IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY MAYO, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE KATHLEEN DELANEY, DISTRICT COURT JUDGE, Respondent.	No. (District Ct. No. C293313)

PETITION FOR WRIT OF PROHIBITION MANDAMUS

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PETITION FOR WRIT OF MANDAMUS

COMES NOW the Petitioner, ANTHONY MAYO, by and through his counsel, Deputy Public Defenders, Dan A. Silverstein and Arlene Heshmati, and respectfully petitions this Honorable Court for a Writ of Mandamus directing the trial court to grant a pretrial petition for writ of habeas corpus.

This Petition is based upon the Memorandum of Points and Authorities, as well as the Appendix attached hereto.

DATED this 12th day of January, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By */s/ Dan A. Silverstein*
DAN A. SILVERSTEIN
Nevada Bar #7518
Deputy Public Defender

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEF.

By */s/ Arlene Heshmati*
ARLENE HESHMATI
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AFFIDAVIT OF DAN A. SILVERSTEIN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAN A. SILVERSTEIN, being first duly sworn, deposes and says:

1. That affiant is an attorney duly licensed to practice law in the State of Nevada and is the Deputy Clark County Public Defender assigned to represent the Petitioner, Anthony Mayo, in this matter.

2. That Mr. Mayo authorized me to file the instant Petition for Writ of Mandamus, together with a Motion to Stay Lower Court Proceedings.

3. That Respondent, at all times mentioned herein, is the District Judge of Department XXV of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

4. That Mr. Mayo has been charged by way of a Criminal Indictment after a grand jury presentment on January 16, 2014. Mr. Mayo was held to answer for Count 1 – Murder, Count 2 – Battery Constituting Domestic Violence – Strangulation, Count 3 – Coercion, and Count 4 – Preventing or Dissuading Witness or Victim from Reporting Crime or Commencing Prosecution.

5. That at the grand jury presentment, the State failed to present exculpatory evidence in its possession that the alleged murder victim, Beverly McFarlane, died as the result of natural causes due to a pre-existing medical condition, and not as the result of Mayo's conduct.

6. That the district court found that the evidence of an alternate, non-criminal cause of McFarlane's death was, in fact, exculpatory. The district court concluded, however, that even though this exculpatory information was in the prosecutor's possession prior to the grand jury presentment, the prosecutor was not personally "aware" of the evidence, because the prosecutor did not appreciate the significance of the evidence prior to the grand jury proceedings.

7. That the district court fundamentally misinterpreted NRS 172.145(2) in a manner which excused the prosecutor's failure to present exculpatory evidence in his possession because the prosecutor claimed that he did not grasp the significance of the evidence. The district court's reading of NRS 172.145(2) was unreasonable and clearly erroneous. The district court's interpretation allows the State to evade its obligation under this statutory provision simply by remaining ignorant of the contents of its own files. A Petition for Writ of Mandamus is necessary to protect the right of Anthony Mayo – and all future defendants in District Court, Department XXV -- to a fair and meaningful probable cause determination.

8. That the Petitioner sought a stay of the proceedings in district court prior to the filing of this petition, as required by Nevada Rule of Appellate Procedure 8(a)(1)(A). The district court granted Petitioner's motion for stay of the proceedings on January 4, 2016, in order for the Petitioner to seek the instant relief with the Nevada Supreme Court.

/s/ Dan Silverstein
DAN SILVERSTEIN

POINTS AND AUTHORITIES

I.

ISSUES PRESENTED

Can the State avoid its statutory obligation to present exculpatory evidence in its possession to the grand jury pursuant to NRS 172.145(2) by claiming a lack of knowledge and/or understanding of the evidence in its own file?

II.

STATEMENT OF FACTS

In August 2012, Anthony Mayo lived with his wife, Beverly McFarlane, and their two young daughters, Ashanti and Ashley. **Record on Appeal ("ROA") 43.** On August 8, 2012, Ashanti overheard Anthony raising his voice to Beverly during a phone conversation. **ROA 60.** When Beverly came home from work later that night, another argument between her and Anthony started when the couple disagreed over the daughters playing ball in the house. **ROA 61-62.** Eventually, the argument became physical, and Ashanti Mayo testified that she witnessed Anthony choke Beverly and punch her in the eye and cheek. **ROA 67-68.** The altercation eventually calmed down, and Mayo and McFarlane had intercourse later that night. **ROA 119.** Two days later, on August 10, 2012, Ashanti Mayo called the police to report the August 8 incident. Ashanti testified that on August 10, McFarlane "...wasn't feeling that well," was slurring and mumbling when she tried to speak, and generally appeared disoriented. **ROA 47-48; 51.**

North Las Vegas Police Officer Manuel Vital was one of the first responders to Ashanti's call. Vital testified that McFarlane "...seemed a little lethargic, disoriented, kind of displaying sort of intoxicated type of person clues," although he did not notice any odor of alcohol. **ROA 92.** McFarlane was unable to answer basic questions, such as her birthday or the current President. **ROA 92.** Uncertain as to the nature and extent of McFarlane's injuries, Officer Vital summoned an ambulance. Paramedics arrived, and according to Ashanti, "...they said that her blood sugar was very high so they took her to the hospital." **ROA 55.**

McFarlane was transported to University Medical Center, where she was joined by North Las Vegas Police Officer Robert Aker. Officer Aker testified that McFarlane was unable to communicate basic information and showed little awareness of where she was. He testified that in his experience, her actions and demeanor were suggestive of "...cognitive brain issues [as opposed to] a drug/alcohol type thing." **ROA 108.** Officer Aker returned to the hospital the following day, on August 11, and noted that McFarlane's ability to communicate had "...changed for the worse." **ROA 112.** He testified that she was unable to answer his questions in complete sentences and "...the sentences would change from topics to gibberish to incomplete thoughts. There [was] just no way to follow or communicate." **ROA 112.** McFarlane also had trouble staying awake. **ROA 112.**

Had she been able to communicate, perhaps Beverly McFarlane could have alerted the doctors at UMC about her serious, pre-existing medical condition. Likely unbeknownst to UMC, McFarlane had been warned in April 2011 that she had an

undiagnosed, potentially fatal ailment that had caused her repeated transient ischemic attacks – essentially, a series of minor strokes. **ROA 311-317.** In March 2011, McFarlane was admitted to UMC of her own volition after suffering from a cough for two months. **Id.** At that time, McFarlane was advised by doctors that she likely suffered from a disease, but they were unable to render a conclusive diagnosis. **Id.** On April 8, 2011, UMC doctors specifically warned McFarlane not to leave the hospital, and that she could potentially die if her disease was left untreated. **Id.** McFarlane ignored their advice, and left the hospital against their wishes. She never sought further treatment for this unknown affliction.

Yet a radiologist at UMC reviewing McFarlane's CT scan in August 2012 offered a potential clue to McFarlane's deteriorating health. On August 20, 2012, Rajneesh Agrawal, M.D. analyzed a CT scan of McFarlane's brain and concluded that the "findings are suggestive of a slow, progressive vasculopathy that can be seen with moyamoya disease." **ROA 249.** This disease, a rare condition that causes a steady occlusion of the major arteries of the brain, would provide an explanation for McFarlane's death, and all of the attendant injuries observed at autopsy. Far from speculation, the potential diagnosis of this disease is not only consistent with McFarlane's prior medical history, but was rendered by an independent UMC employee, not a paid expert for the defense. The State was in possession of Dr. Agrawal's report at the time of the grand jury presentment. In fact, the State sought and obtained a court order for this report, **ROA 244-245**, and the State's receipt of the report was confirmed

on October 4, 2013, more than three months before the grand jury was convened. **ROA 247.**

The district court concluded that evidence McFarlane may have died from moyamoya disease, as opposed to any blunt force trauma allegedly suffered at the hands of Anthony Mayo, "...could explain away the count of murder." **ROA 361.** Importantly, the court acknowledged that it need not be proven that McFarlane had been definitively diagnosed with this disease in order to trigger the State's obligation to inform the grand jury of the potential alternate cause. ("I don't have to make a determination... that the moyamoya disease actually existed, or the victim actually succumbed to it in order to grant [the] petition." **ROA 337.**) The court found that "...the fact that the victim may have suffered from the moyamoya disease would tend to explain away the charges. And it could account for why the alleged victim had brain hemorrhaging, that was essentially reported by the doctors to be apparently two to five days old when the incident occurred prior to that time frame." **ROA 336.**

Once Mayo's grand jury presentment commenced, not only did the State refuse to inform the grand jurors that McFarlane may have died as the result of a disease, but it consciously painted an extremely misleading picture of clarity for the factfinder. Dr. Claudia Greco, a licensed neuropathologist who was asked to review McFarlane's brain in conjunction with the autopsy, implied to the grand jury that she had conducted a thorough review of all available information and found no evidence of an alternative cause of death. ("As Mr. Stephens knows, I really study these cases and I like to be very sure of the whole thing." **ROA 22.**) The State consequently fooled the grand jurors into

believing that there was only one possible cause of death, while the report that established otherwise sat untouched in the prosecutor's file. This was as plain and obvious a violation of NRS 172.145(2) as the trial court was ever likely to see.

The trial court denied Mayo's petition, however. The court reasoned that even though the evidence of a pre-existing medical condition that could have caused McFarlane's death was exculpatory, and even though this exculpatory evidence was unquestionably in the possession of the State prior to the grand jury hearing, NRS 172.145(2) was not violated because the State was unaware of the significance of the radiologist's conclusion. The court announced: "[t]he medical records, as I said, indicated that this may have existed, but it does not appear the district attorney was aware that there was exculpatory value in those medical records." **ROA 338.**

Mayo disputed this interpretation of NRS 172.145(2), an interpretation which apparently required that an accused prove that the prosecutor not only possessed exculpatory information but met some minimum level of comprehension thereof in order to occasion relief. Mayo explained to the court that such an interpretation of the statute "...encourages the State to put its head in the sand... it is a ruling that encourages ignorance on the part of the State." **ROA 338-339.** The court responded that it had struggled with its decision, commenting that "...I absolutely will respect it if the Supreme Court agree[s] with you and doesn't agree with me on how to interpret this." **ROA 340.** Tellingly, the court also worried, "*I very well may be misinterpreting the statute.*" **ROA 342.**

As this Petition will make clear, the court's concerns about its novel interpretation of NRS 172.145(2) were well-founded. The court's requirement that the prosecutor fully grasp the significance of the exculpatory information in its file before the obligation to disclose such information is triggered finds no support in the statutory text, no support in case law, and contravenes the purpose and spirit of the enactment. The court's denial of Mayo's pretrial habeas petition was a plain abuse of discretion, premised on an erroneous and untenable reading of NRS 172.145(2).

III.

JURISDICTION

Pursuant to NRS 33.170, "a writ of mandamus shall issue in all case where there is not a **plain, speedy and adequate remedy** in the ordinary course of law." Generally, this means that a writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, see NRS 34.160, or to control an arbitrary or capricious exercise of discretion. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601 (1981). While the power is not frequently exercised, it is well-settled that this Court possesses "...the constitutional power to review a probable cause pretrial factual determination through a proceeding in mandamus..." Kussman v. Eighth Judicial District Court, 96 Nev. 544, 545 (1980).

In the instant case, Anthony Mayo has no plain, speedy, or adequate remedy in the ordinary course of law for the erroneous denial of his pretrial habeas petition. If acquitted of this charge, there will be nothing to appeal. Conversely, if convicted of the

erroneous charge, this Court has routinely held that conviction at trial precludes relief for errors in the probable cause determination. See Dettloff v. State, 120 Nev. 588 (2004) (holding that conviction by trial jury "cure[s] any irregularities that may have occurred" in connection with the probable cause finding). As a result, extraordinary intervention is the sole means by which the Petitioner can compel the trial court's adherence to governing Nevada law.

IV.

ARGUMENT

"If evidence highly probative of innocence is in [the prosecutor's] file, he should be presumed to recognize its significance even if he has actually overlooked it."

United States v. Agurs, 427 U.S. 97, 110 (1976)

The trial court interpreted NRS 172.145(2) to absolve the prosecutor of its duty to present evidence of obvious exculpatory value, unquestionably in the prosecutor's actual possession prior to the grand jury hearing, where the prosecutor claims to have been unaware of the significance of the evidence. Because this interpretation violates the purpose and spirit of the enactment, leads to absurd and unreasonable results, and renders the obligation conferred by the statute meaningless, it is respectfully submitted that the trial court's interpretation of this statute was clearly erroneous, and that a writ of mandamus is necessary to correct this egregious error.

1. The trial court's interpretation of NRS 172.145(2) violates the policy and spirit of the law.

"A statute should be construed in light of the policy and the spirit of the law." Hunt v. Warden, 111 Nev. 1284, 1285 (1995). The policy and spirit of the statutory obligation to present exculpatory evidence to the grand jury are utterly subverted where the court requires some showing more than the State's actual possession of exculpatory evidence in order to occasion relief.

The grand jury's mission "...is to clear the innocent, no less than to bring to trial those who may be guilty." Sheriff v. Frank, 103 Nev. 160, 165 (1987), quoting United States v. Dionisio, 410 U.S. 1, 16-17 (1973). Where "...a prosecutor refuses to present exculpatory evidence, he, in effect, destroys the existence of an independent and informed grand jury." Sheriff v. Frank, 103 Nev. 160, 165 (1987), quoting United States v. Gold, 470 F.Supp. 1336, 1353 (N.D.Ill. 1979). The withholding of exculpatory evidence "...casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice." Brady v. Maryland, 373 U.S. 83, 88 (1963). Clearly, the policy and spirit of NRS 172.145(2) is to ensure that the factfinder in the criminal justice process be informed of any evidence that has a tendency to show that the accused is innocent.

In this sense, the policy of NRS 172.145(2) can be compared with the policy of the United States Supreme Court's landmark decision in Brady v. Maryland, 373 U.S.83 (1963), imposing a constitutional obligation on the government to disclose exculpatory

evidence to the defense. Importantly, Brady imposes a constitutional obligation on the prosecution to disclose exculpatory evidence "...regardless whether the prosecutor was personally aware of the existence of the evidence." People v. Whalen, 294 P.3d 915, 966 (Cal. 2013); Kyles v. Whitley, 514 U.S. 419, 437 (1995).

The obligation to present exculpatory evidence derives from the character of the evidence, not the character of the prosecutor. The purpose of the rule mandating disclosure of exculpatory evidence is to protect the fairness of the proceedings, not to punish an individual prosecutor for misdeeds. As a result, *"[i]f evidence highly probative of innocence is in his file, he should be presumed to recognize its significance even if he has actually overlooked it."* United States v. Agurs, 427 U.S. 97, 110 (1976) (emphasis added). "It is now axiomatic that the prosecutor has an affirmative duty to volunteer evidence that arguably falls within the scope of Brady, and, in fact, is presumed to have knowledge of the contents of his files, such that claims that exculpatory evidence was overlooked will not be tolerated." United States v. Kipp, 990 F.Supp. 102 (N.D.N.Y. 1998).

Because the purpose of NRS 172.145(2) is to ensure that evidence tending to demonstrate the defendant's innocence is considered by the grand jury, it is irrelevant whether the prosecutor withholds the evidence through inadvertence or intent. The damage to the rights of the accused is the same. The district court's interpretation of NRS 172.145(2) deprives the defendant of a remedy, despite the existence of material

exculpatory evidence in the prosecutor's file, as long as the prosecutor makes the claim that he failed to read it. This interpretation thwarts the policy and spirit of the statute.

In United States v. Agurs, 427 U.S. 97 (1976), the United States Supreme Court concluded that the State's obligation to disclose exculpatory evidence was not contingent on the prosecutor's attention to detail. Agurs stands for the proposition that exculpatory evidence is just as important to the factfinder's judgment whether the prosecution has overlooked it or not. If the evidence exists in the State's file, the prosecutor is presumed to have knowledge of it. The rule cannot reasonably be interpreted any other way. The prosecutor's duty would be effectively nullified if it could be evaded merely by claiming ignorance. The Agurs reasoning applies with equal force to the obligation to present exculpatory evidence to the grand jury set forth in NRS 172.145(2). Any unfairness the Court attributes to presuming the prosecutor has knowledge of the contents of his own file is substantially outweighed by the unfairness of visiting the consequences of the State's lack of diligence upon the accused. The prosecutor "...is presumed to have knowledge of the contents of his files, such that claims that exculpatory evidence was overlooked will not be tolerated." United States v. Kipp, 990 F.Supp. 102 (N.D.N.Y. 1998).

Courts have routinely held that a prosecutor is presumed to possess knowledge of the exculpatory information in his files. "Brady does require that the information requested be known to the prosecution. That knowledge may be presumed, as when the information is in the prosecutor's files." Parker v. State, 587 So.2d 1072, 1086

(Ala.Cr.App. 1991). Where exculpatory evidence is in the State's file, "...knowledge of the existence of evidence will be imputed to the prosecution even when the prosecution is without actual knowledge of the existence of the evidence." Hill v. State, 651 So.2d 1128, 1132 (Ala.Cr.App. 1994). This rationale makes perfect sense. After all, a prosecutor willing to withhold exculpatory evidence from the grand jury would likely have no compunction about disclaiming knowledge of the existence of the evidence to uphold the indictment. The trial court's interpretation of the rule binds only the angelic prosecutor, and any rule that only applies to those who are most likely to follow it is no rule at all.

It is neither unfair nor unreasonable to presume that a prosecutor has knowledge of the contents of his file, and in fact, the United States Supreme Court has done so for almost forty years. United States v. Agurs, 427 U.S. 97 (1976). There is no reason why knowledge of the contents of the file should be presumed in the Brady context, but not in the context of grand jury proceedings. The policy behind the requirement that exculpatory evidence be presented to the grand jury is ill-served by an interpretation of NRS 172.145(2) that allows prosecutors to avoid it by not reading their own file. The trial court actually acknowledged on the record that it may have misinterpreted the statute. **ROA 342.** The district court's interpretation clearly contradicts the spirit of the enactment, and a writ of mandamus ought to issue to correct this obvious mistake.

2. The trial court's interpretation of NRS 172.145(2) creates absurd and unreasonable results.

"Statutory language should be construed to avoid absurd or unreasonable results." Speer v. State, 116 Nev. 677, 679 (2000); Wilson v. State, 121 Nev. 345, 357 (2005). "When interpreting a statute, we resolve any doubt as to legislative intent in favor of what is reasonable, as against what is unreasonable." Oakley v. State, 105 Nev. 700, 702 (1989); Desert Valley Water Co. v. State Engineer, 104 Nev. 718, 720 (1988), citing Cragun v. Nevada Pub. Employees' Ret. Bd., 92 Nev. 202 (1976).

In reading NRS 172.145(2) to excuse the State from responsibility for presenting exculpatory evidence clearly present in the State's file at the time of the grand jury hearing, the trial court encourages prosecutors to read and comprehend the minimum possible amount of evidence prior to the grand jury presentment. In fact, in light of the trial court's reading of NRS 172.145(2), it would make more sense for the prosecutor to read nothing but the police report summarizing probable cause and ignore every other document or report in its file, assuring that the State knew sufficient facts to obtain an indictment without needing to worry about being held accountable later for withholding anything exculpatory. As a result of the lower court's interpretation, the prosecutor is encouraged to remain ignorant; he has a greater incentive to keep himself in the dark than to carefully review all aspects of the case against the accused. The lower court's reading puts the enlightened prosecutor at a disadvantage as opposed to the willfully ignorant one; the enlightened prosecutor must similarly enlighten the grand jury, risking

an adverse result, while the ignorant one can keep the grand jury ignorant as well, and suffer no consequence. By the trial court's logic, the grand jury is only entitled to learn the exculpatory evidence that the prosecutor has taken the time to learn himself; the clever prosecutor would do everything possible to avoid reading too deep into the case file, for fear of accidentally learning the evidence that would unravel his case.

To truly understand the depth of the absurdity, imagine the situation were reversed, and the defense attorney could keep inculpatory evidence away from the grand jury by simply ignoring its existence. Not only would the defense lawyer have no incentive to read the file, arguably, he would be providing ineffective assistance to his client if he were to do so. Yet this is the very sort of regime created by the lower court's reading of NRS 172.145(2) – a reading even the court realized may be erroneous. **ROA 342.** By determining that the State is only responsible for presenting unfavorable evidence to the grand jury if the prosecutor personally comprehends its significance, the trial court has created a system that rewards prosecutors for not reading their files, and imposes more onerous obligations on those that do.

It is patently absurd and unreasonable for the State's obligation to present exculpatory evidence to the grand jury to be nullified by the prosecutor's ignorance of the facts contained in his own file. The State must be charged with presumptive knowledge of the information in its actual possession, otherwise the accused pays the price for the prosecutor's lack of diligence. This simply cannot be the correct

interpretation of NRS 172.145(2). A writ of mandamus should issue to clarify this important issue.

3. The trial court's interpretation of NRS 172.145(2) renders its existence nugatory.

"Statutes should be given their plain meaning and 'must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory.'" Mangarella v. State, 117 Nev. 130, 133 (2001), quoting Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 502 (1990). The district court's interpretation of NRS 172.145(2), that the unquestioned existence of exculpatory evidence in the State's file prior to the grand jury hearing does not confer "knowledge" upon the prosecutor, renders the obligation inherent in the statute a nullity. Because this interpretation of the statute essentially invalidates the entire provision, this interpretation ought to be reconsidered.

The lower court's interpretation of NRS 172.145(2) enables the State to disregard its obligation to present exculpatory evidence by simply refusing to study its own file. According to the district court's ruling, exculpatory evidence need not be presented to the grand jury until the prosecutor personally reads it. So, for example, the State would not be compelled to present a DNA report exonerating the defendant in a sexual assault case, even if the DNA report was sitting in the State's file, as long as the prosecutor thumbed past it while reviewing the case. Given this interpretation of the statute, for

what possible reason would a prosecutor ever thoroughly investigate his own file before a grand jury hearing? Since the trial court's reading of the State's obligation is essentially "out of sight, out of mind," the prosecutor would be better served ignoring any evidence in the file beyond the absolute minimum necessary to establish probable cause for indictment. Where the State can control the introduction of exculpatory evidence by simply turning a blind eye to it, there is no obligation to introduce exculpatory evidence at all. The trial court's interpretation of NRS 172.145(2) negates the very obligation the statute intends to confer, and abridges the rights of the accused to an informed, independent grand jury. This interpretation is plainly incorrect, underscored by the fact that the trial court expressed doubts about its own interpretation of the statute. **ROA 342**. A writ of mandamus ought to issue to correct this clear error.

V.

CONCLUSION

It is undisputed that at the time of the grand jury presentment in this case, the State had in its possession documents that, according to the district court, could explain away the charge of murder against Anthony Mayo. While Nevada law clearly obligated the State to provide this information to the grand jurors, NRS 172.145(2), the trial court's interpretation of this law allows the State to avoid this obligation by claiming ignorance of the contents of its own file. This interpretation is contrary to the spirit and policy behind the law, and creates a perverse incentive for prosecutors to willfully ignore exculpatory evidence. Following the trial court's logic, the diligent prosecutor who carefully studies his or her entire file remains obligated to present exculpatory evidence

to the grand jury, while the lazy, ignorant prosecutor who reads nothing but the police report can hide the exact same evidence without consequence. The trial court's interpretation of NRS 172.145(2) in this case was so problematic that even the trial court itself was left to wonder whether it was correct. **ROA 342.**

Courts around the country have routinely held that prosecutors are "...presumed to have knowledge of the contents of [their] files, such that claims that exculpatory evidence was overlooked will not be tolerated." United States v. Kipp, 990 F.Supp. 102 (N.D.N.Y. 1998). The exculpatory medical records in this case were not only in the prosecutor's file at the time of the grand jury presentment, but they were acquired by the State with the contention that these records were essential to the prosecution. **ROA 244.** The State is properly presumed to have been made aware of this information, and the trial court's contrary interpretation of NRS 172.145(2) was clearly erroneous. The Petitioner respectfully requests that a writ of mandamus issue, and the trial court be directed to correctly interpret NRS 172.145(2): that the State is "aware" of exculpatory evidence pursuant to the statute where that evidence is present in the State's file at the time of the grand jury presentment, whether the prosecutor has taken the time to read it or not.

DATED this 12th day of January, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEF.
By */s/ Dan A. Silverstein*
DAN A. SILVERSTEIN
Nevada Bar #7518
Deputy Public Defender

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEF.
By */s/ Arlene Heshmati*
ARLENE HESHMATI
Nevada Bar #11076
Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of January, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
STEVEN S. OWENS

DAN A. SILVERSTEIN
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Honorable Judge Kathleen Delaney
District Court, Department XXV
200 Lewis Avenue
Las Vegas, NV 89101

BY *_/s/ Carrie M. Connolly_*
Employee, Clark County Public
Defender's Office