1, 240:20-24). Christina then took her boys to her grandmother Clara
8 Rodrigues' house around 7:15 a.m., where they would stay until they were taken home to their
9 father. (PHT, Vol. 1, 240:6-14) Christina then went to work, where she would work until
10 approximately 5 p.m. (Vol 1, 240:14-15). While Christina was at work, her grandfather and
11 grandmother dropped the boys off to Jonathan Quisano during the afternoon. (PHT Vol. 1,
12 239:19-23.) From there, Jonathan was solely responsible for the care of Khayden and Khaysen.
13 (PHT Vol. 1, 239:24-240:2). Christina worked the entire day of June 6, 2013, without any
14 phone calls or updates as to how the boys were doing. (PHT Vol. 1, 241:13-19.) Everything
15 changed shortly after she clocked out of work. (PHT, Vol. 1, 241:20-24.)

16 Jonathan called Christina around 510 p.m., after she had clocked out of work and as
17 she was walking to her car to drive home. (PHT Vol. 1, 241:20-24.) During the call Jonathan
18 asked Christina where she was and urged Christina to hurry home. (PHT, Vol. 1, 242:10-14.)
19 Jonathan didn't tell her why she needed to hurry or describe anything as being wrong at the
20 house. (PHT, Vol. 1, 242:20-24.) A few minutes later Jonathan called Christina a second time,
21 again, asking Christina where she was and urging her to hurry home. (PHT, Vol. 1, 242:24-
22 243:2.) Jonathan still didn't provide any information as to why she needed to hurry home, but
23 rather, urged her to hurry home and then hung up the phone. (PHT, Vol. 1, 243:2-3.) Christina
24 called Jonathan back a few minutes later asking why she needed to hurry home. (PHT, Vol. 1,
25 243:3-5.) Christina wanted to know why Jonathan wanted her to hurry home. (PHT, Vol. 1,
26 243:21-23.) Specifically and only in direct response to Christina's call and question, Jonathan
27 said, "The boys were playing on the couch, and Khayden fell over, and I guess hit his head,
28 and -- um - - he said he wasn't opening his eyes, and he tried to put water on him, he wasn't

1 getting up." (PHT, Vol. 1, 244:9-13.)

2 After Jonathan explained what happened Christina asked Jonathan if he had called 9-
3 1-1, but he hadn't done so and gave no explanation as to why not. (PHT, Vol. 1, 244:13-14,
4 247:11, 17-20.) At that point Christina told Jonathan she was going to call 9-1-1 and this time
5 she hung up on Jonathan. (PHT, Vol. 1, 247:21-24.) Armed only with the information Jonathan
6 had provided, Christina called 9-1-1 right away. (PHT, Vol. 1, 248:4-5.) Christina advised the
7 9-1-1 operator who she was, that she was driving home from work and that Jonathan told her
8 the baby was playing on the couch and fell over. (PHT, Vol. 1, 248:8-11.)

9 Las Vegas City Fire Department responded to the family home around 5:56 or 5:58
10 p.m. as a result of the 9-1-1 call. (PHT, Vol. 1, 153:3-5, 154:22-24.) The call was initially
11 coded as a Bravo level response based on the information provided by Christina. (PHT, Vol.
12 1, 153:5-14.) Upon arriving at the residence, Timothy Kline, a paramedic, was approached by
13 a male who opened the front door holding a small child. (PHT, Vol. 1, 155:2-5.) That male
14 was the only other adult at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.)
15 Timothy Kline's first impression was that the patient was "lifeless...not
16 breathing...cyanotic...meaning that their oxygen level has dropped and they've been not
17 breathing, or not breathing adequately for at least several minutes." (PHT, Vol. 1, 155:8-14.)
18 Kline directed the male to place the child on a bench in the hallway so Kline could render care.
19 (PHT, Vol. 1, 156:18-23.) Kline evaluated Khayden's eyes, noting the pupils were dilated,
20 opened up and wide, nonresponsive and fixed in a wide position. (PHT, Vol. 1, 157:19-22.)
21 Based on the child's condition, Kline noted the call was much more severe than a Bravo level
22 response. (PHT, Vol. 1, 158:6-10.)

23 In an effort to treat the child, paramedic Kline asked the male who presented the child
24 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
25 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
26 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
27 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further
28 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which

1 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
2 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
3 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
4 Vol. 1, 163:4-8.) The medical treatment included breathing for the child, including chest
5 compressions and using a bag. (PHT, Vol. 1, 163:10-13, 177:23-12.) The child was also placed
6 on an EKG to ascertain the presence of electrical heart pulses. (PHT, Vol. 1, 163:10-15.)

7 An American Medical Response (AMR) unit also responded to the residence shortly
8 after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) The child patient was already
9 in the back of the Fire Department unit when AMR arrived. (PHT, Vol. 1, 207:1-5.) AMR
10 emergency technician Patrick Burkhalter inquired separately of Jonathan as to what had
11 caused Khayden's injuries to try to determine the nature of the fall. (PHT, Vol. 1, 208:21-25.)
12 Defendant initially reported to Burkhalter that Khayden was playing on the back of a recliner
13 type chair and fell off the back hitting his head on the floor. (PHT, Vol. 1, 210:1-3.) Defendant
14 specifically said the child fell backwards. (PHT, Vol. 1, 211:18-23.)

15 Burkhalter spoke with the Defendant a second time in an attempt to clarify how the
16 child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the second inquiry
17 because "the injuries that were sustained didn't - - um - - seem compatible to what we were
18 dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he actually hadn't
19 seen the child fall, but, rather he saw Khayden playing on a chair, then turned around and when
20 Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22, 213:11-22.)

21 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
22 had already been asked what had happened to the child, so he, too, asked Defendant what had
23 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
24 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
25 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.) Captain Pedrol made no further
26 attempts to clarify Defendant's statement, as Defendant was getting into the driver's seat of an
27 SUV to go to the hospital. (PHT, Vol. 1, 203:20-25.) Christina arrived at the family home
28 sometime after the Fire Department and AMR arrived, though her primary focus was to rush

1 in and get Khaysen and Jonathan to follow the ambulance to the hospital. (PHT, Vol. 1,
2 249:14-20.)

3 Khayden was transported to University Medical Center ("UMC") as required by Fire
4 Department Trauma Destination protocols arriving at approximately 623 p.m. (PHT, Vol. 1,
5 168:2-21.) At the hospital, Khayden received treatment performed by and under the
6 supervision of Michael Casey, M.D. (PHT, Vol. 1, 20:7-17.) The CT scan of Khayden's head
7 revealed a linear skull fracture, extensive intracranial bleeding with a midline shift, and a
8 tentorial shift caused by blood pushing the brain down. (PHT, Vol. 1, 27:4-7, 19-21.) The
9 herniation of the brain caused Khayden's heart to stop during initial resuscitation, such that
10 the herniation would have slowed his heart and caused the blood pressure to drop until the
11 heart ultimately stopped working, though medical personnel restarted his heart. (PHT, Vol. 1,
12 30:19-23, 31:8-11.) Dr. Casey concluded the injuries to the brain were caused by trauma.
13 (PHT, Vol. 1, 28:23-29:2.) The child also had contusions or bruises developing in the lungs.
14 (PHT, Vol. 1, 30:6-8.) Dr. Casey concluded the lung contusions were a different injury from
15 the injuries to the head, and would not have been a result of the intubation process. (PHT, Vol.
16 1, 65:18-22.)

17 Dr. Casey spoke with investigative personnel to try to determine the cause of
18 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
19 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of
20 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
21 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

22 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
23 required the reported fall to include some amount of rotational force that was not disclosed by
24 Defendant. (PHT, Vol. 1, 143:24-144:6.)

25 Based on the information gleaned at the hospital, Las Vegas Metropolitan Police
26 (LVMPD) detectives conducted a recorded interview with Jonathan Quisano at the family
27 residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-76:2.) Defendant
28 received Khayden and Khaysen from their caretaker around 4:30 p.m., at which time Khayden

1 appeared fine and showed no signs of injury. (PHT, Vol. 2, 77:11-14, 20-24.) Defendant
2 described Khayden playing on the couch with Khaysen while Defendant sat in a recliner in
3 the living room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with
4 different information as to whether or not he saw Khayden fall off the couch; at first stating
5 he didn't see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the
6 account where Defendant said he saw Khayden go over the couch he described looking over
7 and seeing Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.)
8 Defendant re-enacted the fall using the doll and showed LVMPD detectives Khayden was
9 facing down, head first and demonstrated Khayden slipping over the back of the couch. (PHT,
10 Vol. 2, 83:6-13; 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his
11 back parallel to the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden
12 jumping around on the couch or adopt jumping as part of the events leading up to Khayden's
13 injuries, though detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

14 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
15 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
16 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him up
17 and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
18 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
19 Defendant placed tissues and other items he used to clean up Khayden in trash cans around
20 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
21 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
22 Khayden.

23 Defendant stated he waited approximately ten minutes before calling his girlfriend,
24 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
25 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted
26 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
27 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going
28 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)

1 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
2 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

3 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of the Khayden
4 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
5 7:9-12.) Dr. Montes noted the chest CT revealed symmetric consolidation in the lungs, which
6 he opined is evidence of a collapsed lung from lack of oxygen, not pulmonary contusions.
7 (PHT, Vol. 2, 12:3-5, 12-22.) Dr. Montes noted in the abdominal CT that there appeared to
8 be inflammation or fluid around the pancreas. (PHT, Vol. 2, 14:10-15.) Dr. Montes also
9 reviewed the head CT that showed multiple injuries. (PHT, Vol. 2, 15:18-24.) Khayden
10 suffered a subdural hemorrhage on the left side of his skull that extended along the whole side
11 of the head from front to back. (PHT, Vol. 2, 17:4-7, 14-16.) The subdural hemorrhage was
12 acute, in that it was less than 48 hours old, and the heterogeneous color indicated the bleeding
13 was either active or not old enough to have started clotting. (PHT, Vol. 2, 17:21-18:1.) There
14 was also a small amount of blood in the posterior region of the brain, which Dr. Montes
15 associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.) The point of impact causing
16 the fracture would have been the center with the lines extending from the impact site in
17 multiple directions. (PHT, Vol. 2, 18:25-19:10.) Dr. Montes also noted a midline shift as a
18 result of brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse
19 cerebral edema signifying a global injury from either significant trauma or lack of oxygen.
20 (PHT, Vol. 2, 22:7-12.) More significantly, Dr. Montes opined the injuries to Khayden's head,
21 as depicted in the CT scan indicate he had suffered multiple injuries; one injury causing the
22 fracture and blood localized to the fracture site, and a separate injury causing the left-side
23 subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.)

24 Dr. Lisa Gavin performed the autopsy of Khayden Quisano on or about June 7, 2013.
25 (PHT, Vol. 3, 6:12-14.) The majority of the injuries salient to the autopsy findings were located
26 in the brain and skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to
27 occur within hours of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull,
28 Dr. Gavin located a stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3,

1 13:22-14:9.) There was also a subdural hemorrhage predominantly on the left side of the brain,
2 though there was also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side
3 subdural hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr.
4 Gavin noted the left side had a "great deal of hemorrhage" that extended along most of the left
5 side of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
6 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
7 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.) At autopsy, the lungs were filled
8 with blood, which could have obscured evidence of pulmonary contusions. (PHT, Vol. 3, 26:7-
9 15, 108:9-17.)

10 The brain, spinal cord, and eyeballs were sent to a neuropathologist for further testing.
11 (PHT, Vol. 3, 35:15-17.) The additional testing of the eyeballs revealed subdural
12 hemorrhaging in the optic nerve sheaths, with more in the right side than the left. (PHT, Vol.
13 3, 37:11-15.) The greater blood on the right side suggests more of an impact or focus of trauma
14 on the right side versus the left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed
15 multiple findings. (PHT, Vol. 3, 39:1-4, 15-17.) One finding was diffuse cerebral edema, or
16 swelling of the entire brain. (PHT, Vol. 3, 40:8-12.) The brain also revealed injury from
17 hypoxic ischemia, which appeared to be early in the process of oxygen deprivation causing
18 damage to the brain. (PHT, Vol. 3, 40:19-41:14.) There was also diffuse axonal injury, which
19 is damage to the axons of the brain cells. (PHT, Vol. 3, 41:19-25.) The axonal injuries were
20 found in the deeper areas of the brain. (PHT, Vol. 3, 43:2-44:1.) Such injury occurs when the
21 strands of the axon are torn or sheared, indicating the injury was caused by some sort of torsion
22 or rotational force. (PHT, Vol. 3, 42:1-4, 58:1-19.) The neuropathologist noted the extent of
23 the axonal injuries were caused by mixed etiologies, such that the injuries would have resulted
24 from both rotational forces and hypoxic ischemia. (PHT, Vol. 3, 142:20-143:1.)

25 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
26 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
27 noted there were multiple areas of injury to the brain such that there could be more than one
28 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as

1 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
2 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
3 55:7.) Ultimately Dr. Gavin determined manner of death to be undetermined. (PHT, Vol. 3,
4 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule it an accident
5 or a homicide. (PHT, Vol. 3, 55:21-56:2.) Notably, "in this case the information [revealed]
6 from the investigation doesn't match the severity of the injury, and because of that it's
7 undetermined in terms of what ended up causing this injury." (PHT, Vol. 3, 53:21-24.)

8 After the death of Khayden, Detectives conducted additional investigation obtaining
9 records from Hawaii involving the death of an older sibling and additional non-accidental
10 injuries suffered by Khayden in 2010. This resulted in greater scrutiny of the Defendant's
11 versions of the events leading up to Khayden's injuries and the Defendant failure to summon
12 medical assistance or render aid.

13 PROCEDURAL HISTORY

14 The State has filed three sequential notices of expert witnesses, on May 16, 19 and 20,
15 2014, respectively. Each notice contains all of the information the State had regarding each
16 noticed expert, such that supplemental disclosures contained additional information obtained
17 by the State. In fact, where a curriculum vitae, per se, was not available, the State filed and
18 served counsel with each physician's Nevada State Board of Medical Examiners Licensee
19 Details, which includes the physician's schooling, contact information, any notice or
20 restrictions on their medical license or other board actions. See Exhibits attached to 5/16/14
21 Notice of Expert Disclosure, 5/19/14 Supplemental Notice of Expert Disclosure and 5/20/14
22 Second Supplemental Notice of Expert Disclosure.

23 Additionally, the State was able to secure additional curriculum vitae for Michael
24 Casey, M.D., Sandra Cetl, M.D., Peter Egbert, M.D., Lisa Gavin, M.D., Stuart Kaplan, M.D.,
25 Arthur Montes, M.D., and, Meena Vohra, M.D. Those curriculum vitae were produced via
26 electronic transmission to defense counsel on May 27, 2014, and counsel confirmed receipt
27 May 28, 2014. (Exhibit 1¹, email chain regarding additional curriculum vitae.) In the same

28 ¹ Attachments not included in Exhibit 1 but will be provided upon request.

1 email, the State clarified that two listed crime scene analysts also go by different last names;
2 Stephanie Fletcher is also known as Stephanie Smith, while Danielle Keller is also known as
3 Danielle Carvounians. Id.

4 The morning of May 28, 2014, the State produced additional information regarding
5 multiple noticed radiologists obtained online, of which the information is akin, at least in part,
6 to a curriculum vitae. (Exhibit 2, email regarding radiologists.) The radiologists are Shahrokh
7 Assemi, M.D., Thomas E. Costello, M.D., Jerrell L. Ingalls, M.D., Dianne Mazzu, M.D.,
8 Pejman M. Motarjem, M.D., Jimmy C. Wang, M.D., and Lisa K. Wong, M.D.

9 ARGUMENT

10 N.R.S. 174.234(2) and (3)(b) provide:

11 “2. If the defendant will be tried for one or more offenses that
12 are punishable as a gross misdemeanor or felony and a witness that
13 a party intends to call during the case in chief of the State or during
14 the case in chief of the defendant is expected to offer testimony as
15 an expert witness, the party who intends to call that witness shall
16 file and serve upon the opposing party, not less than 21 days before
17 trial or at such other time as the court directs, a written notice
18 containing:

19 (a) A brief statement regarding the subject matter on which
20 the expert witness is expected to testify and the substance of the
21 testimony;

22 (b) A copy of the curriculum vitae of the expert witness; and

23 (c) A copy of all reports made by or at the direction of the
24 expert witness.

25 3. After complying with the provisions of subsections 1 and
26 2, each party has a continuing duty to file and serve upon the
27 opposing party:

28 ...

(b) Any information relating to an expert witness that is
required to be disclosed pursuant to subsection 2. A party shall
provide information pursuant to this paragraph as soon as
practicable after the party obtains that information. The court shall
prohibit the party from introducing that information in evidence or
shall prohibit the expert witness from testifying if the court
determines that the party acted in bad faith by not timely
disclosing that information pursuant to subsection 2.”

//

//

1 Reading both sections together, it is clear the legislature understood that parties will
2 likely receive additional information or documentation that would satisfy the requirements of
3 subsection 2 by creating a continuing duty to turn over information in subsection 3. Moreover,
4 the Supreme Court has held that challenges to the sufficiency of an expert notice focus on
5 whether or not the State acted in bad faith in the information disclosed and if the defendant's
6 substantial rights were prejudiced. Perez v. State, 313 P.3d 862, 870, 129 Nev. Adv. Op. 90,
7 (2013); Mitchell v. State, 124 Nev. 807, 819, 192 P.3d 721, 729 (2008). In Mitchell, the State
8 failed to disclose the expert who testified at trial, conceded the same on appeal, yet there was
9 no claim or finding the State acted in bad faith or prejudice to defendant's substantial rights.
10 Id.

11 The State's timely updates regarding curriculum vitae and information regarding each
12 expert belies any claims the State is acting in bad faith in noticing expert witnesses and
13 complying with the requirements of NRS 174.234². Additionally, other than Dr. Cetl, each
14 and every expert noticed by the State comes from the medical records of the victim child
15 Khayden Quisano and/or reports and/or records produced prior to the preliminary hearing held
16 over the course of three days in November 2013. The medical records and/or reports
17 documenting the involvement of each individual are the basis of each noticed expert's
18 anticipated testimony. As such, the Defendant has had more than forty (40) days to "chase
19 down" information about these experts and "conduct a thorough inquiry into each" individual
20 and their anticipated testimony.

21 Defendant also challenges the sufficiency of the notice as to the crime scene analysts
22 claiming the testimonial summary lacks sufficient detail. As with the physicians, all work done
23 by each crime scene analyst arises from their work in the investigation of the case, the details
24 of which are contained in the records produced prior to the November 2013 preliminary
25 hearing. For instance, the State produced the CSA reports, bates stamped as DA – Quisano
26 00404-00414, which document what each CSA did by each CSA's name and unique personnel

27
28 ² There are no expert reports to disclose as no expert has prepared a report in anticipation of trial. Any report by a named expert was generated as part of his or her work on the case as a first responder, medical provider, investigator and/or at the request of someone other than the District Attorney's Office.

1 number. Thus, the description provided in the Notices of Experts should be sufficient for
2 counsel to review the discovery provided and prepare for what each crime scene analyst may
3 be called to testify about.

4 The State cannot be expected to produce a notice of expert witness that summarizes the
5 details of the work, evaluations, reports, and photographs completed by each and every expert,
6 as such a task would result in a notice almost as long as the hundreds upon hundreds of pages
7 of records, photographs, and reports of discovery produced in this matter. Accordingly, the
8 State's notices of expert witnesses and ongoing disclosures are sufficient in accordance with
9 NRS 174.234 subsections (2) and (3)(b).


10 CONCLUSION

11 Based on the above and foregoing Points and Authorities, the State respectfully requests
12 that this Court deny Defendant's Motion to Exclude Expert Witnesses.

13 DATED this 30th day of May, 2014.

14 STEVEN B. WOLFSON
15 DISTRICT ATTORNEY
16 Nevada Bar #001565

17 BY


18 MICHELLE Y. JOBE
19 Chief Deputy District Attorney
20 Nevada Bar #010575
21 For

22 //
23 //
24 //
25 //
26 //
27 //
28 //

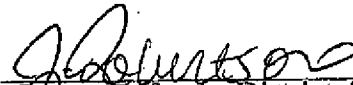
CERTIFICATE OF E-MAIL

I hereby certify that service of the above and foregoing, was made this 30th day of
May, 2014, by e-mail to:

Nancy Lemcke, DPD
Email: lemckenl@ClarkCountyNV.gov

Norman Reed, DPD
Email: reednj@clarkcountynv.gov

pdclerk@clarkcountynv.gov


Secretary for the District Attorney's Office

13F09094X/MYJ/jr/MVU

EXHIBIT “1”

Michelle Jobe

From: Michelle Jobe
Sent: Tuesday, May 27, 2014 6:00 PM
To: 'Nancy Lemcke'; Norman Reed
Cc: Michael Staudaheer
Subject: CVs for Experts - Quisano
Attachments: CaseyM.pdf; Cetl court cv.doc; GavinL.pdf; KaplanStuart.rtf; MontesA.pdf; Peter Egbert CV.doc; VohraM.doc

Hi, Nancy & Norm,

Here are the CVs I was able to locate regarding your motion and inquiry today.

Doctors:

Michael Casey, MD
Sandra Cetl, MD
Peter Egbert, MD
Lisa Gavin, MD
Stuart Kaplan, MD
Arthur Montes, MD
Meena Vohra, MD

As for the CSAs:

All cv's were disclosed.

Note: Stephanie Fletcher is also Stephanie Smith

Note: Danielle Keller is also Danielle Carvounians

Additional information may be found online for certain doctors (I looked at length), but no additional CVs were found online. Notably, there is additional information on some of the radiologists that may be located at desertradillogy.com/directory/people. I printed out the details for all of the radiologists on that website and will send it over tomorrow.

Thanks!

Michelle

Michelle Y. Jobe
Chief Deputy District Attorney
Clark County District Attorney's Office
General Litigation Team L-2
TEL: (702) 671-2674
FAX: (702) 868-2427
Email: Michelle.Jobe@clarkcountyda.com

Michelle Jobe

From: Norman Reed <reednj@ClarkCountyNV.gov>
Sent: Wednesday, May 28, 2014 10:08 AM
To: Michelle Jobe; Nancy Lemcke
Cc: Michael Staudaher
Subject: RE: CVs for Experts - Quisano

Thanks for your help....I appreciate it.

From: Michelle Jobe [mailto:Michelle.Jobe@clarkcountyda.com]
Sent: Tuesday, May 27, 2014 6:00 PM
To: Nancy Lemcke; Norman Reed
Cc: Michael Staudaher
Subject: CVs for Experts - Quisano

Hi, Nancy & Norm,

Here are the CVs I was able to locate regarding your motion and inquiry today.

Doctors:

Michael Casey, MD

Sandra Cetl, MD

Peter Egbert, MD

Lisa Gavin, MD

Stuart Kaplan, MD

Arthur Montes, MD

Meena Vohra, MD

As for the CSAs:

All cv's were disclosed.

Note: Stephanie Fletcher is also Stephanie Smith

Note: Danielle Keller is also Danielle Carvounians

Additional information may be found online for certain doctors (I looked at length), but no additional CVs were found online. Notably, there is additional information on some of the radiologists that may be located at desertradilogy.com/directory/people. I printed out the details for all of the radiologists on that website and will send it over tomorrow.

Thanks!

Michelle

Michelle Y. Jobe
Chief Deputy District Attorney
Clark County District Attorney's Office
General Litigation Team L-2
TEL: (702) 671-2674
FAX: (702) 868-2427
Email: Michelle.Jobe@clarkcountyda.com

EXHIBIT “2”

Michelle Jobe

From: Michelle Jobe
Sent: Wednesday, May 28, 2014 7:42 AM
To: 'Nancy Lemcke'; Norman Reed
Cc: Michael Staudaher
Subject: Quisano - Radiologist Profiles
Attachments: SCAN_0860.pdf

Hi, Nancy and Norm,

As promised, here is the remainder of what I could find on the noticed experts. Attached are the profile print outs from desertradiology.com.

Thanks!

Michelle

Michelle Y. Jobe
Chief Deputy District Attorney
Clark County District Attorney's Office
General Litigation Team L-2
TEL: (702) 671-2674
FAX: (702) 868-2427
Email: Michelle.Jobe@clarkcountyda.com

-----Original Message-----

From: Mary Bailey
Sent: Wednesday, May 28, 2014 6:51 AM
To: Michelle Jobe
Subject: Emailing: SCAN_0860.pdf

Your message is ready to be sent with the following file or link attachments:

SCAN_0860.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Shahrokh Assemi, MD



Medical School University of Vermont College of Medicine, 1993 Internship Kaiser Foundation
Hospital Medical Center, 1996 Residency Emory University School of Medicine, 2003
Fellowship Body Imaging
Emory University School of Medicine, 2004 Sub-Specialty Body/Urology Imaging
Board Certifications American Board of Radiology
American Board of Internal Medicine

Biography

Dr. Assemi served as Emergency Department Physician and Hospitalist/Internist at Kaiser Permanente Medical Center in Los Angeles, California from 1999 to 2001. Dr. Assemi joined Desert Radiologists in January of 2005.

Professional Affiliations

American College of Radiology
American Roentgen Ray Society
Clark County Medical Society
Radiological Society of North America

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Thomas E. Costello, MD



Medical School University of Nevada
School of Medicine, 1983 Residency Parkland Memorial Hospital, 1987 Sub-Specialty Cardiac
Imaging
Board Certifications American Board of Radiology

Biography

Dr. Costello joined Desert Radiologists in 1987. He currently serves as the Medical Director for Desert Radiologists Cathedral Rock facility.

Professional Affiliations

American College of Radiology
American Roentgen Ray Society
Clark County Medical Society
Nevada State Medical Association
Radiological Society of North America

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Jerrell L. Ingalls, MD



Medical School Baylor College of Medicine, 2004 Residency Grand Rapids Medical Education and Research Center, 2009 Fellowship Musculoskeletal Imaging
University of Cincinnati School of Medicine, 2010 Sub-Specialty Musculoskeletal Imaging
Board Certifications American Board of Radiology

Biography

Dr. Ingalls served as Chief Resident from 2008 -2009 at Grand Rapids Medical Education and Research Center at Michigan State University. During his four-year residency, he was the recipient the annual "Top Radiology Resident Research" award.

Dr. Jerrell Ingalls joined Desert Radiologists in 2011. At the University of Cincinnati, Dr. Ingalls served as Assistant Radiology Professor in the MSK Section and Assistant Radiology Residency Program Director. In 2011, he was the recipient of the Resident Teaching Award. He has coauthored several research projects, and was awarded first place at the Michigan Radiologic Society Resident Research Forum in 2008.

Professional Affiliations

American College of Radiology
Association of University Radiologists
Radiological Society of North America

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Dianne Mazzu, M.D.



Medical School University of Nevada School of Medicine, 1991
Alpha Omega Alpha Internship University of Nevada Affiliated Hospitals, 1992 Residency Stanford
University Medical Center, 1996 Fellowship Body Imaging/Mammography
Stanford University Medical Center, 1997 Sub-Specialty Body/Urology Imaging
Women's Imaging
Board Certifications American Board of Radiology

Biography

Dr. Mazzu completed her undergraduate degree at Pennsylvania State University. She joined Desert Radiologists in July 1997 following completion of her fellowship.

Professional Affiliations

American College of Radiology
American Roentgen Ray Society
Clark County Medical Society
Nevada State Medical Association
Radiological Society of North America

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Pejman M. Motarjem, MD



Education B.A. in Cellular Biology
California State University Northridge, 1995 Medical School Boston University School of Medicine,
2004 Internship Harvard University School of Medicine,
Mount Auburn Hospital, 2007 Residency Saint Vincent Hospital
2011 Fellowship Cross-Sectional Imaging
Johns Hopkins Hospital, 2012 Sub-Specialty Body/Urology Imaging
Board Certifications American Board of Radiology

Biography

Dr. Motarjem graduated from St. Vincent Hospital in Worcester MA where he served as chief resident. While a medical student, he spent one year participating in research at the Tissue Engineering Laboratory at the Massachusetts General Hospital, Harvard School of Medicine. During this time, he coauthored multiple papers on tissue engineered cartilage and nerve repair.

Dr. Motarjem joined Desert Radiologists in 2012. He has co-authored numerous publications, as well as, presented a research poster at the 2011 Society of Computed Body Tomography and Magnetic Resonance, in Washington, DC.

Professional Affiliations

American College of Radiology
American Medical Association
American Roentgen Ray Society
Radiological Society Of North America
National Board Of Medical Examiners

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Jimmy C. Wang, MD



Medical School University of California - San Diego, 2005 Residency McGaw Medical Center of
Northwestern University, 2010 Fellowship Musculoskeletal Imaging
University of California - San Diego, 2011 Sub-Specialty Musculoskeletal Imaging
Board Certifications American Board of Radiology

Biography

Dr. Wang graduated in 2000 from Illinois Institute of Technology with a Bachelor of Science in Molecular Biochemistry and Biophysics. After receiving his Medical Degree in 2005, he completed a one-year transitional internship at Santa Clara Valley Medical Center and earned Transitional Intern of the year.

Dr. Wang joined Desert Radiologists in 2013, as a teleradiologist.

Professional Affiliations

American College of Radiology
Radiological Society of North America
American Roentgen Ray Society

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Lisa K. Wong, MD



Medical School University of Nevada - Reno School of Medicine, 2000 Internship University of Nevada - Reno School of Medicine, 2001 Residency Louisiana State University School of Medicine, 2005 Fellowship Pediatric Radiology
Children's Hospital of Los Angeles, 2009 Sub-Specialty Pediatric Imaging
Board Certifications American Board of Radiology
Certificate of Qualification in Pediatric Radiology

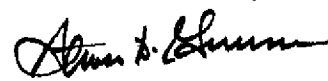
Biography

Dr. Wong served as an Assistant Professor of Thoracic Radiology at the LSU School of Medicine Department of Radiology. She joined Desert Radiologists in 2006.

Professional Affiliations

American College of Radiology
American Roentgen Ray Society
Clark County Medical Society
Radiological Society of North America

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CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 MICHELLE Y. JOBE
9 Chief Deputy District Attorney
10 Nevada Bar #010575
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorneys for Plaintiff

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

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 JONATHAN QUISANO,
15 #5991702

16 Defendant.

Case No. C-13-294266-1

Dept No. XXI

17
18 **OPPOSITION TO DEFENDANT'S MOTION TO LIMIT EXPERT TESTIMONY**

19 DATE OF HEARING: JUNE 3, 2014
20 TIME OF HEARING: 9:00 A.M.

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
22 through MICHAEL V. STAUDAHER and MICHELLE Y. JOBE, Chief Deputy District
23 Attorneys, and files this Opposition to Defendant's Motion to Limit Expert Testimony.

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

27 //

28 //

POINTS AND AUTHORITIES

STATEMENT OF FACTS REGARDING DEATH OF KHAYDEN QUISANO

Thursday, June 6, 2013, started out like a normal day; Christina Rodrigues woke up her two sons with the Defendant, Khayden and Khaysen Quisano, around 6:30 a.m., got ready for work and prepared the boys ready for their day. (PHT Vol. 1, 240:11-12). That morning both Khayden and Khaysen were acting normal; happy, smiling, watching television and getting dressed. (PHT Vol. 1, 240:20-24). Christina then took her boys to her grandmother Clara Rodrigues' house around 7:15 a.m., where they would stay until they were taken home to their father. (PHT, Vol. 1, 240:6-14) Christina then went to work, where she would work until approximately 5 p.m. (Vol 1, 240:14-15). While Christina was at work, her grandfather and grandmother dropped the boys off to Jonathan Quisano during the afternoon. (PHT Vol. 1, 239:19-23.) From there, Jonathan was solely responsible for the care of Khayden and Khaysen. (PHT Vol. 1, 239:24-240:2). Christina worked the entire day of June 6, 2013, without any phone calls or updates as to how the boys were doing. (PHT Vol. 1, 241:13-19.) Everything changed shortly after she clocked out of work. (PHT, Vol. 1, 241:20-24.)

Jonathan called Christina around 510 p.m., after she had clocked out of work and as she was walking to her car to drive home. (PHT Vol. 1, 241:20-24.) During the call Jonathan asked Christina where she was and urged Christina to hurry home. (PHT, Vol. 1, 242:10-14.) Jonathan didn't tell her why she needed to hurry or describe anything as being wrong at the house. (PHT, Vol. 1, 242:20-24.) A few minutes later Jonathan called Christina a second time, again, asking Christina where she was and urging her to hurry home. (PHT, Vol. 1, 242:24-243:2.) Jonathan still didn't provide any information as to why she needed to hurry home, but rather, urged her to hurry home and then hung up the phone. (PHT, Vol. 1, 243:2-3.) Christina called Jonathan back a few minutes later asking why she needed to hurry home. (PHT, Vol. 1, 243:3-5.) Christina wanted to know why Jonathan wanted her to hurry home. (PHT, Vol. 1, 243:21-23.) Specifically and only in direct response to Christina's call and question, Jonathan said, "The boys were playing on the couch, and Khayden fell over, and I guess hit his head, and -- um - - he said he wasn't opening his eyes, and he tried to put water on him, he wasn't

1 getting up." (PHT, Vol. 1, 244:9-13.)

2 After Jonathan explained what happened Christina asked Jonathan if he had called 9-
3 1-1, but he hadn't done so and gave no explanation as to why not. (PHT, Vol. 1, 244:13-14,
4 247:11, 17-20.) At that point Christina told Jonathan she was going to call 9-1-1 and this time
5 she hung up on Jonathan. (PHT, Vol. 1, 247:21-24.) Armed only with the information Jonathan
6 had provided, Christina called 9-1-1 right away. (PHT, Vol. 1, 248:4-5.) Christina advised the
7 9-1-1 operator who she was, that she was driving home from work and that Jonathan told her
8 the baby was playing on the couch and fell over. (PHT, Vol. 1, 248:8-11.)

9 Las Vegas City Fire Department responded to the family home around 5:56 or 5:58
10 p.m. as a result of the 9-1-1 call. (PHT, Vol. 1, 153:3-5, 154:22-24.) The call was initially
11 coded as a Bravo level response based on the information provided by Christina. (PHT, Vol.
12 1, 153:5-14.) Upon arriving at the residence, Timothy Kline, a paramedic, was approached by
13 a male who opened the front door holding a small child. (PHT, Vol. 1, 155:2-5.) That male
14 was the only other adult at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.)
15 Timothy Kline's first impression was that the patient was "lifeless...not
16 breathing...cyanotic...meaning that their oxygen level has dropped and they've been not
17 breathing, or not breathing adequately for at least several minutes." (PHT, Vol. 1, 155:8-14.)
18 Kline directed the male to place the child on a bench in the hallway so Kline could render care.
19 (PHT, Vol. 1, 156:18-23.) Kline evaluated Khayden's eyes, noting the pupils were dilated,
20 opened up and wide, nonresponsive and fixed in a wide position. (PHT, Vol. 1, 157:19-22.)
21 Based on the child's condition, Kline noted the call was much more severe than a Bravo level
22 response. (PHT, Vol. 1, 158:6-10.)

23 In an effort to treat the child, paramedic Kline asked the male who presented the child
24 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
25 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
26 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
27 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further
28 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which

1 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
2 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
3 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
4 Vol. 1, 163:4-8.) The medical treatment included breathing for the child, including chest
5 compressions and using a bag. (PHT, Vol. 1, 163:10-13, 177:23-12.) The child was also placed
6 on an EKG to ascertain the presence of electrical heart pulses. (PHT, Vol. 1, 163:10-15.)

7 An American Medical Response (AMR) unit also responded to the residence shortly
8 after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) The child patient was already
9 in the back of the Fire Department unit when AMR arrived. (PHT, Vol. 1, 207:1-5.) AMR
10 emergency technician Patrick Burkhalter inquired separately of Jonathan as to what had
11 caused Khayden's injuries to try to determine the nature of the fall. (PHT, Vol. 1, 208:21-25.)
12 Defendant initially reported to Burkhalter that Khayden was playing on the back of a recliner
13 type chair and fell off the back hitting his head on the floor. (PHT, Vol. 1, 210:1-3.) Defendant
14 specifically said the child fell backwards. (PHT, Vol. 1, 211:18-23.)

15 Burkhalter spoke with the Defendant a second time in an attempt to clarify how the
16 child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the second inquiry
17 because "the injuries that were sustained didn't - - um - - seem compatible to what we were
18 dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he actually hadn't
19 seen the child fall, but, rather he saw Khayden playing on a chair, then turned around and when
20 Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22, 213:11-22.)

21 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
22 had already been asked what had happened to the child, so he, too, asked Defendant what had
23 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
24 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
25 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.) Captain Pedrol made no further
26 attempts to clarify Defendant's statement, as Defendant was getting into the driver's seat of an
27 SUV to go to the hospital. (PHT, Vol. 1, 203:20-25.) Christina arrived at the family home
28 sometime after the Fire Department and AMR arrived, though her primary focus was to rush

1 in and get Khaysen and Jonathan to follow the ambulance to the hospital. (PHT, Vol. 1,
2 249:14-20.)

3 Khayden was transported to University Medical Center ("UMC") as required by Fire
4 Department Trauma Destination protocols arriving at approximately 623 p.m. (PHT, Vol. 1,
5 168:2-21.) At the hospital, Khayden received treatment performed by and under the
6 supervision of Michael Casey, M.D. (PHT, Vol. 1, 20:7-17.) The CT scan of Khayden's head
7 revealed a linear skull fracture, extensive intracranial bleeding with a midline shift, and a
8 tentorial shift caused by blood pushing the brain down. (PHT, Vol. 1, 27:4-7, 19-21.) The
9 herniation of the brain caused Khayden's heart to stop during initial resuscitation, such that
10 the herniation would have slowed his heart and caused the blood pressure to drop until the
11 heart ultimately stopped working, though medical personnel restarted his heart. (PHT, Vol. 1,
12 30:19-23, 31:8-11.) Dr. Casey concluded the injuries to the brain were caused by trauma.
13 (PHT, Vol. 1, 28:23-29:2.) The child also had contusions or bruises developing in the lungs.
14 (PHT, Vol. 1, 30:6-8.) Dr. Casey concluded the lung contusions were a different injury from
15 the injuries to the head, and would not have been a result of the intubation process. (PHT, Vol.
16 1, 65:18-22.)

17 Dr. Casey spoke with investigative personnel to try to determine the cause of
18 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
19 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of
20 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
21 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

22 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
23 required the reported fall to include some amount of rotational force that was not disclosed by
24 Defendant. (PHT, Vol. 1, 143:24-144:6.)

25 Based on the information gleaned at the hospital, Las Vegas Metropolitan Police
26 (LVMPD) detectives conducted a recorded interview with Jonathan Quisano at the family
27 residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-76:2.) Defendant
28 received Khayden and Khaysen from their caretaker around 4:30 p.m., at which time Khayden

1 appeared fine and showed no signs of injury. (PHT, Vol. 2, 77:11-14, 20-24.) Defendant
2 described Khayden playing on the couch with Khaysen while Defendant sat in a recliner in
3 the living room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with
4 different information as to whether or not he saw Khayden fall off the couch; at first stating
5 he didn't see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the
6 account where Defendant said he saw Khayden go over the couch he described looking over
7 and seeing Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.)
8 Defendant re-enacted the fall using the doll and showed LVMPD detectives Khayden was
9 facing down, head first and demonstrated Khayden slipping over the back of the couch. (PHT,
10 Vol. 2, 83:6-13; 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his
11 back parallel to the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden
12 jumping around on the couch or adopt jumping as part of the events leading up to Khayden's
13 injuries, though detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

14 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
15 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
16 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him up
17 and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
18 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
19 Defendant placed tissues and other items he used to clean up Khayden in trash cans around
20 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
21 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
22 Khayden.

23 Defendant stated he waited approximately ten minutes before calling his girlfriend,
24 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
25 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted
26 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
27 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going
28 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)

1 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
2 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

3 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of the Khayden
4 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
5 7:9-12.) Dr. Montes noted the chest CT revealed symmetric consolidation in the lungs, which
6 he opined is evidence of a collapsed lung from lack of oxygen, not pulmonary contusions.
7 (PHT, Vol. 2, 12:3-5, 12-22.) Dr. Montes noted in the abdominal CT that there appeared to
8 be inflammation or fluid around the pancreas. (PHT, Vol. 2, 14:10-15.) Dr. Montes also
9 reviewed the head CT that showed multiple injuries. (PHT, Vol. 2, 15:18-24.) Khayden
10 suffered a subdural hemorrhage on the left side of his skull that extended along the whole side
11 of the head from front to back. (PHT, Vol. 2, 17:4-7, 14-16.) The subdural hemorrhage was
12 acute, in that it was less than 48 hours old, and the heterogeneous color indicated the bleeding
13 was either active or not old enough to have started clotting. (PHT, Vol. 2, 17:21-18:1.) There
14 was also a small amount of blood in the posterior region of the brain, which Dr. Montes
15 associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.) The point of impact causing
16 the fracture would have been the center with the lines extending from the impact site in
17 multiple directions. (PHT, Vol. 2, 18:25-19:10.) Dr. Montes also noted a midline shift as a
18 result of brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse
19 cerebral edema signifying a global injury from either significant trauma or lack of oxygen.
20 (PHT, Vol. 2, 22:7-12.) More significantly, Dr. Montes opined the injuries to Khayden's head,
21 as depicted in the CT scan indicate he had suffered multiple injuries; one injury causing the
22 fracture and blood localized to the fracture site, and a separate injury causing the left-side
23 subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.)

24 Dr. Lisa Gavin performed the autopsy of Khayden Quisano on or about June 7, 2013.
25 (PHT, Vol. 3, 6:12-14.) The majority of the injuries salient to the autopsy findings were located
26 in the brain and skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to
27 occur within hours of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull,
28 Dr. Gavin located a stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3,

1 13:22-14:9.) There was also a subdural hemorrhage predominantly on the left side of the brain,
2 though there was also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side
3 subdural hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr.
4 Gavin noted the left side had a "great deal of hemorrhage" that extended along most of the left
5 side of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
6 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
7 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.) At autopsy, the lungs were filled
8 with blood, which could have obscured evidence of pulmonary contusions. (PHT, Vol. 3, 26:7-
9 15, 108:9-17.)

10 The brain, spinal cord, and eyeballs were sent to a neuropathologist for further testing.
11 (PHT, Vol. 3, 35:15-17.) The additional testing of the eyeballs revealed subdural
12 hemorrhaging in the optic nerve sheaths, with more in the right side than the left. (PHT, Vol.
13 3, 37:11-15.) The greater blood on the right side suggests more of an impact or focus of trauma
14 on the right side versus the left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed
15 multiple findings. (PHT, Vol. 3, 39:1-4, 15-17.) One finding was diffuse cerebral edema, or
16 swelling of the entire brain. (PHT, Vol. 3, 40:8-12.) The brain also revealed injury from
17 hypoxic ischemia, which appeared to be early in the process of oxygen deprivation causing
18 damage to the brain. (PHT, Vol. 3, 40:19-41:14.) There was also diffuse axonal injury, which
19 is damage to the axons of the brain cells. (PHT, Vol. 3, 41:19-25.) The axonal injuries were
20 found in the deeper areas of the brain. (PHT, Vol. 3, 43:2-44:1.) Such injury occurs when the
21 strands of the axon are torn or sheared, indicating the injury was caused by some sort of torsion
22 or rotational force. (PHT, Vol. 3, 42:1-4, 58:1-19.) The neuropathologist noted the extent of
23 the axonal injuries were caused by mixed etiologies, such that the injuries would have resulted
24 from both rotational forces and hypoxic ischemia. (PHT, Vol. 3, 142:20-143:1.)

25 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
26 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
27 noted there were multiple areas of injury to the brain such that there could be more than one
28 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as

1 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
2 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
3 55:7.) Ultimately Dr. Gavin determined manner of death to be undetermined. (PHT, Vol. 3,
4 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule it an accident
5 or a homicide. (PHT, Vol. 3, 55:21-56:2.) Notably, "in this case the information [revealed]
6 from the investigation doesn't match the severity of the injury, and because of that it's
7 undetermined in terms of what ended up causing this injury." (PHT, Vol. 3, 53:21-24.)

8 After the death of Khayden, Detectives conducted additional investigation obtaining
9 records from Hawaii involving the death of an older sibling and additional non-accidental
10 injuries suffered by Khayden in 2010. This resulted in greater scrutiny of the Defendant's
11 versions of the events leading up to Khayden's injuries and the Defendant failure to summon
12 medical assistance or render aid.

13 PROCEDURAL HISTORY

14 The State has filed three sequential notices of expert witnesses, on May 16, 19 and 20,
15 2014, respectively. Each notice contains all of the information the State had regarding each
16 noticed expert, such that supplemental disclosures contained additional information obtained
17 by the State. In fact, where a curriculum vitae, per se, was not available, the State filed and
18 served counsel with each physician's Nevada State Board of Medical Examiners Licensee
19 Details, which includes the physician's schooling, contact information, any notice or
20 restrictions on their medical license or other board actions. *See* Exhibits attached to 5/16/14
21 Notice of Expert Disclosure, 5/19/14 Supplemental Notice of Expert Disclosure and 5/20/14
22 Second Supplemental Notice of Expert Disclosure.

23 Additionally, the State was able to secure additional curriculum vitae for Michael
24 Casey, M.D., Sandra Cetl, M.D., Peter Egbert, M.D., Lisa Gavin, M.D., Stuart Kaplan, M.D.,
25 Arthur Montes, M.D., and, Meena Vohra, M.D. Those curriculum vitae were produced via
26 electronic transmission to defense counsel on May 27, 2014, and counsel confirmed receipt
27 May 28, 2014.

28 //

1 The morning of May 28, 2014, the State produced additional information regarding
2 multiple noticed radiologists obtained online, of which the information is akin, at least in part,
3 to a curriculum vitae. The radiologists are Shahrokh Assemi, M.D., Thomas E. Costello, M.D.,
4 Jerrell L. Ingalls, M.D., Dianne Mazzu, M.D., Pejman M. Motarjem, M.D., Jimmy C. Wang,
5 M.D., and Lisa K. Wong, M.D.

6 ARGUMENT

7 The State opposes the Defendant's motion to limit expert testimony as to the
8 mechanism of the victim's injuries since neither the statute nor case law require such a
9 prerequisite for admissibility. NRS 50.275 establishes the threshold for qualified expert
10 testimony such that "scientific, technical or other specialized knowledge will assist the trier of
11 fact to understand the evidence or to determine a fact in issue." NRS 50.275; Townsend v.
12 State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987). The three requirements for the
13 admissibility of expert testimony are:

14 " (1) [the expert] must be qualified in an area of "scientific,
15 technical or other specialized knowledge" (the qualification
16 requirement); (2) his or her specialized knowledge must "assist the
17 trier of fact to understand the evidence or to determine a fact in
issue" (the assistance requirement); and (3) his or her testimony
must be limited "to matters within the scope of [his or her
specialized] knowledge" (the limited scope requirement)."

18 Perez v. State, 313 P.3d 862, 870, 129 Nev. Adv. Op. 90, (2013), *quoting* Hallmark v. Eldridge,
19 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (second alteration in original) (*quoting* NRS
20 50.275). The factors used to help determine whether or not a witness is qualified to testify
21 include "(1) formal schooling and academic degrees, (2) licensure, (3) employment
22 experience, and (4) practical experience and specialized training." Id. at 867, *quoting* Hallmark
23 at 499, 189 P.3d at 650-51 (footnotes omitted). Nowhere in the factors enumerated by the
24 Supreme Court is there a requirement of testing or certain specialized knowledge.

25 Once an expert is qualified and provides an expert opinion at trial, it is ultimately up to
26 the trier of fact to determine the weight and credibility to assign to the expert's testimony.
27 Allen v. State, 99 Nev. 485, 487-488, 665 P.2d 238, 240 (1983). The trier of fact is not bound
28 by the expert opinion and may believe or disregard the expert testimony in its entirety. Clark

1 v. State, 95 Nev. 24, 28, 588 P.2d 1027, 1029 (1979).

2 This case revolves around the significant injuries sustained by Khayden Quisano that
3 resulted in his presentation to UMC for medical treatment where he ultimately died as a result
4 of those injuries. The source or mechanism of those injuries is a significant factor in rendering
5 medical treatment, medical prognosis, mandated reporting requirements of medical personnel,
6 and determining cause of death. The experts noticed to testify about the mechanism of injury
7 in the instant case all have a medical background to assess, diagnose and treat medical injuries.
8 Moreover, the experts noticed by the State have employment, practical experience and training
9 in injuries and the mechanism of such injuries as it relates to diagnosis, treatment, mandated
10 reporting of child abuse, and determining cause and manner of death. It is this very training
11 and professional experience by which they routinely encounter patients with medical injuries
12 and must assess the reported mechanism of injury to render care, diagnose, treat and/or
13 conclude the effect of the injuries to the patient. It is also the breadth of experience each of
14 these experts has from treating children with minor injuries to significant injuries and
15 analyzing the mechanism of injury as part of the medical process. Notably, the experts noticed
16 by the State have previously been qualified to testify and render expert opinions about medical
17 injuries and the mechanisms of those injuries. In light of the qualifications, training and
18 experience that each noticed expert has regarding assessing and treating injuries, as well as
19 assessing reported mechanisms of injury, each one should be qualified to testify as to the
20 injuries sustained by Khayden Quisano and the mechanism of injury that could have caused
21 such injuries without testimony from a biomechanical expert. Ultimately, the trier of fact will
22 determine what weight, credibility or believability to assign each expert's testimony based on
23 their qualifications, experience and testimony.

24 Accordingly, the Defendant's claim that these experts should be limited or precluded
25 from testifying about the mechanism of injury to the victim absent a biomechanical expert is
26 inconsistent with case law and prior rulings by the Eighth Judicial District Court.

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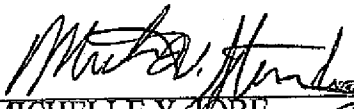
1 CONCLUSION

2 Based on the above and foregoing Points and Authorities, the State respectfully requests
3 that this Court deny Defendant's Motion to Limit Expert Testimony.

4 DATED this 30th day of May, 2014.

5 STEVEN B. WOLFSON
6 DISTRICT ATTORNEY
7 Nevada Bar #001565

8 BY


9 MICHELLE Y. TOPE
10 Chief Deputy District Attorney
11 Nevada Bar #010575

12 CERTIFICATE OF E-MAIL

13 I hereby certify that service of the above and foregoing, was made this 30th day of
14 May, 2014, by e-mail to:

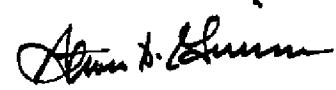
15 Nancy Lemcke, DPD
16 Email: lemckenl@ClarkCountyNV.gov

17 Norman Reed, DPD
18 Email: reednj@clarkcountynv.gov

19 pdclerk@clarkcountynv.gov

20 
21 Secretary for the District Attorney's Office

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25
26
27
28 13F09094X/MYJ/jr/MVU



CLERK OF THE COURT

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14 **Attorneys for Plaintiff**

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

11 **THE STATE OF NEVADA,**
12 **Plaintiff,**
13 **-vs-**
14 **JONATHAN QUISANO,**
15 **#5991702**
16 **Defendant.**

Case No. C-13-294266-1
Dept No. XXI

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE**
18 **TESTIMONY REGARDING TRAUMA DESTINATION FALL CRITERIA**
19 **PROTOCOL**

20 **DATE OF HEARING: JUNE 3, 2014**
21 **TIME OF HEARING: 9:00 A.M.**

22 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,**
23 **through MICHAEL V. STAUDAHER and MICHELLE Y. JOBE, Chief Deputy District**
24 **Attorneys, and files this Opposition to Defendant's Motion in Limine to Exclude Testimony**
25 **Regarding Trauma Destination Fall Criteria Protocol.**

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

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1 and -- um - - he said he wasn't opening his eyes, and he tried to put water on him, he wasn't
2 getting up." (PHT, Vol. 1, 244:9-13.)

3 After Jonathan explained what happened Christina asked Jonathan if he had called 9-
4 1-1, but he hadn't done so and gave no explanation as to why not. (PHT, Vol. 1, 244:13-14,
5 247:11, 17-20.) At that point Christina told Jonathan she was going to call 9-1-1 and this time
6 she hung up on Jonathan. (PHT, Vol. 1, 247:21-24.) Armed only with the information Jonathan
7 had provided, Christina called 9-1-1 right away. (PHT, Vol. 1, 248:4-5.) Christina advised the
8 9-1-1 operator who she was, that she was driving home from work and that Jonathan told her
9 the baby was playing on the couch and fell over. (PHT, Vol. 1, 248:8-11.)

10 Las Vegas City Fire Department responded to the family home around 5:56 or 5:58
11 p.m. as a result of the 9-1-1 call. (PHT, Vol. 1, 153:3-5, 154:22-24.) The call was initially
12 coded as a Bravo level response based on the information provided by Christina. (PHT, Vol.
13 1, 153:5-14.) Upon arriving at the residence, Timothy Kline, a paramedic, was approached by
14 a male who opened the front door holding a small child. (PHT, Vol. 1, 155:2-5.) That male
15 was the only other adult at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.)
16 Timothy Kline's first impression was that the patient was "lifeless...not
17 breathing...cyanotic...meaning that their oxygen level has dropped and they've been not
18 breathing, or not breathing adequately for at least several minutes." (PHT, Vol. 1, 155:8-14.)
19 Kline directed the male to place the child on a bench in the hallway so Kline could render care.
20 (PHT, Vol. 1, 156:18-23.) Kline evaluated Khayden's eyes, noting the pupils were dilated,
21 opened up and wide, nonresponsive and fixed in a wide position. (PHT, Vol. 1, 157:19-22.)
22 Based on the child's condition, Kline noted the call was much more severe than a Bravo level
23 response. (PHT, Vol. 1, 158:6-10.)

24 In an effort to treat the child, paramedic Kline asked the male who presented the child
25 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
26 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
27 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
28 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further

1 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which
2 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
3 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
4 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
5 Vol. 1, 163:4-8.) The medical treatment included breathing for the child, including chest
6 compressions and using a bag. (PHT, Vol. 1, 163:10-13, 177:23-12.) The child was also placed
7 on an EKG to ascertain the presence of electrical heart pulses. (PHT, Vol. 1, 163:10-15.)

8 An American Medical Response (AMR) unit also responded to the residence shortly
9 after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) The child patient was already
10 in the back of the Fire Department unit when AMR arrived. (PHT, Vol. 1, 207:1-5.) AMR
11 emergency technician Patrick Burkhalter inquired separately of Jonathan as to what had
12 caused Khayden's injuries to try to determine the nature of the fall. (PHT, Vol. 1, 208:21-25.)
13 Defendant initially reported to Burkhalter that Khayden was playing on the back of a recliner
14 type chair and fell off the back hitting his head on the floor. (PHT, Vol. 1, 210:1-3.) Defendant
15 specifically said the child fell backwards. (PHT, Vol. 1, 211:18-23.)

16 Burkhalter spoke with the Defendant a second time in an attempt to clarify how the
17 child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the second inquiry
18 because "the injuries that were sustained didn't - - um - - seem compatible to what we were
19 dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he actually hadn't
20 seen the child fall, but, rather he saw Khayden playing on a chair, then turned around and when
21 Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22, 213:11-22.)

22 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
23 had already been asked what had happened to the child, so he, too, asked Defendant what had
24 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
25 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
26 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.) Captain Pedrol made no further
27 attempts to clarify Defendant's statement, as Defendant was getting into the driver's seat of an
28 SUV to go to the hospital. (PHT, Vol. 1, 203:20-25.) Christina arrived at the family home

1 sometime after the Fire Department and AMR arrived, though her primary focus was to rush
2 in and get Khaysen and Jonathan to follow the ambulance to the hospital. (PHT, Vol. 1,
3 249:14-20.)

4 Khayden was transported to University Medical Center ("UMC") as required by Fire
5 Department Trauma Destination protocols arriving at approximately 623 p.m. (PHT, Vol. 1,
6 168:2-21.) According to Kline, UMC was the required destination based on the child's level
7 of consciousness, the status of the child's pupils and his lack of response to painful stimuli.
8 (PHT, Vol. 1, 168:10-13.) Khayden's presentation mandated he be taken to UMC trauma.
9 (PHT, Vol. 1, 168:13-14.) The Trauma Destination protocols related to child falls has to do
10 with the mechanism of injury to the child, where the height of the fall is part of the analysis.
11 (PHT, Vol. 1, 168:22-169:5) The mechanism of injury described by the adult male at the house
12 to Kline was less than ten feet or twice the height of the child, such that based on the reported
13 mechanism of injury alone, UMC Trauma was not a required destination for medical
14 treatment. (PHT, Vol. 1, 169:6-21.)

15 At the hospital, Khayden received treatment performed by and under the supervision
16 of Michael Casey, M.D. (PHT, Vol. 1, 20:7-17.) The CT scan of Khayden's head revealed a
17 linear skull fracture, extensive intracranial bleeding with a midline shift, and a tentorial shift
18 caused by blood pushing the brain down. (PHT, Vol. 1, 27:4-7, 19-21.) The herniation of the
19 brain caused Khayden's heart to stop during initial resuscitation, such that the herniation
20 would have slowed his heart and caused the blood pressure to drop until the heart ultimately
21 stopped working, though medical personnel restarted his heart. (PHT, Vol. 1, 30:19-23, 31:8-
22 11.) Dr. Casey concluded the injuries to the brain were caused by trauma. (PHT, Vol. 1, 28:23-
23 29:2.) The child also had contusions or bruises developing in the lungs. (PHT, Vol. 1, 30:6-8.)
24 Dr. Casey concluded the lung contusions were a different injury from the injuries to the head,
25 and would not have been a result of the intubation process. (PHT, Vol. 1, 65:18-22.)

26 Dr. Casey spoke with investigative personnel to try to determine the cause of
27 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
28 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of

1 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
2 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

3 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
4 required the reported fall to include some amount of rotational force that was not disclosed by
5 Defendant. (PHT, Vol. 1, 143:24-144:6.)

6 Based on the information gleaned at the hospital, Las Vegas Metropolitan Police
7 (LVMPD) detectives conducted a recorded interview with Jonathan Quisano at the family
8 residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-76:2.) Defendant
9 received Khayden and Khaysen from their caretaker around 4:30 p.m., at which time Khayden
10 appeared fine and showed no signs of injury. (PHT, Vol. 2, 77:11-14, 20-24.) Defendant
11 described Khayden playing on the couch with Khaysen while Defendant sat in a recliner in
12 the living room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with
13 different information as to whether or not he saw Khayden fall off the couch; at first stating
14 he didn't see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the
15 account where Defendant said he saw Khayden go over the couch he described looking over
16 and seeing Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.)
17 Defendant re-enacted the fall using the doll and showed LVMPD detectives Khayden was
18 facing down, head first and demonstrated Khayden slipping over the back of the couch. (PHT,
19 Vol. 2, 83:6-13; 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his
20 back parallel to the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden
21 jumping around on the couch or adopt jumping as part of the events leading up to Khayden's
22 injuries, though detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

23 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
24 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
25 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him up
26 and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
27 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
28 Defendant placed tissues and other items he used to clean up Khayden in trash cans around

1 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
2 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
3 Khayden.

4 Defendant stated he waited approximately ten minutes before calling his girlfriend,
5 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
6 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted
7 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
8 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going
9 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)
10 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
11 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

12 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of the Khayden
13 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
14 7:9-12.) Dr. Montes noted the chest CT revealed symmetric consolidation in the lungs, which
15 he opined is evidence of a collapsed lung from lack of oxygen, not pulmonary contusions.
16 (PHT, Vol. 2, 12:3-5, 12-22.) Dr. Montes noted in the abdominal CT that there appeared to
17 be inflammation or fluid around the pancreas. (PHT, Vol. 2, 14:10-15.) Dr. Montes also
18 reviewed the head CT that showed multiple injuries. (PHT, Vol. 2, 15:18-24.) Khayden
19 suffered a subdural hemorrhage on the left side of his skull that extended along the whole side
20 of the head from front to back. (PHT, Vol. 2, 17:4-7, 14-16.) The subdural hemorrhage was
21 acute, in that it was less than 48 hours old, and the heterogeneous color indicated the bleeding
22 was either active or not old enough to have started clotting. (PHT, Vol. 2, 17:21-18:1.) There
23 was also a small amount of blood in the posterior region of the brain, which Dr. Montes
24 associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.) The point of impact causing
25 the fracture would have been the center with the lines extending from the impact site in
26 multiple directions. (PHT, Vol. 2, 18:25-19:10.) Dr. Montes also noted a midline shift as a
27 result of brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse
28 cerebral edema signifying a global injury from either significant trauma or lack of oxygen.

1 (PHT, Vol. 2, 22:7-12.) More significantly, Dr. Montes opined the injuries to Khayden's head,
2 as depicted in the CT scan indicate he had suffered multiple injuries; one injury causing the
3 fracture and blood localized to the fracture site, and a separate injury causing the left-side
4 subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.)

5 Dr. Lisa Gavin performed the autopsy of Khayden Quisano on or about June 7, 2013.
6 (PHT, Vol. 3, 6:12-14.) The majority of the injuries salient to the autopsy findings were located
7 in the brain and skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to
8 occur within hours of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull,
9 Dr. Gavin located a stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3,
10 13:22-14:9.) There was also a subdural hemorrhage predominantly on the left side of the brain,
11 though there was also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side
12 subdural hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr.
13 Gavin noted the left side had a "great deal of hemorrhage" that extended along most of the left
14 side of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
15 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
16 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.) At autopsy, the lungs were filled
17 with blood, which could have obscured evidence of pulmonary contusions. (PHT, Vol. 3, 26:7-
18 15, 108:9-17.)

19 The brain, spinal cord, and eyeballs were sent to a neuropathologist for further testing.
20 (PHT, Vol. 3, 35:15-17.) The additional testing of the eyeballs revealed subdural
21 hemorrhaging in the optic nerve sheaths, with more in the right side than the left. (PHT, Vol.
22 3, 37:11-15.) The greater blood on the right side suggests more of an impact or focus of trauma
23 on the right side versus the left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed
24 multiple findings. (PHT, Vol. 3, 39:1-4, 15-17.) One finding was diffuse cerebral edema, or
25 swelling of the entire brain. (PHT, Vol. 3, 40:8-12.) The brain also revealed injury from
26 hypoxic ischemia, which appeared to be early in the process of oxygen deprivation causing
27 damage to the brain. (PHT, Vol. 3, 40:19-41:14.) There was also diffuse axonal injury, which
28 is damage to the axons of the brain cells. (PHT, Vol. 3, 41:19-25.) The axonal injuries were

1 found in the deeper areas of the brain. (PHT, Vol. 3, 43:2-44:1.) Such injury occurs when the
2 strands of the axon are torn or sheared, indicating the injury was caused by some sort of torsion
3 or rotational force. (PHT, Vol. 3, 42:1-4, 58:1-19.) The neuropathologist noted the extent of
4 the axonal injuries were caused by mixed etiologies, such that the injuries would have resulted
5 from both rotational forces and hypoxic ischemia. (PHT, Vol. 3, 142:20-143:1.)

6 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
7 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
8 noted there were multiple areas of injury to the brain such that there could be more than one
9 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as
10 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
11 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
12 55:7.) Ultimately Dr. Gavin determined manner of death to be undetermined. (PHT, Vol. 3,
13 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule it an accident
14 or a homicide. (PHT, Vol. 3, 55:21-56:2.) Notably, "in this case the information [revealed]
15 from the investigation doesn't match the severity of the injury, and because of that it's
16 undetermined in terms of what ended up causing this injury." (PHT, Vol. 3, 53:21-24.)

17 After the death of Khayden, Detectives conducted additional investigation obtaining
18 records from Hawaii involving the death of an older sibling and additional non-accidental
19 injuries suffered by Khayden in 2010. This resulted in greater scrutiny of the Defendant's
20 versions of the events leading up to Khayden's injuries and the Defendant failure to summon
21 medical assistance or render aid.

22 ARGUMENT

23 The State opposes the Defendant's motion in limine to exclude testimony regarding
24 trauma destination fall criteria protocol since it goes directly to paramedic Kline's training,
25 experience, and medical treatment provided in the instant case. Relevant evidence is "evidence
26 having any tendency to make the existence of any fact that is of consequence to the
27 determination of the action more or less probable." NRS 48.015.

28 //

1 Kline was the first paramedic on scene to render medical care to Khayden Quisano. In
2 the process of assessing Khayden's condition he asked the defendant what happened to
3 determine what injuries Khayden may be suffering from. The Defendant reported that
4 Khayden fell off the chair and when Kline clarified which chair, the La-Z-Boy recliner he had
5 to make decisions regarding Khayden's medical care and treatment. According to Kline, the
6 mechanism of injury described by the Defendant stood in stark contrast to Khayden's apparent
7 "lifeless" condition. It is at this juncture that Kline's training and experience were paramount
8 because he recognized that Khayden's injuries were inconsistent with the reported fall from
9 the chair and he had to treat Khayden for more significant injuries than the mechanism
10 suggested. Thus, the trauma destination protocol is part of Kline's decision-making process
11 because it takes into account the height of a fall in determining trauma destination. Based on
12 Kline's testimony at the preliminary hearing, it appears that the greater the fall, the more
13 serious the potential injury, and the higher level of care or hospital required. It also follows
14 from Kline's testimony at the preliminary hearing that but for Khayden's "lifeless"
15 presentation, UMC trauma may not have been the mandated hospital destination for the
16 mechanism of injury described by the Defendant.

17 As such, Kline should be permitted to testify regarding the trauma destination protocol
18 as part of his training, experience and decision-making process in the instant case.

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1 CONCLUSION

2 Based on the above and foregoing Points and Authorities, the State respectfully requests
3 that this Court deny Defendant's Motion in Limine to Exclude Testimony Regarding Trauma
4 Destination Fall Criteria Protocol.

5 DATED this 30th day of May, 2014.

6 STEVEN B. WOLFSON
7 DISTRICT ATTORNEY
8 Nevada Bar #001565

9 BY

10 
11 MICHELLE Y. JOBE
12 Chief Deputy District Attorney
13 Nevada Bar #010575


14 CERTIFICATE OF E-MAIL

15 I hereby certify that service of the above and foregoing, was made this 30th day of May,
16 2014, by e-mail to:

17 Nancy Lemcke, DPD
18 Email: lemckenl@ClarkCountyNV.gov

19 Norman Reed, DPD
20 Email: reednj@clarkcountynv.gov

21 pdclerk@clarkcountynv.gov

22 
23 Secretary for the District Attorney's Office
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28 13F09094X/MYJ/jr/MVU


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 MICHELLE Y. JOBE
9 Chief Deputy District Attorney
10 Nevada Bar #010575
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorneys for Plaintiff

15
16 **DISTRICT COURT**
17
18 **CLARK COUNTY, NEVADA**

19 THE STATE OF NEVADA,
20
21 Plaintiff,

22 -vs-

23 JONATHAN QUISANO,
24 #5991702

25 Defendant.

Case No. C-13-294266-1

Dept No. XXI

26
27 **OPPOSITION TO DEFENDANT'S MOTION TO STRIKE JURY VENIRE BASED**
28 **UPON THE AUTOMATIC EXCLUSION OF CONVICTED FELONS**

DATE OF HEARING: JUNE 3, 2014
TIME OF HEARING: 9:00 AM

29 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
30 through MICHAEL V. STAUDAHER and MICHELLE Y. JOBE, Chief Deputy District
31 Attorneys, and files this Opposition to Defendant's Motion to Strike Jury Venire Based Upon
32 the Automatic Exclusion of Convicted Felons.

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

36 //

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Defendant seeks to strike the jury venire, before trial commences, based on the
4 automatic exclusion of convicted felons. Following this argument to its logical, though
5 nonsensical end, Defendant essentially claims he can never be brought to trial in Clark County,
6 Nevada, any federal court in the country, or most states, based on the "automatic exclusion of
7 convicted felons." The State stands in opposition to this motion since the Defendant's assertion
8 as to the exclusion of felons misstates the law with respect to jury venires, and convicted felons
9 are not a distinctive group in the community¹.

10 Nevada Revised Statute 6.010 articulates those who are qualified to serve as jurors, as
11 follows:

12 "Except as otherwise provided in this section, every qualified
13 elector of the State, whether registered or not, who has sufficient
14 knowledge of the English language, and who has not been
15 convicted of treason, a felony, or other infamous crime, and who
16 is not rendered incapable by reason of physical or mental
17 infirmity, is a qualified juror of the county in which the person
resides. A person who has been convicted of a felony is not a
qualified juror of the county in which the person resides *until the
person's civil right to serve as a juror has been restored pursuant
to NRS 176A.850, 179.285, 213.090, 213.155 or 213.157.*"
(emphasis added)

18 The plain language alone belies the Defendant's assertion that all convicted felons are
19 excluded as a matter of course from being called for jury service. Rather, it is only convicted
20 felons who have not had their civil rights restored who are precluded.

21 In order to make a claim that his Constitutional right has been violated, the Defendant
22 must show:

23 "(1) that the group alleged to be excluded is a distinctive group in
24 the community; (2) that the representation of this group in venires
25 from which juries are selected is not fair and reasonable in relation
to the number of such persons in the community; and (3) that this
underrepresentation is due to systematic exclusion of the group in
the jury-selection process."

26 Evans v. State, 112 Nev. 1172, 1186, 926 P.2d 265, 275 (1996).

27 ¹ Since the Defendant's motion necessarily calls into question the validity of the Constitution of Nevada and Nevada statutes, the
28 Attorney General's office should have been served with the instant motion and given an opportunity to respond. However, since the
motion is without merit, the State provides the following response.

1 The Defendant cannot meet the first prong necessary to show his Constitutional right
2 has been violated because convicted felons who have not had their civil rights restored are not
3 a distinctive group in the community. A "distinctive group" is based on such categories as race
4 or other protected classes. *See Evans v. State*, 112 Nev. 1172, 1186-1187, 926 P.2d 265, 274-
5 275 (1996); *Bishop v. State*, 92 Nev. 510, 515-517, 554 P.2d 266, 270-271 (1976).

6 Thus, the guarantee of an impartial jury chosen from a fair cross-section of the
7 community is a Constitutional right, but is not violated by the exclusion of convicted felons
8 who have not had their civil rights restored. Accordingly, the Defendant's claim that venire
9 should be stricken is without merit.


10 CONCLUSION

11 Based on the above and foregoing Points and Authorities, the State respectfully requests
12 that this Court deny Defendant's Motion to Strike Jury Venire Based Upon the Automatic
13 Exclusion of Convicted Felons.

14 DATED this 30th day of May, 2014.

15 STEVEN B. WOLFSON
16 DISTRICT ATTORNEY
Nevada Bar #001565

17
18 BY


19 MICHELLE Y. JOBE *per*
Chief Deputy District Attorney
20 Nevada Bar #010575
21
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25
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27
28

1 CERTIFICATE OF E-MAIL

2 I hereby certify that service of the above and foregoing, was made this 30th day of May,
3 2014, by e-mail to:

4 Nancy Lemcke, DPD
5 Email: lemckenl@ClarkCountynv.gov

6 Norman Reed, DPD
7 Email: reednj@clarkcountynv.gov

8 pdclerk@clarkcountynv.gov

9 
10 Secretary for the District Attorney's Office

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28 13F09094X/MYJ/jr/MVU


CLERK OF THE COURT

1 NOTM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 JONATHAN QUISANO,
16 #5991702

17 Defendant.

CASE NO: C-13-294266-1

DEPT NO: XXI

HEARING DATE
ALREADY ENTERED
IN ODYSSEY

18 STATE'S MOTION IN LIMINE TO STRIKE OR LIMIT THE TESTIMONY
19 OF DEFENDANT'S EXPERTS JOHN FARLEY AND ROBERT ROTHFEDER OR
20 IN THE ALTERNATIVE A REQUEST FOR AN EVIDENTIARY HEARING

21 DATE OF HEARING: JUNE 5, 2014

22 TIME OF HEARING: 9:30 A.M.

23 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
24 District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and
25 files this State's Motion in Limine to Strike Defendant's Experts John Farley and Robert
26 Rothfeder or in the Alternative a Request for an Evidentiary Hearing.

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

///

///

NOTICE OF HEARING
DATE 6/5/14 TIME 9:30
APPROVED BY J. Macaule

1 **POINTS AND AUTHORITIES**

2 **PROCEDURAL BACKGROUND**

3 On May 19, 2014, Defendant Quisano filed an expert witness notice identifying John
4 Farley, Ph.D., and Robert Rothfeder, M.D., as defense experts in the instant case. Dr. Farley
5 was noticed as providing testimony about the application of G-force in a domestic environment
6 and the results of G force testing that he apparently conducted in this case. Dr. Rothfeder was
7 noticed as a physician/pathologist who would provide opinions and findings pertaining to the
8 observations, diagnoses, and treatment of Khayden Quisano, as well as the cause/manner of
9 Khayden's death. In addition, Dr. Rothfeder, was noticed as providing expert testimony
10 concerning injury patterns, mechanisms of injury and causes of injury.

11 The notice that Defendant Quisano filed did not contain any reports produced by either
12 expert or any information concerning the results of any testing that was performed by either
13 noticed witness. On May 20, 2014, the State specifically requested said reports and testing
14 results, as well as any video or photographs associated with said testing. The State also
15 requested a list of items or information that each witness was provided in arriving at their
16 opinions.

17 On May 27, 2014, the defense provided the State with a report of testing from Dr.
18 Farley, but no accompanying video or photos of that testing. No information was provided
19 for Dr. Rothfeder and no information concerning what materials were provided to either expert
20 for their review. The State has yet to receive any video, photographs or supplementary
21 material or reports from said experts.

22 **STATEMENT OF FACTS**

23 Thursday, June 6, 2013, started out like a normal day; Christina Rodrigues woke up her
24 two sons with the Defendant, Khayden and Khaysen Quisano, around 6:30 a.m., got ready for
25 work and prepared the boys ready for their day. (PHT Vol. 1, 240:11-12). That morning both
26 Khayden and Khaysen were acting normal; happy, smiling, and watching television and
27 getting dressed. (PHT Vol. 1, 240:20-24). Christina then took her boys to her Grandmother
28 Clara Rodrigues' house around 7:15 a.m., where they would stay until they were taken home

1 to their father. (PHT, Vol. 1, 240:6-14) Christina then went to work, where she would work
2 until approximately 5 p.m. (Vol 1, 240:14-15). While Christina was at work, her grandfather
3 and grandmother dropped the boys off to Jonathan Quisano during the afternoon. (PHT Vol.
4 1, 239:19-23.) From there, Jonathan was solely responsible for the care of Khayden and
5 Khaysen. (PHT Vol. 1, 239:24-240:2). Christina worked the entire day of June 6, 2013,
6 without any phone calls or updates as to how the boys were doing. (PHT Vol. 1, 241:13-19.)
7 Everything changed shortly after she clocked out of work. (PHT, Vol. 1, 241:20-24.)

8 Jonathan called Christina around 510 p.m., after she had clocked out of work and as
9 she was walking to her car to drive home. (PHT Vol. 1, 241:20-24.) During the call Jonathan
10 asked Christina where she was and urged Christina to hurry home. (PHT, Vol. 1, 242:10-14.)
11 Jonathan didn't tell her why she needed to hurry or describe anything as being wrong at the
12 house. (PHT, Vol. 1, 242:20-24.) A few minutes later Jonathan called Christina a second time,
13 again, asking Christina where she was and urging her to hurry home. (PHT, Vol. 1, 242:24-
14 243:2.) Jonathan still didn't provide any information as to why she needed to hurry home, but
15 rather, urged her to hurry home and then hung up the phone. (PHT, Vol. 1, 243:2-3.) Christina
16 called Jonathan back a few minutes later asking why she needed to hurry home. (PHT, Vol. 1,
17 243:3-5.) Christina wanted to know why Jonathan wanted her to hurry home. (PHT, Vol. 1,
18 243:21-23.) Specifically and only in direct response to Christina's call and question, Jonathan
19 said, "The boys were playing on the couch, and Khayden fell over, and I guess hit his head,
20 and -- um -- he said he wasn't opening his eyes, and he tried to put water on him, he wasn't
21 getting up." (PHT, Vol. 1, 244:9-13.)

22 After Jonathan explained what happened Christina asked Jonathan if he had called 9-
23 1-1, but he hadn't done so and gave no explanation as to why not. (PHT, Vol. 1, 244:13-14,
24 247:11, 17-20.) At that point Christina told Jonathan she was going to call 9-1-1 and this time
25 she hung up on Jonathan. (PHT, Vol. 1, 247:21-24.) Armed only with the information Jonathan
26 had provided, Christina called 9-1-1 right away. (PHT, Vol. 1, 248:4-5.) Christina advised the
27 9-1-1 operator who she was, that she was driving home from work and that Jonathan told her
28 the baby was playing on the couch and fell over. (PHT, Vol. 1, 248:8-11.)

1 Las Vegas City Fire Department responded to the family home around 5:56 or 5:58
2 p.m. as a result of the 9-1-1 call. (PHT, Vol. 1, 153:3-5, 154:22-24.) The call was initially
3 coded as a Bravo level response based on the information provided by Christina. (PHT, Vol.
4 1, 153:5-14.) Upon arriving at the residence, Timothy Kline, a paramedic, was approached by
5 a male who opened the front door holding a small child. (PHT, Vol. 1, 155:2-5). That male
6 was the only other adult at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.)
7 Timothy Kline's first impression was that the patient was "lifeless...not
8 breathing...cyanotic...meaning that their oxygen level has dropped and they've been not
9 breathing, or not breathing adequately for at least several minutes." (PHT, Vol. 1, 155:8-14.)
10 Kline directed the male to place the child on a bench in the hallway so Kline could render care.
11 (PHT, Vol. 1, 156:18-23.) Kline evaluated Khayden's eyes, noting the pupils were dilated,
12 opened up and wide, nonresponsive and fixed in a wide position. (PHT, Vol. 1, 157:19-22.)
13 Based on the child's condition, Kline noted the call was much more severe than a Bravo level
14 response. (PHT, Vol. 1, 158:6-10.)

15 In an effort to treat the child, paramedic Kline asked the male who presented the child
16 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
17 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
18 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
19 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further
20 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which
21 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
22 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
23 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
24 Vol. 1, 163:4-8.) The medical treatment included breathing for the child, including chest
25 compressions and using a bag. (PHT, Vol. 1, 163:10-13, 177:23-12.) The child was also placed
26 on an EKG to ascertain the presence of electrical heart pulses. (PHT, Vol. 1, 163:10-15.)

27 An American Medical Response (AMR) unit also responded to the residence shortly
28 after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) The child patient was already

1 in the back of the Fire Department unit when AMR arrived. (PHT, Vol. 1, 207:1-5.) AMR
2 emergency technician Patrick Burkhalter inquired separately of Jonathan as to what had
3 caused Khayden's injuries to try to determine the nature of the fall. (PHT, Vol. 1, 208:21-25.)
4 Defendant initially reported to Burkhalter that Khayden was playing on the back of a recliner
5 type chair and fell off the back hitting his head on the floor. (PHT, Vol. 1, 210:1-3.) Defendant
6 specifically said the child fell backwards. (PHT, Vol. 1, 211:18-23.)

7 Burkhalter spoke with the Defendant a second time in an attempt to clarify how the
8 child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the second inquiry
9 because "the injuries that were sustained didn't - - um - - seem compatible to what we were
10 dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he actually hadn't
11 seen the child fall, but, rather he saw Khayden playing on a chair, then turned around and when
12 Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22, 213:11-22.)

13 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
14 had already been asked what had happened to the child, so he, too, asked Defendant what had
15 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
16 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
17 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.) Captain Pedrol made no further
18 attempts to clarify Defendant's statement, as Defendant was getting into the driver's seat of an
19 SUV to go to the hospital. (PHT, Vol. 1, 203:20-25.) Christina arrived at the family home
20 sometime after the Fire Department and AMR arrived, though her primary focus was to rush
21 in and get Khaysen and Jonathan to follow the ambulance to the hospital. (PHT, Vol. 1,
22 249:14-20.)

23 Khayden was transported to University Medical Center ("UMC") as required by Fire
24 Department Trauma Destination protocols arriving at approximately 623 p.m. (PHT, Vol. 1,
25 168:2-21.) At the hospital, Khayden received treatment performed by and under the
26 supervision of Michael Casey, M.D. (PHT, Vol. 1, 20:7-17.) The CT scan of Khayden's head
27 revealed a linear skull fracture, extensive intracranial bleeding with a midline shift, and a
28 tentorial shift caused by blood pushing the brain down. (PHT, Vol. 1, 27:4-7, 19-21.) The

1 herniation of the brain caused Khayden's heart to stop during initial resuscitation, such that
2 the herniation would have slowed his heart and caused the blood pressure to drop until the
3 heart ultimately stopped working, though medical personnel restarted his heart. (PHT, Vol. 1,
4 30:19-23, 31:8-11.) Dr. Casey concluded the injuries to the brain were caused by trauma.
5 (PHT, Vol. 1, 28:23-29:2.) The child also had contusions or bruises developing in the lungs.
6 (PHT, Vol. 1, 30:6-8.) Dr. Casey concluded the lung contusions were a different injury from
7 the injuries to the head, and would not have been a result of the intubation process. (PHT, Vol.
8 1, 65:18-22.)

9 Dr. Casey spoke with investigative personnel to try to determine the cause of
10 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
11 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of
12 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
13 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

14 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
15 required the reported fall to include some amount of rotational force that was not disclosed by
16 Defendant. (PHT, Vol. 1, 143:24-144:6.)

17 Based on the information gleaned at the hospital, Las Vegas Metropolitan Police
18 (LVMPD) detectives conducted a recorded interview with Jonathan Quisano at the family
19 residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-76:2.) Defendant
20 received Khayden and Khaysen from their caretaker around 4:30 p.m., at which time Khayden
21 appeared fine and showed no signs of injury. (PHT, Vol. 2, 77:11-14, 20-24.) Defendant
22 described Khayden playing on the couch with Khaysen while Defendant sat in a recliner in
23 the living room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with
24 different information as to whether or not he saw Khayden fall off the couch; at first stating
25 he didn't see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the
26 account where Defendant said he saw Khayden go over the couch he described looking over
27 and seeing Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.)
28 Defendant re-enacted the fall using the doll and showed LVMPD detectives Khayden was

1 facing down, head first and demonstrated Khayden slipping over the back of the couch. (PHT,
2 Vol. 2, 83:6-13; 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his
3 back parallel to the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden
4 jumping around on the couch or adopt jumping as part of the events leading up to Khayden's
5 injuries, though detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

6 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
7 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
8 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him up
9 and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
10 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
11 Defendant placed tissues and other items he used to clean up Khayden in trash cans around
12 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
13 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
14 Khayden.

15 Defendant stated he waited approximately ten minutes before calling his girlfriend,
16 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
17 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted
18 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
19 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going
20 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)
21 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
22 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

23 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of the Khayden
24 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
25 7:9-12.) Dr. Montes noted the chest CT revealed symmetric consolidation in the lungs, which
26 he opined is evidence of a collapsed lung from lack of oxygen, not pulmonary contusions.
27 (PHT, Vol. 2, 12:3-5, 12-22.) Dr. Montes noted in the abdominal CT that there appeared to
28 be inflammation or fluid around the pancreas. (PHT, Vol. 2, 14:10-15.) Dr. Montes also

1 reviewed the head CT that showed multiple injuries. (PHT, Vol. 2, 15:18-24.) Khayden
2 suffered a subdural hemorrhage on the left side of his skull that extended along the whole side
3 of the head from front to back. (PHT, Vol. 2, 17:4-7, 14-16.) The subdural hemorrhage was
4 acute, in that it was less than 48 hours old, and the heterogeneous color indicated the bleeding
5 was either active or not old enough to have started clotting. (PHT, Vol. 2, 17:21-18:1.) There
6 was also a small amount of blood in the posterior region of the brain, which Dr. Montes
7 associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.) The point of impact causing
8 the fracture would have been the center with the lines extending from the impact site in
9 multiple directions. (PHT, Vol. 2, 18:25-19:10.) Dr. Montes also noted a midline shift as a
10 result of brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse
11 cerebral edema signifying a global injury from either significant trauma or lack of oxygen.
12 (PHT, Vol. 2, 22:7-12.) More significantly, Dr. Montes opined the injuries to Khayden's head,
13 as depicted in the CT scan indicate he had suffered multiple injuries; one injury causing the
14 fracture and blood localized to the fracture site, and a separate injury causing the left-side
15 subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.)

16 Dr. Lisa Gavin performed the autopsy of Khayden Quisano on or about June 7, 2013.
17 (PHT, Vol. 3, 6:12-14.) The majority of the injuries salient to the autopsy findings were located
18 in the brain and skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to
19 occur within hours of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull,
20 Dr. Gavin located a stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3,
21 13:22-14:9.) There was also a subdural hemorrhage predominantly on the left side of the brain,
22 though there was also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side
23 subdural hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr.
24 Gavin noted the left side had a "great deal of hemorrhage" that extended along most of the left
25 side of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
26 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
27 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.) At autopsy, the lungs were filled
28 with blood, which could have obscured evidence of pulmonary contusions. (PHT, Vol. 3, 26:7-

1 15, 108:9-17.)

2 The brain, spinal cord, and eyeballs were sent to a neuropathologist for further testing.
3 (PHT, Vol. 3, 35:15-17.) The additional testing of the eyeballs revealed subdural
4 hemorrhaging in the optic nerve sheaths, with more in the right side than the left. (PHT, Vol.
5 3, 37:11-15.) The greater blood on the right side suggests more of an impact or focus of trauma
6 on the right side versus the left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed
7 multiple findings. (PHT, Vol. 3, 39:1-4, 15-17.) One finding was diffuse cerebral edema, or
8 swelling of the entire brain. (PHT, Vol. 3, 40:8-12.) The brain also revealed injury from
9 hypoxic ischemia, which appeared to be early in the process of oxygen deprivation causing
10 damage to the brain. (PHT, Vol. 3, 40:19-41:14.) There was also diffuse axonal injury, which
11 is damage to the axons of the brain cells. (PHT, Vol. 3, 41:19-25.) The axonal injuries were
12 found in the deeper areas of the brain. (PHT, Vol. 3, 43:2-44:1.) Such injury occurs when the
13 strands of the axon are torn or sheared, indicating the injury was caused by some sort of torsion
14 or rotational force. (PHT, Vol. 3, 42:1-4, 58:1-19.) The neuropathologist noted the extent of
15 the axonal injuries were caused by mixed etiologies, such that the injuries would have resulted
16 from both rotational forces and hypoxic ischemia. (PHT, Vol. 3, 142:20-143:1.)

17 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
18 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
19 noted there were multiple areas of injury to the brain such that there could be more than one
20 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as
21 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
22 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
23 55:7.) Ultimately Dr. Gavin determined manner of death to be undetermined. (PHT, Vol. 3,
24 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule it an accident
25 or a homicide. (PHT, Vol. 3, 55:21-56:2.) Notably, "in this case the information [revealed]
26 from the investigation doesn't match the severity of the injury, and because of that it's
27 undetermined in terms of what ended up causing this injury." (PHT, Vol. 3, 53:21-24.)

28 After the death of Khayden, Detectives conducted additional investigation obtaining

1 records from Hawaii involving the death of an older sibling and additional non-accidental
2 injuries suffered by Khayden in 2010. This resulted in greater scrutiny of the Defendant's
3 versions of the events leading up to Khayden's injuries and the Defendant failure to summon
4 medical assistance or render aid.

5 ARGUMENT

6 NRS 50.275 states that "[i]f scientific, technical or other specialized knowledge will
7 assist the trier of fact to understand the evidence or to determine a fact in issue, a witness
8 qualified as an expert by special knowledge, skill, experience, training or education may testify
9 to matters within the scope of such knowledge."

10 Expert testimony generally is admissible to aid the jury when the subject matter is
11 distinctly related to a science, skill or occupation which is beyond the knowledge or experience
12 of an average lay person. NRS 50.275; Yamaha Motor Co. v. Arnoult, 114 Nev. 233, 243, 955
13 P.2d 661 (1998).

14 Conversely, expert testimony is not admissible where the issue involves a matter of
15 common knowledge. In assessing the credibility of a witness, jurors must rely on their ordinary
16 experiences of life, common knowledge of the tendencies of human behavior, and
17 observations of the witness' character and demeanor.

18 "Clearly, before a witness may testify as to his or her expert opinion, the district court
19 must first determine that the witness is indeed a qualified expert. *See, e.g., Fernandez v.*
20 *Admirand*, 108 Nev. 963, 969, 843 P.2d 354, 358 (1992) (stating that once a witness is
21 qualified as an expert, he or she may testify to all matters within his or her experience or
22 training); *Houston Exploration v. Meredith*, 102 Nev. 510, 513, 728 P.2d 437, 439 (1986)
23 (indicating that the proffered expert testimony may be admitted only after the witness is
24 qualified as an expert).

25 The Supreme Court of Nevada has consistently held that a Trial Court has discretion to
26 qualify a particular witness as an expert and to permit that witness to give opinion evidence."
27 *See Rudin v. State*, 120 Nev. 121, 135, 86 P.3d 572, 581 (2004).

28 In *Hallmark, v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008), the Nevada Supreme

1 Court extensively reviewed the requirements of NRS 50.275 in determining whether or not it
2 was proper for a designated expert to provide testimony. In addressing this issue the Court
3 stated that:

4 To testify as an expert witness under NRS 50.275, the witness
5 must satisfy the following three requirements: (1) he or she must
6 be qualified in an area of "scientific, technical or other specialized
7 knowledge" (the qualification requirement); (2) his or her
8 specialized knowledge must "assist the trier of fact to understand
the evidence or to determine a fact in issue" (the assistance
requirement); and (3) his or her testimony must be limited "to
matters within the scope of [his or her specialized] knowledge"
(the limited scope requirement).

9 Id. at 497, 189 P.3d at 650. With regard to the **qualification requirement**, the Court stated
10 that a district court "[i]n determining whether a person is properly qualified, a district court
11 should consider the following factors: (1) formal schooling and academic degrees, (2)
12 licensure, (3) employment experience, and (4) practical experience and specialized training."
13 Id. The Court went on to state that the factors were not exhaustive and that a reviewing court
14 should accord them varying weights which may be different from case to case.

15 With regard to the **assistance requirement**, the Court stated that:

16 If a person is qualified to testify as an expert under NRS 50.275,
17 the district court must then determine whether his or her expected
18 testimony will assist the trier of fact in understanding the evidence
19 or determining a fact in issue. An expert's testimony will assist
20 the trier of fact only when it is relevant and the **product of reliable
methodology**. In determining whether an expert's opinion is based
upon reliable methodology, a district court should consider
whether the opinion is (1) within a

21 **recognized field of expertise; (2) testable and has been tested;**
22 **(3) published and subjected to peer review; (4) generally**
23 **accepted in the scientific community** (not always
24 determinative); and (5) based more on particularized facts rather
25 than assumption, conjecture, or generalization. If the expert
26 formed his or her opinion based upon the results of a technique,
27 experiment, or calculation, then a district court should also
28 consider whether (1) the technique, experiment, or calculation was
controlled by known standards; (2) the testing conditions were
similar to the conditions at the time of the incident; (3) the
technique, experiment, or calculation had a **known error rate;**
and (4) it was developed by the proffered expert for purposes of
the present dispute.

//

1 Id. at 501-02, 189 P.3d at 652-53 (emphasis added). The Court again reiterated that these
2 factors were not exhaustive and that a reviewing court should accord them varying weights
3 which may be different from case to case.

4 In Hallmark, the expert in question offered biomechanical testimony. The expert had
5 relied upon photographs, the complaint, the answer, medical records and depositions. The
6 Court held that a biomechanical expert's testimony lacked a sufficient factual basis on which
7 to form his opinion and, therefore, the testimony was improperly admitted.

8 In the instant case, with regard to Dr. Farley's proposed testimony, the report he
9 produced does not provide any information about the items Dr. Farley was provided or which
10 he relied upon or considered in his evaluation. Dr. Farley does not disclose what type of
11 anthropomorphic dummy he employed. Dr. Farley does not reference any supporting
12 literature which would indicate that the dummy he used has been used to measure low velocity
13 impacts, as occurred in the instant case. Dr. Farley has not indicated that the methods he
14 employed in the experiments he conducted are generally accepted in the scientific community
15 for the situation presented in the instant case. Dr. Farley has not provided any information or
16 cited to any studies which show that the methods he employed are in anyway valid under the
17 conditions tested.

18 It appears as though Dr. Farley simply ordered up an anthropomorphic dummy, turned
19 it on, dropped it from several different positions and recorded some measurements. There is
20 nothing in of Dr. Farley's testing results which indicates that the tests he employed are valid
21 or that they meet any of the assistance requirements of NRS 50.275 as outlined *supra*. In fact,
22 as an example, there is not a single reference in any of the results of Dr. Farley's test of any
23 measurement of time interval of impact. A review of even the cited materials in Dr. Farley's
24 report specify that this measurement is critical and that results can vary greatly depending on
25 the time interval involved. Since said time measurements were not included in his report, one
26 must speculate about what the time interval was and how that may have affected his results.

27 In any case, we have no information that the methodology Dr. Farley used is reliable
28 in this particular scenario, that similar methodology has been published or subject to peer

1 review, that it is generally accepted in the scientific community, that it is based on
2 particularized facts, that Dr. Farley used known standards, or that the testing conditions were
3 similar to those occurring at the time of the incident. Furthermore, Dr. Farley never mentions
4 anything about what his experiment's known error rate was or if he even able to determine it.

5 It should be noted that anthropomorphic test dummies (ATDs) were developed to
6 evaluate motor vehicle crashes and the safety of occupant protection systems during high
7 energy events. There is no published peer reviewed literature which has extended the use of
8 ATD's in evaluating lower energy events. Dr. Farley mentions biofidelity in his report, but
9 the true context of that term in this evaluation pertains to whether or not there is any true
10 biofidelity in the use of an ATD for low velocity energy events as compared to the high
11 velocity energy event where the ATDs were designed to be used. The State submits that Dr.
12 Farley's lacks a sufficient factual basis on which to form his opinions and, therefore, his
13 testimony should not be admitted.

14 With regard to Dr. Rothfeder, the State does not have any information about what
15 materials were provided to Dr. Rothfeder, what he reviewed and what his opinions and
16 findings actually are in this case. The State also has, therefore, no information with which to
17 determine if Dr. Rothfeder has relevant information to provide and to what extent that
18 information comports with the requirements of NRS 50.275. It should be noted that Dr.
19 Rothfeder, is both a physician and an attorney and is actually of counsel with a law firm in
20 addition to maintaining a full time medical practice. According to his curriculum vitae, Dr.
21 Rothfeder has been "seriously interested in brain injury issues in children and adults, infant
22 injury evaluation, and child abuse cases for the past 15 years." Said interest does not
23 necessarily comport with any expertise in any particular field and without more the State
24 submits that Dr. Rothfeder also lacks a sufficient factual basis on which to form his opinions
25 and, therefore, his testimony should not be admitted.

26 //

27 //

28 //

1 CONCLUSION

2 For the reasons stated above, the State respectfully requests that the Court strike or
3 limit the testimony of the defense experts or in the alternative, conduct an evidentiary
4 hearing to determine whether or not the defense witnesses meet the requirements of NFS
5 50.275 and Hallmark, and if so, what the scope of their allowed testimony will be in the
6 instant matter.

7 DATED this 2nd day of June, 2013.

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

10
11 BY 

12 MICHAEL V. STAUDAHER
13 Chief Deputy District Attorney
14 Nevada Bar #008273

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16 I hereby certify that service of **MOTION IN LIMINE TO STRIKE OR LIMIT THE**
17 **TESTIMONY OF DEFENDANT'S EXPERTS JOHN FARLEY AND ROBERT**
18 **ROTHFEDER OR IN THE ALTERNATIVE A REQUEST FOR AN EVIDENTIARY**
19 **HEARING** was made this 2nd day of June, 2014, by facsimile transmission to:

20 NANCY LEMCKE, Deputy Public Defender
21 E-Mail: LemckeNL@clarkcountynv.gov

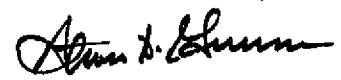
22 NORMAN REED, Deputy Public Defender
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25 BY: 

26 J. Robertson
27 Employee of the District Attorney's Office

28 13F09094X/MVS/jr/MVU


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

11 **THE STATE OF NEVADA,**
12 **Plaintiff,**

13 **-vs-**

14 **JONATHAN QUISANO,**
15 **#5991702**

16 **Defendant.**

CASE NO: C-13-294266-1

DEPT NO: XXI

17 **STATE'S REPLY IN SUPPORT OF MOTION TO ADMIT EVIDENCE OF OTHER**
18 **CRIMES, WRONGS OR ACTS**

19 **DATE OF HEARING: JUNE 3, 2014**
20 **TIME OF HEARING: 9:30 A.M.**

21 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
22 **District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and**
23 **hereby submits the attached Points and Authorities in Reply in Support of Motion to Admit**
24 **Evidence of Other Crimes, Wrongs or Acts.**

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

28 **//**

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS REGARDING DEATH OF KHAYDEN QUISANO

3 On June 6, 2013, the Defendant received Khayden and his brother Khaysen from
4 relatives who had watched the boys earlier in the day. According to all individuals, both the
5 relatives who had watched the boys earlier and the day and the Defendant, both Khayden and
6 Khaysen were without injury and normal at the time they were delivered to the Defendant.
7 From the time the boys were placed in his sole care and custody until paramedics arrived,
8 something traumatic happened to Khayden that resulted in multiple, life-threatening injuries
9 that ultimately led to his death.

10 The Defendant, the only eye-witness to the event, gave multiple versions of what
11 happened to Khayden to Christina and first responders. The Defendant first contacted
12 Christina at approximately 510 p.m., a time when he knew she would be done with work and
13 headed home. (PHT Vol. 1, 241:20-24.) Interestingly, the Defendant did not relay to her
14 Khayden's dire condition or that he had reportedly fallen off the couch. (PHT, Vol. 1, 242:20-
15 24.) Rather, the Defendant simply told Christina to hurry home. (PHT Vol. 1, 241:20-24.) A
16 short while later, the Defendant, again, initiated a phone call to Christina while she was driving
17 home. (PHT, Vol. 1, 242:24-243:2.) Again, the Defendant failed to mention anything about
18 Khayden's condition or what had happened. (PHT, Vol. 1, 242:24-243:2.) And, again, the
19 Defendant urged Christina to hurry home, and terminated the phone call. (PHT, Vol. 1, 243:2-
20 3.)

21 Christina became alarmed and called the Defendant back to ask why she needed to
22 hurry home. (PHT, Vol. 1, 243:3-5, 21-23.) Then, and only then, did the Defendant tell
23 Christina, "The boys were playing on the couch, and Khayden fell over, and I guess hit his
24 head, and -- um - - he said he wasn't opening his eyes, and he tried to put water on him, he
25 wasn't getting up." (PHT, Vol. 1, 244:9-13.) With that brief explanation, Christina
26 immediately recognized the seriousness of Khayden's condition. She asked Jonathan if he had
27 called 9-1-1, at which time she learned he hadn't done so and without any explanation as to
28 why he called her first. (PHT, Vol. 1, 244:13-14, 247:11, 17-20.) Christina decided she would

1 call 9-1-1 and relayed this to Jonathan. (PHT, Vol. 1, 247:21-24.) She then hung up on
2 Jonathan and immediately called 9-1-1 and told the operators what little information Jonathan
3 had relayed to her. (PHT, Vol. 1, 248:4-5, 8-11.)

4 Timothy Kline, a paramedic with Las Vegas City Fire, was first on scene to encounter
5 the Defendant and Khayden. (PHT, Vol. 1, 155:2-5). The Defendant was the only other adult
6 at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.) Timothy Kline's first
7 impression was that the patient was "lifeless...not breathing...cyanotic...meaning that their
8 oxygen level has dropped and they've been not breathing, or not breathing adequately for at
9 least several minutes." (PHT, Vol. 1, 155:8-14.) Kline directed the male to place the child on
10 a bench in the hallway so Kline could render care. (PHT, Vol. 1, 156:18-23.) Kline evaluated
11 Khayden's eyes, noting the pupils were dilated, opened up and wide, nonresponsive and fixed
12 in a wide position. (PHT, Vol. 1, 157:19-22.)

13 In an effort to treat the child, paramedic Kline asked the male who presented the child
14 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
15 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
16 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
17 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further
18 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which
19 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
20 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
21 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
22 Vol. 1, 163:4-8.)

23 Patrick Burkhalter with American Medical Response (AMR) also responded to the
24 residence shortly after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) Burkhalter
25 inquired separately of Jonathan as to what had caused Khayden's injuries to try to determine
26 the nature of the fall. (PHT, Vol. 1, 208:21-25.) Defendant initially reported to Burkhalter that
27 Khayden was playing on the back of a recliner type chair and fell off the back hitting his head
28 on the floor. (PHT, Vol. 1, 210:1-3.) Defendant specifically said the child fell backwards.

1 (PHT, Vol. 1, 211:18-23.) Burkhalter spoke with the Defendant a second time in an attempt to
2 clarify how the child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the
3 second inquiry because "the injuries that were sustained didn't - - um - - seem compatible to
4 what we were dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he
5 actually hadn't seen the child fall, but, rather he saw Khayden playing on a chair, then turned
6 around and when Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22,
7 213:11-22.)

8 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
9 had already been asked what had happened to the child, so he, too, asked Defendant what had
10 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
11 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
12 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.)

13 Khayden was transported to University Medical Center ("UMC") where he received
14 treatment performed by and under the supervision of Michael Casey, M.D. (PHT, Vol. 1, 20:7-
15 17.) The CT scan of Khayden's head revealed a linear skull fracture, extensive intracranial
16 bleeding with a midline shift, and a tentorial shift caused by blood pushing the brain down.
17 (PHT, Vol. 1, 27:4-7, 19-21.) The herniation of the brain caused Khayden's heart to stop
18 during initial resuscitation, though medical personnel restarted his heart. (PHT, Vol. 1, 30:19-
19 23, 31:8-11.) Dr. Casey concluded the injuries to the brain were caused by trauma. (PHT, Vol.
20 1, 28:23-29:2.) The child also had contusions or bruises developing in the lungs. (PHT, Vol.
21 1, 30:6-8.) Dr. Casey concluded the lung contusions were a different injury from the injuries
22 to the head, and would not have been a result of the intubation process. (PHT, Vol. 1, 65:18-
23 22.)

24 Dr. Casey spoke with investigative personnel to try to determine the cause of
25 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
26 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of
27 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
28 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

1 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
2 required the reported fall to include some amount of rotational force that was not disclosed by
3 the Defendant. (PHT, Vol. 1, 143:24-144:6.)

4 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of Khayden
5 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
6 7:9-12.) Dr. Montes noted the head CT showed Khayden suffered from multiple injuries.
7 (PHT, Vol. 2, 15:18-24.) Dr. Montes confirmed Khayden suffered from a skull fracture, but
8 the fracture was more complex than what Dr. Casey noted. Specifically, it was a stellate
9 fracture meaning there was a point of impact that caused the fracture, noted to be at the center
10 with the multiple lines extending from the impact site in different directions. (PHT, Vol. 2,
11 18:25-19:10.) There was also a small amount of blood in the posterior region of the brain,
12 which Dr. Montes associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.)

13 The brain imaging also revealed Khayden suffered a subdural hemorrhage on the left
14 side of his skull that extended along the whole side of the head from front to back. (PHT, Vol.
15 2, 17:4-7, 14-16.) The subdural hemorrhage was acute, in that it was less than 48 hours old,
16 and the heterogeneous color indicated the bleeding was either active or not old enough to have
17 started clotting. (PHT, Vol. 2, 17:21-18:1.) Dr. Montes also noted a midline shift as a result of
18 brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse cerebral
19 edema signifying a global injury from either significant trauma or lack of oxygen. (PHT, Vol.
20 2, 22:7-12.)

21 More significantly, Dr. Montes opined the multiple injuries to Khayden's head, as
22 depicted in the CT scan indicate Khayden suffered multiple injuries; one injury causing the
23 fracture and blood localized to the fracture site, and a separate and distinct injury causing the
24 left-side subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.) Dr.
25 Gavin confirmed these injuries at autopsy.

26 The majority of the injuries salient to the autopsy findings were located in the brain and
27 skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to occur within hours
28 of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull, Dr. Gavin located a

1 stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3, 13:22-14:9.) There
2 was also a subdural hemorrhage predominantly on the left side of the brain, though there was
3 also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side subdural
4 hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr. Gavin
5 noted the left side had a "great deal of hemorrhage" that extended along most of the left side
6 of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
7 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
8 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.)

9 Additional testing of the eyeballs revealed subdural hemorrhaging in the optic nerve
10 sheaths, with more in the right side than the left. (PHT, Vol. 3, 37:11-15.) The greater blood
11 on the right side suggests more of an impact or focus of trauma on the right side versus the
12 left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed multiple findings. (PHT, Vol. 3,
13 39:1-4, 15-17.) One finding was diffuse cerebral edema, or swelling of the entire brain. (PHT,
14 Vol. 3, 40:8-12.) The brain also revealed injury from hypoxic ischemia, which appeared to be
15 early in the process of oxygen deprivation causing damage to the brain. (PHT, Vol. 3, 40:19-
16 41:14.) There was also diffuse axonal injury, which is damage to the axons of the brain cells.
17 (PHT, Vol. 3, 41:19-25.) The axonal injuries were found in the deeper areas of the brain. (PHT,
18 Vol. 3, 43:2-44:1.) Such injury occurs when the strands of the axon are torn or sheared,
19 indicating the injury was caused by some sort of torsion or rotational force. (PHT, Vol. 3,
20 42:1-4, 58:1-19.)

21 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
22 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
23 noted there were multiple areas of injury to the brain such that there could be more than one
24 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as
25 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
26 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
27 55:7.)

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1 On June 6, 2013, LVMPD detectives conducted a recorded interview with the
2 Defendant at the family residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-
3 76:2.) The Defendant confirmed Khayden appeared fine and without injury when he received
4 Khayden him around 4:30 p.m. (PHT, Vol. 2, 77:11-14, 20-24.) The Defendant described
5 Khayden playing on the couch with Khaysen while Defendant sat in a recliner in the living
6 room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with different
7 information as to whether or not he saw Khayden fall off the couch; at first stating he didn't
8 see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the account
9 where Defendant said he saw Khayden go over the couch he described looking over and seeing
10 Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.) Defendant re-
11 enacted the fall using the doll and showed LVMPD detectives Khayden was facing down, head
12 first and demonstrated Khayden slipping over the back of the couch. (PHT, Vol. 2, 83:6-13;
13 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his back parallel to
14 the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden jumping around on
15 the couch or adopt jumping as part of the events leading up to Khayden's injuries, though
16 detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

17 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
18 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
19 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him up
20 and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
21 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
22 Defendant placed tissues and other items he used to clean up Khayden in trash cans around
23 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
24 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
25 Khayden.

26 Defendant stated he waited approximately ten minutes before calling his girlfriend,
27 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
28 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted

1 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
2 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going
3 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)
4 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
5 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

6 After reviewing investigative information about how Khayden sustained the injuries
7 found at autopsy, Dr. Gavin ultimately ruled the manner of death to be undetermined. (PHT,
8 Vol. 3, 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule the
9 injuries causing Khayden's death as either an accident or a homicide. (PHT, Vol. 3, 55:21-
10 56:2.) Notably, "in this case the information [revealed] from the investigation doesn't match
11 the severity of the injury, and because of that it's undetermined in terms of what ended up
12 causing this injury." (PHT, Vol. 3, 53:21-24.)

13 THE OTHER BAD ACTS

14 Death of Jayden Quisano

15 The Defendant and Christina Rodrigues' first child, Jayden Quisano, was born
16 December 15, 2007, in Hawaii. On February 8, 2008, Christina had taken Jayden to the
17 doctor's office in the morning but Jayden was found to not be breathing when doctors checked
18 on him. Doctors transferred Jayden to the ER but he could not be revived. Records from
19 Hawaii indicate Jayden's cause of death was secondary to pneumonia and a lack of medical
20 attention. *See*, Hawaii CPS Records (bates stamped DA - 000070-000079) at 75. Following
21 the birth of Khayden and in light of the demise of Jayden, pediatrician Dr. Jason Ninomya
22 urged Christina and Defendant to seek immediate medical attention should Khayden show
23 conditions similar to Jayden when he presented before death. *Id.*

24 The death of Jayden Quisano and admonition by Dr. Ninomya had little to no effect on
25 the Defendant or Christina as to when and under what circumstances to seek medical care of
26 Khayden Quisano.

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1 2010 Fractures and Failure to Thrive of Khayden Quisano

2 On October 24, 2009, when Khayden was barely over one month old, Christina took
3 Khayden to pediatrician Dr. Ninomya for coughing and congestion. *See* Hawaii Medical
4 Records (bates stamped DA 000095-000135) at 105.) Dr. Ninomya ordered a chest x-ray,
5 which revealed no apparent signs of injury. *Id.* Also, in October 2009, Khayden, though small,
6 was following along the growth curve. *Id.*

7 Khayden next presented to Dr. Ninomya on January 4, 2010, as an ill child. Christina
8 reported that Khayden had suffered from a fever for the previous five days, which was
9 recorded as high as 101 degrees. *Id.* Khayden also had a cough and runny nose. *Id.* Dr.
10 Ninomya, again, ordered a chest x-ray which revealed that Khayden had multiple healing
11 posterior rib fractures, on ribs four through seven. *Id.* at 99. The rib fractures were indicative
12 of non-accidental trauma and a squeezing mechanism, and neither Christina nor the Defendant
13 knew how Khayden sustained the fractures.

14 Khayden was sent to KAPIOLANI WOMEN & CHILDREN Hospital where he was
15 admitted and received additional evaluation and medical care. Additional testing revealed
16 Khayden also suffered a metaphyseal fracture of the distal femur, which was in the healing
17 stages. *Id.* at 106-107. Doctors noted the femur fracture resulted from a shearing force that
18 was non-accidental in nature. *Id.* at 107. An ophthalmologic evaluation revealed Khayden also
19 had a subconjunctival hemorrhage in his left eye that should resolve spontaneously. *Id.* at 104.
20 In January 2010, Khayden was also diagnosed as failure to thrive, as he had fallen below the
21 growth curve. *Id.* at 107. Neither the Defendant nor Christina had any insight as to how, when
22 or what had happened to cause these non-accidental injuries to Khayden. *Id.* at 100. Notably,
23 the medical records reveal doctors considered organic causes for Khayden's injuries, but
24 ultimately concluded the injuries were non-accidental. *Id.* at 103.

25 Law Enforcement and the Department of Human Services, Social Services Division
26 conducted investigations into Khayden's injuries. The Defendant and Christina initially
27 blamed the babysitter, though she was ruled out as the perpetrator during the investigation.
28 Ultimately, law enforcement could not determine who caused the injuries to Khayden, and

1 though the Defendant was not excluded as the possible cause of the injuries to Khayden. On
2 the other hand, Social Services conducted two investigations (one in January 2010 and another
3 in July 2010) and found both parents to be perpetrators of harm and removed Khayden from
4 the care of his parents. Exhibit 1, at 76. Khayden was placed with a relative, during which time
5 there is no record of fractures or other injuries.

6 The case remained open for 2 1/2 years while the Defendant and Christina received
7 training, education and services on how to better parent and protect Khayden from injury.
8 Specifically, both Christina and the Defendant were required to engage in services, including
9 a Clinical Psychological Evaluation and follow recommendations, couples counseling and
10 various classes to improve parenting skills and bonding with the children. The focus of the
11 services was to educate the Defendant and Christina in all aspects of child care for newborns
12 up to three years old. The education included recognizing and preventing non-accidental
13 trauma, providing a safe environment for children, identifying when to contact medical
14 personnel to assist a sick or injured child, what to do if the parent thinks the child has been
15 hurt by someone else, and much more. The education varied in format, including classes,
16 hands-on work with professionals and counseling. The Defendant and Christina could not have
17 Khayden and Khaysen returned to their care until each person could articulate what they had
18 learned in order to provide for and protect their children, both to workers and to the child
19 welfare court who oversaw their case. In September 2010, both parents continued to lack
20 insight into their role and responsibility as parents. Id. In January 2011, after six months of
21 services with a counselor, the Defendant and Christina continued to demonstrate a lack of
22 understanding and insight into Khayden's injuries. The children were reunited with the
23 Defendant and Christina in April 2011, but continued to be monitored until July 2012 when
24 the case was closed. Id. at 79.

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1 ARGUMENT

2 N.R.S. 48.045(2) provides as follows:

3 Evidence of other crimes, wrongs, or acts is not admissible to
4 prove the character of a person in order to show that he acted in
5 conformity therewith. It may, however, be admissible for other
6 purposes, such as proof of motive, opportunity, intent,
preparation, plan, knowledge, identity, or absence of mistake or
accident.

7 Evidence of certain types of injury to a child can be probative of the fact that the
8 physical damage was caused intentionally rather than by accident and thus can be persuasive
9 of intent. United States v. Leight, 818 F.2d 1297, 1299 (7th Cir.) Cert. denied, 484 U.S. 958
10 (1987), *abrogated on other grounds*, Huddleston v. United States, 485 U.S. 681, 108 S.Ct.
11 1496, 99 L.Ed.2d 771 (1988); United States v. Verkuilen, 690 F.2d 648 (7th Cir. 1982).

12 In order to admit such evidence, the State must establish that (1) the act is relevant to
13 the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the evidence
14 is more probative than prejudicial. Cipriano v. State, 111 Nev. 534, 541 (1995) (*citing Berner*
15 *v. State*, 104 Nev. 695, 697 (1988)).

16 **I. Evidence May Be Admitted to Prove Motive, Intent, Knowledge**
17 **and Absence of Mistake or Accident**

18 Pursuant to NRS 48.045(2), evidence of other acts may be admitted in this case to show
19 motive, intent, knowledge and/or absence of mistake or accident. As articulated below, the
20 statute and case law are not as restrictive as the Defendant suggests in the opposition to the
21 motion. The volume of Nevada and federal case law on this issue suggests that the
22 admissibility of other bad act evidence, particularly in child abuse cases, must be case specific.
23 The Supreme Court of Nevada recently noted:

24 "The admissibility of evidence of other crimes, wrongs,
25 or acts to establish...absence of mistake or accident is well
26 established, particularly in child abuse cases.' United States v.
27 Harris, 661 F.2d 138, 142 (10th Cir.1981). This is because
28 '[p]roof that a child has experienced injuries in many purported
accidents is evidence that the most recent injury may not have
resulted from yet another accident.' Bludsworth v. State, 98 Nev,
289, 292, 646 P.2d 558, 559 (1982)."

1 Newman v. State, 298 P.3d 1171, 1178 (2013) rehearing denied. In fact, the Supreme Court in
2 Newman articulated that admissibility of other bad act evidence is fact specific, such that the
3 acts may be inadmissible under one exception, but admissible under another. Id. at 1179. In
4 Newman, the defendant admitted to using corporal discipline, such that evidence of prior acts
5 of striking a different son were inadmissible to establish absence of mistake or accident
6 (because he admitted to striking his son), but were probative to the defendant's intent. Id.

7 Evidence of certain types of injury to a child can be probative of the fact that the
8 physical damage was caused intentionally rather than by accident and thus can be persuasive
9 of intent. United States v. Leight, 818 F.2d 1297, 1299 (7th Cir.) *cert. denied*, 484 U.S. 958
10 (1987); United States v. Verkuilen, 690 F.2d 648 (7th Cir. 1982).

11 In Estelle v. McGuire, 502 U.S. 62, 112 S.Ct 475 (1991), the United States Supreme
12 Court also visited the issue of allowing into evidence of prior bad acts in cases involving child
13 abuse. In this case, Mark McGuire and his wife took their six month-old baby to the hospital
14 because the baby was bluish and not breathing. The physician noticed a large and relatively
15 recent bruise on the baby's chest and multiple bruises around it and the baby's ears. Efforts
16 to revive the child were unsuccessful. An autopsy revealed 17 contusions on the baby's chest,
17 29 contusions in her abdominal area, a split liver, a split pancreas, a lacerated large intestine
18 and damage to her heart and one of her lungs. The autopsy also revealed evidence of rectal
19 tearing and evidence of partially healed rib fractures. Upon questioning, the defendant stated
20 that when his wife left the room to make a telephone call, he left the child alone on the couch.
21 When he returned to the room, he discovered the baby lying on the floor.

22 At trial, the prosecution introduced evidence that the baby was a "battered child", and
23 evidence from other witnesses as to defendant's treatment of the baby. The case was
24 overturned at the federal level, by the Court of Appeals for the Ninth Circuit. However, the
25 Supreme Court found that California law permitted the prosecution to introduce expert
26 testimony and evidence related to prior injuries in order to prove "battered child syndrome".
27 (Citations omitted). The Court went further in explaining its decision to reverse the decision
28 of the court of Appeals for the Ninth Circuit:

1 The demonstration of battered child syndrome "simply indicates
2 that a child found with [serious, repeated injuries] has not suffered
3 those injuries by accidental means." (Citation omitted). Thus,
4 evidence demonstrating battered child syndrome helps to prove
5 that the child died at the hands of another and not by falling off a
6 couch, for example; it also tends to establish that the "other,"
7 whoever it may be, inflicted the injuries intentionally. When
8 offered to show that certain injuries are a product of child abuse,
9 rather than accident, evidence of prior injuries is relevant even
10 though it does not purport to prove the identity of the person who
11 might have inflicted those injuries. (Citations omitted). Because
12 the prosecution had charged McGuire with second-degree murder,
13 it was required to prove that Tori's death was caused by the
14 defendant's intentional act. Proof of Tori's battered child status
helped to do just that; although not linked by any direct evidence
to McGuire, the evidence demonstrated that Tori's death was the
result of an intentional act by someone, and not an accident. The
Court of Appeals, however, ignored the principle of battered child
syndrome evidence in holding that this evidence was incorrectly
admitted. For example, the court stated that, "[evidence cannot
have probative value unless a party connects it to the defendant in
some meaningful way." (Citation omitted). We conclude that the
evidence of prior injuries presented at McGuire's trial, whether it
was directly linked to McGuire or not was probative on the
question of the intent with which the person who caused the
injuries acted.

15 Estelle v. McGuire, 112 S.Ct at 480.

16 The instant case is similar to the McGuire case. The Supreme Court of the United States
17 upheld the admissibility of prior non-accidental injuries to the victim child, though not directly
18 linked to McGuire, because it was probative as to intent. Notably, in McGuire, that defendant
19 also tried to explain away the injuries as being caused from the victim child falling off a couch.
20 Like the child victim in McGuire, Khayden had suffered multiple non-accidental injuries in
21 2010, while in the care of multiple adults, including the Defendant who was not ruled out as
22 having caused those injuries. Thus, the prior death of Jayden and prior injuries of Khayden are
23 probative to intent, as well as motive to explain why the Defendant failed to call 9-1-1 or
24 summon assistance for Khayden when he should have known Khayden was in medical
25 distress.

26 Likewise, other jurisdictions have upheld the use of prior instances of abuse to show
27 absence of mistake or accident and intent. In State v. Hassett, 859 P.2d 955 (Idaho App. 1993),
28 the Idaho Appellate Court addressed the issue of admission of prior bad acts of child abuse in

1 order to prove absence of mistake or accident and intent. The defendant was found guilty of
2 felony injury to a child based on allegations that he had injured his month-old son. On appeal,
3 the defendant challenged the State's presentation of "prior bad acts" during his trial. The Court
4 addressed the felony child abuse statute, which is practically identical to Nevada's statute, and
5 the propriety of allowing into evidence prior bad acts by a defendant in child abuse cases. The
6 Court stated:

7 ... [we observe that "the admissibility of evidence of other crimes,
8 wrongs, or acts to establish intent and an absence of mistake or
9 accident is well established, particularly in child abuse cases."
10 United States v. Harris, 661 F.2d 138, 142(10th Cir. 1981).

11 Further, we agree that:

12 when the crime is one of infanticide or child abuse, evidence of
13 repeated incidents is especially relevant because it may be the only
14 evidence to prove the crime. A child of [very young age] ... is a
15 helpless, defenseless unit of human life. Such a child is too young,
16 if he survives, to relate the facts concerning the attempt on his life,
17 and too young, if he does not survive, to have exerted enough
18 resistance that the marks of his cause of death will survive him.
19 Absent the fortuitous presence of an eyewitness, infanticide or
20 child abuse ... would largely go unpunished. (Emphasis added)
21 *Id.*, quoting United States v. Woods, 484 F.2d 127 (4th Cir. 1973),
22 *cert. denied*, 415 U.S. 979 (1974).

23 More specifically, one commentator has observed that:

24 The courts often admit uncharged misconduct in child abuse cases
25 when the defendant claims that he or she accidentally injured the
26 child. If the defendant claims that he accidentally touched a
27 child's genital organs, evidence of the defendant's similar
28 uncharged sexual misconduct is admissible to prove the
29 defendant's lewd intent.

30 If the defendant claims that she intended to merely discipline the
31 child, evidence of uncharged misconduct may be admissible to
32 establish the defendant's intent to injure the child. If the defendant
33 claims that he accidentally bumped into or ran down the victim,
34 evidence of the defendant's other assaults on the same or similar
35 victims is admissible to show intent. Edward J. Imwinkelried,
36 *Uncharged Misconduct Evidence* sec. 5:10 (1993).

37 Hassett, 859 P.2d at 960.

38 In State v. Smith, 634 P.2d 1 (Ariz. App. 1981), the Arizona Court of Appeals allowed
into evidence the fact that the defendant's children had previously been removed from the

1 home due to the unsanitary conditions in order to allow the State to prove that the defendant
2 acted recklessly as required by statute. The court found that the evidence was admissible to
3 show intent, knowledge, and absence of mistake or accident. 634 P.2d at 3.

4 The Hassett court specifically noted the common practice of admitting uncharged
5 misconduct where the defendant claims the child was accidentally injured, emphasizing the
6 lack of eyewitnesses to infanticide and the defenseless nature of the victim. In Smith, evidence
7 that a child had been previously removed was admissible to prove the defendant acted
8 recklessly. Like Hassett, in this case the Defendant claims Khayden accidentally rolled off the
9 couch resulting in these catastrophic injuries that caused his death. The fact that there is a prior
10 death of a sibling from unknown circumstances and a prior non-accidental injury to Khayden
11 should be admissible to show intent and absence of mistake or accident. Additionally, like in
12 Smith, Khayden was previously removed and the Defendant was required to undergo
13 counseling, education, training and court supervision for a period of two and a half years to
14 learn about non-accidental injuries, child safety, and when to seek medical attention. This
15 evidence goes directly to the Defendant's knowledge and absence of mistake or accident.
16 Unlike many of the cases cited, the Defendant's experience in Hawaii demonstrates he had
17 greater knowledge than the average parent about non-accidental injuries, as well as what to do
18 in an emergency to help a child. The fact that he knew what to do and did none of those things
19 is evidence of motive, knowledge, intent and absence of mistake or accident.

20 Later, in State v. Widdison, 4 P.3d 100 (Utah App. 2000), *citing* Teuscher, 883 P.2d at
21 927-28, the Utah Appellate Court upheld the admission of evidence of prior instances of abuse
22 against a victim and other children to show identity, intent or lack of accident or mistake. In
23 Widdison, *supra*, the Court stated:

24 Because the prior bad act evidence at issue here related to
25 defendant's intent or knowledge, it was admissible in the State's
26 case in chief. By pleading not guilty, defendant placed all
27 elements of the crime at issue, including knowledge and intent.
28 *See Teuscher*, 883 P.2d at 927. Therefore this evidence goes
directly to proving the elements of the crime, requiring the State
to rely on circumstantial evidence. Further, both defendants made
statements to the police and other witnesses which put absence of
mistake or accident at issue. As such, it was necessary and

1 appropriate for the State to introduce this evidence in its case in
2 chief.

3 Widdison, 4 P.3d 100 at 109.

4 As demonstrated by the State's Motion and Reply, case law is Nevada, across other
5 jurisdictions and the Supreme Court of the United States is replete with courts admitting
6 evidence of prior bad acts of child abuse or unexplained injury in cases exactly like this one
7 for purposes of motive, intent, knowledge, and absence of mistake or accident.

8 **II. The State Need Not Prove the Defendant Caused the Death**
9 **of Jayden or Inflicted the Prior Injuries to Khayden To**
10 **Admit Those Prior Acts Under NRS 48.045 (2)(b)**

11 The Defendant also claims the State cannot introduce evidence of other acts because
12 the Defendant has not been shown to have directly caused the death of Jayden or inflicted the
13 rib fractures or femur fracture Khayden suffered as an infant. This claim is belied by the case
14 law. In Bludsworth v. State, 98 Nev. 289, 646 P.2d 558 (1982), the two-year-old victim died
15 after sustaining severe head injuries. The State charged the step-father with Murder and Child
16 Abuse and charged the victim's mother with Child Abuse. The step-father claimed he
17 accidentally injured the victim by dropping him as the step-father climbed the stairs in the
18 family home. During the trial, the State presented evidence of numerous bruises sustained by
19 the victim prior to his death. The Appellant argued that the lower court erred in admitting
20 evidence of prior injuries wherein the State could not prove who inflicted the injuries upon the
21 victim.

22 The Nevada Supreme Court held that admissibility of the other injuries did not
23 depend on connecting either defendant to the infliction of the injury. Specifically, the
24 Court held that:

25 "It is independent, relevant circumstantial evidence tending to
26 show that the child was intentionally, rather than accidentally,
27 injured on the day in question. Proof that a child has experienced
28 injuries in many purported accidents is evidence that the most
recent injury may not have resulted from yet another accident."
(Emphasis added)

1 Bludsworth, 98 Nev. at 291-92. Similarly, in Estelle v. McGuire, the Supreme Court of the
2 United States of America held:

3 "We conclude that the evidence of prior injuries presented at
4 McGuire's trial, whether it was directly linked to McGuire or not
5 was probative on the question of the intent with which the person
6 who caused the injuries acted."

6 Estelle v. McGuire, 112 S.Ct. at 480.

7 In this case, in 2008, Jayden Quisano, the Defendant's first child with Christina
8 Rodriguez died due to complications from pneumonia on the very same day he was finally
9 taken for medical treatment. Notably, Christina is the parent who finally took the child to the
10 doctor and there is no indication Defendant went with her. Defendant claims Jayden had no
11 signs of illness or sickness immediately before the day he died, though the State note this is
12 not independently verified because there is no record anyone else cared for the child during
13 this time period. The death of Jayden resulted in the physicians for Khayden emphasizing the
14 need to seek immediate medical attention should Khayden present in a condition similar to
15 Jayden.

16 On or about October 24, 2009, Christina took Khayden to the pediatrician for a runny
17 nose and cough. There were no signs of injury to Khayden at that time and there is no
18 indication of a delay in seeking treatment. This is significant in contrast to January 2010.

19 In January 2010, Khayden had been sick with a runny nose, cough and fever for five
20 days before he was taken to see Dr. Ninomya. According to representatives in Hawaii,
21 Christina took the child to the doctor at the prompting of the babysitter. In early January 2010,
22 Khayden had multiple healing rib fractures and a healing femur fracture, all of which were
23 determined to be non-accidental in nature. Khayden also presented as failure to thrive in
24 January 2010, based on a lack of adequate feeding. Again, the Defendant lacked any
25 explanation for the source of injuries, awareness as to when Khayden may have suffered these
26 injuries and the failure to thrive. As a result of these injuries and the delay in treatment, Hawaii
27 DHS found fault with the Defendant and removed Khayden from his parents' care to secure
28 Khayden's safety. The Defendant had to engage in counseling and other services to address

1 his lack of awareness and learn how to better care for his children before Khayden and his
2 brother Khaysen were returned to the family home.

3 These prior events, some of which are non-accidental in nature, followed by the death
4 of a Khayden under suspicious circumstances are the exact type of prior events deemed
5 admissible and upheld by the Supreme Court of Nevada and other courts around the country.
6 See Newman, Bludsworth, McGuire, Hassett, Smith, et. al. The jury should be aware that the
7 Defendant had failed to identify his child's medical needs to such a degree that Jayden died
8 from complications related to pneumonia. The jury should also know that Khayden and his
9 brother were removed from the family home for their own safety after Khayden was found to
10 have multiple rib fractures and a femur fracture that were all non-accidental in nature. The
11 Defendant had no explanation for the fractures and was not eliminated as a potential
12 perpetrator by law enforcement. Even so, the body of case law is clear that the State need not
13 link the Defendant directly to the cause of these prior injuries in order to admit the prior acts
14 for purposes of establishing motive, intent, knowledge and absence of mistake or accident.


15 The jury should also know that as a result of Khayden's non-accidental injuries, the
16 Defendant was found to have perpetrated harm against Khayden and required to complete
17 counseling and other services to learn how to care for his children and provide for their needs.
18 This is certainly classic evidence to show motive, intent, knowledge and absence of mistake
19 or accident.

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DATED this 2nd day of June, 2014.

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


MICHELLE Y. JOBE
Chief Deputy District Attorney
Nevada Bar #010575

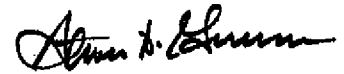
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NANCY LEMCKE, Deputy Public Defender
e-mail: lemckenl@ClarkCountyNV.gov

pdclerk@clarkcountynv.gov

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CLERK OF THE COURT

NWEW
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
NANCY M. LEMCKE
Deputy Public Defender
Nevada Bar No. 5416
NORMAN J. REED
Deputy Public Defender
Nevada Bar No. 3795
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-13-294266-1
)	
v.)	DEPT. NO. XXI
)	
JONATHAN QUISANO,)	
)	
Defendant.)	

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

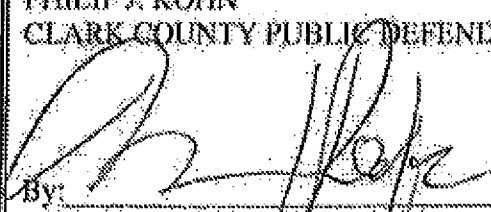
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Defendant,
JONATHAN QUISANO, intends to call the following witness in his case in chief:


<u>NAME</u>	<u>ADDRESS</u>
BLOSS, TOM	3230 W. Hacienda #304, LVN 89118
COSTA, ROXANNE	92538 Ualehei St., Kapolei, HI 96707
FERREIRA, CHENTELL	86-228 Leihua St., Waianae, HI 96792
FRUEND, KENNETH	9115 Bushy Tail Ave., LVN 89149
GARCIA, RUBEN	Clark County Public Defender Investigator 309 S. Third St, LVN 89155
GOMEZ, JAIME	6652 W. Katie, LVN 89103
HOSFORD, ROGER	Clark County Public Defender Investigator 309 S. Third St, LVN 89155

1 KUEHU, THERESA P.O. BOX 892534, Mililani, HI 96789
2 LESSARY, FRANCIS 92-572 Pillipono St., Kapolei, HI 96707
3 LESSARY, GEORGE 9846 Cherokee Ave., LVN 89147
4 QUISANO, JANINE 91-2210 Old Fort Weaver Rd., Ewa Beach, HI 96706
5 QUISANO, JUSTIN 1724 Valley Rd., Champaign, IL 61820
6 RESTICIO, PAIGE 501 Kaniahe St., Wahiawa, HI 96786
7 RODRIGUES, CLARA 4208 Jasper Ave., LVN 89108
8 RODRIGUES, WILLIAM 4208 Jasper Ave., LVN 89108
9 SAN NICOLAS, VERNA 4208 Jasper Ave., LVN 89108
10 SILVA, FRANCIS 4218 Bougainville Ave, Unit A, Kapolei, HI 96707
11 SOARES, ROMAN 92-1129 Makakilo Dr., Kapolei, HI 96707
12 VENTURA-KAHOOKELE, REVELYN 92-539 Ualehei St., Kapolei, HI 96707

13 The Defendant hereby incorporates by reference all the witness noticed by the State as
14 potential defense witnesses.

15 DATED this 2nd day of June, 2014.

16 PHILIP J. KOHN
17 CLARK COUNTY PUBLIC DEFENDER
18
19 By: 
20 NANCY M. LEMCKE, #5116
21 Deputy Public Defender
22
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PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER
By: 
NORMAN J. REED, #3795
Deputy Public Defender

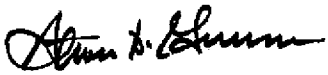
CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of DEFENDANT'S NOTICE OF WITNESSES, was made this 2nd day of June, 2014, by Electronic Filing to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyla.com

MICHAEL STAUDAHIER, Chief Deputy District Attorney
E-Mail: michael.staudahier@clarkcountyla.com

By: Sara Ruaro
Sara Ruaro
Secretary for the Public Defender's Office


CLERK OF THE COURT

1 SLOW
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0536
4 NANCY M. LEMCKE
5 Deputy Public Defender
6 Nevada Bar No. 5416
7 NORMAN J. REED
8 Deputy Public Defender
9 Nevada Bar No. 3795
10 309 South Third Street, Suite #226
11 Las Vegas, Nevada 89155
12 (702) 455-4685
13 Attorneys for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

CASE NO. C-13-294266-1

12 v.

DEPT. NO. XXI

13 JONATHAN QUISANO,

14 Defendant.

15
16 SUPPLEMENTAL DEFENDANT'S NOTICE OF WITNESSES
PURSUANT TO NRS 174.234

17 TO: CLARK COUNTY DISTRICT ATTORNEY:

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Defendant,
19 JONATHAN QUISANO, intends to call the following witness in his case in chief:

20 NAME	ADDRESS
21 BLOSS, TOM	3230 W. Hacienda #304, LVN 89118
22 COSTA, ROXANNE	92538 Ualehei St., Kapolei, HI 96707
23 FERREIRA, CHENTELL	86-228 Leihua St., Waianae, HI 96792
24 FRUEND, KENNETH	9115 Bushy Tail Ave., LVN 89149
25 GARCIA, RUBEN	Clark County Public Defender Investigator 309 S. Third St, LVN 89155
26	
27 GOMEZ, JAIME	6652 W. Katie, LVN 89103
28 HOSFORD, ROGER	Clark County Public Defender Investigator 309 S. Third St, LVN 89155

1 KUEHU, THERESA P.O. BOX 892534, Mililani, HI 96789
2 LESSARY, FRANCIS 92-572 Pilipano St., Kapolei, HI 96707
3 LESSARY, GEORGE 9846 Cherokee Ave., LVN 89147
4 QUISANO, JANINE 91-2210 Old Fort Weaver Rd., Ewa Beach, HI 96706
5 QUISANO, JUSTIN 1724 Valley Rd., Champaign, IL 61820
6 RESTICIO, PAIGE 501 Kaniahe St., Wahiawa, HI 96786
7 RODRIGUES, CLARA 4208 Jasper Ave., LVN 89108
8 RODRIGUES, LESTER 6432 Plumerest Rd., LVN 89108
9 RODRIGUES, WILLIAM 4208 Jasper Ave., LVN 89108
10 SAN NICOLAS, VERNA 4208 Jasper Ave, LVN 89108
11 SILVA, FRANCIS 4218 Bougainville Ave, Unit A, Kapolei, HI 96707
12 SOARES, ROMAN 92-1129 Makakilo Dr., Kapolei, HI 96707
13 VENTURA-KAHOKELE, REVELYN 92-539 Ualehei St., Kapolei, HI 96707

14 The Defendant hereby incorporates by reference all the witness noticed by the State as
15 potential defense witnesses.

16 DATED this 34th day of June, 2014.

17 PHILIP J. KOHN
18 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

19
20 By: 
21 NANCY M. LEMCKE, #5416
22 Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

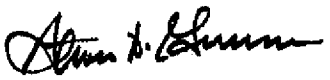
1
2 CERTIFICATE OF ELECTRONIC SERVICE

3 I hereby certify that service of SUPPLEMENTAL DEFENDANT'S NOTICE OF
4 WITNESSES, was made this 3rd day of June, 2014, by Electronic Filing to:

5 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
6 Motions@clarkcountydade.com

7 MICHAEL STAUDAHIER, Chief Deputy District Attorney
8 E-Mail: micahel.staudahier@clarkcountydade.com

9 By: 
10 Sara Ruano
11 Secretary for the Public Defender's Office
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CLERK OF THE COURT

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

CASE NO: C-13-294266-1

12 JONATHAN QUISANO,
13 #5991702

DEPT NO: XXI

14 Defendant.

15 THIRD SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
16 [NRS 174.234(2)]

17 TO: JONATHAN QUISANO, Defendant; and

18 TO: NANCY L. LEMCKE, DEPUTY PUBLIC DEFENDER, Counsel of

19 Record:

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

22 **Kimberly D. Dannenberger - P#13772**, or Designee, a Criminalist with the Las Vegas
23 Metropolitan Police Department. She is an expert in the area of DNA technology and will
24 give scientific opinions related thereto. She will testify regarding the DNA profiling analysis
25 and related procedures she was involved with or reviewed in this case.

26 These witnesses are in addition to those witnesses endorsed on the Information or
27 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert
28 Witnesses has been filed

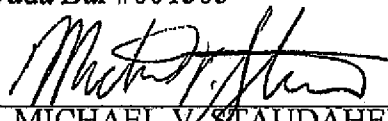
1 The substance of each expert witness' testimony and a copy of all reports made by or
2 at the direction of the expert witness has been provided in discovery.

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

4 In addition, to the witnesses listed in this notice or in any previously filed State notice,
5 the State specifically endorses any and all witnesses and/or experts disclosed in any notice
6 filed by the defense or disclosed by the defense in this case. The State specifically reserves
7 the right to call any or all said defense witnesses and/or experts in its case in chief.

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

10 BY


11 MICHAEL V. STAUDAHER
12 Chief Deputy District Attorney
13 Nevada Bar #008273

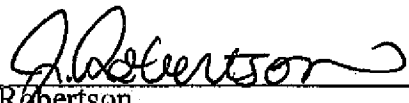
14
15 CERTIFICATE OF ELECTRONIC MAIL

16 I hereby certify that service of Third Supplemental Notice of Expert Witness,
17 was made this 4th day of June, 2014, by e-mail to:

18 NANCY L. LEMCKE, Deputy Public Defender
19 E-Mail: LemckeNL@clarkcountynv.gov

20 pdclerk@clarkcountynv.gov

21 BY:


22 J. Robertson
23 Employee of the District Attorney's Office

24
25
26
27
28 13F09094X/jr/mvu

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
CURRICULUM VITAE**

Date: 05.28.2014

Name: Kimberly Dannenberger P#: 13772 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	
Toolmarks		Toxicology/Breath Alcohol	
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Footwear Impressions		Technical Support / Quality	
Quality Assurance			
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University Nevada, Reno	08/2002-05/2003	Nutritional Sciences	No
University Nevada, Las Vegas	08/2003-05/2008	Cell/ Molecular Biology	Yes
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
NIST DNA Analyst Webinar Series: Probabilistic Genotyping and Software Programs (Part 1)	Las Vegas, NV	05.28.2014	
2014 Annual Review of DNA Data accepted at NDIS	Las Vegas, NV	12.23.2013	
Technical & Administrative Review Training to Make Casework Easier	Las Vegas, NV	10.15.2013	

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
2013 Annual Review of DNA Data accepted at NDIS	Las Vegas, NV (online)	04.23.2013
NIST DNA Mixture Interpretation Workshop	Webcast – NIST	04.12.2013
AAFS Conference: Science in the Courtroom, DNA in Real Time: Amplifying Productivity in today's Forensic Laboratory, and general session talks	Washington D.C.	02.18.2013-02.23.2013
Promega Conference: How to tackle a DNA backlog, Mixture interpretation workshop, and general session talks	Nashville, TN	10/14/12 – 10/18/12
Forensic relationship statistic training	Las Vegas, NV	08/23/12
Interpreting DNA Mixtures	Las Vegas, NV	01/25/12
Annual Review of NDIS	Las Vegas, NV	01/19/12
Emerging DNA Technologies	Huntington, WV	12/05/11-12/07/11
2011 NSDAI Quarterly Training	Las Vegas, NV	07/13/11
Testifying in Court	Las Vegas, NV	05/02/11
NCIC Training	Las Vegas, NV	09/24/10
Driver's Training	Las Vegas, NV	04/09
New Hire Orientation	Las Vegas, NV	01/09
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist II	03/14 - Present
Las Vegas Metropolitan Police Department	Forensic Scientist I	03/12 – 03/14

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Forensic Scientist Trainee	03/11 – 03/12
Las Vegas Metropolitan Police Department	Forensic Lab Aide	12/08-03/11
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>	<i>Date(s)</i>	
American Academy of Forensic Science – Associate Member	02-2014-present	
American Academy of Forensic Science – Trainee Affiliate	02.2013 – 02.2014	
PUBLICATIONS / PRESENTATIONS:		
OTHER QUALIFICATIONS:		

ASCLD/LAB-International

STATEMENT OF QUALIFICATIONS

Name	Kimberly Dannenberger	Date	05/28/2014
-------------	-----------------------	-------------	------------

Laboratory	Las Vegas Metropolitan Police Department Forensic Laboratory
-------------------	--

Job Title	Forensic Scientist II
------------------	-----------------------

Indicate all disciplines in which you do casework:

<input type="checkbox"/>	Drug Chemistry	<input type="checkbox"/>	Toxicology
<input type="checkbox"/>	Firearms/Toolmarks	<input checked="" type="checkbox"/>	Biology
<input type="checkbox"/>	Trace Evidence	<input type="checkbox"/>	Questioned Documents
<input type="checkbox"/>	Latent Prints	<input type="checkbox"/>	Crime Scene
<input type="checkbox"/>	Digital & Multimedia Evidence		

List all category(ies) of testing in which you do casework:

Nuclear DNA, CODIS, Body Fluid Identification

Breath Alcohol Calibration Categories

<input type="checkbox"/>	Toxicology - Breath Alcohol Measuring Instruments (The work of the laboratory MUST include calibration certificates- do not check the box if work is limited to breath/alcohol testing)
<input type="checkbox"/>	Toxicology - Breath Alcohol Calibration Reference Material

Education: List all higher academic institutions attended (list high school only if no college degree has been attained)

Institution	Dates Attended	Major	Degree Completed
University of Nevada, Reno	08/02 - 05/03	B.S. Nutritional Sciences	N/A
University of Nevada, Las Vegas	08/03 - 05/08	B.S. Cell/Molecular Biology	05/2008

Other Training: List continuing education, workshops, in-service and other formal training received. Please include the course title, source and date of the training.

NIST DNA Analyst Webinar Series: Probabilistic Genotyping and Software Programs (Part I)	05.28.14
2014 Annual Review of DNA Data Accepted at NDIS	Las Vegas, NV - online 12.23.2013
Technical & Administrative Review Training to make Casework easier	Las Vegas, NV 10.15.2013
2013 Annual Review of DNA Data Accepted at NDIS	Las Vegas, NV - online 04/23/2013
NIST DNA Mixture Interpretation Workshop	Webcast - NIST 04/12/2013
American Academy of Forensic Science Conference: Science in the Courtroom, DNA in Real Time: Applying Productivity in today's	
Forensic Laboratory, and general session talks	Washington D.C. 02/18/13-02/23/13
Promega Conference: How to tackle a DNA backlog, Mixture interpretation workshop, and general session talks	Nashville, TN 10/14/12 - 10/18/12
Forensic relationship statistic training	Las Vegas, NV 08/23/12
Interpreting DNA Mixtures	Las Vegas, NV 01/25/12
Annual Review of NDIS	Las Vegas, NV 01/19/12
Emerging DNA Technologies	Huntington, WV 12/05/11 - 12/07/11
2011 NSDAI Quarterly Training	Las Vegas, NV 07/13/11

Testifying in Court	Las Vegas, NV	05/02/11
NCIC Training	Las Vegas, NV	09/24/10
Driver's Training	Las Vegas, NV	04/09
New Hire Orientation	Las Vegas, NV	01/09

Courtroom Experience: List the discipline/category(ies) of testing in which you have qualified to testify as an expert witness and indicate over what period of time and approximately how many times you have testified in each.

--

Professional Affiliations: List any professional organizations of which you are or have been a member. Indicate any offices or other positions held and the date(s) of these activities.

American Academy of Forensic Science - Associate Member

Employment History: List all scientific or technical positions held, particularly those related to forensic science. List current position first. Be sure to indicate employer and give a brief summary of principal duties and tenure in each position.

Job Title	Forensic Scientist II	Tenure	03/14 - present
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Perform serology on items of evidence, employ various extraction techniques, generate scientific reports, perform data interpretation, calculate of statistics, handle casework and database samples, as well as various lab duties as assigned by the Biology/DNA detail			

Job Title	Forensic Scientist I	Tenure	03/12 - 03/14
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Perform serology on items of evidence, employ various extraction techniques, generate scientific reports, perform data interpretation, calculate of statistics, handle casework and database samples, as well as various lab duties as assigned by the Biology/DNA detail			

Job Title	Forensic Lab Aide	Tenure	12/08 - 03/11
Employer	Las Vegas Metropolitan Police Department		
Provide a brief description of principal duties:			
Assisted the Forensic Laboratory, as a whole, with a variety of duties, including but not limited too: chemical inventory, supply ordering, reagent preparation, filing, instrument maintenance, and quality checks throughout.			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Job Title		Tenure	
Employer			
Provide a brief description of principal duties:			

Other Qualifications: List below any scientific publication and/or presentation you have authored or co-authored, research in which you are or have been involved, academic or other teaching positions you have held, and any other information which you consider relevant to your qualification as a forensic scientist.
(Use additional sheets if necessary.)

--


CLERK OF THE COURT

1 EXPR
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
12 Plaintiff,
13
14 JONATHAN QUISANO,
15
16 Defendant.

CASE NO. C-13-294266-1
DEPT. NO. XXI

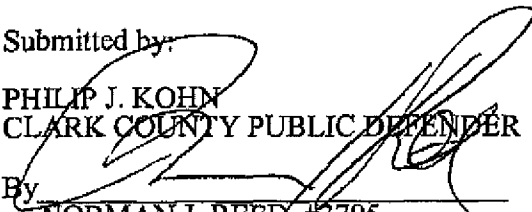
17 **EX PARTE ORDER FOR TRANSPORT**

18 Upon the ex parte application of the above-named Defendant, by and through
19 NANCY L. LEMCKE and NORMAN J. REED, Clark County Public Defender, and good cause
20 appearing therefore,

21 IT IS HEREBY ORDERED that the Clark County Detention Center transport the
22 Defendant, JONATHAN QUISANO, I.D. No. 5991702, to the Clark County Public Defender's
23 Office, 309 S. Third Street, 2nd Floor, Las Vegas, Nevada 89155 on Tuesday, June 10, 2014 from
24 10:00 a.m. to 12:30 p.m. for the purposes of trial preparation. The Public Defender's Office has
25 already arranged the date and time with Sandy Molina, Court Services Supervisor on behalf of Lt.
26 Zolman with the Clark County Detention Center and it does not present an undue burden to them.

27 DATED this 10 day of June, 2014.

28 
DISTRICT COURT JUDGE

Submitted by:
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER
By 
NORMAN J. REED, #3795
Deputy Public Defender

● ORIGINAL ●

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2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 10 2014

BY Denise Husted
DENISE HUSTED, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JONATHAN QUISANO,
13 #5991702

14 Defendant.

CASE NO. C-13-294266-1

DEPT NO. XXI

SECOND AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

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

19 That JONATHAN QUISANO, the Defendant(s) above named, having committed the
20 crimes of **VOLUNTARY MANSLAUGHTER (Category B Felony - NRS 200.040,**
21 **200.050, 200.080 - 50020) and CHILD ABUSE, NEGLECT, OR ENDANGERMENT**
22 **WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - 55222),**
23 on or about the 6th day of June, 2013, within the County of Clark, State of Nevada, contrary
24 to the form, force and effect of statutes in such cases made and provided, and against the peace
25 and dignity of the State of Nevada,

26 //

27 //

28 //

1 COUNT 1 - VOLUNTARY MANSLAUGHTER


2 did then and there wilfully, unlawfully, feloniously, without malice and without
3 deliberation, kill KHAYDEN QUISANO, a human being, by striking the head and/or body of
4 the said KHAYDEN QUISANO and/or by shaking him and/or by throwing him against a hard
5 surface and/or by other manner or means unknown, all of which resulted in the death of the
6 said KHAYDEN QUISANO.

7 COUNT 2 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL
8 BODILY HARM

9 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
10 wit: KHAYDEN QUISANO, being approximately three (3) year(s) of age, to suffer
11 unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: severe
12 head trauma resulting in brain injury and/or lung contusions, and/or cause the said KHAYDEN
13 QUISANO to be placed in a situation where he might have suffered unjustifiable physical pain
14 or mental suffering as a result of abuse or neglect, to wit: severe head trauma resulting in brain
15 injury and/or lung contusions causing the death of the said KHAYDEN QUISANO, by the
16 Defendant striking the head and/or body of the said KHAYDEN QUISANO and/or by shaking
17 him and/or by throwing him against a hard surface and/or by other manner or means unknown,
18 resulting in substantial bodily harm or mental harm and causing death to the said KHAYDEN
19 QUISANO.

20 STEVEN B. WOLFSON
21 DISTRICT ATTORNEY
22 Nevada Bar #001565

23 BY


24 MICHAEL V. STAUDAHER
25 Chief Deputy District Attorney
26 Nevada Bar #00008273

27 DA#13F09094X/jr
28 LVMPD EV#1306063235
(TK12)

JONATHAN QUISANO,) No. 66816
)
)
 Appellant,)
)
)
 vi.)
)
)
 THE STATE OF NEVADA,)
)
)
 Respondent.)

PHILIP J. KOHN
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Employee, Clark County Public Defender's Office

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Respondent.

Electronically Filed
Feb 17 2015 09:22 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX VOLUME IV PAGES 751-999

Counsel for Respondent

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STATEMENT OF: QUISANO, JONATHAN

- A: Yeah.
- Q: Okay. So how long have you guys been together?
- A: Um, I think it was goin' - 'cause it was back in '06 so right now it's (unintelligible) - what's that '06.
- Q: 2006?
- A: Yeah.
- Q: Un-'kay.
- A: '06 - yeah.
- Q: Seven years. Okay. Um, okay so who's your next child?
- A: That - that's where Khayden come in.
- Q: Un-'kay.
- A: (Unintelligible).
- Q: And is Khayden the...
- A: (Unintelligible).
- Q: ...one's that injured or the one that's in the room?
- A: The one that injured right now.
- Q: Okay and how old is Khayden?
- A: Khayden is 3.
- Q: Okay.
- A: He'll turn 4 in Sept- in September.
- Q: Does Khayden have any prior injuries - prior to today - has he been substantially

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Injured...

A: Yeah, because...

Q: ...before?

A: ...we was in CPS before.

Q: Un-'kay, what was that about?

A: That was because me and wife we used to - no, my girlfriend. We used to work in Hawaii.

Q: Okay.

A: And we never have nobody for watch my kid - on - (unintelligible) mean (unintelligible) Khayden. So, she look for babysitter - she found one - she used to drop him off every morning and then she pick him back up.

Q: Okay.

A: And then like - 'cause babies they need their pediatricians, right? They gotta go every week and I think every month then so and so - gotta see pediatrician. One day he seen the pediatrician. Ah, I guess he did his normals - checkup and stuff. He get an x-ray and he found like hairline cracks on his ribs.

Q: Okay.

A: And then from there we went to the - a regular hospital name Kap- Kaplani Medical Center. We - we all over there and then that's where CPS jumped in and got involved. And then they took my kids - my - him from us right then and there. And gave him to my aunty I guess - her aunty. Her sister.

VOLUNTARY STATEMENT

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EVENT #: 130608-3235

STATEMENT OF: QUISANO, JONATHAN

Q: Okay and how long did they have the kids?

A: Um, for about. About one - about a year because then I had my other boy - Khaysen (unintelligible).

Q: Okay.

A: Soon as he was born - he was taken away.

Q: They took him too?

A: Yeah.

Q: Okay.

A: So they had him about maybe a year.

Q: Okay. At what point did they return them?

A: Right after we was done at our case - 'cause I think it was like one other - 'cause we had to go therapy - we had to go counseling.

Q: Right.

A: Had to go parenting classes and then.

Q: Did you guys get arrested?

A: No.

Q: Okay, just - you had to go through the CPS program?

A: Had to go through everything.

Q: Okay. Did they figure out what happened to the - how the baby got hurt?

A: No, 'cause they - they - they - they - we couldn't blame the babysitter or nothing because we never have proof was her.

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STATEMENT OF: QUISANO, JONATHAN

Q: Okay, so you didn't have the baby who's injured now for about a year and then when this baby was born they took this baby away for a period of time.

A: Yeah.

Q: As well until...

A: Yeah.

Q: ...they gave them both back to you.

A: They - they were with the same aunty - soon as she gave birth.

Q: Right.

A: Then they had - aunty came take.

Q: Okay. All right and then who's the other baby that's in here now?

A: My - my son that was born.

Q: And what's his name?

A: Khaysen.

Q: Okay. And how old is Khaysen now?

A: He's 2 - he gonna turn 3 in September.

Q: Okay. Let's run through the whole series of events that happened today.

A: Today?

Q: Yeah. Um, did...

A: Yeah.

Q: ...you work today?

A: Yeah.

VOLUNTARY STATEMENT

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STATEMENT OF: QUISANO, JONATHAN

Q: (Unintelligible).

A: I came - I came home around like 11:30.

Q: 'Kay, where do you work at?

A: Um, with Beverage Doctors?

Q: Okay.

A: We're affiliated with, um, Coors and Works Beverage - (unintelligible) in there.

Q: Un-'kay.

A: We clean beer lines.

Q: Okay, so you go into the companies that have beer and you keep the lines clean so the beer tastes good.

A: Yeah, pretty much all the bars or.

Q: Okay. So, what time did you go to work last night?

A: What you ask me?

Q: Did you -

A: I - I start at 2:00 and about at 10:00 or 11:00.

Q: Okay so 2:00 this morning and then you came home at 11:00.

A: Yeah.

Q: Okay who was watching the kids that morning - and is that your mom or...

A: That's...

Q: ...your girlfriend's mom?

A: My girlfriend's grandma.

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STATEMENT OF: QUISANO, JONATHAN

Q: Okay. So she had them. What's her name?

A: Um, Clara Rodrigues.

Q: Un-'kay and I think we have the phone number for Clara already - you might have given that to...

A: Yeah.

Q: ...somebody before. Okay, so Clara had the kids.

A: Mm-hm.

Q: All right and does she normally watch the kids - is that usually a routine?

A: Yeah that's the routine.

Q: Okay, does your girlfriend work?

A: Yeah, she work.

Q: Where does she work?

A: She works, um, for, ah, small clinic down on Eastern and Flamingo - I don't know what it's called.

Q: Okay.

A: Some kind of cardiology office.

Q: Okay. And what time does she go to work?

A: She go to work - she starts at 8:00 - 8:30.

Q: So - okay.

A: She - she drops the kids off at grandma's - I don't know what time - maybe like 7:50 or something.

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STATEMENT OF: QUISANO, JONATHAN

Q: Okay, so when you're at work she drops the kids off?

A: Yeah.

Q: Okay, did she talk about anything happening with the kids last night - were they fine when she dropped 'em off as far as you know?

A: Yeah.

Q: Okay, when they got brought back to you today what time did you get them back?

A: I got them back - 'cause grandma them normally drop them off around - sometimes they come like 3:50 and sometimes 4:30 - normally it's 3:00 - 4:30 to 4:45.

Q: Okay.

A: Yeah, 'cause grandpa - grandpa works at the Cannery. He picks - he goes - I mean he went - once he finish work at 2:30 he comes home, grabs - I mean spend some time with the boys (unintelligible). And then they come and drop them off.

Q: Okay.

A: And then from there I get 'em from like 4:30 to 6:00 - 'cause then mom come home.

Q: Okay, 4:30 to...

A: Yeah.

Q: ...6:00. Okay, so - but today she dropped them off what time?

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STATEMENT OF: QUISANO, JONATHAN

A: Around that time - 4:30 around then.

Q: Okay. And she brings them to you?

A: Yeah. Oh no, she - grandma stay in the car - grandpa usually he ring the bell.

Q: I mean brings them to the house?

A: Yeah - yeah.

Q: Yeah.

A: (Unintelligible).

Q: Like you didn't have to go pick them up?

A: No.

Q: Okay, were they fine when they got home?

A: Yeah.

Q: Okay. She didn't talk about any injuries to them.

A: (Unintelligible).

Q: Anybody hurt or anything?

A: No.

Q: 'Kay, were they acting fine?

A: Yeah.

Q: Okay. So then did you feed 'em today - did - did they eat?

A: Um, yeah, 'cause soon as they came home - would - I was just - we was watchin' a movie - cartoons - whatever. And then they fell asl- they fell back asleep even though grandma told 'em that they already took a nap.

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Q: Okay.

A: They fell asleep just watching the movies and then they woke up - start playing in a while and then that's when the incident just happened.

Q: Okay and tell me what happened?

A: Okay. I was outside - brought 'em outside. Ah, sit down on the chair - they was just playin' with their toys like normal - they just started playing. And they was on the chair. Then for - for a split second he just fell right over.

Q: Okay this chair - the couch right here that we're talking about?

A: Yeah, this one - this one right here -yeah.

Q: Okay.

A: He just went right overboard.

Q: Okay, so the one we're closest to and you're saying he fell right here...

A: Yeah.

Q: ...up to the tile?

A: Right.

Q: Okay. Did he get pushed?

A: Uh, see, I, - I wasn't paying attention.

Q: Okay. So you just heard him fall?

A: Yeah.

Q: Okay.

A: I just see him go right over - I just take fast glance - seen him just...seen, like a

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split second - boom, right there he was on the floor

Q: Okay. Where were you when that happened?

A: On that first chair where the pillow was at. The recliner.

Q: The - the farther recliner?

A: Yeah.

Q: Okay and the two boys were on this couch together?

A: Yeah.

Q: Okay and - and he falls to the tile?

A: Yeah.

Q: Okay. Does he start crying?

A: He - he made like a funny noise like I think, - if I - let's see - like was sore.

Q: Like what?

A: Like what - I mean like he was hurt.

Q: Okay.

A: I'm sorry for my language.

Q: That's okay. All right, so then you picked him up?

A: I picked him up - I...

Q: Or did you pick him up - I...

A: Yeah, I...

Q: ...don't know.

A: I pick - I picked him up.

VOLUNTARY STATEMENT

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STATEMENT OF: QUISANO, JONATHAN

Q: Okay.

A: I picked him up. He just - like he went into like shock - like he just - like he was fr- like frozen and he was just like all like.

Q: Okay. And.

A: I don't know what for do so I - I - I figured I just - like run the cold water on him maybe he wake up.

Q: Okay.

A: But- so then- after that I just called my girlfriend.

Q: Okay, so you ran cold - where'd you get the cold water from?

A: In the - the bathroom.

Q: Okay, so you took him into the...

A: Bathroom.

Q: Bathroom?

A: Yeah.

Q: The one over here by the bedroom?

A: Yeah.

Q: Okay.

A: Just like to see if he would.

Q: Okay, were his eyes closed or open?

A: His eyes were like half open.

Q: Okay. Were they rolled back in his head - have you ever seen somebody get

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knocked out?

A: No, it wasn't rolled back - he just - he was - he's like right there with me.

Q: Okay.

A: Yeah.

Q: Was he...

A: He was - he was responding a little bit but not.

Q: Okay and then...

A: But slowly he - he started...

Q: So you put some water on his face? Is that what you said?

A: Yeah.

Q: You put water on his face.

A: Yeah.

Q: Okay, so you put water on his face.

A: Then - then I...

Q: That didn't help so then what'd you do?

A: I just - I just carried him and I called mom.

Q: Okay. Your girlfriend?

A: Yeah.

Q: Okay and what'd you tell her?

A: That she gotta come home - 'cause I never like - like scare her, so I told you
gotta come home - you gotta - your boy. I - I don't - there's something wrong

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with him.

Q: Okay.

A: He's acting kind of funny right now. She's - I never like scare her or spook her 'cause she was coming on her way home - I never like her race home or.

Q: Okay. And what happened then?

A: So then I just - then she would just - I told her just for call 9-1-1 and it's - she never like 'cause we know expense for pay for an ambulance.

Q: Okay.

A: So we just - I just told her just to a...

Q: Okay.

A: And that's when she called paramedics and 9-1-1 and then they came to the house.

Q: What did you do with him until the paramedics got here?

A: I notice that he had - he - he was vomiting - clammy.

Q: Uh-huh.

A: Spitting out (unintelligible). So I just - get the napkins in here. (unintelligible) (unintelligible).

Q: They're in the trash can then?

A: Yeah.

Q: Okay.

A: He was spitting up stuff right there.

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STATEMENT OF: QUISANO, JONATHAN

Q: He was spitting up what?

A: I don't know - is like - like blood. Um...

Q: Un-'kay.

A: Mucous - like or throw- smell like vomit too.

Q: Okay, so he was - but he's vomiting blood and...

A: Yeah.

Q: Other stuff. And you said you - there's - and we're on tape, but behind...

A: Yeah.

Q: ...us there's a trash can...

A: Yeah.

Q: ...that you threw it in?

A: Yeah, it's just - the trash can is right there.

Q: Okay. Is there anything else that you cleaned up over that period of time?

A: Um, no 'cause I had him - I had him right down top the rug. Just - I was just tryin' for get air in his lungs too.

Q: Okay. Did he ever stop breathing?

A: No.

Q: Did he ever close his eyes?

A: I was - I was scared that he - no (unintelligible).

Q: Okay. Um...

A: I kept talking to him so he know I was still there.

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STATEMENT OF: QUISANO, JONATHAN

Q: Was he saying anything to you?

A: (Unintelligible).

Q: Or does he talk now? Does he talk at all?

A: What you mean - like right now?

Q: No, in - in general does he speak...

A: Oh - yeah - yeah - yeah. He - he - he mumbled - he hardly talk.

Q: Okay. Words - dad - mom?

A: Yeah - yeah - yeah.

Q: Can he say stuff like that?

A: Yeah - yeah.

Q: Okay - but he can't carry on a conversation?

A: Yeah.

Q: Okay. Does he still wear diapers?

A: No.

Q: Okay so he pees in the bathroom and he poops by himself?

A: Yeah.

Q: Okay. Um, so did you ever feed them - we - we talked bri- briefly about that - did you ever feed them?

A: No not - not in that period of time.

Q: Okay. All right, did anything else happen you're not telling us about?

A: No.

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VOLUNTARY STATEMENT

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Q: Un-'kay. Um, well here - here's - this - this is the problem and this is why we're here - this - the injuries to your child - they're substantial. He has - he has, um, a severe brain bleed, ah, and without going into great detail his brain shifted seven millimeters. Am I sayin' it properly?

A: Yeah.

Q: Millimeters. Um, which is a substantial amount and it's more than - than would account for him falling off that couch. So what that tells the doctors and that tells us is something else more...

A: Happened to him.

Q: ...substantial happened to him that you're not explaining. So we want to - we want to find out what happened.

A: Yeah.

Q: We don't know if you hurt him on purpose.

A: I never hit my kids.

Q: Or if - or if he ever (unintelligible).

A: I would never abuse my kids.

Q: He also has a - another injury to his ribs here and to his chest.

A: For real?

Q: Yeah, for real. And the problem is - and unless you didn't tell us something - you're the only one here with him - those injuries...

A: (Unintelligible).

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Q: ...are all consistent with when he got the head injury. So they're all - I mean we can tell they're all at the same time so we're trying to find out what else happened.

A: Right - right - right.

Q: Because the - the fall from the couch to the floor couldn't do the kind of brain trauma that he has - it's - it's a substantial brain bleed, um, to his head. So, something else had to happen other than what you're telling us.

A: That's - that's all what happened. Honest, I - I never do nothin' to my kids.

Q: Well, (unintelligible) and...

A: I would never hurt my kids.

Q: I understand what you're saying.

A: (Unintelligible).

Q: (Unintelligible) - which - here's what you have to understand. Those injuries can't happen the way you're describing. Something else had to happen because...

A: I - I know.

Q: ...you - with a - with a seven millimeter brain - when your brain shifts it means your head moves enou- it hits a object hard enough that it shifts seven millimeters from where it should be. All the way over and all the way back and they can tell that from a CAT scan. And it - it scrambles your brain.

A: Right - right.

Q: And so because of that - that's not an injury you can sustain from that distance.

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A: (Unintelligible).

Q: It's not - yeah, it's not. So there either had to be force in - in him hitting the ground. He was hit in the head with something.

A: No.

Q: Or, something else you're not telling us. So...

A: I would never strike my kids.

Q: Okay, well I'm not saying that you struck your kids - I'm trying to ask you for an explanation as to what happened beyond what you're telling us 'cause it has to be something more substantial.

A: I know - I know what you mean.

Q: Did you lose your temper?

A: No, I...

Q: Is it...

A: I...

Q: ...something...

A: ...never lose my temper.

Q: You never lose your temper?

A: I'm good with kids. (unintelligible).

Q: Okay, well then - then can you offer me an alternative explanation for what happened?

A: What's an alternative?

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- Q: A different - what you're telling me can't be true.
- A: I - I - I don't know (unintelligible) (unintelligible).
- Q: So if...
- A: I (unintelligible) for (unintelligible) - that's - that's all what happened.
- Q: Right, but...
- A: I have no (unintelligible).
- Q: Do you understand what I'm saying?
- A: Yeah, I know what you're...
- Q: Yeah.
- A: ...trying to say, but.
- Q: Can you explain the other injuries that he has - the injuries to the ribs?
- A: No. I would never hit my kid.
- Q: Un-kay, well - I know you keep saying that and...
- A: Yeah.
- Q: And I'm not saying you're lying.
- A: I - I'm...
- Q: But what I'm telling you is, the injuries we're talking about are way more substantial.
- A: I - I...
- Q: And there's - there's more than just the head - I mean there's injuries to his lungs - there's injuries to his ribs. He's presenting as though somebody - somebody

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beat him.

A: Beat him up.

Q: 'Cause here's the thing - I mean we're out here - your son's probably gonna die - that's why we're here. And if you can't offer me more than that we're stuck with you're the kinda guy who did beat your kid to death. And I know you're saying you're not and I'd like to think you're not.

A: Yeah.

Q: You seem...

A: I mean I...

Q: ...like a good father - this is a nice home.

A: I would never strike my kids.

Q: So I have - I have to think there's some other explanation besides what you're telling me that you're not tellin' me. Did your wife come home - did your wife have - was she here prior?

A: She - she - she came home when they got taken away.

Q: After the fact - right, she wasn't here before hand. Was there anybody else here?

A: No.

Q: 'Kay.

A: It's just...

Q: Would grandma have beat your kid?

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A: No.

Q: Okay. Did your other son beat your kid?

A: (Unintelligible) I wouldn't think so.

Q: Right - right, so you see where I'm at.

A: (Unintelligible).

Q: I'm stuck with you're not really offerin' me...

A: And I'm just - I'm like the number one.

Q: Well it's not even...

A: And I...

Q: ...you're the number one - it - it's just medical science.

A: Yeah - yeah - yeah.

Q: The doctors can tell the - the kind of injuries that are - that are there. And they can...

A: It's like - it's like common sense 'cause I was with my boy last.

Q: Right.

A: That just common sense.

Q: Right and it concerns me that your boy had this before - that...

A: Yeah.

Q: Before he had some injuries to his ribs and he has those now. I'm wondering if he did something that upset you...

A: No.

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Q: And this is - 'cause there's a difference between a guy who loses temper and didn't mean too and a guy who just kills his kid.

A: I never lose my temper.

Q: Okay, you hear what I'm saying?

A: Yeah I - I...

Q: There is a difference.

A: I don't - I - I don't...

Q: And so if there's - if - if you lost your temper and it's not what you meant to do that's different than a guy who just beat his kid and doesn't care. And that's kinda what you're givin' me is I'm - I'm kinda stuck with that - if you're not gonna explain what happened. And I would like to understand - 'cause you don't seem like you don't care for your children. But the injuries to your child are - don't suggest that. And so I - Jonathan I just - you know, I want to know what happened - if this is out of character for you and you didn't mean to do this than - and now you're sitting here goin' fuck I didn't mean to do this.

A: (Unintelligible).

Q: And I don't know how to take it back.

A: I know.

Q: I understand how that happens. We do this all the time. And if that's the case at least explain that so we can explain that to your wife - girlfriend.

A: (Unintelligible) that all I have to say is what happened?

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Q: Okay, but you understand...

A: I - yeah...

Q: ...something else hap...

A: Yeah.

Q: We know something else had to happen. There's - you know, there's evidence.

A: Had to have somethin' else what happened.

Q: There's substantial injuries to your child that go way beyond one fall off of a couch - even if he landed right on his head you can't substan- you - you can't get that kind of brain injury from that - that low of a fall. Even onto a tile concrete floor like this - it's - the - the injuries don't make sense. I - the - the brain bleed is substantial. So there's force behind what happened. Were you playing with him and you pushed him off the couch?

A: No.

Q: Un-'kay. Well, we're kinda stuck with - you know, we - I'd like you to explain what happened and you're really not, but I mean we're kinda stuck with this - you need to...

A: I - I am explaining. That's - that's how...

Q: But you understand somethin' else had to happen buddy, right?

A: Yeah - yeah - yeah, I...

Q: You understand that?

A: Just - just that - just that injuries you just talkin' about.

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Q: Right, there's more than one injury.

A: Yeah.

Q: Okay. So I mean we know somethin' happened - it's just a matter of you're gonna tell me the truth about it or not. The thing is...

A: (Unintelligible).

Q: If you're. If this is a mistake and - and - look I understand what happens - people lose their temper - I have a bunch of kids and I know that I've - I've lost my temper with my children and before you know it you did somethin' you didn't mean too and all of a sudden you can't take it back.

A: (Unintelligible).

Q: But it doesn't mean you don't love your child. It doesn't mean you don't care about your child. It just means that you're a human and you made a mistake. But, um, stickin' with what you're telling me just we know isn't true. And I'd just like to know the truth. I'd like to be able to explain the truth to your...

A: Girlfriend.

Q: Girlfriend. And your family. And if it's you lost your temper and you did well then that's what you did.

A: Nah-uh.

Q: That's what you did. But, somethin' more happened than what you're tellin' us. And I mean, you know, let's - let's just hear it - I mean you're not a bad guy. I can tell that from the (unintelligible) - look what you're providing for your family.

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This is a beautiful home and your ki...

A: This is not - this is not my home.

Q: Okay, but this is where you live - this is where you keep your family.

A: I don't know what to say.

Q1: A couple things. When did you come here from Hawaii - when did you leave Hawaii?

A: Ah, was in October - somewhere in October.

Q1: October...

A: Late - late October.

Q1: Of what year?

A: Last year.

Q1: Last year?

A: Yeah. So I was only living here like seven - seven months. Seven - eight months.

Q1: Un-'kay and when you looked over and you saw...

A: My boy Khayden.

Q1: Khayden goin' over the couch - which way was he facing?

A: He was just like - his head was like this, facing that way.

Q1: No - no - did - what - did you say you saw him go over - did you see him go over at all - the couch?

A: Yeah, like on fast glance.

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Q1: Which - was he lookin' at you or was he lookin' - how did he go...

((Crosstalk))

Q1: How did he...

A: Well - well - well when I seen, it was on a fast glance - when I seen him go over -
I just seen him go like right over.

Q: Okay, but is his...

Q1: Which way was his feet?

Q: Is he facing towards where we are or is he facing towards you?

A: He was facing like this way.

Q1: He's facing to the south.

A: Yeah.

Q1: And then - so you just see his feet kinda go up over the - and where - and where
does - where's Khayden at - or Khaysen at?

A: Was right - right - right next to the brother.

Q1: Right on the couch - both of 'em?

A: Both of 'em (unintelligible) (unintelligible).

Q1: Were they standin' up on the couch?

A: Yeah.

Q1: Both standin' up on the couch?

A: Yeah.

Q1: And then are they rough housin' - are they playin' or - I mean...

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A: Well they...

Q1: Are you sleeping - did you fall asleep or somethin' or have you been up - you work - I mean you go to work from 2:00 to 11:00.

A: Two to (unintelligible) - well I get tired because of (unintelligible). I (unintelligible) my time what was (unintelligible).

Q1: Did you stay up all day?

A: No.

Q1: You slept during the day?

A: Yeah, we - we took a nap when they came home.

Q1: Okay, so when you...

A: When they took a nap I took, I took a partial nap and then before - like when I come home around 11:00 - 10:00 - 11:00 I get that - like two - three hours sleep - fall asleep before grandma come and bring 'em home.

Q1: Okay but they're - they're standin' up on the couch - were they jumpin' up on the couch playin' around or - you're watchin' the game or.

A: Yeah they do. They were just farlin' around - playin' around.

Q1: Mm-hm. And then what draws your attention to the couch to see...

A: All's I just seen my boy just - like on glance he just went right over.

Q1: Does he make a noise or is there a scream - is there like a somethin' that makes you...

A: (Unintelligible) like - like when he hit.

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Q1: Is there somethin' that make you look over there - if you're just watchin' the TV or something - they...

A: (Unintelligible) 'cause I - yeah, I got up and check on - up on them once in a while - look at them. Right - right - right there when I take one look.

Q1: Yes.

A: Right over.

Q1: And then when you come around and you see him, his head is facing which way?

A: That way.

Q1: His head is that way to the east and then his feet.

A: That way.

Q1: Are to the west?

A: Yeah. He was just...

Q: Was he face down or face up?

A: Up.

Q: Or on his side?

A: Up.

Q: Face - so he's on his back?

A: Yeah.

Q1: And Khaysen's still on the other side?

A: Well yeah...

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Q1: Standing on the...

A: ...I told him get off the chair.

Q1: But he's still standin' up?

A: Yeah.

Q1: The chair or couch?

A: Well, I call them chairs (unintelligible) couch - couch - chair.

Q1: He's standin' up on that - is he lookin' over at his brother or?

A: No, I to- I told him for get off the chair.

Q1: Were they standin' on the very top of the back at all or no?

A: No.

Q1: No - on the cushion side.

A: On the cushion.

Q1: They're just on - on the cushion side?

A: Yeah. 'Cause if they was on the top I'm - I'm gonna told 'em get off.

Q1: And you don't have anything to drink when get home from work today or anything?

A: Nah.

Q1: No beers or nothin'?

A: No.

Q: Did you clean anything up here?

A: Huh? No.

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Q: Did you clean anything?

A: No.

Q: Other than what he was vomiting?

A: No. When he was vomiting that - that was way after.

Q: Okay.

A: Yeah.

Q1: So nothing right away - he...

A: No, nothin'...

Q1: ...didn't start...

A: ...nothing' right away.

Q1: ...throwin' up.

A: He just went boom - I pick him up.

Q1: But you described him as bein' - you described him as being locked up - like frozen.

A: Yeah.

Q1: His body was locked up.

A: Like - he was just like fr- like just straight.

Q1: Stuck.

A: Yeah. So I just figured I just slap some water on him or somethin' - just - just for get him- see if he would like respond to the coldness of the water.

Q1: Mm-hm.

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A: Nothin'.

Q1: Did you see any injuries on him?

A: Nah.

Q1: On his face or anything? Blood anywhere?

A: I - well when I was rubbin' his head, I felt like one - like one - I see it on what - the left side or the right side - like one - like one indentation on his head.

Q1: A dent on his head - where at? Toward the...

A: Like in - like when - yeah, I could feel his skull - was like...

Q1: But...

A: Indented like.

Q1: Toward the back or the front?

A: I think it was on the side or something.

Q1: On the side?

A: Yeah.

Q: Do you know which side? Just if you remember.

A: It's (unintelligible) - it's the left side.

Q1: Now the brothers - do the rough - do they play rough or no - they...

A: (Unintelligible)

Q1: They mess around a lot? 'Cause they're pretty close - what 2 and 3?

A: Especially the fat one.

Q1: The what?

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A: The big boy - big boy - my big boy.

Q1: Which one's the fat one?

A: Ka...

Q1: The one...

A: Khaysen.

Q1: The one that's in there is the fat one?

A: Yeah.

Q1: So Khayden's thinner?

A: Yeah.

Q1: So does Khaysen pick on Khayden?

A: Pretty much.

Q1: Yeah does he - have you ever seen him hit him with anything or?

A: Um, well grandma always tell me like they always fighting at the house and stuff -
sometimes they (unintelligible) too.

Q1: (Unintelligible).

A: They rough house -yeah.

Q1: Yeah.

A: Yeah, but for kids it's minor.

Q1: Normally like kicking each other - hitting each other?

A: Not kicking - like - just like pushing around.

Q1: Yeah.

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A: Whacking the head - (unintelligible).

Q1: But they're not messing around on the couch today when - you're sure you're awake when this happens - are you fallin' - or you kinda fallin' asleep watchin' the game or what - what do you...

A: No we - we don't no more cable - we just get one (unintelligible). I watch Family Feud.

Q1: What were you watching?

A: Um, we (unintelligible) - ah, I had Judge Matthew was on, something like that.

Q1: Were you awake...

A: Judge Alex - get that - get the court - that court (unintelligible) that come on.

Q: But you're wide awake - you're not sleeping?

Q1: You're not like...

A: Yeah - yeah, I just watching - just normal - watching - kicking back - watching.

Q: No drinking?

A: No drinking.

Q: You're not impaired?

A: Like...

Q: Drugs?

A: No.

Q1: And you don't have any toys on the couch or anything? They're just - they're just...

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A: Just - just playing around.

Q1: They're just playing around with each other on the...

A: Yeah.

Q1: ...couch - jumpin' up and down.

A: Yeah.

Q1: No...

A: Chasing each other - they're just running around (unintelligible).

Q1: Where do they normally play at - do they have toys in their room - a specific room.

A: All - all of 'em. They either play over here by their train set or they playin' with their fire trucks or they playin' in the closet- with all their Lego's - not Lego's but their blocks and stuff like that.

Q: How quickly did you call your - your girlfriend?

A: Was about like around five - ten minutes.

Q: Okay. Is there - is there a reason you called her instead of the police first or like an ambulance - like you obviously thought...

A: 'Cause...

Q: ...he was bad.

A: 'Cause - 'cause she - she's like a medical assistant - she's almost a nurse (unintelligible).

Q: What did she say - did she get freaked out or?

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A: Yeah she told - she told me we got to call the ambulance - we got to (unintelligible) - this serious - I said, oh shit. I came up to - 'cause we never like - like what I say - we never like call the ambulance but this is - this is my son we're talking about so we told him - I told her just call the ambulance.

Q: Okay. Is there - I'm just tryin' to get around is there a reason why you didn't call as opposed to her - she's not here - you are here.

A: 'Cause I - I get nervous where I - I cannot like give like - I couldn't even give the right address and stuff.

Q: Okay.

A: I get nervous.

Q: Do you ever spank the kids just in general - do you discipline 'em?

A: Yeah.

Q: Okay.

A: I do that - that's - that's not like full force or whatnot - just - just...

Q: Spank 'em on the butt?

A: Just general - yeah.

Q: Okay. Do you ever - what kind of discipline do you do? Is it spanking with a belt - spanking with your hand?

A: I got, um, the back scratcher.

Q: You use a back scratcher?

A: Yeah.

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Q: Where is that at?

A: Ah...

Q: Did that - did you have to do that today - did they do anything wrong today?

A: No.

Q: Okay. Where's - do - so that's what you - like my mom used to use a spatula when she'd spank me - that's what you use is the back scratcher?

A: Or - or they face the wall.

Q: What do you mean they face to the wall?

A: Like if they don't listen I - they - they - they swear or - 'cause they starlin' swear and all that so. Or they talk back or he - he punched the brother or he push on the brother - just make 'em stand up for a little while.

Q: Like in time-out?

A: Yeah, like time-out kinda.

Q: Oh, just...

A: Yeah - yeah - yeah - yeah -yeah.

Q: Like stand in a corner - okay - okay.

A: Just stand in the corner a little while and then (unintelligible).

Q: Okay - or you spank 'em with the back scratcher?

A: Just not - not hard but, yeah.

Q: Okay. I'm just trying to get a baseline on...

A: Yeah.

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((Crosstalk))

Q: ...how you discipline.

A: (Unintelligible) weapons.

Q: What about your girlfriend? Does she spank them?

A: Nah.

Q: Okay, so are you the one who does all the discipline?

A: Well, (unintelligible) she yell at 'em.

Q: Un-'kay. I'm saying if it comes down to discipline - puttin' 'em in time-out -
spankin' 'em - that's you?

A: Yeah, well not heavily.

Q: Can - can you offer me any other explanation what happened to your son? I
mean you understand your son's probably gonna die right?

A: I - I - I understand officer.

Q: I mean you...

A: (Unintelligible).

Q: ...understand that it's a substantial injury - this is...

A: That - that is.

Q: This isn't like the CPS thing last time.

A: Yeah.

Q: This is.

A: This is...

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Q: A lot more serious.

A: This is more serious. Just listening - yeah.

Q: Un-'kay. And you didn't do any cleaning up over there? 'Cause that kind of injury should have left some kind of mark.

A: No.

Q: There's nothin' on the tile. You're certain that it happened right there?

A: Yeah.

Q: Do you have any other questions Tate?

Q1: No - no.

Q: For right now?

Q1: No - no.

Q: Do you have any questions for me right now?

Q1: No.

A: I don't know (unintelligible) (unintelligible).

Q1: I don't see the footprints on this couch on that side.

Q: Can you point out for...

Q1: I mean this...

Q: ...us where you - where he's on the ground. Come show us where he is on the ground.

Q1: This one still has like the lines from where it was vacuumed in it.

A: 'Cause it was sittin' - I was sittin' on the chair with him. I had this pillow was - the

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pillow was like this - I had on the chair. (unintelligible) (unintelligible). Least one more (unintelligible). I have - I have (unintelligible) (unintelligible) (unintelligible).

Q1: Okay, where were they jumping - that's where I...

A: It was right here - they were just playing right here. Just right over the thing.

Q: Okay, so when you pick him up he's right here?

A: This right here - the couch - came around and pick him up (unintelligible) on the ground.

Q: Okay, so this tile right here?

A: Boom.

Q: Give or take these two?

A: Yeah.

Q: Not farther up there where the chair is?

A: No - no.

Q: Okay.

A: So just sitting right there.

Q: Come sit - come sit. All right, um - um, CPS is obviously gonna come out and...

A: Yeah.

Q: We're gonna talk to them.

A: Ah - ah, I know the whole thing.

Q: Okay. Um, we're gonna have you hang here for just a minute 'til we go talk to them. Um, and then, um, we're gonna talk to the doctor one more time at the

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hospital and then figure out what we're gonna do with you. Okay? You certain you don't want to explain this 'cause I really would feel better if you would explain this as opposed to lettin' this...

A: I tellin' you the whole - I tell you the truth.

Q: Yeah, but - but you're not.

A: (Unintelligible).

Q: But you're not. And - and I'm just telling you the injuries that happened to your son aren't what you're saying happened. Something else had to happen. It just had to - it's - it's a scientific physical impossibility for what you're saying happened for those injuries to be with your son. So, you know - I'm not trying to be mean to you - I'm just tryin' to understand...

A: You just - just tryin' to find out what happened...

Q: Right.

A: ...and I'm telling you what happened.

Q: But...

A: But you - you think...

Q: You understand what I'm sayin'?

A: Yeah, you think I'm lying because the injuries that he got is...

Q: Well...

A: Serious and stuff.

Q: What I'm telling you is the injuries that - that he has couldn't have happened the

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way you're describing - something else had to happen. Something more than what you're telling us. And so I'm just trying to figure out why you're - you know, what it is. Did you do it - is it something you don't want us to know.

A: No.

Q: Is it...

A: I did not do nothing to my child.

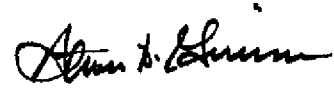
Q: Um-'kay. Anything?

Q1: No.

Q: All right, we're gonna conclude the interview. It's a 2150 hours.

**THIS VOLUNTARY STATEMENT WAS COMPLETED AT 4720 TRIMWATER COURT
ON THE 6TH DAY OF JUNE 2013 AT 2150 HOURS.**

DB: TS: (NET TRANSCRIPTS)
13V0706


CLERK OF THE COURT

1 MDIS
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 NANCY M. LEMCKE
5 Deputy Public Defender
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7 NORMAN J. REED
8 Deputy Public Defender
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10 309 South Third Street, Suite 226
11 Las Vegas, Nevada 89155
12 (702) 455-4685
13 Attorneys for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JONATHAN QUISANO,

14 Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014
TIME: 9:30 a.m.

15
16 MOTION TO COMPEL PRODUCTION OF DISCOVERY

17 COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY
18 M. LEMCKE and NORMAN REED, Deputy Public Defenders, and hereby requests that this
19 Honorable Court compel production of discovery as outlined below.


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

22 DATED this 17 day of May, 2014.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

25 By: 
26 NANCY M. LEMCKE, #5416
27 Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

I. STATEMENT OF FACTS

On June 6, 2013, three year-old Kayden Quisano died as the result of blunt force trauma to the head. I PHT p. 18-41. Kayden lived with his mother, Christina Rodrigues; his father, Jonathan Quisano; his little brother, Khaysen; and his maternal grandmother, Lynnel Rodrigues. I PHT p. 233. On the morning of June 6, Jonathan left for work just before dawn, in keeping with his usual work schedule. I PHT p. 239-24. Christina woke Kayden and Khaysen around 6:30. I PHT p. 240. She dressed them and drove them to her grandparents' home, after which she drove to work for her 8:30-5:00 shift at cardiovascular specialist's office. I PHT p. 239-241. As typically happened, Christina's grandparents drove Kayden and Khaysen home after Jonathan returned home from work, sometime in the afternoon. I PHT p. 233-40. At approximately 5:10 that evening, as Christina was driving home from work, she received a phone call from Jonathan. I PHT p. 241-42. Jonathan told her to hurry home. I PHT p. 243. A few minutes later, Christina called Jonathan back and asked why he needed her to hurry home. I PHT p. 243. Jonathan explained that Khayden fell off of the back of the couch in the tile-floored living room¹ and hit his head. I PHT p. 243-44; 261. Jonathan told Christina that Khayden was not opening his eyes and was spitting up. I PHT p. 244; 256. Christina hung up and called 911. I PHT p. 244.

Emergency personnel responded and found Khayden unresponsive and lifeless. I PHT p. 155. Paramedics immediately initiated life-saving measures, including CPR/chest compressions. I PHT p. 163-64; 176-79. When asked what happened to Khayden, Jonathan told paramedic Timothy Kline that Khayden fell from a living room chair onto the tile floor. I PHT p. 160-61. Notably, the living room housed a love seat, two recliner chairs, and a three-seat couch. I PHT p. 237; 245-46. Jonathan similarly told paramedic Patrick Burkhalter that Khayden fell backwards off of a chair/recliner onto the floor. I PHT p. 210-12. Jonathan later clarified that he did not actually witness the fall; that he only saw Khayden playing on top of the chair when he fell. I PHT p. 213. Las Vegas Fire Department Captain Mickey Pedrol also asked Jonathan how Khayden sustained his injuries. I PHT p. 192-93. Jonathan purportedly told Capt. Pedrol that both of his sons were playing on a bar when Khayden fell off, hitting his head on the floor. I PHT p. 193. Notably,

¹ Jonathan later reiterated this version of events to Christina when the couple drove to the hospital. PHT p. 244-49.

1 when asked, Christina Rodrigues could not identify anything in the home approximating a 'bar,'
2 nor was she aware of anything to which Jonathan referred as a 'bar' other than a barstool located in
3 the kitchen area. I PHT p. 257.

4 Christina arrived home to find paramedics already tending to Khayden. I PHT p. 249.
5 Suspicious of Jonathan's accounting of Khayden's injury(ies), Capt. Pedrol alerted LVMPD
6 officials. I PHT p. 190. Khayden was transported to UMC Hospital where doctors determined
7 him to be clinically brain dead. I PHT p. 38. Khayden died not long thereafter.

8 LVMPD detectives responded to the hospital and, ultimately, to Khayden's home to
9 investigate. Det. Dolphis Boucher interrogated Jonathan. II PHT p. 77-100. Jonathan told Det.
10 Boucher that Christina's grandparents dropped Khayden and Khaysen off at home at
11 approximately 4:30 in the afternoon. II PHT p. 77. Jonathan indicated that the children appeared
12 to be fine. II PHT p. 77. Jonathan told Det. Boucher that everyone took a nap for a short while,
13 after which the kids played. II PHT p. 78. At some point the kids were playing on the living room
14 sofa while Jonathan sat in one of the recliner chairs watching TV. II PHT p. 78. According to
15 Det. Boucher, Jonathan indicated that Khayden slid over the back of the couch, head first. II PHT
16 p. 83. Jonathan explained that he immediately went to tend to Khayden, and found him lying on
17 his back, parallel to the couch. II PHT p. 85. Jonathan described Khayden as being "frozen up,"
18 making some type of noise. II PHT p. 87. Jonathan indicated he picked Khayden up, thinking he
19 had been knocked out from the fall. II PHT p. 87. Not seeing any blood, Jonathan tried to revive
20 Khayden by splashing water on his face. II PHT p. 88. Khayden did not respond to the cold water
21 and began to vomit, at which point Jonathan called Christina, a medical assistant in a doctor's
22 office. II PHT p. 88.

23 Dr. Lisa Gavin performed an autopsy on Khayden. III PHT p. 4-10. Dr. Gavin found that
24 Khayden suffered a stellate skull fracture to the back of his head, slightly to the right of the
25 midline. III PHT p. 14. Dr. Gavin also found subgaleal and subdural hemorrhaging in this area.
26 III PHT p. 12-16; 52. Dr. Gavin noted a significant amount of bleeding on the left side of
27 Khayden's brain, along with some hemorrhaging around the eyes, as well. III PHT p. 19-20; 24;
28 52. Consistent with imaging performed at the hospital, Dr. Gavin observed a midline shift of the

1 brain of a few millimeters. III PHT p. 51-52. Neuropathologic testing further revealed diffuse
2 cerebral edema, as well as early-onset hypoxic ischemia and diffuse axonal injury. III PHT p. 40-
3 42; 52. Dr. Gavin opined that Khayden died as the result of blunt force trauma to the head. III PHT
4 p. 53. However, Dr. Gavin did not classify Khayden's death as a homicide. III PHT p. 55-56.
5 Rather, she could not determine the manner of Khayden's death. III PHT p. 55-56. Dr. Gavin
6 explained that she could not rule out the possibility that Khayden's death was the result of an
7 accident. III PHT p. 55-56.

8 It should be noted that the instant prosecutors have been very cooperative where
9 discovery in the instant matter is concerned. The instant motion is not a reflection on the often-
10 times great lengths to which the instant prosecutors have gone to timely provide relevant discovery
11 in this matter. Rather, the instant motion is borne out of the Mr. Quisano's need to ensure that that
12 all relevant discovery, some of which has been provided, has been ordered by this Honorable
13 Court.

14 II. POINTS AND AUTHORITIES

15 A. PROSECUTORS ARE REQUIRED TO DISCLOSE BOTH INCULPATORY AND 16 EXCULPATORY INFORMATION PRIOR TO TRIAL.

17 1. Prosecutors must disclose inculpatory evidence.

18 Nevada Revised Statute 174.235 requires disclosure of:

- 19 1. Written or recorded statements or confessions made by the defendant, or any
20 written or recorded statements made by a witness the prosecuting attorney
21 intends to call during the case in chief of the state, or copies thereof, within the
22 possession, custody or control of the state, the existence of which is known, or
23 by the exercise of due diligence by become known, the prosecuting attorney.
- 24 2. Results or reports of physical or mental examinations, scientific tests or
25 scientific experiments made in connection with the particular case, or copies
26 thereof, within the possession, custody or control of the state, the existence of
27 which is known, or by the exercise of due diligence may become known, to the
28 prosecuting attorney.²

26 ²This includes medical data/imaging/films/reports and/or slides, histological, colposcopic, or otherwise. The Sixth
27 Amendment's right to counsel guarantees obligate defense counsel to conduct "an adequate pre-trial investigation into
28 [] medical evidence." *Gersten v. Senkowski*, 426 F.3d 588, 605 (2d Cir. 2005). This duty includes obtaining and
reviewing pertinent medical imaging such as colposcopic slides, even when the State's medical expert has opined that
the medical examination(s) reveal no significant findings or are otherwise "normal." *Id.* at 603, 607-10 ("If a medical
examination of the alleged victim failed to reveal any evidence clinically indicative of sexual penetration, that failure

1 3. Books, papers, documents, tangible objects, or copies thereof, which the
2 prosecuting attorney intends to introduce during the case in chief of the state
3 and which are within the possession, custody or control of the state, the
4 existence of which is known, or by the exercise of due diligence may become
5 known, to the prosecuting attorney.

6 a. Prosecutors must disclose all inculpatory evidence, regardless of
7 whether the material is intended for use in the government's case in
8 chief.

9 Prosecutors may not lawfully withhold inculpatory material and information from the
10 defense simply because they do not intend to present the material or information during the
11 government's case in chief. State v. Harrington, 9 Nev. 91, 94 (1873); People v. Carter, 312 P.2d
12 665, 675 (Cal.1957); People v. Bunyard, 756 P.2d 795, 809 (Cal. 1988). Any holding to the
13 contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material
14 from the government's case in chief, only to surprise the defense by using it in rebuttal.

15 b. NRS 174.235 requires disclosure of all statements made by a
16 defendant, regardless of whether the statement(s) are reduced to
17 writing and/or recorded.

18 Notably, while NRS 174.235 obligates prosecutors to disclose a defendant's *written or*
19 *recorded* statements, fundamental fairness requires the statute extend to any unrecorded oral
20 statement(s) and/or any statement(s) for which a defendant can be held vicariously liable. Courts
21 have recognized the "fundamental fairness" involved in "granting the accused equal access to his
22 own words, no matter how the Government came by them." U.S. v. Caldwell, 543 F.2d 1333,
23 1353 (D.D.C. 1974). This fairness should extend not only to written or recorded statements, but
24 unrecorded oral statements as well as those for which a defendant can be held vicariously liable.
25 Under NRS 51.035(3)(a)-(c), a defendant can be held vicariously liable for a statement made by a
26 third party.³ See also Fields v. State, 220 P.3d 709 (2009) (evidence of defendant's silence
27 following wife's complaint that she was in jail because of his conduct admissible as an adoptive
28

would constitute strong affirmative evidence that forced sexual penetration did not occur."). Thus, the discovery
obligation(s) set forth in NRS 174.235(2) require prosecutors to disclose otherwise invasive physical imaging and/or
testing.

³ NRS 51.035(3)(b), which excepts from the definition of hearsay a "statement offered against a party" that is "[a]
statement of which [the party against whom it is offered] has manifested his adoption or believe in its truth."

admission). Thus, NRS 174.235 should be construed to include within the definition of a defendant's "statement" both unrecorded oral statements as well as those for which he/she can be held vicariously liable.

c. NRS 174.235 requires disclosure of any/all rough notes prepared in connection with the investigation of the instant matter.

Raw notes made by any law enforcement officer or other prosecution agent in connection with the investigation of instant matter must be disclosed to the defense. Notably, this does not include information amounting to work product. In Hickman v. Taylor, 329 U.S. 495, 508-11 (1947), the U.S. Supreme Court recognized the privileged nature of discussions relating to the preparation of a case for trial.⁴ The 'work product doctrine' announced in Hickman shelters not only material generated by an attorney in preparation for trial, but by his/her agent, as well:

At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney as well as those prepared by the attorney himself. Moreover, the concerns reflected in the work-product doctrine do not disappear once trial has begun...

U.S. v. Nobles, 422 U.S. 225, 238-39 (1975).

Codifying this, NRS 174.235(2) exempts from discovery by a criminal defendant:

- (a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

⁴ "In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel... Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference... This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways - aptly... termed... as the 'work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own... Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of clients and the cause of justice would be poorly served." Id.

1 (b) A statement, report, book, paper, document, tangible object or any other
2 type of item or information that is privileged or protected from
3 disclosure or inspection pursuant to the constitution or laws of this state
4 or the Constitution of the United States.

5 Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted from
6 disclosure. Any other raw note(s) compiled during the investigation of this matter must be turned
7 over pursuant to the disclosure obligation conferred by NRS 174.235 or, in the case of exculpatory
8 material, Brady v. Maryland, *infra*.

9
10 a. Prosecutors must disclose exculpatory evidence as required by the U.S. and
11 Nevada Constitutions.

12 The United States and Nevada Constitutions require disclosure of all exculpatory evidence
13 of which prosecutors are in actual or constructive possession prior to trial. U.S.C.A. V, VI, XIV;
14 Nev. Const. Art. I, Sect. 8; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S.
15 419, (1995); Jimenez v. State, 112 Nev. 610, 618 (1996) ("It is a violation of due process for the
16 prosecutor to withhold exculpatory evidence, and his motive for doing so is immaterial....The
17 prosecutor represents the state and has a duty to see that justice is done in criminal prosecution.").
18 This means prosecutors must turn over material evidence that is favorable to the defendant. U.S. v.
19 Bagley, 473 U.S. 667, 675 (1985). Material evidence is evidence that is logically connected with
20 the facts of consequences or the issues in the case. Wyman v. State, 217 P.3d 572, 583 (Nev.
21 2009). The rule applies regardless of how a prosecutorial agency structures its overall discovery
22 process. Strickler v. Greene, 527 U.S. 263, (1999).

23 1. 'Favorable evidence' includes impeachment information.

24 The Due Process Clause of the Fifth and Fourteenth Amendments require that the State
25 disclose "any information about its witnesses that could cast doubt on their credibility." U.S. v.
26 Jennings, 960 F.2d 1488, 1490 (9th Cir. 1992); see also U.S. v. Bagley, *supra*, 473 U.S. 667
27 (1985). Accordingly, 'favorable evidence' includes impeachment information pertaining to any/all
28 government witnesses. Giglio v. U.S., 405 U.S. 150, 154 (1972); Youngblood v. West Virginia.

1 547 U.S. 867 (U.S. 2006); U.S. v. Bagley, supra, 473 U.S. at 676 (requiring disclosure of all
2 impeachment evidence).

3 **a. Cooperation agreements and benefits.**

4 Impeachment evidence includes any/all cooperation agreement(s)^b between a government
5 witness and prosecutors. Giglio v. U.S., 405 U.S. 150, 154 (1972) (requiring disclosure of
6 cooperation agreement between government witness and prosecutors). It also includes benefits
7 provided to a state witness, regardless of whether an explicit deal is outlined. Browning v. State,
8 120 Nev. 347, 369 (2004). It is the witness' own anticipation of reward, not the intent of the
9 prosecutor, which gives rise to the required disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30
10 (11th Cir. 1987), cert. denied, 481 U.S. 1054 (1987); Dugan v. State, 778 S.W.2d 465, 468 (Tex.
11 Crim. App. 1989) (Agreements need not be express or formal arrangements, and understanding
12 merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes
13 proper material for impeachment). And 'benefits' are not limited to agreement made in relation to
14 the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996). For example,
15 prosecutors must disclose evidence that a witness acted as a paid informant on one or more
16 occasions. State v. Bennett, 119 Nev. 589, 603 (2003).

17 Finally, 'benefits' can include, but are not necessarily limited to, travel and/or lodging
18 benefits, as well as counseling, treatment, or other assistance, including immigration assistance of
19 any kind, whether actual or anticipatory. This is relevant to issues regarding possible bias,
20 credibility, and motive to lie, all of which constitute impeachment evidence. See Davis v. Alaska,
21 415 U.S. 308 (1974). Check cites.

22 **b. Criminal histories.**

23 Impeachment material includes evidence relating to a witness' criminal history. Briggs v.
24 Raines, 652 F.2d 862, 865-66 (9th Cir. 1981) (under Brady, rap sheet useful to prove a witness'
25 history or propensity for a relevant character trait should be produced). This encompasses
26 information that is more than ten (10) years old. See Moore v. Kemp, 809 F.2d 702 (9th Cir.
27 1987) (entire criminal record should be disclosed). It further includes criminal history information
28 maintained by law enforcement agencies other than the Las Vegas Metropolitan Police

Department⁵, such as the federal government's National Crime Information Center ("NCIC") database.⁶ See also FN 2, *supra*.

c. Evidence contradicting statements of government witnesses.

Impeachment evidence encompasses prior statements and/or other evidence that contradicts government witnesses. Accordingly, prosecutors must disclose prior inconsistent statements by key government witnesses. *Lay v. State*, 116 Nev. 1185, 1199 (2000). Prosecutors must also disclose statements and/or evidence that contradict(s) the testimony of other government witness(es). *Rudin v. State*, 120 Nev. 121, 139 (2004).

d. Confidential records.

A witness can be attacked by "revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to the issues or personalities on the case at hand. The partiality of a witness is...always relevant as discrediting the witness and affecting the weight of his testimony." *Davis v. Alaska*, *supra*, at 354; See also *Lobato v. State*, 120 Nev. 512 (2004) (discussing the "nine basic modes of impeachment.") Accordingly, impeachment evidence can derive from otherwise privileged and/or confidential material. When this occurs, the privileged and/or confidential nature of the material at issue must yield to a defendant's constitutionally

⁵ See *Odle v. U.S.*, 65 F. Supp. 2d 1065 (N.D. Cal. 1999), *rev'd on other grounds by* *Odle v. Woodford*, 238 F.3d 1084 (9th Cir. 2001), (holding that "...knowledge may be imputed to the prosecutor, or a duty to search may be imposed, in cases where a search for readily available background information is routinely performed, such as routine criminal background checks of witnesses." *Id.* at 1072 (citations omitted) (emphasis added); *U.S. v. Perdomo*, 929 F.2d 967 (3rd Cir. 1991) (adopting 5th Circuit's rationale in requiring government to obtain complete criminal history on prosecution witness(es)); *Martinez v. Wainwright*, 621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-government witnesses, including data obtainable from the FBI; prosecutor's lack of awareness of alleged victim's criminal history does not excuse duty to obtain and produce rap sheet); *U.S. v. Thornton*, 1 F.3d 149 (3rd Cir. 1993) (prosecutor charged with producing impeachment evidence actually or constructively in his possession as "prosecutors have an obligation to make a thorough inquiry of all enforcement agencies that had a potential connection with the witnesses..."). But cf. *U.S. v. Blood*, 435 F.3d 612, 627 (6th Cir. 2006) (no *Brady* violation where prosecutor did not produce to the defense the printout of the NCIC check but disclosed that the witness in question had no criminal history; "the Government is only required to disclose its informant's criminal history if he has one").

⁶ Federal law permits disclosure of NCIC information under circumstances such as that here. 28 C.F.R. Chapter 1 addresses the U.S. Dept. of Justice and Criminal Justice Information Systems. 28 C.F.R. Sec. 20.33 sets forth the instances in which NCIC information may be disclosed. It provides for NCIC disclosure "... (1) To criminal justice agencies for criminal justice purposes..." 28 C.F.R. Sec. 20.3(g) defines criminal justice agencies as: "... (1) Courts; and [other entities set forth in that section]." Additionally, 28 C.F.R. Sec. 20.3 defines the "[a]dministration of criminal justice" to include the "performance of any of the following activities... adjudication..."⁶ Therefore, the C.F.R. authorizes prosecutors to access and disclose NCIC data pursuant to Court order as part of a criminal case adjudication.

1 secured right to confront and cross-examine those who testify against him. Davis v. Alaska, supra,
2 at 356 (state's interest in maintaining confidentiality of juvenile records must yield to defendant's
3 right to cross examine as to bias); see also U.S. v. Nixon, 418 U.S. 683, 713 (1974) (generalized
4 assertion of privilege must yield to demonstrated, specific need for evidence in a pending criminal
5 case). Thus, prosecutors must obtain and disclose privileged/confidential records pertaining to
6 government witnesses when the records contain information bearing on witness credibility.⁷

7 This includes mental health records. See U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th
8 Cir. 1983) (requiring disclosure of government witness' mental health records); U.S. v. Robinson,
9 583 F.3d 1265, 1271-74 (10th Cir. 2009) (requiring disclosure of material portions of confidential
10 informant's mental health records); Wyman v. State, 125 Nev. 592, 607-08 (2009) (trial court
11 abused discretion by denying defendant's request for certificate of materiality to obtain accuser's
12 out-of-state mental health records); Burns v. State, 968 A.2d 1012, 1024-25 (Del. 2009) (defendant
13 entitled to therapy records). It also includes Child Protective Services (or the functional
14 equivalent) and school records. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (defendant
15 entitled to *in camera* review of Child and Youth Services records⁸); and State v. Cardali, 982 P.3d
16 79, 86 (Ut. 1999) (defendant entitled to complainant's school psychological records indicating she
17 had propensity to lie and had fabricated prior rape allegations). It further includes
18 parole/probation records, as well as jail/prison records. See U.S. v. Striffler, 851 F.2d 1197, 1201
19 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989); Carriger v. Stewart, 132 F.3d 463, 479-82 (9th
20 Cir. 1997) (requiring production of Department of Corrections file on principle government
21 witness). And it includes juvenile records. Davis v. Alaska, supra, at 356. See also State v.
22 Bennett, 119 Nev. 589, 603 (2003) (failure to disclose co-conspirator's juvenile records in penalty
23
24

25 ⁷ At a minimum, otherwise confidential or privileged material must be submitted to the Court for an *in camera* review.
26 Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (absent statute prohibiting disclosure of records to prosecution,
defendant entitled to have trial court review Child and Youth Services records to determine if records contain material
information.).

27 ⁸ The Ritchie Court held that the State cannot claim privilege to refuse disclosure of CPS records, unless there is a
28 statutory scheme that forbids any use, including disclosure to a prosecutor, of such records. Ritchie, supra, 480 U.S.
39, at 57-58 (1987). NRS 432B.290 allows for disclosure of such records to the prosecutor and to the court for *in camera* review.

1 hearing amounted to *Brady* violation). Thus, prosecutors cannot lawfully refuse disclosure of
2 impeachment information on the basis that the information is privileged and/or confidential.

3 e. Prior allegations of sexual misconduct and prior sexual
4 knowledge.

5 In cases involving allegations of sexual misconduct, impeachment evidence includes
6 evidence that a complaining witness made prior allegations of sexual misconduct. See *Jackson v.*
7 *State*, 688 F.3d 1091, 1096-1101 (9th Cir. 2012) (defendant entitled to present evidence that
8 complainant made prior contradicted and/or uncorroborated assault accusations against defendant
9 as "such [extrinsic evidence] was highly relevant... to... witness's credibility and motive to lie and
10 bias, and its exclusion implicates a defendant's due process rights." (citing *Crane v. Kentucky*,
11 476 U.S. 683, 690 (1986)). Under Nevada law, prior false allegations of sexual misconduct
12 amount to an exception to rape shield laws. *Miller v. State* 105 Nev. 497 (1989), which allows for
13 such evidence as an exception to rape shield laws. NRS 432B.290 (3), states: "An agency which
14 provides child welfare services shall disclose the identity of a person who makes a report or
15 otherwise initiates an investigation pursuant to this chapter if a court, after reviewing the record in
16 camera and determining that there is reason to believe that the person knowingly made a false
17 report, orders the disclosure." See also *Fowler v. Sacramento Co. Sheriff's Dept.*, 421 F.3d 1027,
18 1032-33, 1040 (9th Cir. 2005) (error to exclude evidence of prior false sexual assault allegations as
19 evidence "might reasonably have influenced the jury's assessment of [the complainant's]
20 reliability or credibility... [and] 'the jurors were entitled to have the benefit of the defense theory
21 before them so that they could make an informed judgment as to the weight to place on [the
22 complainant's] testimony.'" (quoting *Davis v. Alaska*, 415 U.S. 308, 317 (1974)).

23 Additionally, Nevada law authorizes the admission of prior sexual conduct to show sexual
24 knowledge. *Summitt v. State*, 101 Nev. 159 (1985); See also *Holley v. Yarborough*, 568 F.3d
25 1091, 1099-1100 (9th Cir. 2009) (error to exclude evidence that complainant made comments to
26 friends regarding a prior sexual encounter and claimed other boys expressed a desire to engage in
27 sexual acts with her, as this evidence revealed complainant's "active sexual imagination," and,
28

1 accordingly, may have altered jury's perception of the complainant's "credibility and reliability of
2 her claims.")

3
4 **f. Law enforcement personnel files.**

5 Under U.S. v. Henthorn, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must examine law
6 enforcement personnel files when a defendant makes such a request. See also U.S. v. Cadet, 727
7 F.2d 1453 (9th Cir. 1984). A defendant is not required to make an initial showing of materiality
8 before prosecutors must examine the files — the examination obligation arises solely from the
9 defendant's request. Henthorn, 931 F.2d at 31. "Absent such an examination, [the State] cannot
10 ordinarily determine whether it is obligated to turn over the files." Id. at 31. Once examined,
11 prosecutors must "disclose information favorable to the defense that meets the appropriate
12 standard of materiality.... If the prosecution is uncertain about the materiality of the information
13 within its possession, it may submit the information to the trial court for an in camera inspection
and evaluation...." Henthorn, at 30-31 (quoting Cadet, 727 F.2d at 1467-68).

14 **2. Favorable evidence includes witnesses with exculpatory information.**

15
16 Prosecutors must disclose the identity of witnesses possessing exculpatory information, as
17 no legitimate interest is served by precluding the defense from calling such witnesses for trial.
18 U.S. v. Eley, 335 F.Supp. 353 (N.D. Ga. 1972); U.S. v. Houston, 339 F.Supp. 762 (N.D. GA
19 1972).

20 **3. Favorable evidence includes evidence of third-party guilt.**

21 The U.S. Constitution guarantees a criminal defendant the right to present evidence of
22 third-party guilt. See Holmes v. South Carolina, 547 U.S. 319 (2006) (holding that refusal to
23 allow defendant to present evidence of third party guilt deprives him of a meaningful right to
24 present a complete defense under the 14th and 6th Amendment of the US Constitution). Thus,
25 prosecutors must disclose any/all evidence that another perpetrator committed the charged
26 crime(s). Lay v. State, 116 Nev. 1185, 1195-96 (2000) (State's failure to disclose evidence of
27 another perpetrator violated Brady). This includes evidence that another individual was arrested in
28 connection with the charged crime. Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995).

1 It also includes evidence of investigative leads pointing to other suspects. Jimenez v. State, 112
2 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless
3 of admissibility, constitutes *Brady* violation). Finally, prosecutors must provide the actual
4 documents, evidence, and/or reports pertaining to evidence of third-party guilt; it is not enough for
5 prosecutors to provide the defense with a summary of the information relating to other suspects.
6 Mazzan v. Warden, 116 Nev. 48, 69 (2000) (summary of prosecutor's perspective on written
7 reports relating to potential suspects were constitutionally inadequate and reports should have been
8 disclosed pursuant to *Brady*); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

9 4. Favorable evidence includes any/all evidence that may mitigate a
10 defendant's sentence.

11 Favorable evidence also includes evidence which could serve to mitigate a defendant's
12 sentence upon conviction. Jimenez v. State, 112 Nev. 610 (1996).

13 5. Any question as to what amounts to *Brady* material should be
14 resolved in favor of disclosure.

15 Ultimately, prosecutors are tasked with a "broad duty of disclosure." Strickler v. Greene,
16 527 U.S. 263, 281 (1999); cf. U.S. v. Agurs, 427 U.S. 97, 108 (1976) (finding that "the prudent
17 prosecutor will resolve doubtful questions in favor of disclosure"). As the Nevada Supreme Court
18 has explained:

19 Due process does not require simply the disclosure of "exculpatory" evidence.
20 Evidence also must be disclosed if it provides grounds for the defense to attack the
21 reliability, thoroughness, and good faith of the police investigation, to impeach the
22 credibility of the state's witnesses, or to bolster the defense case against prosecutorial
23 attacks. Furthermore, "discovery in a criminal case is not limited to investigative
24 leads or reports that are admissible in evidence." Evidence "need not have been
25 independently admissible to have been material."

26 Mazzan v. Warden, 116 Nev. 48, 67 (2000) (citations omitted). Significantly, the government's
27 disclosure obligation exists even "when the defendant does not make a *Brady* request."⁹ Bagley,

28 ⁹ However, a specific *Brady* request will result in reversal "if there exists a reasonable possibility that the claimed
evidence would have affected the judgment of the trier of fact." Roberts v. State, 110 Nev. 1121 (1994). See also
Jimenez v. State *supra*; State v. Bennett, 119 Nev. 589 (2003). Absent a specific request, reversal is warranted, "if
there exists a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have
been different." U.S. v. Bagley, *supra*, 473 U.S. at 667, 682, 685 (1985); Pennsylvania v. Ritchie, 480 U.S. 39, 57

1 supra at 680-82. Accordingly, any question as to whether certain material, information, and/or
2 evidence falls within the purview of *Brady* should be resolved in favor of disclosure. *U.S. v.*
3 *Aguirre*, 427 U.S. 97, 108 (1976) ("[T]he prudent prosecutor will resolve doubtful questions in favor
4 of disclosure."); See also *Kyles v. Whitley*, 514 U.S. 419, 439 (1995) ("[A] prosecutor anxious
5 about tacking too close to the wind will disclose a favorable piece of evidence.").

6 **B. THE DISCLOSURE OBLIGATIONS SET FORTH ABOVE EXTEND TO ALL**
7 **MATERIAL OF WHICH PROSECUTORS ARE IN ACTUAL OR**
8 **CONSTRUCTIVE POSSESSION.**

9 "It is a violation of due process for the prosecutor to withhold exculpatory evidence, and
10 his motive for doing so is immaterial." *Jimenez*, supra at 618. Accordingly, prosecutors are
11 responsible for disclosing evidence in their possession as well as evidence held/maintained by
12 other government agents. *Id.* at 620; See also *State v. Bennett*, 119 Nev. 589, 603 (2003) ("We
13 conclude that it is appropriate to charge the State with constructive knowledge of the evidence
14 because the Utah police assisted in the investigation of this crime..."). This constructive
15 possession rule applies to evidence that is withheld by other agencies: "Even if the detectives
16 withheld their reports without the prosecutor's knowledge, the state attorney is charged with
17 constructive knowledge and possession of evidence withheld by other state agents, such as law
18 enforcement officers." *Id.* (citation omitted) (emphasis added). "Exculpatory evidence cannot be
19 kept out of the hands of the defense just because the prosecutor does not have it, where an
20 investigative agency does." *U.S. v. Zuno-Arce*, 44 F.3d 1420, 1427 (9th Cir. 1995).

21 In fact, prosecutors have an affirmative obligation to obtain *Brady* material and
22 provide it to the defense, even if the prosecutor is initially unaware of its existence. "The
23 prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its origins to
24 early 20th century strictures against misrepresentation and is of course most prominently associated
25 with this Court's decision in *Brady v. Maryland*..." *Kyles v. Whitley*, supra, 514 U.S. at 432.
26 This obligation exists even where the defense does not make a request for such evidence. *Id.* As
27 the U.S. Supreme Court explained:

28 (1986). A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome. *Bagley*, 473
U.S. at 678, 685; *Ritchie*, 480 U.S. at 57." *Roberts*, supra, at 1129.

1 This in turn means that the individual prosecutor has a duty to learn of any favorable
2 evidence known to the others acting on the government's behalf in the case, including
3 the police. But whether the prosecutor succeeds or fails in meeting this obligation
4 (whether, that is, a failure to disclose is in good faith or bad faith), the prosecution's
5 responsibility for failing to disclose known, favorable evidence rising to a material
6 level of importance is inescapable. Since then, the prosecutor has the means to
7 discharge the government's Brady responsibility if he will, any argument for
8 excusing a prosecutor from disclosing what he does not happen to know about boils
9 down to a plea to substitute the police for the prosecutor, and even for the courts
10 themselves, as the final arbiter's of the government's obligation to ensure fair trials.

11 Kyles, supra, 514 U.S. at 437-38 (emphasis added) (citations and footnotes omitted). See also
12 Carriger v. Stewart, 132 F.3d 463, 479-82 (9th Cir. 1997) (holding that "...the prosecution has a
13 duty to learn of any exculpatory evidence known to others acting on the government's behalf.
14 Because the prosecution is in a unique position to obtain information known to other agents of the
15 government, it may not be excused from disclosing what it does not know but could have learned."
16 (citations omitted) (emphasis added). Thus, the disclosure obligations outlined above extend not
17 only to material directly in the possession of prosecutors, but material of which prosecutors are in
18 constructive possession, as well.

19 **CAN 'OPEN FILE' POLICY DOES NOT OBVIATE THE DISCLOSURE**
20 **OBLIGATIONS OUTLINED ABOVE.**

21 Historically, the Clark County District Attorney's Office has employed an 'open file'
22 policy in which prosecutors allow defense counsel to review the discovery contained in the
23 government's trial file. This does not vitiate above-referenced disclosure obligations. Strickler v.
24 Green, 527 U.S. 263, 283 (1999) (holding that a prosecutor's open file policy does not in any way
25 substitute for or diminish the State's obligation to turn over Brady material). "If a prosecutor
26 asserts that he complies with Brady through an open file policy, defense counsel may reasonably
27 rely on that file to contain all materials the State is constitutionally obligated to disclose under
28 Brady." Strickler, 527 U.S. at 283, n.23; See also Amando v. Gonzalez, No. 11-56420 at 27 (9th
Cir. 2013). McKee v. State, 112 Nev. 642, 644, 917 P.2d 940, 944 (1996) (reversing a judgment
of conviction based on prosecutorial misconduct where the prosecutor did not make available all
relevant inculpatory and exculpatory evidence consistent with the county district attorney's open

1 file policy); see also Furbay v. State, 116 Nev. 481, 998 P.2d 553 (2000) (discussing prosecution's
2 duty to provide all evidence in its possession where it has promised to do so). Accordingly, if the
3 defense relies on the government's assurance of an 'open file' policy, the defense is not required to
4 hunt down information otherwise obtained and maintained pursuant to that policy.

5 III. DEFENDANT'S SPECIFIC DISCOVERY REQUESTS

6
7 Based upon the foregoing, the instant defendant requests that this Honorable Court enter an
8 order directing prosecutors to disclose the following¹⁰:

9 *General discovery*

- 10 1. All statements, regardless of whether the statements were written or recorded, made by
11 the defendant, including any comments made at the time of arrest or during transport to
12 the detention center. This includes conversations, telephonic or otherwise, intercepted
13 by any/all law enforcement agencies. This further includes the substance of any
14 statements made by the defendant and which the prosecution intends to use as evidence
at trial, including but not limited to any conversations or correspondence overheard or
intercepted by any jail personnel or other inmates which have not been recorded or
memorialized.
- 15 2. Any and all statements of any/all potential witnesses in the case, including any audio
16 and/or video recording of any form collected by investigating officers or any other law
17 enforcement agent as part of the investigation of this matter, as well as any related
18 matters. This includes any notes of interviews that were not later recorded, such as
19 notes of patrol officers, or notes of phone calls made to potential witnesses, or attempts
20 to contact such witnesses. This also includes any police reports, notes, or other
21 documents that contain information pertaining to this case or any witnesses in this case,
22 no matter what the form or title of the report, including "Case Monitoring Forms", 911
23 recordings, relevant dispatch log(s), and/or any report of information related to the case
24 given by anyone to any police department or crime tip organization such as Crime
25 Stoppers, and any reward or benefit received for such tip. The aforementioned request
26 includes, but is not limited to, interviews of Christina Rodrigues, Clara Rodrigues,
27 Lynelle Rodrigues, Mark Willingham, George Lessary, William Rodrigues, Verna San
28 Nicolas and Bill San Nicolas, and any other lay witness involved in or with information
relevant to the instant matter; paramedic/fire and rescue personnel Patrick Burkhalter,
Timothy Kline, Mickey Pedrol, or any other paramedic/fire/rescues personnel involved
in the instant matter (including Kris Chipman, Martin Delgado, Brandon Gray); CSAs
R. McPhail, D. Carvounairis, S. Fletcher, T. Kruse, and any other CSA involved in the
instant matter (including Joel Albert, Deborah Brotherson, L. Smith, Danielle Keller,
Michael Perkins), Christopher Hyink); CCME Investigator Aimee Modglin, CCME
Lisa Gavin, forensic technician Jenna Hergott, and any other CCME personnel
involved in the instant matter; any medical expert involved in the instant matter,

¹⁰ Significantly, this request is not in any way intended to be a substitute for the generalized duties described above.

including Dr. Hannes Vogel, Dr. Daniel Arber, Dr. Peter Egbert, Dr. Michael Casey, Dr. Arthur Montes (and Shahrokh Assemi, Sandra Ceti, David Chao, L. Chen, Thomas Costello, Juanita Crespo, Andrea Davis, Donna Evangelista, Sherri Fabbro, Srinivas Halthore, Jerrell Ingalls, Stuart Kaplan, Nelson Marietta, Dianne Mazza, Sasha Milligan, Patricia Moore, Pejman Motarjem, Ashley Pistorio, Kelly Postell, Latia Rahming, Connie Saqueton, Karalyn Smalley, Erin Sturgeon, Meena Vohra, Jimmy Wang, and Lisa Wong); LVMPD Officers/personnel including Dets. Dolphis Boucher, Travis Ivie, Joel Kisner, Tate Sanborn, M. Dosch, Det. Tafoya, Lt. R. Steiber, Sgt. J. Scott, Sgt. T. Miller, Officers Hardwick, A. Quiles, R. Rasch, J. Schmitt, S. Mohler, B. Garcia, Lt. J. Weiskopf, Sgt. J. Bitsko, A/N Investigator H. Campbell-Dolinar, Det. C. Grivas, and any other investigative official involved in the instant matter and any related matter, such as any child abuse investigation(s) involving the instant Defendant in Hawaii; and DA Investigators Ron Acuna, and Matt Johns, and/or any other investigative official involved in the instant matter and any related matter.

3. Request, results and/or reports of any and all crime scene analysis, evidence collection and/or forensic testing performed in this case, including, but not limited to, any and all photographs, the results of any fingerprint collection and comparison, AFIS (Automated Fingerprint Identification System) searches and/or results, DNA testing, CODIS (Combined DNA Index System) searches and/or results, toxicological analyses, footwear impressions, trace evidence analyses, any forensic analysis of cellular telephones, any requests for forensic analysis regardless of the outcome of such request, Neuropathological, toxicological, or other medical evaluations of the deceased, performed through this investigation. This includes the complete case file for any testing done, including, but is not limited to; raw data, photographs, rough notes, draft reports, recorded or otherwise memorialized notes relied upon by experts in rendering an opinion in this case. This request encompasses, but is not limited to, any work done by: paramedic/fire and rescue personnel Patrick Burkhalter, Timothy Kline, Mickey Pedrol, or any other paramedic/fire/rescue personnel involved in the instant matter (including Kris Chipman, Martin Delgado, Brandon Gray); CSAs R. McPhail, D. Carvounairis, S. Fletcher, T. Kruse, and any other CSA involved in the instant matter (including Joel Albert, Deborah Brotherson, L. Smith, Danielle Keller, Michael Perkins), Christopher Hyink); CCME Investigator Aimee Modglin, CCME Lisa Gavin, forensic technician Jenna Hergott, and any other CCME personnel involved in the instant matter; any medical expert involved in the instant matter, including Dr. Hannes Vogel, Dr. Daniel Arber, Dr. Peter Egbert, Dr. Michael Casey, Dr. Arthur Montes (and Shahrokh Assemi, Sandra Ceti, David Chao, L. Chen, Thomas Costello, Juanita Crespo, Andrea Davis, Donna Evangelista, Sherri Fabbro, Srinivas Halthore, Jerrell Ingalls, Stuart Kaplan, Nelson Marietta, Dianne Mazza, Sasha Milligan, Patricia Moore, Pejman Motarjem, Ashley Pistorio, Kelly Postell, Latia Rahming, Connie Saqueton, Karalyn Smalley, Erin Sturgeon, Meena Vohra, Jimmy Wang, and Lisa Wong); LVMPD Officers/personnel including Dets. Dolphis Boucher, Travis Ivie, Joel Kisner, Tate Sanborn, M. Dosch, Det. Tafoya, Lt. R. Steiber, Sgt. J. Scott, Sgt. T. Miller, Officers Hardwick, A. Quiles, R. Rasch, J. Schmitt, S. Mohler, B. Garcia, Lt. J. Weiskopf, Sgt. J. Bitsko, A/N Investigator H. Campbell-Dolinar, Det. C. Grivas, and any other investigative official involved in the instant matter and any related matter, such as any child abuse investigation(s) involving the instant Defendant in Hawaii; and

1 DA Investigators Ron Acuna, and Matt Johns, and/or any other investigative official
2 involved in the instant matter and any related matter.

- 3 4. Access to and preservation of any and all material collected in the investigation of this
4 case to include but not limited to forensic material, raw data, video surveillance,
5 photographic negatives, digital negatives, biological samples and toxicological
6 samples.
- 7 5. Any and all intercepted electronic and/or oral communications and/or any and all
8 communications sent to and from handset and/or telephone and/or computers pursuant
9 to the investigation in this case, including but not limited to: Audio, Push to Talk, Data,
10 Packet Data, electronic messaging encompassing Global System for Mobile
11 Communications (GSM), Short Message Service (SMS), Multimedia Messaging
12 Service (MMS), and Internet Relay Chat, File Transfer Protocol (FTP), Internet
13 Protocol (IP), Voice Over Internet Protocol (VOIP), Transmission Control Protocol
14 (TCP) and electronic mail or other internet based communications, obtained by the any
15 law enforcement agency, including federal authorities, via subpoena, interception or
16 other means, pertaining to the instant matter, or any related matter.
- 17 6. Any and all data, recordings, reports and documentation of voice monitoring devices
18 and/or geographic tracking devices and/or pen register and/or trap and trace device
19 installed pursuant to interception, warrant or other means, as obtained by any law
20 enforcement agency, including federal authorities, pertaining to the instant matter or
21 any related matter.
- 22 7. Any and all 911 and 311 recordings to include, but not limited to, car-to-car audio
23 communications, car-to-dispatch radio communications, and the Unit Log incident print
24 out related to the event.
- 25 8. Any and all information which shows that the defendant did not commit the crime(s)
26 alleged, that the incident in question was accidental in nature, or which shows the
27 possibility of another perpetrator, co-conspirator, aider and abettor, or accessory after
28 the fact, including the name(s) of those individual(s). This includes, but is not limited
to, any information concerning an arrest of any other individual for the charged crime
and any information suggesting a possible perpetrator other than the defendant.
9. All statements of identification, or witness interviewed who did not identify the
Defendant as the perpetrator of the alleged crime to include: (1) any statement(s)
indicating the injury(ies) at issue were accidental in nature; (2) statement(s) identifying
another person as the perpetrator of this offense; (3) any prior statement by
eyewitnesses who now identify my client as involved in this offense that they
previously could not identify anyone; (4) a copy of all photographic lineups shown to
any witnesses for the purposes of identifying suspects in this case, including lineups
created without the Defendant in them; (5) other identification procedures, if any, used
to identify suspects in this case. This request includes, but is not limited to, any
showups, lineups, photographic lineups, single photo showups, photo compilations and
composite drawings made or shown. This request further includes (1) the identify of
each witness who was shown an identification procedure; (2) the date such procedure

1 occurred; (3) the time such a procedure occurred; (4) the names of all persons who
2 were present when the procedure took place; (5) instructions given to the witness prior
3 to the procedure being conducted; (6) the results of the procedure, including as exact a
4 rendition as possible of what the witness said, how long the witness took to make the
5 identification if it was made, and any hesitancy or uncertainty of the witness in making
6 the identification; and (7) whether or not the witness before or after the procedure was
7 informed that they had picked the suspect officers believed committed the crime.

8 10. All relevant reports of chain of custody, including reports of any destruction of any
9 evidence in the case.¹¹

10 11. Any documents used to prepare State's witnesses for preliminary hearing or trial as
11 well as any/all rough or other non work-product notes and reports of any witness in the
12 case, including experts and mental health workers. This includes any preliminary
13 reports or notes not necessarily included in a final report.

14 12. All updated witness contact information, to include last known address and phone
15 number. This includes the names/contact information for witnesses who may have
16 information tending to exculpate the instant defendant.

17 13. Any and all records of the Las Vegas Metropolitan Police Department and any other
18 law enforcement agency(ies) involved in the investigation of this or any related matter,
19 including photocopies or other reproduction(s) of any and all handwritten or other
20 notes. This includes, but is not limited to, any notes documenting explanation(s) for the
21 injury(ies) at issue as being accidental in nature; alternate suspects, investigative leads
22 that were not followed up on; or any other matter bearing on the credibility of any State
23 witness.

24 14. Any and all information obtained by the use of confidential informants for any aspect
25 of the investigation of this case. This includes, but is not limited to, informants who
26 purportedly obtained information about this case while incarcerated, whether the
27 information came from the Defendant or another source, regardless of whether
28 prosecutors intend to use the informant-related information at the upcoming trial of this
matter.

29 *General Impeachment*

30 15. Disclosure of any and all compensation, express or implied, promises of favorable
31 treatment or leniency, or any other benefit that any of the State's witnesses may of have
32 received in exchange for their cooperation with this or any related prosecution. This
33 includes but is not limited to: (1) any and all records and notes from the victim witness
34 office of the District Attorney, including any/all records of any expectation of any
35 benefit or assistance to be received, or already received by any witness in this case; (2)
36 any monetary benefits received as well as any express or implied promises made to any
37 witness to provide counseling and/or treatment and/or provide immigration assistance

38 ¹¹ Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed
favorable to the accused. Crockett v. State, 95 Nev. 859, 865 (1979); Sparks v. State, 104 Nev. 316, 319 (1988);
Sanborn v. State, 107 Nev. 399, 409 (1991).

(including, but not limited to, U-Visa documentation) as a result of the witness' participation in this case; (3) the names of any and all agencies and workers or other referrals that were given to any witness and/or his/her family member, relative or guardian in connection with this case or any related matter; (4) an estimate of future benefits to be received by any witness during or after the trial, including travel expenses.

16. Disclosure of any and all statements, tangible or intangible, recorded or unrecorded, made by any witness that are in any manner consistent or inconsistent with the written and/or recorded statements previously provided to the defense. This includes, but is not limited to, any oral statements made to any employee or representative of the District Attorney's office or any other government employee, local or federal, during pre-trial conferences or other investigative meetings.

17. Any and all impeachment information located in the personnel files of any police witness called to testify at trial or any pretrial hearing in this matter, including, but not limited to, any Statement of Complaint regarding the witness or this investigation, any Employee Notice of Internal Investigation, any Internal Affairs Investigative Report of Complaint, any witness statement, any Bureau Investigation Supervisory Intervention, and any other document maintained or generated by the Office of Internal Affairs, Critical Incident Review Panel, or other investigative agency.

18. Criminal history information on any witness, actual or potential, relating to specific instances of misconduct or from untruthfulness may be inferred and/or which could lead to admissible evidence, impeachment or otherwise. This includes, but is not limited to, NCIC data, juvenile records, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency, and any other information that would go to the issue(s) of credibility and/or bias, or lead to the discovery of information bearing on credibility/bias, whether or the information is directly admissible by the rules of evidence.¹² In addition those witnesses, actual or potential, known to the State or any law enforcement agency involved in the investigation of this or any related matter, the defense requests the above-referenced criminal history/impeachment information on the following individuals: Christina Rodrigues, Clara Rodrigues, Lynelle Rodrigues, Mark Willingham, George Lessary, William Rodrigues, Verna San Nicolas and Bill San Nicolas. In addition to any other requirements imposed by *Brady*, the defense requests that the District Attorney be required to run the aforementioned witnesses, in addition to any other lay witnesses prosecutors intend to call or upon whose testimony or statements the State will rely during either the guilt or penalty phases of trial, through an NCIC check and allow

¹² The State usually is under the mistaken impression that they only must disclose felony convictions from the last 10 years that can be used as impeachment under NRS 50.095. However, in *Davis v. Alaska*, *supra*, the US Supreme Court found that a witness can be attacked by "revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to the issues or personalities on the case at hand. The partiality of a witness is...always relevant as discrediting the witness and affecting the weight of his testimony." *Id.* at 354. The court found that the State's policy interest in protecting the confidentiality of a juvenile offender's record must yield to the defendant's right to cross-examine as to bias. *Id.* at 356. *See also Lobato v. State*, 120 Nev. 512 (2004), discussing the "nine basic modes of impeachment." Therefore, juvenile records, misdemeanors and older criminal records may yield information relevant to many forms of impeachment other than that outlined in NRS 50.095.

1 defense counsel to review the NCIC reports on those witnesses. The defense requests
2 that the NCIC information be provided to defense counsel as soon as possible. If there
3 is no NCIC record for a particular witness, the State can make that representation.
4 While the defense is not insisting that prosecutors run NCICs expert or law
5 enforcement witnesses, the defense requests that the State be ordered to comply with
6 any Brady obligations with respect to these witnesses.

7 *U-Visa and related information*

8 19. Whether the alleged victim(s), an immediate family member, or any other qualifying
9 person¹³ has consulted with a representative or victim advocate, or any other person
10 acting in a representative capacity, regarding obtaining a U Visa as a result of this
11 case.¹⁴

12 20. Whether the alleged victim, immediate family member, or any other qualifying person
13 has applied for a U Visa as a result of this case.¹⁵

14 21. All USCIS Form(s) I-918, Petition for U Nonimmigrant Status completed as a result of
15 this case, including any supporting documentation filed with Form I-918.¹⁶

16 22. All USCIS Form(s) I-918, Supplement B (Form I-918B) completed by a law
17 enforcement agency, the prosecuting attorney or representative, any judge, child and
18 adult protective services, any other authority that has the responsibility for the
19 investigation or prosecution of a qualifying crime or criminal activity, or any other
20 certifying agency as a result of this case,¹⁷ including any additional documents,
21 attachments, or addenda submitted with Form I-918B.¹⁸

22 ¹³The U visa is available to an alleged victim; her unmarried children under the age of twenty-one (21); her spouse, her
23 parents, if she is under twenty-one (21); and unmarried siblings under eighteen (18) years old if the alleged victim is
24 under age twenty-one (21). U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal
25 and Territorial Law Enforcement, Department of Homeland Security, http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf at 3. Furthermore, when the principal alleged
26 victim is under twenty-one (21) years old, her noncitizen parent can apply for a U visa as an "indirect victim"
27 regardless of whether the principal alleged victim is a U.S. citizen or noncitizen. *Id.* at 13.

28 ¹⁴Given the complexity of U visa petitions, petitioners often work with a legal representative or victim advocate,"
and, in fact, "is usually done with the assistance of an advocate." *Id.* at 2, 5.

¹⁵The U visa is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or
have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful
in the investigation or prosecution of criminal activity. . . . The U visa provides eligible victims with nonimmigrant
status in order to temporarily remain in the United States (U.S.) while assisting law enforcement. If certain conditions
are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status." *Id.* at 1.

¹⁶This is the U visa form that must be completed by the individual seeking the U visa. *Id.* at 2.

¹⁷Form I-918B is the certification document that a law enforcement or other certifying agency completes for the
individual seeking a U visa. Without the certification, "the victim will not be eligible for a U visa." "In order to be
eligible for a U visa, the victim must submit a law enforcement certification completed by a certifying agency.
Certifying agencies include all authorities responsible for the investigation, prosecution, conviction or sentencing of
the qualifying criminal activity, including but not limited to" law enforcement agencies, prosecutors' offices, judges,
family protective services, Equal Employment Opportunity Commission, Federal and State Departments of Labor and
"other investigative agencies." *Id.* at 2-3 (emphasis added), 9. After signing Form I-918B, the certification must be
returned to the alleged victim or her representative. *Id.* at 6.

¹⁸A certifying agency may submit additional documentation, and if so, it must state "see attachment" or "see
addendum" on Form I-918B. *Id.* at 6.

- 1 23. The law enforcement agency's and the prosecutor's office's policies and procedures
has established regarding U visa certification.¹⁹
- 2 24. Whether an individual has requested a certifying agency fill out Form I-918B, even if
3 the certifying agency declined to fill out Form I-918B.²⁰
- 4 25. Whether a certifying agency has refused to sign or complete Form I-918B, and any
5 information regarding that certifying agency's refusal to sign or fill out Form I-918B.
- 6 26. Any evidence submitted to the U.S. Citizenship and Immigration Services (USCIS) as
7 part of a U visa application by a certifying agency or the individual applying for the U
8 visa. This evidence includes, but is not limited to, fingerprint check, the individual's
9 criminal history, immigration records, security concerns, and other background
10 information.²¹
- 11 27. Whether the USCIS has contacted the certifying agency regarding issues or questions
12 based on the information provided in the certification, and what issues or questions the
13 USCIS had for the certifying agency.²²
- 14 28. Whether the USCIS has found the alleged victim or other qualifying person
15 inadmissible and any information regarding the reason for the inadmissibility
16 determination.²³
- 17 29. Whether the certifying agency contacted the USCIS regarding any later discovered
18 information regarding the victim, crime, or certification that the agency believes the
19 USCIS should be aware of or whether the agency contacted the USCIS to withdraw or
20 disavow the certification, including withdrawal or disavowal based upon the alleged

18 ¹⁹Whether a certifying agency signs a certification . . . [depends on the] policies and procedures it has established
19 regarding U visa certification." *Id.* at 3; see also *id.* at 8 (discussing the best practices in U visa certifications and
20 department policies); *id.* at 9 ("DHS encourages all jurisdictions to implement U visa certification practices and
21 policies.").

20 ²⁰There is no statute of limitations on signing the law enforcement certification, and a law enforcement certification
21 "can even be submitted for a victim in a closed case." *Id.* at 4, 10. An alleged victim "may be eligible for a U visa
22 based on having been helpful in the past to investigate or prosecute a crime." *Id.* at 10. Therefore, a certifying agency
23 could wait until after the close of the case to fill out Form I-918B and then argue that there is no discoverable
24 immigration information or immigration benefit received as part of this case. However, if an individual has requested
25 a certifying agency fill out Form I-918B, that individual is therefore attempting to gain an immigration benefit as part
26 of this case, which would be discoverable regardless of whether the certifying agency has or has not completed the
27 certification.

24 ²¹The USCIS conducts a background check for all U visa petitioners. This includes a fingerprint check and name
25 check. This also includes "[a]ny evidence that law enforcement and immigration authorities possess . . . [which]
26 includes, but is not limited to, the person's criminal history, immigration records, and other background information."
27 *Id.* at 5. "If law enforcement believes USCIS should know something particular about a victim's criminal history, that
28 information can be cited on the certification or with an attached report or statement detailing the victim's criminal
history with that law enforcement agency or his or her involvement with the crime." *Id.* at 14.

27 ²²USCIS may contact the certifying law enforcement agency if there are any issues or questions arise during the
adjudication based on information provided in the law enforcement certification." *Id.* at 5, 9.

28 ²³The USCIS may find the alleged victim or other qualifying person inadmissible when there are security related
concerns, multiple or violent criminal arrests, multiple immigration violations, or complicity or culpability in the
criminal activity in which she claims the victimization occurred. *Id.* at 8, 14.

victim's failure to cooperate.²⁴ If the agency has notified the USCIS in writing regarding the withdrawal or disavowal, a copy of the writing is requested.²⁵

30. Whether the certifying agency has notified the USCIS that the alleged victim has unreasonably refused to cooperate in the investigation or prosecution of the crime.²⁶

31. Whether the USCIS has requested further evidence from the petitioner and/or certifying agency as part of the U visa process. Any and all information from the certifying agency that the USCIS suspects fraud in the U visa application.²⁷

32. Whether an alleged victim or witness has self-petitioned for Violence Against Women Act (VAWA) relief as a part of this case, and if so, a copy of the completed Form I-360 and corroborating evidence.²⁸

33. Whether any witness in the case has been granted Significant Public Benefit Parole (SPBP) in connection with this case.²⁹

34. Finally, the Defendant respectfully requests that this Court order the State to contact any agencies or agents acting on behalf of or working with the prosecution, or in any other way a part of the prosecution team, and to ascertain whether any of those agencies or agents possess or know of any material information that would tend to exculpate the Defendant, impeach a prosecution witness, or mitigate the Defendant's possible punishment.

CPS related information

35. Any and all Department of Child and Family Services and/or Child Protective Service or equivalent department in another State (including complete records maintained by the Hawaii Dept. of Social Services), records material to the case to include any and all notes of caseworkers or their agents or assistants. This includes information of any and all referrals to therapists by anyone at any of the above mentioned agencies. This also includes any reports prepared for Family Court or any domestic relations proceedings, related to the issues or witnesses in the case.

36. Any and all notes of social workers or case workers, working on behalf of the any state child welfare agency, including the Hawaii Dept. of Human Services, and including employees of Child Haven, or any governmental agency supervising foster care or any

²⁴*Id.* at 10.

²⁵If the alleged victim stops cooperating, the certifying agency can withdraw or disavow Form I-918B, but must notify the USCIS Vermont Service Center in writing. *Id.* at 12.

²⁶*Id.* at 12.

²⁷If USCIS suspects fraud in a U visa petition, USCIS may request further evidence from the petitioner and may also reach out to the law enforcement agency for further information." *Id.* at 15. The USCIS has a dedicated fraud detection unit called the Fraud Detection and National Security unit. *Id.*

²⁸The VAWA visa allows an alleged victim to self-petition for relief without a law enforcement certification. This relief applies equally to men and women and is available to the abused spouse or former spouse of a U.S. citizen or Lawful Permanent Resident, the abused child of a U.S. citizen or Lawful Permanent Resident, or the abused parent of a U.S. citizen.

²⁹SPBP allows a witness, defendant, cooperating source, and immediate family members into the United States for up to one year. *Id.* at 16.

1 other living arrangement made for any alleged victim or witness in the case, even if
2 on a temporary basis. This also includes all information on all referrals to any
3 physicians, psychologists, psychiatrists, social workers or other mental health
4 workers or health care providers and any and all notes of any contract providers to
5 such institution.

6 37. Any and all records and notes of any mental health workers who have had contact with
7 the any party or witness to the events in this case. This includes any records reflecting
8 the mental state/cognitive abilities of any witness that is relevant to his/her competency
9 as a witness.³⁰

10 38. Any and all notes and records of pertaining to the medical history and treatment of the
11 decedent, Khayden Quisano, and his siblings, Jayden and Khaysen Quisano, including,
12 but not limited to, any physical exams, imaging, or other testing conducted upon those
13 individuals or in connection with this case. This includes any medical imaging,
14 photographs, videos, colposcopes, recordings or other medical testing, any lab or
15 toxicology reports done in conjunction with such exam. This includes all documents
16 recording what physical evidence was taken in the case, where it was stored, and any
17 related chain of custody documents.

18 V. CONCLUSION

19 Based upon the foregoing, JONATHAN QUISANO requests that this Honorable Court
20 enter an order directing prosecutors to provide the discovery sought herein NRS 174.235; Brady
21 v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI, XIV; and Nev. Const. Art. 1 § 8.

22 DATED this 1st day of May, 2014.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: 
28 NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

30 In addition to the authority outlined above, if such counselors are seeing the alleged victims after being referred by a State or County agency or worker, or are paid by victim witness or through aid especially due to status as a "victim" then there is no provider-patient privilege as the information is being sought with the purpose to disclose to third parties. Further, under general discovery principles, anything disclosed that bears on the credibility of the witness, on the credibility of any other witness or any evidence, that suggests that the defendant did not commit the crime; that someone else may have perpetrated the crime, or anything else relevant to discovery, then such information must be disclosed under case law cited in this brief.

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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 3rd day of June, 2014, at 9:30 a.m., in District Court Department XX1.

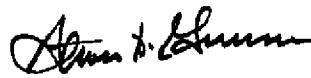
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: NANCY M. LEMCKE, #5416
Deputy Public Defender

I hereby certify that service of MOTION TO COMPEL PRODUCTION OF DISCOVERY, was made this 21st day of May, 2014, by Electronic Filing to:

MICHAEL STAUDAHER, Chief Deputy District Attorney
E-Mail: michael.staudaher@clarkcountynvda.com

By: S. Ruano
S. Ruano
Secretary for the Public Defender's Office



CLERK OF THE COURT

1 **OPPM**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL V. STAUDAHNER
6 Chief Deputy District Attorney
7 Nevada Bar #008273
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JONATHAN QUISANO,
13 #5991702,

14 Defendant.

CASE NO: C-13-294266-1

DEPT NO: XXI

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY**

16 DATE OF HEARING: 6/3/14

17 TIME OF HEARING: 9:30 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
19 through MICHAEL V. STAUDAHNER, Chief Deputy District Attorney, and hereby submits
20 the attached Points and Authorities in Opposition to Defendant's Motion to Compel Discovery.

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

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25 ///

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 LEGAL ARGUMENT

3 The State agrees with defense counsel that the State has an affirmative duty to provide
4 any exculpatory information that the State possesses or comes to possess during the course of
5 its criminal prosecution. The State does not agree, however, that it is under any affirmative
6 obligation to root out or otherwise seek discovery of information that defense counsel hopes
7 might in some way aid in the representation of his client.

8 The current discovery motion before the Court is extremely overbroad and makes
9 requests for many items which Defendant knows are not at issue in the present case. For
10 example, "evidence of sexual misconduct and prior sexual knowledge." There has been no
11 allegation or charge related to any sexual misconduct in the instant matter. The fact that an
12 entire section of Defendant's discovery motion is directed at this subject makes it clear that
13 that the motion is simply a boilerplate request and is not specific to any defined or legitimate
14 area of discovery under NRS 174.235. Additionally, Defendant in his motion requests items
15 such as U-visa information pertaining to any victim in the case. The fact that such a request
16 is made in the instant motion where the only witness victim was killed and was three years old
17 at the time further shows that Defendant is not making a legitimate discovery request.

18 It is the position of the Clark County District Attorney to permit discovery and
19 inspection of any relevant material pursuant to NRS 174.235 *et. seq.*, and any exculpatory
20 material under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). To the extent that
21 Defendant's request for discovery exceeds the statutory and legal requirements outlined in
22 Brady, the State objects to the defense's motion for discovery.

23 The Rule of Brady, which requires the State to disclose to the defendant any
24 exculpatory evidence, is founded on the constitutional requirement for a fair trial. Brady is
25 not a rule of discovery, however. In construing Brady the Court, in Weatherford v. Bursy, 429
26 U.S. 545 (1977), held that "[t]here is no general constitutional right to discovery in a criminal
27 case, and Brady did not create one . . . the due process clause has little to say regarding the
28 amount of discovery which the parties must be afforded." Id.

1 Under Brady, and its progeny, the defense cannot require that the prosecution conduct
2 further investigation to uncover purported exculpatory evidence that it does not possess. The
3 defendant is not entitled to all evidence known or believed to exist which may or may not be
4 favorable to the accused, or which pertains to the credibility of the prosecution's case. In U.S.
5 v. Gardner, 611 F.2d 770 (9th Cir. 1980), the court stated that the prosecution . . .

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

9 611 F.2d at 774-775 (internal citations omitted; See also U.S. v. Sukumolachan, 610 F.2d 685,
10 687 (9th Cir. 1980) (prosecution not required to create exculpatory material). Under federal
11 law, Brady does not create any pretrial discovery privileges not contained in the Federal Rules
12 of Criminal Procedure (which served as the model for Nevada law). U.S. v. Flores, 112 Cal
13 Rptr. 540 F.2d 432, 438 (9th Cir. 1980).

14 **A. The State is not Required to Perform Investigations at the Request of the**
15 **Defense**

16 Kyles, requires that the State "has a duty to learn of any favorable evidence known to
17 the others *acting on the government's behalf in the case.*" Kyles v. Whitley, 514 U.S. at 437,
18 (emphasis added). The Court did not, however, require the State to actively learn of possible
19 evidence known to those acting outside the government.

20 Additionally, Brady does not require the State to disclose evidence which is available
21 to a defendant from other sources through a diligent investigation by the defense. Stockton v.
22 Murry, 41 F.3d 920, 927 (4th Cir. 1994); accord U.S. v. Davis, 787 F.2d 1501 (11th Cir. 1986).
23 While the State will gladly comply with legally required discovery obligations pursuant to
24 statute and Brady, the State is not obligated to indulge the defendant's request for the State to
25 investigate for the defense.

26 In the instant case, the defense has asked for all exculpatory evidence in this case, as
27 well as all evidence relevant to the guilt or innocence of the defendant. The defense has been
28 provided access to the entirety of the evidence in the State's possession and the State has both

1 recently and previously offered to facilitate the defense access to the vault where any
2 remaining evidence has been impounded, as well as the files contained at the Las Vegas
3 Metropolitan Police Department (LVMPD). The State also has repeatedly invited defense
4 counsel to come to the State's office and review the discovery in this matter.

5 To the extent, therefore, that the defense is using its discovery motion as a method to
6 attempt to force the State to conduct any investigation on the behalf of the defendant the State
7 objects. The defense has an investigator at their disposal and can seek out whatever
8 information they deem important. As such, the Court should deny the defense motion.

9 Again, to insure that defense counsel has full access to the available discovery,
10 the State formally invites the defense to review the State's case file in the instant
11 matter. This invitation is ongoing and is intended to make all discovery in the
12 State's possession available and accessible to the defense. In addition, the State,
13 at the request of the defense, will facilitate a review of the case file information
14 housed at the Las Vegas Metropolitan Police Department (LVMPD) under event
15 #060821-3209, as well as access to all evidence at the evidence vault which has
16 been impounded under event #130606-3235. It is the desire of the State to
17 provide the defense with full access to all discovery in the actual or constructive
18 possession of the State. That access has been and currently is available now.

19 The State acknowledges that its discovery obligations are continuing and the
20 State will make all subsequent discovery received, if any, available to the defense
21 in compliance with the requirements of NRS 174.235, as well as Brady v.
22 Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972).

23 The State also again takes this opportunity to formally request reciprocal
24 discovery from the defense and for the defense to provide timely access to any
25 discovery that it intends to use at trial.

26 **B. To the Extent that the Defense Motion Exceeds or Brodens the Requirements**
27 **of NRS 174.235, the State Objects and Respectfully Requests that the Defense**
28 **Motion be Denied**

NRS 174.235 states that:

1. Except as otherwise provided in NRS 174.233 to 174.295,
inclusive, at the request of a defendant, the prosecuting attorney
shall permit the defendant to inspect and to copy or photograph
any:

(a) Written or recorded statements or confessions made by
the defendant, or any written or recorded statements made by a
witness the prosecuting attorney intends to call during the case in
chief of the State, 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;

1 (b) Results or reports of physical or mental examinations,
2 scientific tests or scientific experiments made in connection with
3 the particular case, or copies thereof, within the possession,
4 custody or control of the State, the existence of which is known,
5 or by the exercise of due diligence may become known, to the
6 prosecuting attorney; and

7 (c) Books, papers, documents, tangible objects, or copies
8 thereof, which the prosecuting attorney intends to introduce during
9 the case in chief of the State and which are within the possession,
10 custody or control of the State, the existence of which is known,
11 or by the exercise of due diligence may become known, to the
12 prosecuting attorney.

13 2. The defendant is not entitled, pursuant to the provisions of
14 this section, to the discovery or inspection of:

15 (a) An internal report, document or memorandum that is
16 prepared by or on behalf of the prosecuting attorney in connection
17 with the investigation or prosecution of the case.

18 (b) A statement, report, book, paper, document, tangible object
19 or any other type of item or information that is privileged or
20 protected from disclosure or inspection pursuant to the
21 Constitution or laws of this state or the Constitution of the United
22 States.

23 3. The provisions of this section are not intended to affect any
24 obligation placed upon the prosecuting attorney by the
25 Constitution of this state or the Constitution of the United States
26 to disclose exculpatory evidence to the defendant.
27 (Emphasis Added)
28

18 Defendant, in his motion, specifically requests that the State produce any oral
19 statements of the defendant or of any State witnesses including those in for which Defendant
20 may be vicariously liable. This request would seem to include any oral statement which may
21 also be obtained during pretrial conferences. Defendant further requests documentation and
22 disclosure of any interactions with outside agencies, such as child protective services or other
23 family services agency, and also requests that the State provide documentation and disclosure
24 of any oral communications between any witness and any said outside agency(s). Such a
25 request far exceeds the State's discovery obligations outlined in NRS 174.235, and does not
26 comport with Nevada law. Defendant has not cited to any statute or case which would provide
27 authority for his request for said oral statements. As such, said request should be denied.

28 //

1 Defendant further requests that the State provide Defendant with privileged or
2 confidential information, including any juvenile records, mental health records, school records
3 and child protective services records pertaining to any State witness. Again, beyond the fact
4 that such a request far exceeds the statutory requirements under NRS 174.235, such a request
5 also violates the privacy rights of said individuals and the relevant statutes that would protect
6 against the release of said information if it existed. In addition, the State does not possess such
7 information pertaining to any State witness and does not have access to said information.

8 Again, Defendant has not provided any authority to support such a broad discovery
9 request and therefore, the current discovery motion violates current law under NRS 174.235
10 and should be denied.

11 **C. A Witness or Victim's Criminal Background is not Relevant or Material to the**
12 **Defense of the Accused**

13 Although a witnesses' criminal record may be material under some circumstances, it is
14 not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d 1353 (1974). In Hill
15 the defense sought production of a witness's felony conviction record. Because the witness
16 was the only eyewitness other than the defendants, and the corroboration of his report was not
17 strong, the court found the requisite materiality and granted the defense motion. However, the
18 court concluded, "[w]e do not hold that good cause exists in every case in which a defendant
19 charged with a felony seeks discovery of any felony convictions any "rap sheet" of prosecution
20 witnesses." Id. at 1358.

21 In the present case, Defendant has requested that the State perform a National Crime
22 Information Center (NCIC) inquiry on all possible State witnesses and to provide that inquiry
23 to the Defendant. The State has not run an NCIC inquiry on all witnesses, nor does it plan to
24 do so in this matter. The State has no legitimate reason to make such an inquiry and
25 strenuously objects to defense requests that the State provide this information.

26 Although Defendant liberally touts Brady v. Maryland, 373 U.S. 83 (1963) as the basis
27 for his NCIC request, the defense has failed to establish that the requested NCIC information
28 falls within the scope of Brady, that is, that it might in some way be exculpatory or that it

1 might somehow constitute impeachment evidence. Moreover, Defendant has not shown how
2 such information might be "material." In other words, the defense has failed to show that the
3 lack of any State witnesses' NCIC information will somehow result in an unfair trial or will
4 produce a verdict that is not worthy of confidence. *See Kyles v. Whitley*, 514 U.S. 419, 434
5 (1995).

6 The Supreme Court has stated that information is considered material if there is a
7 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
8 proceeding would have been different." *U.S. v. Bagley*, 473 U.S. 667, 682 (1985). The
9 Supreme Court defined reasonable probability as probability sufficient to "undermine
10 confidence in the outcome" of the trial. *Id.* In addition, the Court in *Bagley*, stated that
11 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the *Brady* rule." *Id.*
12 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
13 that, if disclosed and used effectively, it may make the difference between conviction and
14 acquittal." *Id.* (internal quotes omitted).

15 In the present case, Defendant has failed to articulate even an arguable use of the
16 witnesses' NCIC information that would comport with the requirements as outlined by the
17 Supreme Court in *Brady*, *Kyles* and *Bagley*. Defendant is simply looking for any information
18 that he can use to cloud the facts of the case at bar and to cast aspersions on those witnesses.

19 **D. The Defense has not Established the Materiality or Exculpatory Nature of the**
20 **Evidence it Seeks**

21 The defense has not identified, much less established the materiality or exculpatory
22 nature of any of the evidence that it seeks. As such, this Court should not conclude that the
23 purported evidence falls within the ambit of *Brady*.

24 As noted by the language of NRS 174.245, the defense must satisfy two requirements
25 before non-exculpatory criminal records of prosecution witnesses or documents or papers must
26 be produced. First, the defense must show that such records may be material to the preparation
27 of his defense. Second, he must show the request for such discovery is reasonable.

28 //

1 While the defense lays out what Brady and its progeny require, it does not apply the
2 requirements to the facts of the instant matter. The defense simply leaves this burden it up to
3 this Court and the State. The defense, without basis in the record, seems to hold to the position
4 that the State is out of compliance with the statute and Brady if it does not provide the results
5 of NCIC inquiries of all witnesses to the defense. As the defense has not alleged how such
6 material would be exculpatory, the State has no framework upon which to respond on that
7 issue.

8 Furthermore, Defendant's motion lacks an allegation that his request for discovery is
9 reasonable – the second element required by NRS 174.245. The Defendant's bare assertion
10 that impeachment information might be contained in the victim's NCIC report is not sufficient
11 under the circumstances of this case.

12 In U.S. v. Flores, 540 F.2d 432 (9th Cir. 1976), prior to trial defendants moved to compel
13 the government to disclose the criminal histories of informant-witnesses claiming that the
14 information sought was needed for impeachment purposes. Similarly, the defense in the
15 instant matter seeks criminal background information concerning the victim. In both Flores
16 and the instant matter, the defense made claims that the criminal background information was
17 needed to impeach the credibility of the witness. In Flores, the Ninth Circuit affirmed the trial
18 court's denial of that motion by holding that the defendant had made no showing of
19 reasonableness. The court stated, "[t]heir request was tantamount to asking the government
20 to fish through public records and collate information which was equally available to the
21 defense." Id. at 437 (emphasis added).

22 In the present case, similarly, Defendant essentially is requesting an NCIC inquiry on
23 the witnesses and victims for the State. As in Flores, such a shotgun request is inherently
24 unreasonable as the State cannot be expected to go on a fishing expedition by providing the
25 victim's NCIC results which contains far more than the victim's criminal background. The
26 defense investigators can explore this information themselves, but the defense cannot require
27 the State to investigate and discover that information.

28 //

1 Because the evidence Defendant requests is not material or exculpatory, discovery is
2 not mandated under Brady. The defense request is, therefore, inherently unreasonable and this
3 Court should reject it. The Defendant is merely on a fishing expedition and is attempting to
4 use the mandates of Brady as a tool for discovery. This approach is improper and wastes both
5 the State's and the Court's limited resources. As such, Defendant's motion should be denied.

6 **E. The State Is Prohibited From Providing Information Contained In NCIC**
7 **Reports To Anyone Other Than Legitimate Law Enforcement Personnel**

8 Pursuant to 28 C.F.R. §20.33(b) as codified under 28 U.S.C.A. § 534 (2002), criminal
9 history information may only be disseminated to law enforcement agencies, those hired by
10 law enforcement agencies and to those who have entered into signed agreements for the
11 specific and authorized use of criminal background information. Pursuant to 28 C.F.R. §20.25,

12 Any agency or individual violating subpart B of these regulations
13 shall be subject to a civil penalty not to exceed \$10,000 for a
14 violation occurring before September 29, 1999, and not to exceed
\$11,000 for a violation occurring on after September 29, 1999.

15 In addition, pursuant to 28 C.F.R. §20.38,

16 Access to systems managed or maintained by the FBI is subject to
17 cancellation in regard to any agency or entity that fails to comply
with the provisions of subpart C of this part.

18 If the State is forced to disseminate such information to the defense in this matter, the
19 State and/or the individual who actually provides the NCIC information runs the risk of civil
20 penalties and loss of future access to the NCIC system. In addition, the Multi-System Guide
21 4 (MSG4) published by the Las Vegas Metropolitan Police Department (LVMPD) states that
22 "[d]ata stored in each of our criminal justice systems . . . must be protected to ensure correct,
23 legal and efficient dissemination and use." P. 21. The MSG4 further states that
24 "[d]issemination of CHI [Criminal History Information] that does not belong to the LVMPD
25 or is obtained through NCIC, NCJIS or NLETS is prohibited." Id.

26 As a user of the National Crime Information Center (NCIC) database, the State is
27 prohibited from disseminating criminal history information to non-criminal justice agencies
28 as defined by Title 28 Code of Federal Regulations (CFR)§ 20.3, which describes a criminal

1 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which
2 performs the administration of criminal justice pursuant to a statute or executive order, and
3 which allocates a substantial part of its annual budget to the administration of criminal justice.
4 Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice
5 purposes is prohibited.

6 A 1989 United States Supreme Court case looked at this issue from the standpoint of
7 an invasion of privacy and ruled accordingly:

8 Accordingly, we hold as a categorical matter that a third party's
9 request for law enforcement records or information about a private
10 citizen can reasonably be expected to invade that citizen's privacy,
11 and that when the request seeks no "official information" about a
Government agency, but merely records that the Government
happens to be storing, the invasion of privacy is "unwarranted."

12 United States Department of Justice v. the Reporters Committee for Freedom of the Press, 109
13 S.Ct. 1468, 1485 (1989).

14 Criminal defense attorneys, public or private, are not within the definition of "criminal
15 justice agency," nor is the criminal defense function considered a "criminal justice purpose."
16 Therefore, Defendant is not entitled to the criminal history information he seeks.

17 **F. NCIC Policy of the District Attorney's Office as of 6/11/08**

18 If the District Attorney runs an NCIC inquiry on a witness and that NCIC inquiry is in
19 our file, the FBI has NO policy prohibiting us from disclosing that NCIC inquiry. If, on the
20 other hand, we have not run the NCIC report already, it is a violation of FBI regulations to run
21 it on request of defense counsel, or court order.

22 In short, if we already have it, we make the call--pursuant to our obligations under
23 Brady and Giglio--whether or not to divulge any information contained in the NCIC report. If
24 we don't have the NCIC report in our file, the defense has to follow FBI-outlined procedures
25 to get it.

26 Defense must obtain an order from the judge directed to the FBI requested describing
27 specifically what they need. The FBI then reviews the judge's order and almost always
28

1 complies with it, but the FBI sends the NCIC report to the judge, who then reviews the
2 information and decides on its admissibility before turning anything over to the defense.

3 **G. Reciprocal Discovery Request by the State**

4 NRS 174.234 states in pertinent part that:

5 2. If the defendant will be tried for one or more offenses that
6 are punishable as a gross misdemeanor or felony and a witness that
7 a party intends to call during the case in chief of the State or during
8 the case in chief of the defendant is expected to offer testimony as
9 an expert witness, the party who intends to call that witness shall
10 file and serve upon the opposing party, not less than 21 days before
11 trial or at such other time as the court directs, a written notice
12 containing:

13 (a) A brief statement regarding the subject matter on
14 which the expert witness is expected to testify and the
15 substance of the testimony;

16 (b) A copy of the curriculum vitae of the expert witness;
17 and

18 (c) **A copy of all reports made by or at the direction
19 of the expert witness.**

20 3. After complying with the provisions of subsections 1 and
21 2, each party has a continuing duty to file and serve upon the
22 opposing party:

23 (a) Written notice of the names and last known
24 addresses of any additional witnesses that the party intends to call
25 during the case in chief of the State or during the case in chief of
26 the defendant. A party shall file and serve written notice pursuant
27 to this paragraph as soon as practicable after the party determines
28 that the party intends to call an additional witness during the case
in chief of the State or during the case in chief of the defendant.
The court shall prohibit an additional witness from testifying if the
court determines that the party acted in bad faith by not including
the witness on the written notice required pursuant to subsection
1.

(b) Any information relating to an expert witness
that is required to be disclosed pursuant to subsection 2. A
party shall provide information pursuant to this paragraph as
soon as practicable after the party obtains that information.
The court shall prohibit the party from introducing that
information in evidence or shall prohibit the expert witness
from testifying if the court determines that the party acted in
bad faith by not timely disclosing that information pursuant
to subsection 2.

(emphasis added)

25 Defendant has noticed two expert witnesses in this matter and the filed expert witness
26 disclosure references testing that was performed by one or both witnesses. On May 23, 2014,
27 the State specifically requested copies of all reports, tests, videos, photographs or any other
28

1 items prepared by or produced from either of the noticed witnesses. The State renewed that
2 request on May 23, 2014. The State has yet to receive any responsive items from the defense.
3 The State formally requests said information pertaining to any defense experts.

4 CONCLUSION

5
6 The State respectfully requests that the defense motion be denied in its entirety since
7 the State has consistently made discovery available throughout this case and has provided full
8 access to the State's files, the vault and the case file of the Las Vegas Metropolitan Police
9 Department. However, with respect to the specific inquiries outlined in the defense motion,
10 the State answers as follows:

- 11 1. All statements, regardless of whether the statements

12 See ROC dated October 7, 2013 - The State previously provided discovery
13 to the defense responsive to this request and has not obtained any new witness
14 statements or other discovery since the last production of discovery in this matter,
15 however, the State invites defense counsel to review the State's case information
16 to insure that they have all written or recorded statements, as well as all other
17 discovery available at the present time.

18 To the extent that this discovery request exceeds the requirements imposed
19 upon the State by NRS 174.235, the State objects to this discovery request. NRS
20 174.235 does not impose upon the State the obligation to search out or otherwise
21 disclose any possible statements made which were not written or recorded.

- 22
23 2. Any and all statements of any/all potential witnesses. . . .

24 Same response as request #1.

- 25 3. Request, results and/or reports. . . .

26 See ROC dated October 7, 2013 - The State previously provided discovery
27 to the defense responsive to this request and has not obtained any new witness
28 statements or other discovery since the last production of discovery in this matter,

1 however, the State invites defense counsel to review the State's case information
2 to insure that they have all written or recorded statements, as well as all other
3 discovery available at the present time.

4 To the extent that this discovery request exceeds the requirements imposed
5 upon the State by NRS 174.235, the State objects to this discovery request. With
6 respect to the specific request for rough notes, raw data and backup files, etc. from
7 the Las Vegas Metropolitan Police Department Crime Laboratory or other
8 outside agencies, the defense is fully able to independently subpoena said
9 documents and should seek out any and all such discovery which they desire, if it
10 exists, which was not previously obtained by and produced by the State.

11 4. Access to and preservation. . . .

12 Same response as request #3.

13 5. Any and all intercepted electronic. . . .

14 See ROC dated October 7, 2013 - The State previously provided discovery
15 to the defense responsive to this request and has not obtained any new witness
16 statements or other discovery since the last production of discovery in this matter,
17 however, the State invites defense counsel to review the State's case information
18 to insure that they have all written or recorded statements, as well as all other
19 discovery available at the present time.

20 To the extent that this discovery request exceeds the requirements imposed
21 upon the State by NRS 174.235, the State objects to this discovery request. With
22 respect to the specific request for discovery pertaining to federal authorities or
23 other outside agencies, the defense is fully able to independently subpoena said
24 documents and should seek out any and all such discovery which they desire, if it
25 exists, which was not previously obtained by and produced by the State.

26 6. Any and all data. . . .

27 Same response as request #5.

28 7. Any and all 911. . . .

//

1 **See ROC dated October 7, 2013 - The State previously provided discovery**
2 **to the defense responsive to this request and has not obtained any new witness**
3 **statements or other discovery since the last production of discovery in this matter,**
4 **however, the State invites defense counsel to review the State's case information**
5 **to insure that they have all written or recorded statements, as well as all other**
6 **discovery available at the present time.**

7 **To the extent that this discovery request exceeds the requirements imposed**
8 **upon the State by NRS 174.235, the State objects to this discovery request. With**
9 **respect to the specific request for 911, 311 or other discovery available from Las**
10 **Vegas Metropolitan Police Department Dispatch, the defense is fully able to**
11 **independently subpoena said records and should seek out any and all such**
12 **discovery which they desire, if it exists, which was not previously obtained by and**
13 **produced by the State.**

14 8. Any and all information which shows that the defendant did not commit. . . .

15 **The State is unaware of any said evidence, however, the State would refer**
16 **the defense to the previously disclosed evidence to make their own independent**
17 **determination. See ROC dated October 7, 2013 - The State previously provided**
18 **discovery to the defense responsive to this request and has not obtained any new**
19 **witness statements or other discovery since the last production of discovery in this**
20 **matter, however, the State invites defense counsel to review the State's case**
21 **information to insure that they have all written or recorded statements, as well as**
22 **all other discovery available at the present time.**

23 9. All statements of identification. . . .

24 **Same response as request #8.**

25 10. All relevant reports. . . .

26 **The State is unaware of any reports of destruction of evidence, however, the**
27 **State refers the defense to the ROC dated October 7, 2013 - The State previously**

1 provided discovery to the defense responsive to this request and has not obtained
2 any new witness statements or other discovery since the last production of
3 discovery in this matter, however, the State invites defense counsel to review the
4 State's case information to insure that they have all written or recorded
5 statements, as well as all other discovery available at the present time.

6 With respect to any chain of custody issues, the State is unaware of any such
7 issues. The State has, however, invited the defense to review the evidence
8 contained at the evidence vault to make their own determination.

9 11. Any documents used to prepare State's witnesses. . . .

10 See ROC dated October 7, 2013 - The State previously provided discovery
11 to the defense responsive to this request and has not obtained any new witness
12 statements or other discovery since the last production of discovery in this matter,
13 however, the State invites defense counsel to review the State's case information
14 to insure that they have all written or recorded statements, as well as all other
15 discovery available at the present time.

16 12. All updated witness contact. . . .

17 The State is aware of its continuing discovery obligations and has recently
18 filed updated and supplemental expert and lay witness notices in this case with the
19 most current contact information that the State possesses. If there are any specific
20 listed witnesses which the defense is having difficulty locating, the State will
21 endeavor to aid the defense in obtaining additional contact information for said
22 witnesses.

23 13. Any and all records of the Las Vegas Metropolitan. . . .

24 See ROC dated October 7, 2013 - The State previously provided discovery
25 to the defense responsive to this request and has not obtained any new witness
26 statements or other discovery since the last production of discovery in this matter,
27 however, the State invites defense counsel to review the State's case information
28 to insure that they have all written or recorded statements, as well as all other

1 discovery available at the present time.

2 The State has repeatedly offered to facilitate a review of the Las Vegas
3 Metropolitan Police Department case file which may have additional material
4 responsive to this request. The State and the defense are currently in the process
5 of arranging a time for said file review.

6 14. Any and all information obtained by the use of confidential informants. . . .

7 At the present time, the State is unaware of the use of any confidential
8 informants in the instant case and is not in possession of any discovery that is
9 responsive to this request.

10 15. Disclosure of any and all compensation. . . .

11 The State may have provided a witness fee of \$25.00, mileage and/or
12 transportation expenses to witnesses who testified at the preliminary hearing.
13 Other than possibly the witness fee and transportation expenses described above,
14 the State has not provided any compensation to or entered into any cooperation
15 agreement with any State witness at the present time. The State is aware of this
16 request by the defense and will supplement this response if necessary as the case
17 progresses.

18 The State has not provided any favorable treatment, benefit or leniency to
19 any witness in the instant matter. The State is not aware of any U-Visas that
20 may have been issued related to this case. In fact, the State has not listed any
21 non-US citizens in its witness notices.

22 16. Disclosure of any and all statements. . . .

23 Redundant request, same response as #1 and #2.

24 17. Any and all impeachment information located in the personnel files. . . .

25 The State objects to this discovery request as being overbroad, lacking
26 materiality and requesting discovery not available to the State. The State,
27 however, will make a request from the investigative agency in the instant matter
28 for any materials which may be disclosed under Brady pertaining to any law

1 enforcement officer whom the State intends to call as a witness at trial.

2 18. Criminal history information. . . .

3 The State objects to this discovery request as being overbroad, lacking
4 materiality and requesting discovery that the State cannot legitimately obtain
5 and turn over to the defense. See Motion Response C-F *supra*.

6 19. Whether the alleged victim(s). . . .

7 The State objects to this discovery request as being irrelevant, overbroad,
8 lacking materiality. As stated before, the State is not aware of any U-Visas that
9 may have been issued related to this case. In fact, the State has not listed any
10 non-US citizens in its witness notices. Furthermore, the victim in this case is
11 dead and was only three and a half years old. No U-Visa was issued to the
12 victim.

13 20. Whether the alleged victim. . . .

14 Same response as #19.

15 21. All USCIS Form(s). . . .

16 Same response as #19.

17 22. All USCIS Form(s), I-918, Supplement B. . . .

18 Same response as #19.

19 23. The law enforcement. . . .

20 Same response as #19.

21 24. Whether an individual. . . .

22 Same response as #19.

23 25. Whether a certifying. . . .

24 Same response as #19.

25 26. Any evidence submitted. . . .

26 Same response as #19.

27 27. Whether the USCIS. . . .

28 Same response as #19.

1 28. Whether the USCIS has found. . . .

2 Same response as #19.

3 29. Whether the certifying agency. . . .

4 Same response as #19.

5 30. Whether the certifying agency has notified. . . .

6 Same response as #19.

7 31. Whether the USCIS. . . .

8 Same response as #19.

9 32. Whether the alleged victim. . . .

10 Same response as #19.

11 33. Whether any witness. . . .

12 Same response as #19.

13 34. Finally, the Defendant. . . .

14 Same response as #19. In addition, the State objects to this request. It is
15 not the State's responsibility to perform investigations or inquiries on behalf of
16 the defense.

17 35. Any and all Department of Child. . . .

18 See ROC dated October 7, 2013 - The State previously provided all Child
19 Protective Services (CPS) discovery it has in its possession to the defense
20 responsive to this request and has not obtained any additional CPS discovery,
21 however, the State invites defense counsel to review the State's case information
22 to insure that they have all CPS records in the State's possession.

23 Furthermore, the State objects to this request. The State is not the holder
24 of records for any State CPS division, therefore, the defense must utilize their own
25 resources, including requesting Court orders, to obtain any additional CPS
26 records that they may desire.

27 36. Any and all notes. . . .

28 Same response as #35.

//

1 37. Any and all records. . . .

2 See ROC dated October 7, 2013 - The State previously provided all records
3 it has in its possession to the defense responsive to this request and has not
4 obtained any additional discovery, however, the State invites defense counsel to
5 review the State's case information to insure that they have all such records in the
6 State's possession.

7 Furthermore, the State objects to this request. The State is not the holder
8 of specific records of mental health workers, therefore, the defense must utilize
9 their own resources, including requesting Court orders, to obtain any additional
10 mental health records that they may desire.

11 38. Any and all notes. . . .

12 See ROC dated October 7, 2013 - The State previously provided all records
13 it has in its possession to the defense responsive to this request and has not
14 obtained any additional discovery, however, the State invites defense counsel to
15 review the State's case information to insure that they have all such records in the
16 State's possession.

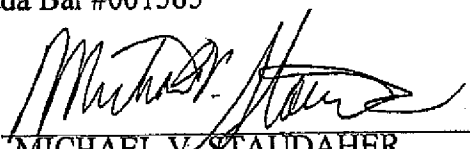
17 Furthermore, the State objects to this request. The State is not the holder
18 of specific medical records, therefore, the defense must utilize their own resources,
19 including requesting Court orders, to obtain any additional medical records that
20 they may desire.

21 DATED this 23rd day of May, 2014.

22 Respectfully submitted,

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

26 BY

27 
28 MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #008273

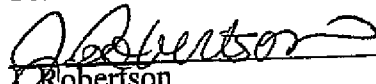
1 **CERTIFICATE OF FACSIMILE TRANSMISSION &/OR ELECTRONIC MAIL**

2 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION
3 TO COMPEL PRODUCTION OF DISCOVERY, was made this 23rd day of MAY, 2014,
4 by Facsimile Transmission &/or email to:

5 NANCY M. LEMCKE, ESQ.
6 E-mail Address: LemckeNL@clarkcountynv.gov

7 NORMAN J. REED
8 E-mail Address: REEDNJ@clarkcountynv.gov
9 pdclerk@clarkcountynv.gov

10 FAX #702-455-5112

11 
12 J. Robertson
13 Secretary for the District Attorney's Office
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MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0536
NANCY M. LEMCKE
Deputy Public Defender
Nevada Bar No. 5416
NORMAN J. REED
Nevada Bar No. 3795
Deputy Public Defender
309 South Third Street, Suite 226
Las Vegas, Nevada 89135
(702) 455-4685
Attorneys for Defendant


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JONATHAN QUISANO,

Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014
TIME: 9:30 a.m.

MOTION TO STRIKE JURY VENIRE BASED UPON THE
AUTOMATIC EXCLUSION OF CONVICTED FELONS

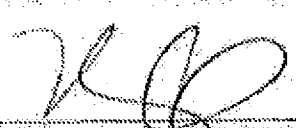
COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY M. LEMCKE and NORMAN REED, Deputy Public Defenders, and hereby moves to strike the jury venire because the Clark County Jury Commissioner automatically excludes convicted felons that may be eligible to sit in jury service.

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

DATED this 23rd day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

ARGUMENT

Currently, the Clark County Jury Commissioner summarily turns away ex-felons summoned for jury duty. While some ex-felons are, indeed, ineligible to serve, others are not.

NRS 213.155 provides, in relevant part, as follows:

1. Except as otherwise provided in subsection 2, a person who receives an honorable discharge from parole pursuant to NRS 213.154: ... (c) Six years after the date of his or her honorable discharge from parole, is restored the right to serve as a juror in a criminal action.

The only exception to immediate restoration after the requisite six years from discharge is for category A or B felonies—serious or violent crimes. NRS 213.155(2).

A similar statute exists for honorable discharge from probation: NRS 176A.850 provides:

1. A person who: (a) Has fulfilled the conditions of probation for the entire period thereof; (b) Is recommended for earlier discharge by the Division; or (c) has demonstrated fitness for honorable discharge but, because of economic hardship, verified by the Division, has been unable to make restitution as ordered by the court, may be granted an honorable discharge from probation by order of the court.
2. Except as otherwise provided in subsection 4, a person who has been honorably discharged from probation: (d) Six years after the date of honorable discharge from probation, is restored the right to serve as a juror in a criminal action.

This statute also makes an exception for category A or B felonies, but -- other than successful completion of probation versus parole -- is identical.

The United States and Nevada Constitutions guarantee the right to a fair and impartial jury, chosen from a fair cross-section of the community. U.S.C.A. VI, XIV; Nev. Const. Art 1, Sec. 1; Art. 1, Sec. 8; See also Taylor v. Louisiana, 419 U.S. 522 (1975). By summarily turning away ex-felons without conducting some type of eligibility inquiry, the Clark County Jury Commissioner is excising a segment of the local population from the jury venire. This violates the statutory provisions outlined above, as well as an accused's right to have a jury venire comprised of a cross section of the community. U.S.C.A. VI, XIV; Nev. Const. Art 1, Sec. 1; Art. 1, Sec. 8; See also, Taylor v. Louisiana, 419 U.S. 522 (1975). Thus, the Defendant, JONATHAN QUISANO respectfully requests that this Honorable Court strike the instant jury venire. Mr. Quisano further requests that this Honorable Court conduct an evidentiary hearing on this issue and direct the Jury Commissioner to comply with the statutory provisions outlined above.

CONCLUSION

Based on the foregoing, the Defendant, JONATHAN QUISANO, respectfully requests that this Honorable Court strike the jury venire until the Jury Commissioner can assure this Honorable Court that ex-felons are not being summarily turned away from jury service.

DATED this 22nd day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NORMAN J. REED, 3795
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 3rd day of June, 2014, at 9:30 a.m., District Court Department XXI.

DATED this ____ day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

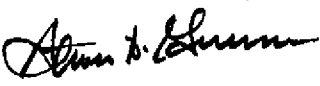
CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of MOTION TO STRIKE JURY VENIRE BASED UPON THE AUTOMATIC EXCLUSION OF CONVICTED FELONS, was made this 23rd day of May, 2014, by Electronic Filing to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyda.com

MICHAEL STAUDAHER, Chief Deputy District Attorney
E-Mail: michael.staudaher@clarkcountyda.com

By: 
S. Ruano
Secretary for the Public Defender's Office


CLERK OF THE COURT

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
NANCY M. LEMCKE
Deputy Public Defender
Nevada Bar No. 5416
NORMAN J. REED
Deputy Public Defender
Nevada Bar No. 3795
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JONATHAN QUISANO,

Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014
TIME: 9:30 a.m.


MOTION TO LIMIT EXPERT TESTIMONY

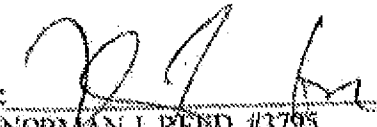
COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY M. LEMCKE and NORMAN J. REED, Deputy Public Defenders, and hereby moves to exclude expert testimony pertaining to the biomechanical forces necessary to cause certain injuries absent proper qualification in that field of expertise. This Motion is made and based upon all the papers and pleadings on file herein and oral argument at the time set for hearing this Motion.

DATED this 22 day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

I. STATEMENT OF FACTS

On June 6, 2013, three year-old Khayden Quisano died as the result of blunt force trauma to the head. I PHT p. 18-41. Khayden lived with his mother, Christina Rodriguez; his father, Jonathan Quisano; his little brother, Khaysen; and his maternal grandmother, Lynn Rodriguez. I PHT p. 233. On the morning of June 6, Jonathan left for work just before dawn, in keeping with his usual work schedule. I PHT p. 239-24. Christina woke Khayden and Khaysen around 6:30. I PHT p. 240. She dressed them and drove them to her grandparents' home, after which she drove to work for her 8:30-5:00 shift at cardiovascular specialist's office. I PHT p. 239-241. As typically happened, Christina's grandparents drove Khayden and Khaysen home after Jonathan returned home from work, sometime in the afternoon. I PHT p. 233-40. At approximately 5:10 that evening, as Christina was driving home from work, she received a phone call from Jonathan. I PHT p. 241-42. Jonathan told her to hurry home. I PHT p. 243. A few minutes later, Christina called Jonathan back and asked why he needed her to hurry home. I PHT p. 243. Jonathan explained that Khayden fell off of the back of the couch in the tile-floored living room¹ and hit his head. I PHT p. 243-44; 261. Jonathan told Christina that Khayden was not opening his eyes and was spitting up. I PHT p. 244; 256. Christina hung up and called 911. I PHT p. 244.

Emergency personnel responded and found Khayden unresponsive and lifeless. I PHT p. 155. Paramedics immediately initiated life-saving measures, including CPR/chest compressions. I PHT p. 163-64; 176-79. When asked what happened to Khayden, Jonathan told paramedic Timothy Kline that Khayden fell from a living room chair onto the tile floor. I PHT p. 160-61. Notably, the living room housed a love seat, two recliner chairs, and a three-seat couch. I PHT p. 237; 245-46. Jonathan similarly told paramedic Patrick Buckhalter that Khayden fell backwards off of a chair/recliner onto the floor. I PHT p. 210-12. Jonathan later clarified that he did not actually witness the fall; that he only saw Khayden playing on top of the chair when he fell. I PHT p. 213. Las Vegas Fire Department Captain Mickey Pedrol also asked Jonathan how Khayden sustained his injuries. I PHT p. 192-93. Jonathan purportedly told Capt. Pedrol that both of his sons were playing on a bar when Khayden fell off, hitting his head on the floor. I PHT p. 193.

¹ Jonathan later reiterated this version of events to Christina when the couple drove to the hospital. PHT p. 244-49.

1 Notably, when asked, Christina Rodrigues could not identify anything in the home approximating
2 a 'bar,' nor was she aware of anything to which Jonathan referred as a 'bar' other than a barstool
3 located in the kitchen area. I PHT p. 257.

4 Christina arrived home to find paramedics already tending to Khayden. I PHT p. 249.
5 Suspicious of Jonathan's accounting of Khayden's injury(ies), Capt. Pedrol alerted LVMPD
6 officials. I PHT p. 190. Khayden was transported to UMC Hospital where doctors determined
7 him to be clinically brain dead. I PHT p. 38. Khayden died not long thereafter.

8 LVMPD detectives responded to the hospital and, ultimately, to Khayden's home to
9 investigate. I PHT p. 253-54. Investigating officers directed Jonathan to leave the hospital and
10 return home for further investigation of the incident. I PHT 253-54; II PHT p. 101. Initially,
11 LVMPD Abuse/Neglect detectives responded to the hospital and Jonathan's home. II PHT p. 101-
12 03. Once it appeared as though Khayden would succumb to his injuries, LVMPD officers
13 summoned homicide detectives. II PHT p. 101-03. Homicide Detectives Dolfis Boucher and
14 Tate Sanborn responded. II PHT p. 101-03.

15 Investigating officials obtained a warrant to search Jonathan's residence. II PHT p. 102.
16 By the time Dets. Boucher and Sanborn arrived at Jonathan's home, Jonathan had returned to the
17 residence, and numerous other LMVPD officials, including CSAs and LVMPD Child
18 Abuse/Neglect detectives, were (or had been) present in the home investigating. II PHT p. 103.

19 Dets. Boucher and Sanborn interrogated Jonathan in his kitchen. II PHT p. 77-100. They
20 did not *Mirandize* him. Jonathan told Det. Boucher that Christina's grandparents dropped
21 Khayden and Khaysen off at home at approximately 4:30 in the afternoon. II PHT p. 77. Jonathan
22 indicated that the children appeared to be fine. II PHT p. 77. Jonathan told Det. Boucher that
23 everyone took a nap for a short while, after which the kids played. II PHT p. 78. At some point,
24 the kids were playing on the living room sofa while Jonathan sat in one of the recliner chairs
25 watching TV. II PHT p. 78. Jonathan indicated that, at some point, he looked over at his kids and
26 saw Khayden falling over the back of the couch onto the tile floor. II PHT p. 127-28. Jonathan
27 indicated to detectives that he did not see the beginning of the fall; only the "split second" when
28 Khayden was going over the couch. II PHT p. 78-82; 127-28.

Jonathan explained that he immediately went to tend to Khayden, and found him lying on his back, parallel to the couch. II PHT p. 85. Jonathan described Khayden as being "frozen up," making some type of noise. II PHT p. 87. Jonathan indicated he picked Khayden up, thinking he had been knocked out from the fall. II PHT p. 87. Not seeing any blood, Jonathan tried to revive Khayden by splashing water on his face. II PHT p. 88. Khayden did not respond to the cold water and began to vomit, at which point Jonathan called Christina, a medical assistant in a doctor's office, urging her to hurry home. II PHT p. 88. Shortly after his interrogation, investigating officers arrested Jonathan and charged him with murder.

Dr. Lisa Gavin performed an autopsy on Khayden. III PHT p. 4-10. Dr. Gavin found that Khayden suffered a stellate skull fracture to the back of his head, slightly to the right of the midline. III PHT p. 14. Dr. Gavin also found subgaleal and subdural hemorrhaging in this area. III PHT p. 12-16; 52. Dr. Gavin noted a significant amount of bleeding on the left side of Khayden's brain, along with some hemorrhaging around the eyes, as well. III PHT p. 19-20; 24; 52. Consistent with imaging performed at the hospital, Dr. Gavin observed a midline shift of the brain of a few millimeters. III PHT p. 51-52. Neuropathologic testing further revealed diffuse cerebral edema, as well as early-onset hypoxic ischemia and diffuse axonal injury. III PHT p. 40-42; 52.

Dr. Gavin opined that Khayden died as the result of blunt force trauma to the head. III PHT p. 53. However, Dr. Gavin did not classify Khayden's death as a homicide. III PHT p. 55-56. Rather, she could not determine the manner of Khayden's death. III PHT p. 55-56. Dr. Gavin explained that she could not rule out the possibility that Khayden's death was the result of an accident. III PHT p. 55-56.

II. PROCEDURAL HISTORY

On May 16, 2014, prosecutors filed a Notice of Expert Witness ("Notice"). That Notice identified no less than 46 expert witnesses prosecutors intend to call at trial. If all are called, the trial of this matter may set a record in Clark County for most experts ever utilized in a criminal prosecution. However, of the 46 witnesses listed, prosecutors provided curriculum vitae for only 6. As to 16 of the expert witnesses, prosecutors provided licensure printouts from the

1 Nevada State Board of Medical examiners. As to the remaining 24 witnesses, prosecutors
2 provided no additional information.

3 On May 19, 2014 prosecutors filed a Supplemental Notice of Expert Witness
4 ("Supplemental Notice") adding Dr. Jason Ninomiya and Dr. Oscar Ingaramo to the government's
5 expert witness list. The Supplemental Notice included a curriculum vitae for Dr. Consolacion
6 Saqueton, one of the experts endorsed in the original Notice of Expert Witness, as well as what
7 appears to be a printout of an internet description of Dr. Ninomiya and his pediatric practice in
8 Hawaii. The internet printout includes photos of Dr. Ninomiya and the building in which his
9 pediatric practice is housed, together with a photo of the parking garage for his office. Also
10 attached is Dr. Ninomiya's license information from the Department of Commerce and Consumer
11 Affairs, as generated and printed from an internet search. The Supplemental Notice contains no
12 curriculum vitae for Dr. Ninomiya.

13 On May 20, 2014, prosecutors filed a Second Supplemental Notice of Expert Witness in
14 which they attached a curriculum vitae for Dr. Hannes Vogel, a medical expert listed in the
15 original Notice of Expert Witness. The instant Motion to Limit Expert Testimony follows.

16 III. POINTS AND AUTHORITIES

17 To date, prosecutors have noticed 48 expert witnesses, many of whom are medical experts.
18 As to several of those medical experts, prosecutors intend to solicit opinion testimony regarding
19 the mechanism of injury in the instant matter. The defense expects prosecutors to solicit
20 opinion(s) from these experts that the fall described by Jonathan could not have caused the injuries
21 Khayden sustained. Absent qualification by any one of the prosecution's 48 experts as having
22 expertise in the area of biomechanics, and having conducted appropriate testing replicating fall
23 Jonathan described in the same domestic environment in which Khayden's injuries occurred, any
24 such opinion testimony should be excluded at the upcoming trial of this matter.

25 NRS 50.275 provides that: "... a witness qualified as an expert by special knowledge,
26 skill, experience, training, or education, may testify to matters within the scope of such
27 knowledge." Expert testimony is admissible if it meets three requirements: (1) the expert must be
28

1 qualified in an area of scientific, technical, or other specialized knowledge; (2) his or her
2 specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact
3 in issue; and (3) his/her testimony must be limited to matters within the scope of his/her
4 specialized knowledge. Perez v. State, 313 P.3d 862 (Nev. 2013). Additionally, NRS 174.234(2)
5 obligates prosecutors, no later than 21 days before trial, to provide notice of any expert prosecutors
6 intend to call in the government's case-in-chief. The notice must provide "a brief statement
7 regarding the subject matter on which the expert is expected to testify and the substance of the
8 testimony," and contain a copy of the expert's curriculum vitae. NRS 174.234(2).

9 Here, prosecutors endorsed several medical experts from whom they intend to solicit
10 'mechanism of injury' opinions. None of the experts identified in the prosecution's Expert
11 Witness Notices appears to have any background and/or qualification in the area of biomechanics.
12 Moreover, none of the prosecution's 48 experts appears to have conducted biomechanical testing
13 in the domestic environment at issue here. Thus, prosecutors must be precluded from introducing
14 opinion testimony from any currently-endorsed medical expert regarding whether the fall
15 described by Jonathan could generate the force necessary to cause the injuries Khayden sustained.

16 17 IV. CONCLUSION

18 Based on the foregoing, the Defendant, JONATHAN QUISANO, respectfully requests that
19 this Honorable Court exclude opinion testimony from any currently-endorsed prosecution medical
20 expert regarding whether the fall described by Jonathan could have generated the force necessary
21 to cause the injuries Khayden sustained.

22 DATED this 27th day of May, 2014.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

25
26 By: 

27 NANCY M. LEMCKE, #5416
28 Deputy Public Defender

By: 

NORMAN J. REED, #3795
Deputy Public Defender

1 NOTICE OF MOTION

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
4 above and foregoing Motion on for hearing before the Court on the 3rd day of June, 2014, at 9:30
5 a.m., District Court Department XXI.

6 DATED this 23rd day of May, 2014.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: 
11 NANCY M. LEMCKE, #5416
Deputy Public Defender

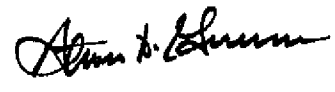
12 CERTIFICATE OF ELECTRONIC SERVICE

13 I hereby certify that service of MOTION TO LIMIT EXPERT TESTIMONY, was
14 made this 23rd day of May, 2014, by Electronic Filing to:

15
16 CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountydak.com

17
18 MICHAEL STAUDAHIER, Chief Deputy District Attorney
E-Mail: michael.staudahier@clarkcountydak.com

19
20 By: 
21 S. Ruano
Secretary for the Public Defender's Office


CLERK OF THE COURT

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
NANCY M. LEMCKE
Deputy Public Defender
Nevada Bar No. 5416
NORMAN J. REED
Deputy Public Defender
Nevada Bar No. 3795
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JONATHAN QUISANO,

Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014
TIME: 9:30 a.m.


MOTION TO EXCLUDE EXPERT WITNESSES


COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY M. LEMCKE and NORMAN J. REED, Deputy Public Defenders, and hereby moves this Honorable Court to exclude any/all prosecution witness not properly noticed pursuant to NRS 174.234. This Motion is made and based upon all the papers and pleadings on file herein and oral argument at the time set for hearing this Motion.

DATED this 23rd day of May, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

I. STATEMENT OF FACTS

On June 6, 2013, three year-old Khayden Quisano died as the result of blunt force trauma to the head. I PHT p. 18-41. Khayden lived with his mother, Christina Rodrigues; his father, Jonathan Quisano; his little brother, Khaysen; and his maternal grandmother, Lynn Rodrigues. I PHT p. 233. On the morning of June 6, Jonathan left for work just before dawn, in keeping with his usual work schedule. I PHT p. 239-24. Christina woke Khayden and Khaysen around 6:30. I PHT p. 240. She dressed them and drove them to her grandparents' home, after which she drove to work for her 8:30-5:00 shift at cardiovascular specialist's office. I PHT p. 239-241. As typically happened, Christina's grandparents drove Khayden and Khaysen home after Jonathan returned home from work, sometime in the afternoon. I PHT p. 233-40. At approximately 5:10 that evening, as Christina was driving home from work, she received a phone call from Jonathan. I PHT p. 241-42. Jonathan told her to hurry home. I PHT p. 243. A few minutes later, Christina called Jonathan back and asked why he needed her to hurry home. I PHT p. 243. Jonathan explained that Khayden fell off of the back of the couch in the tile-floored living room¹ and hit his head. I PHT p. 243-44; 261. Jonathan told Christina that Khayden was not opening his eyes and was spitting up. I PHT p. 244; 256. Christina hung up and called 911. I PHT p. 244.

Emergency personnel responded and found Khayden unresponsive and lifeless. I PHT p. 155. Paramedics immediately initiated life-saving measures, including CPR/chest compressions. I PHT p. 163-64; 176-79. When asked what happened to Khayden, Jonathan told paramedic Timothy Kline that Khayden fell from a living room chair onto the tile floor. I PHT p. 160-61. Notably, the living room housed a love seat, two recliner chairs, and a three-seat couch. I PHT p. 237; 245-46. Jonathan similarly told paramedic Patrick Bunkhalter that Khayden fell backwards off of a chair/recliner onto the floor. I PHT p. 210-12. Jonathan later clarified that he did not actually witness the fall; that he only saw Khayden playing on top of the chair when he fell. I PHT p. 213. Las Vegas Fire Department Captain Mickey Pedrol also asked Jonathan how Khayden sustained his injuries. I PHT p. 192-93. Jonathan purportedly told Capt. Pedrol that both of his sons were playing on a bar when Khayden fell off, hitting his head on the floor. I PHT p. 193.

¹ Jonathan later reiterated this version of events to Christina when the couple drove to the hospital. PHT p. 244-49.

1 Notably, when asked, Christina Rodrigues could not identify anything in the home approximating
2 a 'bar,' nor was she aware of anything to which Jonathan referred as a 'bar' other than a barstool
3 located in the kitchen area. I PHT p. 257.

4 Christina arrived home to find paramedics already tending to Khayden. I PHT p. 249.
5 Suspicious of Jonathan's accounting of Khayden's injury(ies), Capt. Pedrof alerted LVMPD
6 officials. I PHT p. 190. Khayden was transported to UMC Hospital where doctors determined
7 him to be clinically brain dead. I PHT p. 38. Khayden died not long thereafter.

8 LVMPD detectives responded to the hospital and, ultimately, to Khayden's home to
9 investigate. I PHT p. 253-54. Investigating officers directed Jonathan to leave the hospital and
10 return home for further investigation of the incident. I PHT 253-54; II PHT p. 101. Initially,
11 LVMPD Abuse/Neglect detectives responded to the hospital and Jonathan's home. II PHT p. 101-
12 03. Once it appeared as though Khayden would succumb to his injuries, LVMPD officers
13 summoned homicide detectives. II PHT p. 101-03. Homicide Detectives Dolphis Boucher and
14 Tate Sanborn responded. II PHT p. 101-03.

15 Investigating officials obtained a warrant to search Jonathan's residence. II PHT p. 102. By
16 the time Dets. Boucher and Sanborn arrived at Jonathan's home, Jonathan had returned to the
17 residence, and numerous other LMVPD officials, including CSAs and LVMPD Child
18 Abuse/Neglect detectives, were (or had been) present in the home investigating. II PHT p. 103.

19 Dets. Boucher and Sanborn interrogated Jonathan in his kitchen. II PHT p. 77-100. They did
20 not *Mirandize* him. Jonathan told Det. Boucher that Christina's grandparents dropped Khayden
21 and Khaysen off at home at approximately 4:30 in the afternoon. II PHT p. 77. Jonathan indicated
22 that the children appeared to be fine. II PHT p. 77. Jonathan told Det. Boucher that everyone took
23 a nap for a short while, after which the kids played. II PHT p. 78. At some point, the kids were
24 playing on the living room sofa while Jonathan sat in one of the recliner chairs watching TV. II
25 PHT p. 78. Jonathan indicated that, at some point, he looked over at his kids and saw Khayden
26 falling over the back of the couch onto the tile floor. II PHT p. 127-28. Jonathan indicated to
27 detectives that he did not see the beginning of the fall; only the "split second" when Khayden was
28 going over the couch. II PHT p. 78-82; 127-28.

Jonathan explained that he immediately went to tend to Khayden, and found him lying on his back, parallel to the couch. II PHT p. 85. Jonathan described Khayden as being "frozen up," making some type of noise. II PHT p. 87. Jonathan indicated he picked Khayden up, thinking he had been knocked out from the fall. II PHT p. 87. Not seeing any blood, Jonathan tried to revive Khayden by splashing water on his face. II PHT p. 88. Khayden did not respond to the cold water and began to vomit, at which point Jonathan called Christina, a medical assistant in a doctor's office, urging her to hurry home. II PHT p. 88. Shortly after his interrogation, investigating officers arrested Jonathan and charged him with murder.

Dr. Lisa Gavin performed an autopsy on Khayden. III PHT p. 4-10. Dr. Gavin found that Khayden suffered a stellate skull fracture to the back of his head, slightly to the right of the midline. III PHT p. 14. Dr. Gavin also found subgaleal and subdural hemorrhaging in this area. III PHT p. 12-16; 52. Dr. Gavin noted a significant amount of bleeding on the left side of Khayden's brain, along with some hemorrhaging around the eyes, as well. III PHT p. 19-20; 24; 52. Consistent with imaging performed at the hospital, Dr. Gavin observed a midline shift of the brain of a few millimeters. III PHT p. 51-52. Neuropathologic testing further revealed diffuse cerebral edema, as well as early-onset hypoxic ischemia and diffuse axonal injury. III PHT p. 40-42; 52.

Dr. Gavin opined that Khayden died as the result of blunt force trauma to the head. III PHT p. 53. However, Dr. Gavin did not classify Khayden's death as a homicide. III PHT p. 55-56. Rather, she could not determine the manner of Khayden's death. III PHT p. 55-56. Dr. Gavin explained that she could not rule out the possibility that Khayden's death was the result of an accident. III PHT p. 55-56.

II. PROCEDURAL HISTORY

On May 16, 2014, prosecutors filed a Notice of Expert Witness ("Notice"), attached hereto as Exhibit A. That Notice identified no less than 46 expert witnesses prosecutors intend to call at trial. If all are called, the trial of this matter may set a record in Clark County for most experts ever utilized in a criminal prosecution. However, of the 46 witnesses listed, prosecutors provided curriculum vitae for only 6. As to 16 of the expert witnesses, prosecutors provided licensure

1 printouts from the Nevada State Board of Medical examiners. As to the remaining 24 witnesses,
2 prosecutors provided no additional information.

3 On May 19, 2014 prosecutors filed a Supplemental Notice of Expert Witness
4 ("Supplemental Notice") adding Dr. Jason Ninomiya and Dr. Oscar Ingaramo to the government's
5 expert witness list. The Supplemental Notice included a curriculum vitae for Dr. Consolacion
6 Saqueton, one of the experts endorsed in the original Notice of Expert Witness, as well as what
7 appears to be a printout of an internet description of Dr. Ninomiya and his pediatric practice in
8 Hawaii. The internet printout includes photos of Dr. Ninomiya and the building in which his
9 pediatric practice is housed, together with a photo of the parking garage for his office. Also
10 attached is Dr. Ninomiya's license information from the Department of Commerce and Consumer
11 Affairs, as generated and printed from an internet search. The Supplemental Notice contains no
12 curriculum vitae for Dr. Ninomiya.

13 On May 20, 2014, prosecutors filed a Second Supplemental Notice of Expert Witness in
14 which they attached a curriculum vitae for Dr. Hannes Vogel, a medical expert listed in the
15 original Notice of Expert Witness. The instant Motion to Exclude Expert Witnesses follows.

16 III. POINTS AND AUTHORITIES

17 Nevada Revised Statute 174.234(2) states that:

18 If the defendant will be tried for one or more offenses that are punishable as a gross
19 misdemeanor or felony and a witness that a party intends to call during the case in
20 chief of the State or during the case in chief of the defendant and is expected to
21 offer testimony as an expert witness, the party who intends to call that witness shall
22 file and serve upon the opposing party, not less than 21 days before trial or at such
23 other time as the court directs, a written notice containing (a) A brief statement
24 regarding the subject matter on which the expert witness is expected to testify and
25 the substance of the testimony; (b) A copy of the curriculum vitae of the expert
26 witness; and (c) A copy of all reports made by or at the direction of the expert
27 witness.

28 The prosecution's Notice of Expert Witness and Supplemental Notice of Expert Witness
failed to provide curriculum vitae for the following experts prosecutors intend to call at the trial of
this matter: Shahrokh Asseini, M.D.; Patrick Burkhalter, First Responder, AMR; Michael Casey,
M.D., treating physician; Sandra Cett, M.D., physician; David Chao, M.D., treating physician; L.

1 Chen, M.D., forensic neuropathologist; Kris Chipman, First Responder, LVFD; Thomas Costello,
2 M.D., radiologist; Juanita Crespo, R.N., nurse, UMC; Andrea Davis, R.N., nurse, UMC; Martin
3 Delgado, First Responder, LVFD; Peter Egbert, M.D., forensic neuropathologist; Donna
4 Evangelista, R.N., nurse, UMC; Sherri Fabbro, R.N., nurse, UMC; Stephanie Flether, CSA; Lisa
5 Gavin, M.D., medical examiner; Brandon Gray, first responder, AMR; Srinivas N. Halthore, M.D.,
6 Christopher Hyink, first responder, LVFD; Jerrell Ingalls, M.D.; Stuart Kaplan, M.D.,
7 neurosurgeon; Danielle Keller, CSA; Timothy Kline, first responder, AMR; Nelson Marietta,
8 M.D., and/or designee, treating physician, ophthalmologist; Dianne Mazzu, M.D., radiologist; Sasha
9 Milligan, R.N., nursing, UMC; Amie J. Modglin, coroner investigator, Arthur Montes, M.D.,
10 pediatric radiologist; Patricia Moore, R.N., nurse, UMC; Pejman Motarjem, M.D., radiologist;
11 Ashley Pistorio, M.D., treating physician/resident physician; Kelly Postell, R.N., nurse, UMC;
12 Latia Rahming, R.N., nursing, UMC; Karalyn Smalley, R.N., nursing, UMC; Erin Sturgeon, R.N.,
13 nursing, UMC; Meena Vohra, M.D., Treating Physician; Jimmy Wang, M.D., radiologist; Lisa
14 Wong, M.D., radiologist. Accordingly, the government failed to provide proper notice for these
15 experts, as required by NRS 174.234(2). The idea that a defendant should be required to chase
16 down some 40 curriculum vitae in the days leading up to a life-sentence trial, and conduct
17 thorough inquiry into each is onerous to the point of infringing upon his/her Due Process, Fair
18 Trial, and Right to Counsel guarantees. As such, all testimony from the improperly noticed
19 experts should be excluded from the upcoming trial of this matter. NRS 174.234(2); U.S.C.A. V,
20 VI, XIV; Nev. Const. Art. 1, Sect. 3, 8.

21 Additionally, the government's Expert Witness Notices failed to properly summarize the
22 expected testimony of the Crime Scene Analysts noticed therein. Prosecutors summarized each
23 CSA's (Joel Albert, Deborah Brotherson, Stephanie Fletcher, Tracy Kruse, Danielle Keller,
24 Randall McPhail, and Michael Perkins) expected expert testimony by stating that each witness "is
25 expect to provide testimony as an expert in the field of crime scene analysis, as well as his/her
26 direct involvement under LVMPD Event #130606-3235." This is the functional equivalent of
27 stating that a radiologist is expected to provide testimony as an expert in the field of radiology. In
28 other words, it says nothing about what the expected testimony will be, such that the instant

1 Defendant can be properly prepared to defend against it. Thus, each CSA for whom prosecutors
2 failed to provide the testimonial summary required by NRS 174.234 must be excluded from the
3 upcoming trial of this matter.

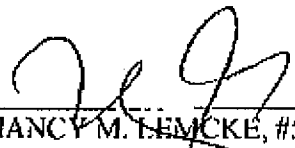
4 **IV. CONCLUSION**

5 Based on the foregoing, the Defendant, JONATHAN QUISANO, respectfully requests that
6 this Honorable Court exclude the testimony of any/all prosecution experts not properly noticed
7 pursuant to NRS 174.234.

8 DATED this 20th day of May, 2014.

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

11
12 By: 
13 NANCY M. LEMCKE, #5416
14 Deputy Public Defender

15
16 By: 
17 NORMAN J. REED, #3795
18 Deputy Public Defender

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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 3rd day of June, 2014, at 9:30 a.m., District Court Department XXI.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: NANCY M. LEMKE, #5416
Deputy Public Defender

I hereby certify that service of MOTION TO EXCLUDE EXPERT TESTIMONY,
was made this 23rd day of May, 2014, by Electronic Filing to:

MICHAEL STAUDAHER, Chief Deputy District Attorney
E-Mail: michael.staudaheir@clarkcountynvda.com

B. S. Ruano
S. Ruano
Secretary for the Public Defender's Office

1 MLIM
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 NANCY M. LEMCKE
5 Deputy Public Defender
6 Nevada Bar No. 5416
7 NORMAN J. REED
8 Deputy Public Defender
9 Nevada Bar No. 3795
10 309 South Third Street, Suite 226
11 Las Vegas, Nevada 89155
12 (702) 455-4685
13 Attorneys for Defendant


CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JONATHAN QUISANO,

14 Defendant.

CASE NO. C-13-294266-1

DEPT. NO. XXI

DATE: June 3, 2014

TIME: 9:30 a.m.


15
16 MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING
17 TRAUMA DESTINATION FALL CRITERIA PROTOCOL

18 COMES NOW, the Defendant, JONATHAN QUISANO, by and through NANCY M.
19 LEMCKE and NORMAN REED, Deputy Public Defenders, and hereby moves to exclude any
20 testimony regarding 'trauma destination fall criteria protocol' at the upcoming trial of this matter.
21 This Motion is made and based upon all the papers and pleadings on file herein and oral argument
22 at the time set for hearing this Motion.

23 DATED this 22nd day of May, 2014.

24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

26
27 By: 
28 NANCY M. LEMCKE, #5416
Deputy Public Defender

By: 
NORMAN J. REED, #3795
Deputy Public Defender

I. STATEMENT OF FACTS

On June 6, 2013, three year-old Khayden Quisano died as the result of blunt force trauma to the head. I PHT p. 18-41. Khayden lived with his mother, Christina Rodrigues; his father, Jonathan Quisano; his little brother, Khaysen; and his maternal grandmother, Lynn Rodrigues. I PHT p. 233. On the morning of June 6, Jonathan left for work just before dawn, in keeping with his usual work schedule. I PHT p. 239-24. Christina woke Khayden and Khaysen around 6:30. I PHT p. 240. She dressed them and drove them to her grandparents' home, after which she drove to work for her 8:30-5:00 shift at cardiovascular specialist's office. I PHT p. 239-241. As typically happened, Christina's grandparents drove Khayden and Khaysen home after Jonathan returned home from work, sometime in the afternoon. I PHT p. 233-40. At approximately 5:10 that evening, as Christina was driving home from work, she received a phone call from Jonathan. I PHT p. 241-42. Jonathan told her to hurry home. I PHT p. 243. A few minutes later, Christina called Jonathan back and asked why he needed her to hurry home. I PHT p. 243. Jonathan explained that Khayden fell off of the back of the couch in the tile-floored living room¹ and hit his head. I PHT p. 243-44; 261. Jonathan told Christina that Khayden was not opening his eyes and was spitting up. I PHT p. 244; 256. Christina hung up and called 911. I PHT p. 244.

Emergency personnel responded and found Khayden unresponsive and lifeless. I PHT p. 155. Paramedics immediately initiated life-saving measures, including CPR/chest compressions. I PHT p. 163-64; 176-79. When asked what happened to Khayden, Jonathan told paramedic Timothy Kline that Khayden fell from a living room chair onto the tile floor. I PHT p. 160-61. Notably, the living room housed a love seat, two recliner chairs, and a three-seat couch. I PHT p. 237; 245-46. Jonathan similarly told paramedic Patrick Burkhalter that Khayden fell backwards off of a chair/recliner onto the floor. I PHT p. 210-12. Jonathan later clarified that he did not actually witness the fall; that he only saw Khayden playing on top of the chair when he fell. I PHT p. 213. Las Vegas Fire Department Captain Mickey Pedrol also asked Jonathan how Khayden sustained his injuries. I PHT p. 192-93. Jonathan purportedly told Capt. Pedrol that both of his sons were playing on a bar when Khayden fell off, hitting his head on the floor. I PHT p. 193.

¹ Jonathan later reiterated this version of events to Christina when the couple drove to the hospital. PHT p. 244-49.

1 Notably, when asked, Christina Rodríguez could not identify anything in the home approximating
2 a 'bar,' nor was she aware of anything to which Jonathan referred as a 'bar' other than a barstool
3 located in the kitchen area. I PHT p. 257.

4 Christina arrived home to find paramedics already tending to Khayden. I PHT p. 249.
5 Suspicious of Jonathan's accounting of Khayden's injury(ies), Capt. Pedrol alerted LVMPD
6 officials. I PHT p. 190. Khayden was transported to UMC Hospital where doctors determined
7 him to be clinically brain-dead. I PHT p. 38. Khayden died not long thereafter.

8 LVMPD detectives responded to the hospital and, ultimately, to Khayden's home to
9 investigate. I PHT p. 253-54. Investigating officers directed Jonathan to leave the hospital and
10 return home for further investigation of the incident. I PHT 253-54; II PHT p. 101. Initially,
11 LVMPD Abuse/Neglect detectives responded to the hospital and Jonathan's home. II PHT p. 101-
12 03. Once it appeared as though Khayden would succumb to his injuries, LVMPD officers
13 summoned homicide detectives. II PHT p. 101-03. Homicide Detectives Dolphis Boucher and
14 Tate Sanborn responded. II PHT p. 101-03.

15 Investigating officials obtained a warrant to search Jonathan's residence. II PHT p. 102. By
16 the time Dets. Boucher and Sanborn arrived at Jonathan's home, Jonathan had returned to the
17 residence, and numerous other LVMPD officials, including CSAs and LVMPD Child
18 Abuse/Neglect detectives, were (or had been) present in the home investigating. II PHT p. 103.

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20 not *Mirandize* him. Jonathan told Det. Boucher that Christina's grandparents dropped Khayden
21 and Khaysen off at home at approximately 4:30 in the afternoon. II PHT p. 77. Jonathan indicated
22 that the children appeared to be fine. II PHT p. 77. Jonathan told Det. Boucher that everyone took
23 a nap for a short while, after which the kids played. II PHT p. 78. At some point, the kids were
24 playing on the living room sofa while Jonathan sat in one of the recliner chairs watching TV. II
25 PHT p. 78. Jonathan indicated that, at some point, he looked over at his kids and saw Khayden
26 falling over the back of the couch onto the tile floor. II PHT p. 127-28. Jonathan indicated to
27 detectives that he did not see the beginning of the fall; only the "split second" when Khayden was
28 going over the couch. II PHT p. 78-82; 127-28.

Jonathan explained that he immediately went to tend to Khayden, and found him lying on his back, parallel to the couch. II PHT p. 85. Jonathan described Khayden as being "frozen up," making some type of noise. II PHT p. 87. Jonathan indicated he picked Khayden up, thinking he had been knocked out from the fall. II PHT p. 87. Not seeing any blood, Jonathan tried to revive Khayden by splashing water on his face. II PHT p. 88. Khayden did not respond to the cold water and began to vomit, at which point Jonathan called Christina, a medical assistant in a doctor's office, urging her to hurry home. II PHT p. 88. Shortly after his interrogation, investigating officers arrested Jonathan and charged him with murder.

Dr. Lisa Gavin performed an autopsy on Khayden. III PHT p. 4-10. Dr. Gavin found that Khayden suffered a stellate skull fracture to the back of his head, slightly to the right of the midline. III PHT p. 14. Dr. Gavin also found subgaleal and subdural hemorrhaging in this area. III PHT p. 12-16; 52. Dr. Gavin noted a significant amount of bleeding on the left side of Khayden's brain, along with some hemorrhaging around the eyes, as well. III PHT p. 19-20; 24; 52. Consistent with imaging performed at the hospital, Dr. Gavin observed a midline shift of the brain of a few millimeters. III PHT p. 51-52. Neuropathologic testing further revealed diffuse cerebral edema, as well as early-onset hypoxic ischemia and diffuse axonal injury. III PHT p. 40-42; 52.

Dr. Gavin opined that Khayden died as the result of blunt force trauma to the head. III PHT p. 53. However, Dr. Gavin did not classify Khayden's death as a homicide. III PHT p. 55-56. Rather, she could not determine the manner of Khayden's death. III PHT p. 55-56. Dr. Gavin explained that she could not rule out the possibility that Khayden's death was the result of an accident. III PHT p. 55-56.

II. POINTS AND AUTHORITIES

At the preliminary hearing of this matter, LVFD paramedic Timothy Kline testified that the fire department follows a "Trauma Destination Criteria Protocol" with respect to head injuries. Mr. Kline indicated that:

It's kind of a step by step sequence that you follow in this trauma destination criteria protocol. And if it doesn't meet the first step, you move on to No. 2. If it doesn't meet No. 2, you move on to No. 3, and basically down under No. 3, it talks about mechanism of injury, and that's where the distance of the fall would come

1 into play, if the previous two criteria were normal... So if everything else was
2 normal, and I was judging solely on the mechanism of injury -- um -- for a child, a
3 pediatric -- um -- a fall of ten feet or greater, would indicate that I take that patient to
the trauma center. And I believe there's also a stipulation that says or two times the
child's height.

4 I PHT p. 168-69. With this, prosecutors tried to suggest that only falls from a certain height are
5 capable of causing trauma worthy of transport to the UMC trauma center.

6 Yet, the fall height only becomes part of the 'destination criteria' if all other vital signs are
7 normal. Which was not the case here. So the fall height criteria bears no relevance to the case at
8 bar, and must be excluded from the upcoming trial of this matter.

9
10 NRS 48.015 defines relevant evidence as "evidence having any tendency to make the existence
11 of any fact that is of consequence to the determination of the action more or less probable than it
12 would be without the evidence." How paramedics assess where to take head trauma patients who
13 show no outward signs of distress bears no relevance to the situation at bar, given the nature and
14 severity of Khayden's symptoms. As Mr. Kline explained: "So right off the bat the child
15 [Khayden] met these initial qualifications, without even going into the -- level of fall criteria." I
16 PHT p. 168. Thus, testimony regarding the 'level of fall criteria' employed in treating
17 asymptomatic head injury patients should be excluded from the upcoming trial of this matter.

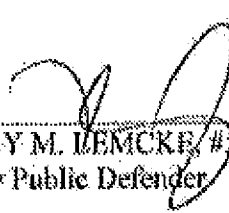
18 III. CONCLUSION

19 Based on the foregoing, the Defendant, JONATHAN QUISANO, respectfully requests that
20 this Honorable Court exclude testimony regarding trauma destination fall criteria protocol from the
21 upcoming trial of this matter.

22 DATED this 22nd day of May, 2014.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

25
26 By: 
27 NANCY M. LEMCKE /#4416
28 Deputy Public Defender

By: 
NORMAN J. REED /#3795
Deputy Public Defender

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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 3rd day of June, 2014, at 9:30 a.m., District Court Department XXI.

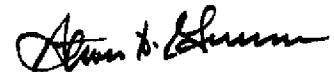
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: NANOY M. J. MCKE, #5416
Deputy Public Defender

I hereby certify that service of MOTION IN LIMINE TO EXCLUDE TESTIMONY REGARDING TRAUMA DESTINATION FALL CRITERIA PROTOCOL, was made this 23rd day of May, 2014, by Electronic Filing to:

MICHAEL STAUDAHNER, Chief Deputy District Attorney
E-Mail: michael.staudaher@clarkcountyda.com

By: S. Ruano
S. Ruano
Secretary for the Public Defender's Office


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL STAUDAHER
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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 JONATHAN QUISANO,
13 #5991702

Defendant.

CASE NO: C-13-294266-1

DEPT NO: XXI

STATE'S OPPOSITION TO DEFENDANT'S MOTION
TO SUPPRESS DEFENDANT'S STATEMENT

DATE OF HEARING: JUNE 3, 201
TIME OF HEARING: 9:30 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
19 through MICHAEL STAUDAHER, Chief Deputy District Attorney, and hereby submits the
20 attached Points and Authorities in Opposition to Defendant's Motion to Suppress Defendant's
21 Statement.

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

25 //

26 //

27 //

28 //

POINTS AND AUTHORITIES

STATEMENT OF FACTS REGARDING THE DEATH OF KHAYDEN QUISANO

Thursday, June 6, 2013, started out like a normal day; Christina Rodrigues woke up her two sons with the Defendant, Khayden and Khaysen Quisano, around 6:30 a.m., got ready for work and prepared the boys ready for their day. (PHT Vol. 1, 240:11-12). That morning both Khayden and Khaysen were acting normal; happy, smiling, watching television and getting dressed. (PHT Vol. 1, 240:20-24). Christina then took her boys to her grandmother Clara Rodrigues' house around 7:15 a.m., where they would stay until they were taken home to their father. (PHT, Vol. 1, 240:6-14) Christina then went to work, where she would work until approximately 5 p.m. (Vol 1, 240:14-15). While Christina was at work, her grandfather and grandmother dropped the boys off to Jonathan Quisano during the afternoon. (PHT Vol. 1, 239:19-23.) From there, Jonathan was solely responsible for the care of Khayden and Khaysen. (PHT Vol. 1, 239:24-240:2). Christina worked the entire day of June 6, 2013, without any phone calls or updates as to how the boys were doing. (PHT Vol. 1, 241:13-19.) Everything changed shortly after she clocked out of work. (PHT, Vol. 1, 241:20-24.)

Jonathan called Christina around 5:10 p.m., after she had clocked out of work and as she was walking to her car to drive home. (PHT Vol. 1, 241:20-24.) During the call Jonathan asked Christina where she was and urged Christina to hurry home. (PHT, Vol. 1, 242:10-14.) Jonathan didn't tell her why she needed to hurry or describe anything as being wrong at the house. (PHT, Vol. 1, 242:20-24.) A few minutes later Jonathan called Christina a second time, again, asking Christina where she was and urging her to hurry home. (PHT, Vol. 1, 242:24-243:2.) Jonathan still didn't provide any information as to why she needed to hurry home, but rather, urged her to hurry home and then hung up the phone. (PHT, Vol. 1, 243:2-3.) Christina called Jonathan back a few minutes later asking why she needed to hurry home. (PHT, Vol. 1, 243:3-5.) Christina wanted to know why Jonathan wanted her to hurry home. (PHT, Vol. 1, 243:21-23.) Specifically and only in direct response to Christina's call and question, Jonathan said, "The boys were playing on the couch, and Khayden fell over, and I guess hit his head,

1 and -- um - - he said he wasn't opening his eyes, and he tried to put water on him, he wasn't
2 getting up." (PHT, Vol. 1, 244:9-13.)

3 After Jonathan explained what happened Christina asked Jonathan if he had called 9-
4 1-1, but he hadn't done so and gave no explanation as to why not. (PHT, Vol. 1, 244:13-14,
5 247:11, 17-20.) At that point Christina told Jonathan she was going to call 9-1-1 and this time
6 she hung up on Jonathan. (PHT, Vol. 1, 247:21-24.) Armed only with the information Jonathan
7 had provided, Christina called 9-1-1 right away. (PHT, Vol. 1, 248:4-5.) Christina advised the
8 9-1-1 operator who she was, that she was driving home from work and that Jonathan told her
9 the baby was playing on the couch and fell over. (PHT, Vol. 1, 248:8-11.)

10 Las Vegas City Fire Department responded to the family home around 5:56 or 5:58
11 p.m. as a result of the 9-1-1 call. (PHT, Vol. 1, 153:3-5, 154:22-24.) The call was initially
12 coded as a Bravo level response based on the information provided by Christina. (PHT, Vol.
13 1, 153:5-14.) Upon arriving at the residence, Timothy Kline, a paramedic, was approached by
14 a male who opened the front door holding a small child. (PHT, Vol. 1, 155:2-5). That male
15 was the only other adult at the home with the children. (PHT, Vol. 1, 214:22-25, 216:3-5.)
16 Timothy Kline's first impression was that the patient was "lifeless...not
17 breathing...cyanotic...meaning that their oxygen level has dropped and they've been not
18 breathing, or not breathing adequately for at least several minutes." (PHT, Vol. 1, 155:8-14.)
19 Kline directed the male to place the child on a bench in the hallway so Kline could render care.
20 (PHT, Vol. 1, 156:18-23.) Kline evaluated Khayden's eyes, noting the pupils were dilated,
21 opened up and wide, nonresponsive and fixed in a wide position. (PHT, Vol. 1, 157:19-22.)
22 Based on the child's condition, Kline noted the call was much more severe than a Bravo level
23 response. (PHT, Vol. 1, 158:6-10.)

24 In an effort to treat the child, paramedic Kline asked the male who presented the child
25 what had happened. (PHT, Vol. 1, 160:13-16.) Defendant told Kline that Khayden had fallen
26 from a chair. (PHT, Vol. 1, 160:18.) For clarification Kline pointed or gestured to the two
27 chairs he saw and asked, "Those chairs right there?" (PHT, Vol. 1, 161:5-5, 186:8-9.)
28 Defendant replied, "Yes, those chairs." (PHT, Vol. 1, 161:5-6, 186:10-14.) Defendant further

1 stated to Kline that the child had fallen out of the chair and hit his head on the floor, which
2 appeared to be tile. (PHT, Vol. 1, 161:10-12.) Notably, Kline could only see two La-Z-Boy
3 recliners from where he was positioned working on Khayden. (PHT, Vol. 1, 160:25-161:2,
4 186:15-20.) Kline rushed to the ambulance with Khayden where treatment continued. (PHT,
5 Vol. 1, 163:4-8.) The medical treatment included breathing for the child, including chest
6 compressions and using a bag. (PHT, Vol. 1, 163:10-13, 177:23-12.) The child was also placed
7 on an EKG to ascertain the presence of electrical heart pulses. (PHT, Vol. 1, 163:10-15.)

8 An American Medical Response (AMR) unit also responded to the residence shortly
9 after Las Vegas City Fire Department. (PHT, Vol. 1, 206:4-24.) The child patient was already
10 in the back of the Fire Department unit when AMR arrived. (PHT, Vol. 1, 207:1-5.) AMR
11 emergency technician Patrick Burkhalter inquired separately of Jonathan as to what had
12 caused Khayden's injuries to try to determine the nature of the fall. (PHT, Vol. 1, 208:21-25.)
13 Defendant initially reported to Burkhalter that Khayden was playing on the back of a recliner
14 type chair and fell off the back hitting his head on the floor. (PHT, Vol. 1, 210:1-3.) Defendant
15 specifically said the child fell backwards. (PHT, Vol. 1, 211:18-23.)

16 Burkhalter spoke with the Defendant a second time in an attempt to clarify how the
17 child fell off the chair. (PHT, Vol. 1, 212:18, 225:15-16.) Burkhalter made the second inquiry
18 because "the injuries that were sustained didn't - - um - - seem compatible to what we were
19 dealing with." (PHT, Vol. 1, 225:15-16.) Defendant then told Burkhalter he actually hadn't
20 seen the child fall, but, rather he saw Khayden playing on a chair, then turned around and when
21 Defendant turned back Khayden was on the floor. (PHT, Vol. 1, 212:19-22, 213:11-22.)

22 Due to the quick pace at the house Fire Captain Mickey Pedrol, was unaware Defendant
23 had already been asked what had happened to the child, so he, too, asked Defendant what had
24 happened to Khayden. (PHT, Vol. 1, 181:15-25.) Defendant told Captain Pedrol that both of
25 his sons had been playing on the bar and he turned around to see his son, Khayden, fall off of
26 the bar and hit his head on the floor. (PHT, Vol. 1, 193:6-10.) Captain Pedrol made no further
27 attempts to clarify Defendant's statement, as Defendant was getting into the driver's seat of
28 an SUV to go to the hospital. (PHT, Vol. 1, 203:20-25.) Christina arrived at the family home

1 sometime after the Fire Department and AMR arrived, though her primary focus was to rush
2 in and get Khaysen and Jonathan to follow the ambulance to the hospital. (PHT, Vol. 1,
3 249:14-20.)

4 Khayden was transported to University Medical Center ("UMC") as required by Fire
5 Department Trauma Destination protocols arriving at approximately 623 p.m. (PHT, Vol. 1,
6 168:2-21.) At the hospital, Khayden received treatment performed by and under the
7 supervision of Michael Casey, M.D. (PHT, Vol. 1, 20:7-17.) The CT scan of Khayden's head
8 revealed a linear skull fracture, extensive intracranial bleeding with a midline shift, and a
9 tentorial shift caused by blood pushing the brain down. (PHT, Vol. 1, 27:4-7, 19-21.) The
10 herniation of the brain caused Khayden's heart to stop during initial resuscitation, such that
11 the herniation would have slowed his heart and caused the blood pressure to drop until the
12 heart ultimately stopped working, though medical personnel restarted his heart. (PHT, Vol. 1,
13 30:19-23, 31:8-11.) Dr. Casey concluded the injuries to the brain were caused by trauma.
14 (PHT, Vol. 1, 28:23-29:2.) The child also had contusions or bruises developing in the lungs.
15 (PHT, Vol. 1, 30:6-8.) Dr. Casey concluded the lung contusions were a different injury from
16 the injuries to the head, and would not have been a result of the intubation process. (PHT, Vol.
17 1, 65:18-22.)

18 Dr. Casey spoke with investigative personnel to try to determine the cause of
19 Khayden's injuries for purposes of treatment. Based on the information provided to Dr. Casey,
20 he ultimately concluded "The injury pattern [of Khayden] is not consistent with the height of
21 the fall...in this particular child." (PHT, Vol. 1, 37:21-24.) Khayden ultimately succumbed to
22 the injuries and was declared clinically brain dead. (PHT, Vol. 1, 38:3-6.)

23 At the preliminary hearing, Dr. Casey opined that Khayden's injuries would have
24 required the reported fall to include some amount of rotational force that was not disclosed by
25 Defendant. (PHT, Vol. 1, 143:24-144:6.)

26 Based on the information gleaned at the hospital, Las Vegas Metropolitan Police
27 (LVMPD) detectives conducted a recorded interview with Jonathan Quisano at the family
28 residence to find out what happened to Khayden. (PHT, Vol. 2, 75:24-76:2.) Defendant

1 received Khayden and Khaysen from their caretaker around 4:30 p.m., at which time Khayden
2 appeared fine and showed no signs of injury. (PHT, Vol. 2, 77:11-14, 20-24.) Defendant
3 described Khayden playing on the couch with Khaysen while Defendant sat in a recliner in
4 the living room. (PHT, Vol. 2, 78:16-23.) Defendant provided LVMPD detectives with
5 different information as to whether or not he saw Khayden fall off the couch; at first stating
6 he didn't see Khayden go over the couch, then stating he did. (PHT, Vol. 2, 81:11-18.) In the
7 account where Defendant said he saw Khayden go over the couch he described looking over
8 and seeing Khayden falling over the couch onto the floor. (PHT, Vol. 2, 78:23-79:4.)
9 Defendant re-enacted the fall using the doll and showed LVMPD detectives Khayden was
10 facing down, head first and demonstrated Khayden slipping over the back of the couch. (PHT,
11 Vol. 2, 83:6-13; 92:2-5.) Defendant said and then demonstrated finding Khayden lying on his
12 back parallel to the couch. (PHT, Vol. 2, 85:15-17.) Defendant did not mention Khayden
13 jumping around on the couch or adopt jumping as part of the events leading up to Khayden's
14 injuries, though detectives suggested jumping in the interview. (PHT, Vol. 2, 91:22-92:2.)

15 Defendant told LVMPD detectives that as soon as he picked up Khayden after the fall,
16 Khayden was making noise and appeared frozen, which he demonstrated with his arms. (PHT,
17 Vol. 2, 87:6-13.) Defendant reported splashing water on Khayden's face to try to wake him
18 up and also observing Khayden vomit. (PHT, Vol. 2, 87:25-88:18.) Defendant told LVMPD
19 detectives that he tried to keep air in Khayden's lungs. (PHT, Vol. 2, 91:6-7.) Interestingly,
20 Defendant placed tissues and other items he used to clean up Khayden in trash cans around
21 the house before paramedics arrived. (PHT, Vol. 2, 97:5-15.) By his own admissions,
22 Defendant waited to contact Christina and did not call 9-1-1 to summon assistance for
23 Khayden.

24 Defendant stated he waited approximately ten minutes before calling his girlfriend,
25 instead of calling 9-1-1. (PHT, Vol. 2, 88:25-89:14.) Defendant provided two different
26 explanations as to why he called Christina rather than 9-1-1. First, Defendant stated he wanted
27 Christina to come home first because she works in a doctor's office as a nurse. (PHT, Vol. 2,
28 88:24-89:2.) During the initial call, Defendant curiously didn't tell Christina what was going

1 on with Khayden stating he didn't want her to get into an accident. (PHT, Vol. 2, 89:2-7.)
2 Defendant also explained to detectives that he didn't call 9-1-1 himself because "he gets
3 nervous and he didn't know where to tell them to go." (PHT, Vol. 2, 92:24-93:4.)

4 Dr. Montes, a pediatric radiologist, reviewed the June 6, 2013 imaging of the Khayden
5 from UMC and rendered his own opinions as to the findings contained therein. (PHT, Vol. 2,
6 7:9-12.) Dr. Montes noted the chest CT revealed symmetric consolidation in the lungs, which
7 he opined is evidence of a collapsed lung from lack of oxygen, not pulmonary contusions.
8 (PHT, Vol. 2, 12:3-5, 12-22.) Dr. Montes noted in the abdominal CT that there appeared to
9 be inflammation or fluid around the pancreas. (PHT, Vol. 2, 14:10-15.) Dr. Montes also
10 reviewed the head CT that showed multiple injuries. (PHT, Vol. 2, 15:18-24.) Khayden
11 suffered a subdural hemorrhage on the left side of his skull that extended along the whole side
12 of the head from front to back. (PHT, Vol. 2, 17:4-7, 14-16.) The subdural hemorrhage was
13 acute, in that it was less than 48 hours old, and the heterogeneous color indicated the bleeding
14 was either active or not old enough to have started clotting. (PHT, Vol. 2, 17:21-18:1.) There
15 was also a small amount of blood in the posterior region of the brain, which Dr. Montes
16 associated with the stellate skull fracture. (PHT, Vol. 2, 18:2-19.) The point of impact causing
17 the fracture would have been the center with the lines extending from the impact site in
18 multiple directions. (PHT, Vol. 2, 18:25-19:10.) Dr. Montes also noted a midline shift as a
19 result of brain herniation. (PHT, Vol. 2, 19:23-20:3.) The CT of the brain also revealed diffuse
20 cerebral edema signifying a global injury from either significant trauma or lack of oxygen.
21 (PHT, Vol. 2, 22:7-12.) More significantly, Dr. Montes opined the injuries to Khayden's head,
22 as depicted in the CT scan indicate he had suffered multiple injuries; one injury causing the
23 fracture and blood localized to the fracture site, and a separate injury causing the left-side
24 subdural hemorrhage and cerebral edema. (PHT, Vol. 2, 24:15-19; 25:14-19.)

25 Dr. Lisa Gavin performed the autopsy of Khayden Quisano on or about June 7, 2013.
26 (PHT, Vol. 3, 6:12-14.) The majority of the injuries salient to the autopsy findings were located
27 in the brain and skull. (PHT, Vol. 3, 11:8-14.) The injuries to the brain would have had to
28 occur within hours of the time of death. (PHT, Vol. 3, 133:17-21.) On the back of the skull,

1 Dr. Gavin located a stellate fracture and corresponding subgaleal hemorrhage. (PHT, Vol. 3,
2 13:22-14:9.) There was also a subdural hemorrhage predominantly on the left side of the brain,
3 though there was also some bleeding on the right side. (PHT, Vol. 3, 13:13-19.) The right side
4 subdural hemorrhage was mostly at the back portion of the brain. (PHT, Vol. 3, 19:9-11.) Dr.
5 Gavin noted the left side had a "great deal of hemorrhage" that extended along most of the left
6 side of the brain from the back to the front. (PHT, Vol. 3, 19:11-14.) The brain was also very
7 swollen, as indicated by the lack of prominent grooves. (PHT, Vol. 3, 22:3-7.) The eyes also
8 had subdural hemorrhage present. (PHT, Vol. 3, 24:16-17.) At autopsy, the lungs were filled
9 with blood, which could have obscured evidence of pulmonary contusions. (PHT, Vol. 3, 26:7-
10 15, 108:9-17.)

11 The brain, spinal cord, and eyeballs were sent to a neuropathologist for further testing.
12 (PHT, Vol. 3, 35:15-17.) The additional testing of the eyeballs revealed subdural
13 hemorrhaging in the optic nerve sheaths, with more in the right side than the left. (PHT, Vol.
14 3, 37:11-15.) The greater blood on the right side suggests more of an impact or focus of trauma
15 on the right side versus the left. (PHT, Vol. 3, 38:5-9.) The testing of the brain revealed
16 multiple findings. (PHT, Vol. 3, 39:1-4, 15-17.) One finding was diffuse cerebral edema, or
17 swelling of the entire brain. (PHT, Vol. 3, 40:8-12.) The brain also revealed injury from
18 hypoxic ischemia, which appeared to be early in the process of oxygen deprivation causing
19 damage to the brain. (PHT, Vol. 3, 40:19-41:14.) There was also diffuse axonal injury, which
20 is damage to the axons of the brain cells. (PHT, Vol. 3, 41:19-25.) The axonal injuries were
21 found in the deeper areas of the brain. (PHT, Vol. 3, 43:2-44:1.) Such injury occurs when the
22 strands of the axon are torn or sheared, indicating the injury was caused by some sort of torsion
23 or rotational force. (PHT, Vol. 3, 42:1-4, 58:1-19.) The neuropathologist noted the extent of
24 the axonal injuries were caused by mixed etiologies, such that the injuries would have resulted
25 from both rotational forces and hypoxic ischemia. (PHT, Vol. 3, 142:20-143:1.)

26 Based on the constellation of injuries, Dr. Gavin concluded the cause of Khayden's
27 death was "acute brain injury due to the blunt force trauma." (PHT, Vol. 3, 53:5-9.) Dr. Gavin
28 noted there were multiple areas of injury to the brain such that there could be more than one

1 component involved in the case. (PHT, Vol. 3, 57:12-25.) Prior to making a determination as
2 to manner of death, Dr. Gavin also reviewed the investigative statements of the Defendant to
3 LVMPD and to the medical personnel who responded to the family home. (PHT, Vol. 3, 54:4-
4 55:7.) Ultimately Dr. Gavin determined manner of death to be undetermined. (PHT, Vol. 3,
5 56:5.) Dr. Gavin chose manner of death undetermined because she couldn't rule it an accident
6 or a homicide. (PHT, Vol. 3, 55:21-56:2.) Notably, "in this case the information [revealed]
7 from the investigation doesn't match the severity of the injury, and because of that it's
8 undetermined in terms of what ended up causing this injury." (PHT, Vol. 3, 53:21-24.)

9 After the death of Khayden, Detectives conducted additional investigation obtaining
10 records from Hawaii involving the death of an older sibling and additional non-accidental
11 injuries suffered by Khayden in 2010. This resulted in greater scrutiny of the Defendant's
12 versions of the events leading up to Khayden's injuries and the Defendant failure to summon
13 medical assistance or render aid.

14 LEGAL ARGUMENT

15 *Miranda* warnings are not required where a suspect, not under arrest, voluntarily makes
16 a statement. California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517 (1983). Neither are *Miranda*
17 warnings required simply because the questioning takes place at the police station, or because
18 the questioned person is one whom the police suspect. Oregon v. Mathiason, 429 U.S. 494,
19 495, 97 S.Ct. 711, 714 (1977). Furthermore, "in custody" status is not created simply because
20 the interview is "coercive." The United States Supreme Court has repeatedly recognized the
21 reality that "any interview of one suspected of a crime by a police officer will have coercive
22 aspects to it, simply by virtue of the fact that the police officer is part of law enforcement
23 system which may ultimately cause the suspect to be charged with a crime. Mathiason, 429
24 U.S. 494, 495, 97 S.Ct. 711, 714.

25 In Oregon v. Mathiason, the defendant was a suspect in a burglary. The police left a
26 note at the defendant's apartment asking him to call them. Upon reading the note the defendant
27 called and arranged a meeting at the police station. When he arrived he was told that he was
28 not under arrest and was not given *Miranda* warnings. During questioning the officers told
him that his prints had been found at the crime, even though they had not been. The defendant

1 subsequently confessed to the burglary. At trial, the trial court denied the defendant's motion
2 to suppress this confession. The United States Supreme Court on appellate review ruled that
3 no *Miranda* violation had occurred and the confession was properly admitted. The court noted
4 that even though the police had focused on the defendant as a suspect, *Miranda* warnings were
5 not required.

6 Also, in California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517 (1983), the defendant,
7 who was a murder suspect, agreed to go to the police station and was questioned a few hours
8 after the murder. Although *Miranda* rights were not given, the Court ruled that the defendant's
9 statements were admissible since he was not subject to custodial interrogation. Moreover,
10 an objective test is used to determine whether a custodial situation is present. Factors such as
11 show of authority, involuntary restraint and passage of time are important. See State v. Carter,
700 P.2d 488 (Ariz. 1985), State v. Stanley, 809 P.2d 944 (Ariz. 1991).

12 Courts have regularly held that "... *Miranda* warnings are not required simply because
13 the questioning takes place in the station house, or because the questioned person is one
14 whom the police suspect." Feltrop v. Delo, 46 F.3d 766, 773 (8th Cir. 1995). See also Dannels,
15 *supra.*, quoting Oregon v. Mathiason, *supra.*

16 In the instant case, however, Defendant's interview did not take place at a police station.
17 The Defendant was initially contacted by detectives at University Medical Center (UMC)
18 following the transport of decedent, Kayden Quisano to that facility. At the time, the injuries
19 Kayden sustained were not consistent with the story Defendant proffered. Detectives asked
20 Defendant if he would go back to his residence and explain what happened. Defendant
21 agreed and drove both himself and his other child back to the residence to talk with the
22 detectives.

23 At no time was Defendant under arrest or otherwise detained in any way. Defendant
24 was never handcuffed at any time and the questioning that took place was actually at the
25 Defendant's own home. Also, when the detectives and Defendant arrived at his home, there
26 was only a single patrol officer on scene. In no way were the circumstances of the questioning
27 coercive. The detectives also did not immediately begin questioning when they arrived at
28 Defendant's residence. In fact, Defendant initially played with and interacted with his other
child for a time before the initiation of any questions by the detectives.

1 Detectives then asked Defendant to tell them what happened so they could understand
2 what had occurred. Defendant never refused to talk with officers or acted as though he was
3 forced to do anything. Defendant, in fact, told the officers that he had been through a similar
4 situation in the past and was familiar with the process. Defendant readily offered his
5 explanation to the detectives and showed them where and how Kayden had supposedly been
6 injured. Additionally Defendant demonstrated with a doll what had supposedly taken place.

7 Defendant never "confessed" to any wrong doing and never offered any other
8 explanation of events to detectives, despite his knowledge that Kayden's injuries were not
9 consistent with Defendant's explanation. Defendant did not have his will overborn by
10 detectives and Defendant maintained that he had done nothing wrong.

11 In Alward v. State, 112 Nev. 141, 154, 912 P.2d 243, 252 (1996), the Nevada Supreme
12 Court stated that the test for determining whether a defendant who has not been arrested is in
13 custody "'is how a reasonable man in the suspect's position would have understood his
14 situation.'" (Berkemer v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317
15 (1984)(emphasis added)).

16 In State v. Taylor, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998) the Nevada Supreme
17 Court stated that there are seven factors to consider in determining whether objective indicia
18 of arrest are present: (1) whether the suspect was told that the questioning was voluntary or
19 that he was free to leave; (2) whether the suspect was not formally under arrest; (3) whether
20 the suspect could move about freely during questioning; (4) whether the suspect voluntarily
21 responded to questions; (5) whether the atmosphere of questioning was police-dominated; (6)
22 whether the police used strong arm tactics or deception during questioning; and (7) whether
23 the police arrested the suspect at the termination of the questioning. 114 Nev. at 1082 n.1, 968
24 P.2d at 323 n.1.

25 With regard to the instant case, Factor #1, while it is true that in Defendant's interview
26 he was not told he was free to leave, Defendant was at his home and voluntarily agreed to meet
27 detectives at that location so he could tell them what had happened. Factor #2, Defendant was
28 not formally under arrest at any time during or even immediately after his interview. Factor
#3, Defendant was allowed to freely move about during the interview. Defendant walked

1 about during the interview showing detectives where and how things had supposedly occurred.
2 In addition, Defendant, unaccompanied by police, drove himself and his other child, to
3 Defendant's residence and interacted with his son before any questioning took place. Factor
4 #4, Defendant voluntarily responded to questions and freely engaged with detectives during
5 the interview. At no time did Defendant indicate that he did not want to speak with the police
6 or that he needed or might want a lawyer. Factor #5, Defendant's interview was not police
7 dominated. It occurred at Defendant's own home with few other police present. Factor #6,
8 police did not use any strong arm tactics or deception during questioning. The tone of the
9 questioning was reasonable and Defendant was not threatened in anyway. Factor #7, while it
10 is true that police later arrested Defendant that same day, they did not do so immediately
11 following the interview. In fact, police terminated the interview and continued their
12 investigation only later deciding to arrest Defendant.

13 In this case, there are simply no facts which support an argument that Defendant's
14 statement was involuntarily given or was the subject of coercive police action.

15 CONCLUSION

16 Based upon the foregoing arguments, the State asserts that Defendant's statement to
17 police was voluntary and Defendant was not coerced in any way. The State will provide a
18 copy of the audio recording of Defendant's statement so that the Court can assess for itself the
19 voluntariness of Defendant's responses to questions and whether or not the questioning and
20 tactics employed by detectives involved any coercion. Defendant also provided a hand written
21 voluntary statement to the police before any questioning took place which provided some of
22 the details Defendant provided to detectives during his later interview. That statement is
23 attached to this Opposition as **Exhibit 1**.

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1 The State, therefore, respectfully requests that this Court deny the defense motion. The
2 State, however, does not object to the Court holding a pretrial Jackson v. Denno hearing in
3 this matter so that the Court can further assess the voluntariness of Defendant's statements to
4 police.

5 DATED this 27th day of May, 2014.

6 Respectfully submitted,

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

10 BY Michael Staudaher
11 MICHAEL STAUDAHER
12 Chief Deputy District Attorney
13 Nevada Bar #008273

14 CERTIFICATE OF SERVICE

15 I certify that on the 27th day of May, 2014, I e-mailed a copy of the foregoing State's
16 Opposition To Defendant's Motion To Suppress Defendant's Statement, to:

17 NANCY M. LEMCKE
18 PHILIP J. KOHN
19 Public Defenders Office
20 pdclerk@clarkcountyNV.gov

21 BY

22 R. Johnson
23 R. JOHNSON
24 Secretary for the District Attorney's Office
25
26
27

28 MVS/rj/M-1

EXHIBIT 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event #

130606-3235

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>SICK OR INJURED PERSON</u>		Date Occurred <u>6/06/13</u>	Time Occurred <u>1806</u>
Location of Occurrence <u>4720 TRIM WATER CT. LV. NV. 89130</u>		Section/Beat <u>X2</u>	<input checked="" type="checkbox"/> City <input type="checkbox"/> County

Your Name (Last / First / Middle) <u>QUISANO, JONATHAN</u>						Date of Birth <u>[REDACTED]</u>		Social Security # <u>[REDACTED]</u>	
Race <u>A</u>	Sex <u>M</u>	Height <u>5'9</u>	Weight <u>185</u>	Hair <u>BLK</u>	Eyes <u>BRO</u>	Work Schedl. (Hours) <u>0800 - 1000 HRS</u>	(Days Off) <u>SAT - SUN</u>	Business / School <u>BEVERLY DOCTORS</u>	
Residence Address: (Number & Street) <u>[REDACTED]</u>				Bldg./Apt.# <u>[REDACTED]</u>	City <u>[REDACTED]</u>	State <u>[REDACTED]</u>	Zip Code <u>[REDACTED]</u>	Res. Phone: <u>[REDACTED]</u>	
Bus. (Local) Address: (Number & Street) <u>[REDACTED]</u>				Bldg./Apt.# <u>[REDACTED]</u>	City <u>[REDACTED]</u>	State <u>[REDACTED]</u>	Zip Code <u>[REDACTED]</u>	Bus. Phone: <u>[REDACTED]</u>	
Best place to contact you during the day <u>HOME</u>				Best time to contact you during the day <u>11:00 AM - 5:00 PM</u>				Occupation <u>NA</u>	
								Depart Date (if visitor) <u>NA</u>	
								Can You Identify the Suspect? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

DETAILS I JONATHAN QUISANO WAS WATCHING TV.
WHILE MY TWO SONS KHAYDEN & KHAYSEN WAS
PLAYING. THEY WERE PLAYING ON THE CHAIR AND
THEN MY BOY KHAYDEN WENT OVER THE TOP OF
THE SOFA AND HIT HIS HEAD ON THE GROUND.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS
 COMPLETED AT (LOCATION) 4720 TRIM WATER CT. LV. NV. 89130
 AT THE 6TH DAY OF JUNE AT 1910 (AM/PM), 2013.

Witness/Officer: _____

Witness/Officer: _____

LVMPD 85 (REV. 6-06)

(PRINTED)

(SIGNATURE)

PH# 7433SIGNATURE OF WITNESS STAFF # 000899