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Respondent.

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Counsel for Respondent

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1 JUSTICE COURT LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA

3 AUG 3 12 19 PM '15

4 THE STATE OF NEVADA,

5 Plaintiff,

J. J. LAS VEGAS, NEVADA

6 TMM

DEPUTY

CASE NO: 15F11273X

DEPT NO: 14

7 -VS-

8 GABRIEL IBARRA #2588689,

9 Defendant.

CRIMINAL COMPLAINT

10 The Defendant above named having committed the crime of LARCENY FROM
11 PERSON (Category C Felony - NRS 205.270 - NOC 56019), in the manner following, to-wit:
12 That the said Defendant, on or about the 31st day of July, 2015, at and within the County of
13 Clark, State of Nevada, did then and there willfully, unlawfully, and feloniously, under
14 circumstances not amounting to robbery, with intent to steal or appropriate to his own use,
15 take from the person of another, to-wit: EVANGELINA MANTIKAS, without her consent,
16 personal property, to-wit: an iPhone 5s.

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

20 08/03/15

21 *K.M. Carroll*

22
23
24
25
26
27 15F11273X/jjd
28 LVMPD EV# 1507310413
(TK14)

15F11273X
CRM
Criminal Complaint
5360853



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

Court Minutes



15F11273X State of Nevada vs. Ibarra, Gabriel

Lead Atty: Public Defender

8/4/2015 7:30:00 AM Initial Appearance (In custody)

Result: Matter Heard

PARTIES Attorney Wood, Jeremy
PRESENT: Defendant Ibarra, Gabriel

Judge: Hafen, Conrad
Prosecutor: Sudano, Michelle
Court Reporter: Fluker, Kris
Court Clerk: Monterroso, Judie

PROCEEDINGS

Attorneys:	Public Defender	Ibarra, Gabriel	Added
	Wood, Jeremy	Ibarra, Gabriel	Added
Hearings:	8/18/2015 9:00:00 AM: Preliminary Hearing		Added
Events:	Initial Appearance Completed		
	<i>Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i>		
	Public Defender Appointed		
	Motion by Defense for an O.R. Release		
	<i>Motion Denied</i>		
	Bail Stands		
	<i>Counts: 001</i>		

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

Court Minutes



15F11273X State of Nevada vs. Ibarra, Gabriel

Lead Atty: Public Defender

8/18/2015 9:00:00 AM Preliminary Hearing (In custody)

Result: Bound Over

PARTIES Attorney Wood, Jeremy
PRESENT: Defendant Ibarra, Gabriel

Judge: Hafen, Conrad
Prosecutor: Sudano, Michelle
Court Reporter: Fluker, Kris
Court Clerk: Monterroso, Judie

PROCEEDINGS

Events: Preliminary Hearing Held

Motion to Exclude Witnesses by Defense - Motion Granted States Witnesses:

#1 - Evangelia Mantikas - Witness identified Defendant

Oral motion by State to amend Criminal Complaint by interlineation - motion granted

State Rests.

Defendant Advised of His Statutory Right to Make a Statement Defendant Waives the Right to a Sworn or Unsworn Statement

Defense Witnesses:

Defense Rests

Motion to Dismiss and Argument In Favor of Said Motion by Defense

Argument Against Said Motion by State

Motion to Dismiss Denied

Bound Over to District Court as Charged

Review Date: 8/19/2015

District Court Appearance Date Set

Aug 20 2015 10:00AM: In custody

Case Closed - Bound Over

Bail Stands

Counts: 001

Plea/Disp: 001: Larceny from pers, < \$3500 [56019]

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

1 CASE NO: C308774

2 DEPT NO: 14

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA

6

7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.) CASE NO. 15F11273X

11 GABRIEL IBARRA,)

12 Defendant.)

13 _____)

14 REPORTER'S TRANSCRIPT
15 OF
16 PRELIMINARY HEARING

17 BEFORE THE HONORABLE CONRAD HAFEN
18 JUSTICE OF THE PEACE

19 Tuesday, August 18, 2015
20 9:00 a.m.

21 APPEARANCES:

22 For the State: MICHELLE SUDANO, ESQ.
23 DEPUTY DISTRICT ATTORNEY

24 For the Defendant: JEREMY WOOD, ESQ.
25 DEPUTY PUBLIC DEFENDER

Reported by: KRISTINE A. FLUKER, CCR NO. 403

3
1 LAS VEGAS, CLARK COUNTY, NEVADA, TUES, AUGUST 18, 2015
9:00 A.M.

2 PROCEEDINGS

3 THE COURT: Case No. 15F11273X, State of
4 Nevada vs. Gabriel Ibarra.

5 He's present in custody. He's being
6 represented by the Public Defender's office. The State
7 is being represented by the Clark County District
8 Attorney's office. The record should reflect that the
9 court reporter has been duly sworn.

10 This is the time and place for
11 preliminary hearing. You have one witness, Michelle?

12 MS. SUDANO: I believe
13 witness, yes.

14 THE COURT: Okay. Do you have other
15 witnesses in the courtroom?

16 MS. SUDANO: I do.

17 THE COURT: Jeremy, I assume you're
18 invoking?

19 MR. WOOD: Yes, please, Your Honor.

20 THE COURT: Okay. All witnesses that are in
21 the courtroom on the Ibarra case, please go out in the
22 hall. Don't talk to anybody about your testimony. Wait
23 until you're called.

24 Who's your first witness going to be?

25 MS. SUDANO: Evangelia Mantikas.

1 INDEX

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4 EVANGELIA MANTIKAS

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8
9
10 EXHIBITS
11 (none)

4
1 Whereupon,
2 EVANGELIA MANTIKAS,
3 having been first duly sworn to testify to the truth,
4 the whole truth and nothing but the truth, was examined
5 and testified as follows:

6 THE CLERK: Please be seated. State your
7 name and spell your full name for the record.

8 THE WITNESS: Evangelia Mantikas,
9 E-v-a-n-g-e-l-i-a.

10 THE COURT: Go ahead, Michelle.

11 THE CLERK: Can she spell her last name.

12 THE COURT: Didn't she already do that? I'm
13 sorry, spell your last name too.

14 THE WITNESS: M-a-n-t-i-k-a-s.

15 THE COURT: Okay. Go ahead, Michelle.

16 DIRECT EXAMINATION

17 BY MS. SUDANO: Thank you, Your Honor.

18 Q. Ms. Mantikas, I want to draw your attention to
19 July 31st of 2015 at approximately 2:50 a.m. Where were
20 you at that time?

21 A. The bus stop.

22 Q. What bus stop?

23 A. Located on Boulder Highway and Flamingo.

24 Q. Is that here in Clark County, Nevada?

25 A. Yes.

5

1 Q. Were you waiting for the bus?

2 A. Yes.

3 Q. Were there other people there who were waiting

4 for the bus?

5 A. Yes.

6 Q. Do you see any of those people here in the

7 courtroom today?

8 A. Waiting for the bus, no.

9 Q. Okay. Do you see anybody else who was present at

10 the bus stop here in court today?

11 A. Yes.

12 Q. Can you please point to that person and describe

13 an article of clothing that he or she is wearing today?

14 A. There.

15 Q. And what is that individual wearing today?

16 A. A black or navy blue shirt with, I want to say,

17 orange shoes.

18 MS. SUDANO: May the record reflect the

19 identification of the defendant?

20 THE COURT: The record will so reflect.

21 MS. SUDANO:

22 Q. Now, how is it that you first came into contact

23 with the defendant at that bus stop?

24 A. I was sitting there waiting, on my phone texting,

25 and he just came around the corner and just was looking

6

1 around and just sat next to me, and then asked to borrow

2 my phone.

3 Q. And did he tell you why he wanted to borrow your

4 phone?

5 A. No.

6 Q. Did you eventually let him borrow your phone?

7 A. Yes.

8 Q. Did you do anything before you gave him the

9 phone?

10 A. I was texting, and I also typed in the number he

11 wanted to contact.

12 Q. And then what did you do after you typed that

13 number in?

14 A. I handed it to him, and he held it with -- he was

15 on the right side of me. He held it with this hand and

16 switched it to the left, and then he got up.

17 Q. Now, had you had any conversation with him before

18 you handed him your phone about the purpose of handing

19 him the phone?

20 A. The purpose, no.

21 Q. Why did you think you were handing him the phone?

22 A. I believed he just wanted to make a simple phone

23 call. Usually --

24 MR. WOOD: Objection; speculation.

25 THE COURT: Sustained.

7

1 MS. SUDANO:

2 Q. So you handed him the phone so he could make a

3 phone call?

4 A. Yes.

5 Q. Now, what happened after he made the phone call?

6 You said he had the phone in his right hand. Then what?

7 A. Well, left, then he switched to his right. And

8 then he held it up as it was dialing. He got up and

9 mumbled something while talking into the phone and he

10 started walking around the corner of the bus stop.

11 Q. What did you do at that point?

12 A. I got up, thinking that's my phone, so I got up

13 and followed him.

14 Q. What did the defendant do as you started to

15 follow him?

16 A. He turned to see that I was within -- still

17 following him, and then he just took off running.

18 Q. Were you able to follow the defendant?

19 A. For a short time, yes.

20 Q. Were you able to catch up with him?

21 A. No.

22 Q. So what did you do after that?

23 A. After he took off and there was no sight of him?

24 Q. Yes.

25 A. There was a couple outside and I stopped and just

8

1 asked for help, if they saw where he ran to, and if they

2 could help me find him.

3 Q. Okay. And after that couple -- based on your

4 conversation with that couple, did you do anything next?

5 A. Like after I told them what happened?

6 Q. Yes.

7 A. Well, I was with the girl, and the guy split up.

8 And we couldn't find him. Then I said that I left my

9 stuff at the bus stop, which had my wallet and

10 everything in it. So she walked with me to go to the

11 bus stop and get my stuff, and then I asked her if I

12 could borrow her phone to make a call.

13 Q. And what happened after that? Did you make that

14 phone call?

15 A. Yes.

16 Q. Now, did there come a point where you were

17 tracking where the defendant was?

18 A. Yes.

19 Q. How did that happen?

20 A. When I asked to borrow her phone -- this was

21 before I actually called the police -- I called my

22 girlfriend, and the person that was with me asked if she

23 had an iPhone, and I said yes. She said you can do the

24 iPhone tracker. She asked for my information, my

25 girlfriend, which was with me, and I gave it to her and

9

1 **we were able to track every ounce of where he was.**
 2 **Q.** And did the police eventually respond?
 3 **A. Yes.**
 4 **Q.** And were you able to give the police the
 5 information of where you thought that your phone was
 6 based on the Track My iPhone app?
 7 **A. Yes. They actually let me call her because the**
 8 **couple had to leave. So when I was with the cop, he let**
 9 **me call her, and he actually spoke to her. Then her and**
 10 **her sister were explaining where they were.**
 11 **Q.** Now, did the police eventually tell you that they
 12 had located your phone?
 13 **A. Yes.**
 14 **Q.** How did that happen?
 15 **A. It was -- they were close to kind of giving up.**
 16 **They were both in front of me, telling me, "Well, what**
 17 **do you want to do? It's already like 4:00 in the**
 18 **morning and we're not sure if we can find it. We have**
 19 **five patrols out looking for your phone. We can't find**
 20 **him. What do you want to do?" Then as they were asking**
 21 **me, one of them got a call on their walkie-talkie, and**
 22 **that's when he said --**
 23 MR. WOOD: Objection; hearsay.
 24 MS. SUDANO: It's just for what happened
 25 next. I can move on with her.

10

1 THE COURT: All right. Well, it's not
 2 offered for the truth of the matter asserted, but just
 3 to offer what he did?
 4 MS. SUDANO: Correct.
 5 THE COURT: Okay. So I'll overrule the
 6 objection. Go ahead.
 7 MS. SUDANO:
 8 **Q.** So the police, eventually you learned, might have
 9 found your phone, correct?
 10 **A. Yes.**
 11 **Q.** Do you go to a different location with the
 12 police?
 13 **A. Yes.**
 14 **Q.** Where did you go?
 15 **A. The there was an apartment complex on Vegas**
 16 **Valley and Nellis, I believe, called The Oasis.**

17 **Q.** And what happened when you went to that second
 18 apartment complex?
 19 **A. We drove in, and the car that I was in was backed**
 20 **up a little bit. They said they had found him and they**
 21 **walked him out and asked if that was him, and I said**
 22 **yes.**
 23 **Q.** And that was, again, the defendant that's here in
 24 the courtroom today?
 25 **A. Yes.**

11

1 **Q.** Now, did you get your phone back that night?
 2 **A. Yes.**
 3 **Q.** How did that happen?
 4 **A. They said it was in a bush and --**
 5 MR. WOOD: Objection; hearsay.
 6 THE COURT: Sustained.
 7 MS. SUDANO:
 8 **Q.** So how did you get your phone back? I don't want
 9 you to tell me anything that the officers said, but just
 10 what happened when you got your phone back.
 11 **A. The officer just handed it to me because -- they**
 12 **were doing fingerprints on it, and then he just handed**
 13 **it to me.**
 14 **Q.** Okay. Court's indulgence. Now, did you give the
 15 defendant permission to leave with your phone?
 16 **A. No.**
 17 **Q.** Did you give him permission to do anything other
 18 than make that one phone call?
 19 MS. SUDANO: Your Honor, no further
 20 questions.
 21 THE COURT: Cross-examination?
 22 CROSS-EXAMINATION
 23 BY MR. WOOD:
 24 **Q.** At the bus stop, how long had you been waiting
 25 there?

12

1 **A. 20 minutes.**
 2 **Q.** And approximately how long did you actually talk
 3 to the suspect?
 4 **A. Maybe less than five minutes.**
 5 **Q.** Less than five minutes. Do you think it was less
 6 than two or three minutes?
 7 **A. No.**
 8 **Q.** So between three and five?
 9 **A. Yes.**
 10 **Q.** It's pretty late at night, right?
 11 **A. Yes.**
 12 **Q.** 2:50. Is this one of those bus stops that's got
 13 the big like kind of covering or is it just a bench?
 14 **A. It has the covering.**
 15 **Q.** It's got the covering. Does it have lights, do
 16 you know?

17 **A. Yes.**
 18 **Q.** So it was lit up, correct?
 19 **A. Yes.**
 20 **Q.** And there were other people also there while
 21 you're talking to the suspect, correct?
 22 **A. Yes.**
 23 **Q.** Do you recall how many other people were there?
 24 **A. I want to say three or four.**
 25 **Q.** Okay. So the whole thing takes approximately

13

1 three to five minutes. You hand him your phone,
 2 correct?
 3 **A. Yes.**
 4 **Q.** And then he takes off running, correct?
 5 **A. Yes.**
 6 **Q.** Now, when you saw him -- you testified that he
 7 sat next to you, correct?
 8 **A. Yes.**
 9 **Q.** So you weren't looking head on at him; you were
 10 actually side to side with him, correct?
 11 **A. Yes.**
 12 **Q.** So at some point during that are you actually
 13 turned towards him or are you just still sitting side to
 14 side?
 15 **A. Still sitting side to side, but I did turn my**
 16 **head to look at him a few times.**
 17 **Q.** Okay. You said you looked at him a few times.
 18 Approximately how long did you have to observe him?
 19 **A. Not that long.**
 20 **Q.** That's fair enough. You know, we all have
 21 different strengths and weaknesses. Would you say
 22 you're good with faces?
 23 **MS. SUDANO:** I'll object to this line of
 24 questioning, Your Honor.
 25 **MR. WOOD:** I think she can testify as to her

14

1 own ability.
 2 **THE COURT:** Well, and it goes to
 3 identification. I mean, that's probably the defense, I
 4 would assume, at this point. So overruled. I'm going
 5 to let you pursue it.
 6 **MR. WOOD:**
 7 **Q.** Would you say that you're good with faces?
 8 **A. Yes.**
 9 **Q.** Now, you recall being asked to fill out a
 10 voluntary witness statement, correct? You wrote
 11 something for the police, right?
 12 **A. Yes.**
 13 **Q.** And do you remember in that giving a description
 14 of the suspect?
 15 **A. Yes.**
 16 **Q.** And when you did that, you were trying to be as
 17 helpful as possible with the police, correct?
 18 **A. Yes.**
 19 **Q.** You wanted them to catch the person, right?
 20 **A. Yes.**
 21 **Q.** Do you recall telling the police that you
 22 believed he was African-American?
 23 **A. Yes.**
 24 **Q.** Do you recall what sort of clothes he was
 25 wearing?

15

1 **A. Yes.**
 2 **Q.** What was that?
 3 **A. I believe I said he was wearing blue shorts, and**
 4 **I don't remember the shirt I said. I do remember saying**
 5 **blue shorts though.**
 6 **Q.** Do you remember what type of shirt it was?
 7 **A. What I said, no. But after I saw him, I did**
 8 **realize what he was wearing. I didn't -- I was in**
 9 **shock. I didn't remember anything. All I remember was**
 10 **just chasing after him. But then I did see him in just**
 11 **a tank top.**
 12 **Q.** That's fair enough. I mean, it happened so
 13 quick. You're in shock, correct?
 14 **A. Um-hum.**
 15 **Q.** So at first you don't really take notice of his
 16 clothes, correct?
 17 **A. Yes.**
 18 **Q.** But then later on the police take you and do a
 19 show-up, correct?
 20 **A. Yes.**
 21 **Q.** And that's when you realized he was wearing a
 22 tank top, correct?
 23 **A. Yes.**
 24 **Q.** Is that also when you realized that he was
 25 wearing blue shorts?

16

1 **A. Honestly I don't remember.**
 2 **Q.** That's fair enough. Now, I'm going to ask you
 3 about the show-up. So you learned that the police might
 4 have a suspect, correct?
 5 **A. Yes.**
 6 **Q.** What do the police tell -- you're taken to a
 7 place, correct, in a car?
 8 **A. Yes.**
 9 **Q.** Did you get out of the car?
 10 **A. No.**
 11 **Q.** Approximately how far were you from the suspect
 12 when you identified him?
 13 **A. I want to say maybe 50 feet, 40 feet.**
 14 **Q.** Okay. So 40 to 50 feet?
 15 **A. Yeah.**
 16 **Q.** And it's still dark out, correct?
 17 **A. Yes.**
 18 **Q.** And is he standing by himself or is he standing
 19 with other police?
 20 **A. With police.**
 21 **Q.** So there's two -- how many police are with him?
 22 **A. One was walking with him towards the car that I**
 23 **was in.**
 24 **Q.** So just one policeman is next to him?
 25 **A. Yes.**

17

1 Q. And was that policeman wearing a police uniform?

2 A. Yes.

3 Q. Was the suspect in handcuffs?

4 A. Yes.

5 Q. And you said they're walking, correct?

6 A. Um-hum.

7 Q. Are they underneath a lamp or is it -- how did

8 they have it illuminated?

9 A. In the parking lot where some of the cars go

10 under, they actually had lights, so he was sort of under

11 light or next to light.

12 Q. Okay. Did they have the headlamps from their car

13 on him?

14 A. Yes.

15 Q. And you're still sitting in the car? You're

16 looking through a window, correct?

17 A. Yes.

18 Q. Now, did the police read you any instructions

19 before you showed up?

20 A. Instructions on?

21 Q. Anything on the show-up that you were about to

22 do.

23 A. No.

24 Q. You just learned that they may have someone in --

25 that they may have a suspect, correct?

18

1 A. Yes.

2 Q. Later you said they gave you your phone back,

3 correct?

4 A. Yes.

5 Q. But that was after they were doing

6 fingerprinting, correct?

7 A. Yes.

8 Q. How do you know they were doing fingerprinting?

9 A. When I came up to the phone and behind it there

10 was a bunch of black smudges and fingerprints, and the

11 lady that was doing it said it's dirty only because I

12 was doing the fingerprints, but you can easily wipe it

13 off.

14 MR. WOOD: Okay. Court's indulgence. No

15 further questions.

16 THE COURT: Any redirect, Michelle?

17 REDIRECT EXAMINATION

18 BY MS. SUDANO: Very briefly.

19 Q. So you did one witness statement with the police

20 before they found your phone, correct?

21 A. Yes.

22 Q. And then did you fill out a second statement

23 after you did the show-up?

24 A. Yes.

25 Q. Now, in that first statement did you describe the

19

1 man who took your phone as African-American?

2 A. Yes.

3 Q. Now, when did you do that second statement? Was

4 it before did you the show-up or after you did the

5 show-up?

6 A. After the show-up.

7 Q. Now, did you also describe that same individual

8 as African-American again the second time?

9 A. Yes.

10 MR. WOOD: Court's indulgence one second.

11 THE COURT: Are you going to need us to make

12 a copy?

13 MS. SUDANO: Yes, Your Honor. Apparently

14 Mr. Wood didn't have a copy of this, even though it

15 should have been in the discovery.

16 THE COURT: Okay. We can make a copy real

17 quick.

18 MS. SUDANO:

19 Q. Now, that individual that you saw in the show-up

20 that you described as African-American, was that the man

21 that took your phone?

22 A. Yes.

23 Q. And is that the man that's sitting here in the

24 courtroom today?

25 A. Yes.

20

1 MS. SUDANO: No further questions, Your

2 Honor.

3 THE COURT: Any recross?

4 MR. WOOD: No.

5 THE COURT: Thanks for coming in. You're

6 excused for the day.

7 Michelle, any more witnesses?

8 MS. SUDANO: No, Your Honor. The State

9 would rest with one minor amendment.

10 THE COURT: Okay.

11 MS. SUDANO: Just that the victim's name is

12 spelled incorrectly on the Complaint. It's not

13 Evangelina. It's E-v-a-n-g-e-l-i-a.

14 THE COURT: Okay. I'll allow that

15 correction.

16 Okay. The State rests.

17 Defense, any witnesses or evidence?

18 MR. WOOD: Your Honor, I've talked to him

19 about his right to testify. He's going to go ahead and

20 follow my advice and not testify today. He'll be saving

21 that for trial.

22 THE COURT: Okay. So the Defense rests.

23 Let's go to closing arguments. State goes

24 first. Then Defense. The State has rebuttal.

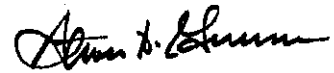
25 MS. SUDANO: The State would waive for

<p style="text-align: right;">21</p> <p>1 rebuttal, Your Honor.</p> <p>2 THE COURT: Jeremy, anything?</p> <p>3 MR. WOOD: Your Honor, I'd ask that the case</p> <p>4 be dismissed. The State charged him with larceny from a</p> <p>5 person. We had testimony from the victim that she</p> <p>6 handed him, of her own accord, the telephone. So it</p> <p>7 doesn't meet the burden of the statute.</p> <p>8 Larceny from a person is taking from the</p> <p>9 person of another. That's what makes it a larceny from</p> <p>10 a person. That the only they charged here, and they</p> <p>11 haven't presented any evidence regarding that, period.</p> <p>12 There's not even slight or marginal evidence for the</p> <p>13 larceny from the person.</p> <p>14 So based on that, they have to dismiss</p> <p>15 today.</p> <p>16 MS. SUDANO: Your Honor, it's our position</p> <p>17 that she handed the phone over voluntarily, certainly</p> <p>18 because she was being trying to be a good citizen and</p> <p>19 let this individual borrow the phone. But when he took</p> <p>20 it from her with the intent to not return it and the</p> <p>21 intent to permanently deprive, he took it from sitting</p> <p>22 right next to her where she had let him borrow and it</p> <p>23 where it was still within her reach and took off running</p> <p>24 with it.</p> <p>25 So based on that, Your Honor -- and there</p>	<p style="text-align: right;">23</p> <p>1</p> <p>2 AFFIRMATION</p> <p>3 Pursuant to NRS 239B.030</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 The undersigned does hereby affirm that the</p> <p>10 preceding bind over filed in District Court Case</p> <p>11 No. C308774 does not contain the Social Security Number</p> <p>12 of any person.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Dated this 9th day of September, 2015.</p> <p>17</p> <p>18 /S/Kristine Fluker</p> <p>19</p> <p>20 KRISTINE A. FLUKER, CCR NO. 403</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">22</p> <p>1 are other cases where larceny from the person is charged</p> <p>2 where it's not a physical taking actually from inside</p> <p>3 somebody's pockets or something. It's just taking from</p> <p>4 their immediate vicinity. So based on that, the State</p> <p>5 would submit that it has met its burden of slight or</p> <p>6 marginal evidence.</p> <p>7 THE COURT: Yeah, it appears to me from the</p> <p>8 Complaint on file herein and from the testimony</p> <p>9 presented at this preliminary hearing that the crime set</p> <p>10 forth in the Criminal Complaint has been committed and</p> <p>11 that there's sufficient evidence to believe that the</p> <p>12 defendant, Gabriel Ibarra, may have committed said</p> <p>13 crime.</p> <p>14 As a result, I'll order that the defendant</p> <p>15 be bound over to the Eighth Judicial District Court to</p> <p>16 be arraigned on that charge.</p>	
<p>17 THE CLERK: August 20th, 10:00 a.m.,</p> <p>18 lower-level arraignment.</p> <p>19 -oOo-</p> <p>20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF</p> <p>21 PROCEEDINGS.</p> <p>22</p> <p>23 /S/Kristine Fluker</p> <p>24</p> <p>25 KRISTINE A. FLUKER, CCR NO. 403</p>	

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CLERK OF THE COURT

1 **INFM**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
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10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 **I.A. 8/20/15**
13 **10:00 AM**
14 **PD - WOOD**

15 **THE STATE OF NEVADA,**

16 **Plaintiff,**

17 **-vs-**

18 **GABRIEL IBARRA, #2588689**

19 **Defendant.**

CASE NO: C-15-308774-1

DEPT NO: XVII

INFORMATION

20 **STATE OF NEVADA** }
21 **COUNTY OF CLARK** } ss.

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

24 **That GABRIEL IBARRA, the Defendant(s) above named, having committed the crime**
25 **of LARCENY FROM PERSON (Category C Felony - NRS 205.270 - NOC 56019), on or**
26 **about the 31st day of July, 2015, within the County of Clark, State of Nevada, contrary to the**
27 **form, force and effect of statutes in such cases made and provided, and against the peace and**
28 **dignity of the State of Nevada, did then and there willfully, unlawfully, and feloniously, under**

///

///

///

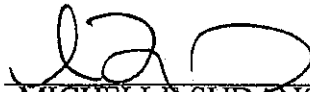
///

///

1 circumstances not amounting to robbery, with intent to steal or appropriate to his own use,
2 take from the person of another, to-wit: EVANGELIA MANTIKAS, without her consent,
3 personal property, to-wit: an iPhone 5s.

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

7 BY


8 MICHELLE SUDANO
9 Deputy District Attorney
10 Nevada Bar #13260

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

13 NAME

ADDRESS

14 CUSTODIAN OF RECORDS
15 OR DESIGNEE

Clark County Detention Center,
330 S. Casino Center Blvd., Las Vegas, NV

16 CUSTODIAN OF RECORDS
17 OR DESIGNEE

LVMPD Communications,
400 E. Stewart, Las Vegas, NV

18 CUSTODIAN OF RECORDS
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LVMPD Dispatch,
400 E. Stewart, Las Vegas, NV

20 CUSTODIAN OF RECORDS
21 OR DESIGNEE

LVMPD Records,
400 E. Stewart, Las Vegas, NV

22 GIESE, J.

LVMPD #9657

23 KUNZ, P.

LVMPD #10047

24 MANTIKAS, Evangelia M.

C/O District Attorney's Office

25 MCFARLANE, B.

LVMPD #13740

26 MORALES, C.

LVMPD #8788

27 ///

28 ///

1 NAVARRO, N.
2 RAFALOVICH, Marco

LVMPD #14754
DA Investigator and/or Designee

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DA#15F1273X/cmj/L3
LVMPD EV#1507310413
(TK14)


CLERK OF THE COURT

0014
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Application of,)	
	)	CASE NO. C-15-308774-1
	)	DEPT. NO. XVII
Gabriel Ibarra,)	
for a Writ of Habeas Corpus.	)	DATE: October 6, 2015
	)	TIME: 8:30 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of Gabriel Ibarra submitted by JEREMY B. WOOD, Deputy Public
Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, State of Nevada.
2. That Petitioner makes application for a Writ of Habeas Corpus; that the place where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is Doug Gillespie, Sheriff.
3. That the imprisonment and restraint of said Petitioner is unlawful in that: There was insufficient evidence presented at the preliminary hearing to bind the defendant up on the charge of Larceny from the Person.
4. That Petitioner waives his right to be brought to trial within 60 days.
5. That Petitioner consents that if Petition is not decided within 15 days before the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date.

1 designated by the Court.

2 6. That Petitioner personally authorized his aforementioned attorney to
3 commence this action.

4 WHEREFORE, Petitioner prays that this Honorable Court make an order directing
5 the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,
6 commanding him to bring the Petitioner before your Honor, and return the cause of his
7 imprisonment.

8 DATED this 18th of September, 2015.

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11 By: /s/ JEREMY B. WOOD
12 JEREMY B. WOOD, #12136
13 Deputy Public Defender
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DECLARATION

JEREMY B. WOOD makes the following declaration:

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

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, GABRIEL IBARRA, personally authorizes me to commence this Writ of Habeas Corpus action.

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

EXECUTED this 18th day of September, 2015.

/s/ JEREMY B. WOOD
JEREMY B. WOOD

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

3 COMES NOW the Petitioner, GABRIEL IBARRA, by and through his counsel,
4 JEREMY B. WOOD, the Clark County Public Defender's Office, and submits the following Points
5 and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

6
7 **STATEMENT OF FACTS**

8 On July 31, 2015 at approximately 2:50 A.M., Ms. Mantikas was at a bus stop in the area of
9 Boulder Highway and Flamingo. (PHT 4). While waiting for a bus, an individual approached Ms.
10 Mantikas and asked to borrow her phone. (PHT 5-6). This exchange took approximately three to
11 five minutes. (PHT 12). The entire time Ms. Mantika was sitting next to the individual and was not
12 looking head on at him. (PHT 13). However, during the exchange she did turn her head to look at
13 him a few times. (PHT 13).

14 Ms. Mantikas testified that the man made no mention of why he wanted to borrow the phone.
15 (PHT 6). Prior to handing the phone over, Ms. Mantika entered a phone number for the individual.
16 (PHT 6). After receiving the phone the individual got up, mumbled something into the phone and
17 then took off running. (PHT 7).

18 Ms. Mantika gave chase after the individual but after a short while lost him. (PHT 7). She
19 later ran into a couple who allowed her to use their phone to call her girlfriend and the police. (PHT
20 8). Ms. Mantika was then able to take advantage of the "Track my Iphone" app to narrow down the
21 area where her phone could be. (PHT 9). Ultimately, police informed Ms. Mantika that her phone
22 had been located. (PHT 10).

23 Cops drove Ms. Mantika in a patrol vehicle to an apartment complex in the area of Vegas
24 Valley and Nellis. (PHT 10). Ms. Mantika was told they had found the suspect. (PHT 10). She
25 couldn't remember what clothes he was wearing until she saw him at the show up and realized he
26 was wearing a tank top. (PHT 15). At the show up Ms. Mantika did not leave the police vehicle but
27 viewed the suspect from approximately 40 to 50 feet away. (PHT 16). At the time he was standing
28 with police. (PHT 16). The officer standing next to the suspect was wearing a uniform and the

1 suspect at the time Ms. Mantika viewed him was in handcuffs. (PHT 17). No show up instructions
2 were ever read to Ms. Mantika regarding identification. (PHT 17).

3 Cops later returned Ms. Mantika's phone to her. (PHT 18). The phone had a bunch of black
4 smudges and fingerprints. (PHT 18). Ms. Mantika was informed the smudges were from crime
5 scene analysts fingerprinting the phone and would come off. (PHT 18).

6 7 STATEMENT OF AUTHORITIES

8 The crime of Larceny from the Person is espoused in NRS 205.270 and states simply:

9
10 NRS 205.270 Penalty for taking property from person of another under
11 circumstances not amounting to robbery; limitation on granting of
12 probation or suspension of sentence.

13 1. A person who, under circumstances not amounting to robbery,
14 with the intent to steal or appropriate to his or her own use, takes property
15 from the person of another, without the other person's consent, is guilty
16 of:

17 (a) If the value of the property taken is less than \$3,500, a category C
18 felony and shall be punished as provided in NRS 193.130; or

19 The statute was restricted in scope to such individuals as pick pockets, purse snatchers, jewel
20 abstracters and the like. Terral v. State, 84 Nev. 412, 413, 442 P.2d 465, 466 (1968). The crime is
21 not committed if the property is taken from the immediate presence or constructive control or
22 possession of the owner. Id. The focus, is that the person of another has been violated and his
23 privacy directed invaded. Id. For instance, an item of little value if **snatched** from the person of
24 another subjects the offender to a felony violation whereas the same item merely taken from the
25 owner's presence would constitute a petty larceny. Id. (Emphasis added).

26 In Terral the defendant snatched gaming tokens from a crap table rack. Id. at 413. The jury
27 convicted him of larceny from the person. Id. Defendant appealed the ruling arguing that the items
28 were merely taken from the presence of another and the Nevada Supreme Court agreed reversing the
conviction. Id.

In the instant matter, the sole testimony presented was that Ms. Mantika willingly handed
over her phone for defendant to use it to make a phone call. Ms. Mantika in fact dialed the number

1 defendant intended to call before handing the phone over. She was fully aware and cognizant when
2 she handed her phone over and did not do so under any sense of duress. Only after the phone had
3 been willingly handed over, did the defendant take advantage of the opportunity to flee with Ms.
4 Mantika's phone. This is similar to the case in Terral. The phone was in Ms. Mantika's presence
5 but no longer on her person when the crime was effectuated. Consequently, by law it cannot be a
6 Larceny from the Person. As the Court in Terrell noted, the focus must be whether Ms. Mantika's
7 person, or privacy had been violated. Because the item was merely taken from Ms. Mantika's
8 presence it cannot be a Larceny from the Person.

9 DATED this 18th of September, 2015.

10 PHILIP J. KOHN
11 CLARK COUNTY PUBLIC DEFENDER

12 By: /s/ JEREMY B. WOOD
13 JEREMY B. WOOD, #12136
14 Deputy Public Defender
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1 **NOTICE**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
4 HABEAS CORPUS will be heard on 6th day of October, 2015, at 8:30 a.m. in Department No.
5 XVII District Court.

6 DATED this 18th day of September, 2015.

7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: /s/ JEREMY B. WOOD
11 JEREMY B. WOOD, #12136
12 Deputy Public Defender
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18 **CERTIFICATE OF ELECTRONIC SERVICE**

19 A COPY of the above and foregoing was sent via electronic to the District Attorney's
20 Office at Motions@clarkcountyda.com on this 18th day of September, 2015.
21
22

23 By: /s/ KONIE BALDWIN
24 An employee of Clark County Public
Defender's Office
25
26
27
28

EXHIBIT A

1 CASE NO: C308774

2 DEPT NO: 14

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA

6

7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.) CASE NO. 15F11273X

11 GABRIEL IBARRA,)

12 Defendant.)

13)

14 REPORTER'S TRANSCRIPT
15 OF
16 PRELIMINARY HEARING

17 BEFORE THE HONORABLE CONRAD HAFEN
18 JUSTICE OF THE PEACE

19 Tuesday, August 18, 2015
20 9:00 a.m.

21 APPEARANCES:

22 For the State: MICHELLE SUDANO, ESQ.
23 DEPUTY DISTRICT ATTORNEY

24 For the Defendant: JEREMY WOOD, ESQ.
25 DEPUTY PUBLIC DEFENDER

Reported by: KRISTINE A. FLUXER, CCR NO. 403

1 LAS VEGAS, CLARK COUNTY, NEVADA, TUES, AUGUST 18, 2015
2 9:00 A.M.

3 PROCEEDINGS

4 THE COURT: Case No. 15F11273X, State of
5 Nevada vs. Gabriel Ibarra.

6 He's present in custody. He's being
7 represented by the Public Defender's office. The State
8 is being represented by the Clark County Attorney's office. The record should reflect that the
9 court reporter has been duly sworn.

10 This is the time and place for
11 preliminary hearing. You have one witness, Michelle?

12 MS. SUDANO: I believe
13 witness, yes. **CLERK OF THE COURT**

14 THE COURT: Okay. Do you have other
15 witnesses in the courtroom?

16 MS. SUDANO: I do.

17 THE COURT: Jeremy, I assume you're
18 invoking?

19 MR. WOOD: Yes, please, Your Honor.

20 THE COURT: Okay. All witnesses that are in
21 the courtroom on the Ibarra case, please go out in the
22 hall. Don't talk to anybody about your testimony. Wait
23 until you're called.

24 Who's your first witness going to be?

25 MS. SUDANO: Evangelia Mantikas.

1

2 INDEX

3

4 WITNESSES FOR THE STATE: PAGE

5

6 EVANGELIA MANTIKAS

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10 Cross-Examination by Mr. Wood 11

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12 Redirect Examination by Ms. Sudano 18

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EXHIBITS
(none)

1 Whereupon,

2 EVANGELIA MANTIKAS,

3 having been first duly sworn to testify to the truth,
4 the whole truth and nothing but the truth, was examined
5 and testified as follows:

6 THE CLERK: Please be seated. State your
7 name and spell your full name for the record.

8 THE WITNESS: Evangelia Mantikas,
9 E-v-a-n-g-e-l-i-a.

10 THE COURT: Go ahead, Michelle.

11 THE CLERK: Can she spell her last name.

12 THE COURT: Didn't she already do that? I'm
13 sorry, spell your last name too.

14 THE WITNESS: M-a-n-t-i-k-a-s.

15 THE COURT: Okay. Go ahead, Michelle.

16 DIRECT EXAMINATION

17 BY MS. SUDANO: Thank you, Your Honor.

18 Q. Ms. Mantikas, I want to draw your attention to

19 July 31st of 2015 at approximately 2:50 a.m. Where were
20 you at that time?

21 A. The bus stop.

22 Q. What bus stop?

23 A. Located on Boulder Highway and Flamingo.

24 Q. Is that here in Clark County, Nevada?

25 A. Yes.

5

1 Q. Were you waiting for the bus?

2 A. Yes.

3 Q. Were there other people there who were waiting

4 for the bus?

5 A. Yes.

6 Q. Do you see any of those people here in the

7 courtroom today?

8 A. Waiting for the bus, no.

9 Q. Okay. Do you see anybody else who was present at

10 the bus stop here in court today?

11 A. Yes.

12 Q. Can you please point to that person and describe

13 an article of clothing that he or she is wearing today?

14 A. There.

15 Q. And what is that individual wearing today?

16 A. A black or navy blue shirt with, I want to say,

17 orange shoes.

18 MS. SUDANO: May the record reflect the

19 identification of the defendant?

20 THE COURT: The record will so reflect.

21 MS. SUDANO:

22 Q. Now, how is it that you first came into contact

23 with the defendant at that bus stop?

24 A. I was sitting there waiting, on my phone texting,

25 and he just came around the corner and just was looking

6

1 around and just sat next to me, and then asked to borrow

2 my phone.

3 Q. And did he tell you why he wanted to borrow your

4 phone?

5 A. No.

6 Q. Did you eventually let him borrow your phone?

7 A. Yes.

8 Q. Did you do anything before you gave him the

9 phone?

10 A. I was texting, and I also typed in the number he

11 wanted to contact.

12 Q. And then what did you do after you typed that

13 number in?

14 A. I handed it to him, and he held it with -- he was

15 on the right side of me. He held it with this hand and

16 switched it to the left, and then he got up.

17 Q. Now, had you had any conversation with him before

18 you handed him your phone about the purpose of handing

19 him the phone?

20 A. The purpose, no.

21 Q. Why did you think you were handing him the phone?

22 A. I believed he just wanted to make a simple phone

23 call. Usually --

24 MR. WOOD: Objection; speculation.

25 THE COURT: Sustained.

7

1 MS. SUDANO:

2 Q. So you handed him the phone so he could make a

3 phone call?

4 A. Yes.

5 Q. Now, what happened after he made the phone call?

6 You said he had the phone in his right hand. Then what?

7 A. Well, left, then he switched to his right. And

8 then he held it up as it was dialing. He got up and

9 mumbled something while talking into the phone and he

10 started walking around the corner of the bus stop.

11 Q. What did you do at that point?

12 A. I got up, thinking that's my phone, so I got up

13 and followed him.

14 Q. What did the defendant do as you started to

15 follow him?

16 A. He turned to see that I was within -- still

17 following him, and then he just took off running.

18 Q. Were you able to follow the defendant?

19 A. For a short time, yes.

20 Q. Were you able to catch up with him?

21 A. No.

22 Q. So what did you do after that?

23 A. After he took off and there was no sight of him?

24 Q. Yes.

25 A. There was a couple outside and I stopped and just

8

1 asked for help, if they saw where he ran to, and if they

2 could help me find him.

3 Q. Okay. And after that couple -- based on your

4 conversation with that couple, did you do anything next?

5 A. Like after I told them what happened?

6 Q. Yes.

7 A. Well, I was with the girl, and the guy split up.

8 And we couldn't find him. Then I said that I left my

9 stuff at the bus stop, which had my wallet and

10 everything in it. So she walked with me to go to the

11 bus stop and get my stuff, and then I asked her if I

12 could borrow her phone to make a call.

13 Q. And what happened after that? Did you make that

14 phone call?

15 A. Yes.

16 Q. Now, did there come a point where you were

17 tracking where the defendant was?

18 A. Yes.

19 Q. How did that happen?

20 A. When I asked to borrow her phone -- this was

21 before I actually called the police -- I called my

22 girlfriend, and the person that was with me asked if she

23 had an iPhone, and I said yes. She said you can do the

24 iPhone tracker. She asked for my information, my

25 girlfriend, which was with me, and I gave it to her and

9

1 we were able to track every ounce of where he was.

2 Q. And did the police eventually respond?

3 A. Yes.

4 Q. And were you able to give the police the

5 information of where you thought that your phone was

6 based on the Track My iPhone app?

7 A. Yes. They actually let me call her because the

8 couple had to leave. So when I was with the cop, he let

9 me call her, and he actually spoke to her. Then her and

10 her sister were explaining where they were.

11 Q. Now, did the police eventually tell you that they

12 had located your phone?

13 A. Yes.

14 Q. How did that happen?

15 A. It was -- they were close to kind of giving up.

16 They were both in front of me, telling me, "Well, what

17 do you want to do? It's already like 4:00 in the

18 morning and we're not sure if we can find it. We have

19 five patrols out looking for your phone. We can't find

20 him. What do you want to do?" Then as they were asking

21 me, one of them got a call on their walkie-talkie, and

22 that's when he said --

23 MR. WOOD: Objection; hearsay.

24 MS. SUDANO: It's just for what happened

25 next. I can move on with her.

10

1 THE COURT: All right. Well, it's not

2 offered for the truth of the matter asserted, but just

3 to offer what he did?

4 MS. SUDANO: Correct.

5 THE COURT: Okay. So I'll overrule the

6 objection. Go ahead.

7 MS. SUDANO:

8 Q. So the police, eventually you learned, might have

9 found your phone, correct?

10 A. Yes.

11 Q. Do you go to a different location with the

12 police?

13 A. Yes.

14 Q. Where did you go?

15 A. The there was an apartment complex on Vegas

16 Valley and Nellis, I believe, called The Oasis.

17 Q. And what happened when you went to that second

18 apartment complex?

19 A. We drove in, and the car that I was in was backed

20 up a little bit. They said they had found him and they

21 walked him out and asked if that was him, and I said

22 yes.

23 Q. And that was, again, the defendant that's here in

24 the courtroom today?

25 A. Yes.

11

1 Q. Now, did you get your phone back that night?

2 A. Yes.

3 Q. How did that happen?

4 A. They said it was in a bush and --

5 MR. WOOD: Objection; hearsay.

6 THE COURT: Sustained.

7 MS. SUDANO:

8 Q. So how did you get your phone back? I don't want

9 you to tell me anything that the officers said, but just

10 what happened when you got your phone back.

11 A. The officer just handed it to me because -- they

12 were doing fingerprints on it, and then he just handed

13 it to me.

14 Q. Okay. Court's indulgence. Now, did you give the

15 defendant permission to leave with your phone?

16 A. No.

17 Q. Did you give him permission to do anything other

18 than make that one phone call?

19 MS. SUDANO: Your Honor, no further

20 questions.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. WOOD:

24 Q. At the bus stop, how long had you been waiting

25 there?

12

1 A. 20 minutes.

2 Q. And approximately how long did you actually talk

3 to the suspect?

4 A. Maybe less than five minutes.

5 Q. Less than five minutes. Do you think it was less

6 than two or three minutes?

7 A. No.

8 Q. So between three and five?

9 A. Yes.

10 Q. It's pretty late at night, right?

11 A. Yes.

12 Q. 2:50. Is this one of those bus stops that's got

13 the big like kind of covering or is it just a bench?

14 A. It has the covering.

15 Q. It's got the covering. Does it have lights, do

16 you know?

17 A. Yes.

18 Q. So it was lit up, correct?

19 A. Yes.

20 Q. And there were other people also there while

21 you're talking to the suspect, correct?

22 A. Yes.

23 Q. Do you recall how many other people were there?

24 A. I want to say three or four.

25 Q. Okay. So the whole thing takes approximately

13

1 three to five minutes. You hand him your phone,
 2 correct?
 3 A. Yes.
 4 Q. And then he takes off running, correct?
 5 A. Yes.
 6 Q. Now, when you saw him -- you testified that he
 7 sat next to you, correct?
 8 A. Yes.
 9 Q. So you weren't looking head on at him; you were
 10 actually side to side with him, correct?
 11 A. Yes.
 12 Q. So at some point during that are you actually
 13 turned towards him or are you just still sitting side to
 14 side?
 15 A. Still sitting side to side, but I did turn my
 16 head to look at him a few times.
 17 Q. Okay. You said you looked at him a few times.
 18 Approximately how long did you have to observe him?
 19 A. Not that long.
 20 Q. That's fair enough. You know, we all have
 21 different strengths and weaknesses. Would you say
 22 you're good with faces?
 23 MS. SUDANO: I'll object to this line of
 24 questioning, Your Honor.
 25 MR. WOOD: I think she can testify as to her

14

1 own ability.
 2 THE COURT: Well, and it goes to
 3 identification. I mean, that's probably the defense, I
 4 would assume, at this point. So overruled. I'm going
 5 to let you pursue it.
 6 MR. WOOD:
 7 Q. Would you say that you're good with faces?
 8 A. Yes.
 9 Q. Now, you recall being asked to fill out a
 10 voluntary witness statement, correct? You wrote
 11 something for the police, right?
 12 A. Yes.
 13 Q. And do you remember in that giving a description
 14 of the suspect?
 15 A. Yes.
 16 Q. And when you did that, you were trying to be as
 17 helpful as possible with the police, correct?
 18 A. Yes.
 19 Q. You wanted them to catch the person, right?
 20 A. Yes.
 21 Q. Do you recall telling the police that you
 22 believed he was African-American?
 23 A. Yes.
 24 Q. Do you recall what sort of clothes he was
 25 wearing?

15

1 A. Yes.
 2 Q. What was that?
 3 A. I believe I said he was wearing blue shorts, and
 4 I don't remember the shirt I said. I do remember saying
 5 blue shorts though.
 6 Q. Do you remember what type of shirt it was?
 7 A. What I said, no. But after I saw him, I did
 8 realize what he was wearing. I didn't -- I was in
 9 shock. I didn't remember anything. All I remember was
 10 just chasing after him. But then I did see him in just
 11 a tank top.
 12 Q. That's fair enough. I mean, it happened so
 13 quick. You're in shock, correct?
 14 A. Um-hum.
 15 Q. So at first you don't really take notice of his
 16 clothes, correct?
 17 A. Yes.
 18 Q. But then later on the police take you and do a
 19 show-up, correct?
 20 A. Yes.
 21 Q. And that's when you realized he was wearing a
 22 tank top, correct?
 23 A. Yes.
 24 Q. Is that also when you realized that he was
 25 wearing blue shorts?

16

1 A. Honestly I don't remember.
 2 Q. That's fair enough. Now, I'm going to ask you
 3 about the show-up. So you learned that the police might
 4 have a suspect, correct?
 5 A. Yes.
 6 Q. What do the police tell -- you're taken to a
 7 place, correct, in a car?
 8 A. Yes.
 9 Q. Did you get out of the car?
 10 A. No.
 11 Q. Approximately how far were you from the suspect
 12 when you identified him?
 13 A. I want to say maybe 50 feet, 40 feet.
 14 Q. Okay. So 40 to 50 feet?
 15 A. Yeah.
 16 Q. And it's still dark out, correct?
 17 A. Yes.
 18 Q. And is he standing by himself or is he standing
 19 with other police?
 20 A. With police.
 21 Q. So there's two -- how many police are with him?
 22 A. One was walking with him towards the car that I
 23 was in.
 24 Q. So just one policeman is next to him?
 25 A. Yes.

17

1 Q. And was that policeman wearing a police uniform?

2 A. Yes.

3 Q. Was the suspect in handcuffs?

4 A. Yes.

5 Q. And you said they're walking, correct?

6 A. Um-hum.

7 Q. Are they underneath a lamp or is it -- how did

8 they have it illuminated?

9 A. In the parking lot where some of the cars go

10 under, they actually had lights, so he was sort of under

11 light or next to light.

12 Q. Okay. Did they have the headlamps from their car

13 on him?

14 A. Yes.

15 Q. And you're still sitting in the car? You're

16 looking through a window, correct?

17 A. Yes.

18 Q. Now, did the police read you any instructions

19 before you showed up?

20 A. Instructions on?

21 Q. Anything on the show-up that you were about to

22 do.

23 A. No.

24 Q. You just learned that they may have someone in --

25 that they may have a suspect, correct?

18

1 A. Yes.

2 Q. Later you said they gave you your phone back,

3 correct?

4 A. Yes.

5 Q. But that was after they were doing

6 fingerprinting, correct?

7 A. Yes.

8 Q. How do you know they were doing fingerprinting?

9 A. When I came up to the phone and behind it there

10 was a bunch of black smudges and fingerprints, and the

11 lady that was doing it said it's dirty only because I

12 was doing the fingerprints, but you can easily wipe it

13 off.

14 MR. WOOD: Okay. Court's indulgence. No

15 further questions.

16 THE COURT: Any redirect, Michelle?

17 REDIRECT EXAMINATION

18 BY MS. SUDANO: Very briefly.

19 Q. So you did one witness statement with the police

20 before they found your phone, correct?

21 A. Yes.

22 Q. And then did you fill out a second statement

23 after you did the show-up?

24 A. Yes.

25 Q. Now, in that first statement did you describe the

19

1 man who took your phone as African-American?

2 A. Yes.

3 Q. Now, when did you do that second statement? Was

4 it before did you the show-up or after you did the

5 show-up?

6 A. After the show-up.

7 Q. Now, did you also describe that same individual

8 as African-American again the second time?

9 A. Yes.

10 MR. WOOD: Court's indulgence one second.

11 THE COURT: Are you going to need us to make

12 a copy?

13 MS. SUDANO: Yes, Your Honor. Apparently

14 Mr. Wood didn't have a copy of this, even though it

15 should have been in the discovery.

16 THE COURT: Okay. We can make a copy real

17 quick.

18 MS. SUDANO:

19 Q. Now, that individual that you saw in the show-up

20 that you described as African-American, was that the man

21 that took your phone?

22 A. Yes.

23 Q. And is that the man that's sitting here in the

24 courtroom today?

25 A. Yes.

20

1 MS. SUDANO: No further questions, Your

2 Honor.

3 THE COURT: Any recross?

4 MR. WOOD: No.

5 THE COURT: Thanks for coming in. You're

6 excused for the day.

7 Michelle, any more witnesses?

8 MS. SUDANO: No, Your Honor. The State

9 would rest with one minor amendment.

10 THE COURT: Okay.

11 MS. SUDANO: Just that the victim's name is

12 spelled incorrectly on the Complaint. It's not

13 Evangelina. It's E-v-a-n-g-e-l-i-a.

14 THE COURT: Okay. I'll allow that

15 correction.

16 Okay. The State rests.

17 Defense, any witnesses or evidence?

18 MR. WOOD: Your Honor, I've talked to him

19 about his right to testify. He's going to go ahead and

20 follow my advice and not testify today. He'll be saving

21 that for trial.

22 THE COURT: Okay. So the Defense rests.

23 Let's go to closing arguments. State goes

24 first. Then Defense. The State has rebuttal.

25 MS. SUDANO: The State would waive for

<p>21</p> <p>1 rebuttal, Your Honor.</p> <p>2 THE COURT: Jeremy, anything?</p> <p>3 MR. WOOD: Your Honor, I'd ask that the case</p> <p>4 be dismissed. The State charged him with larceny from a</p> <p>5 person. We had testimony from the victim that she</p> <p>6 handed him, of her own accord, the telephone. So it</p> <p>7 doesn't meet the burden of the statute.</p> <p>8 Larceny from a person is taking from the</p> <p>9 person of another. That's what makes it a larceny from</p> <p>10 a person. That the only they charged here, and they</p> <p>11 haven't presented any evidence regarding that, period.</p> <p>12 There's not even slight or marginal evidence for the</p> <p>13 larceny from the person.</p> <p>14 So based on that, they have to dismiss</p> <p>15 today.</p> <p>16 MS. SUDANO: Your Honor, it's our position</p> <p>17 that she handed the phone over voluntarily, certainly</p> <p>18 because she was being trying to be a good citizen and</p> <p>19 let this individual borrow the phone. But when he took</p> <p>20 it from her with the intent to not return it and the</p> <p>21 intent to permanently deprive, he took it from sitting</p> <p>22 right next to her where she had let him borrow and it</p> <p>23 where it was still within her reach and took off running</p> <p>24 with it.</p> <p>25 So based on that, Your Honor -- and there</p>	<p>23</p> <p>1</p> <p>2 AFFIRMATION</p> <p>3 Pursuant to NRS 239B.030</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 The undersigned does hereby affirm that the</p> <p>10 preceding bind over filed in District Court Case</p> <p>11 No. C308774 does not contain the Social Security Number</p> <p>12 of any person.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Dated this 9th day of September, 2015.</p> <p>17</p> <p>18 /S/Kristine Fluker</p> <p>19</p> <p>20 KRISTINE A. FLUKER, CCR NO. 403</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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22

1 are other cases where larceny from the person is charged

2 where it's not a physical taking actually from inside

3 somebody's pockets or something. It's just taking from

4 their immediate vicinity. So based on that, the State

5 would submit that it has met its burden of slight or

6 marginal evidence.

7 THE COURT: Yeah, it appears to me from the

8 Complaint on file herein and from the testimony

9 presented at this preliminary hearing that the crime set

10 forth in the Criminal Complaint has been committed and

11 that there's sufficient evidence to believe that the

12 defendant, Gabriel Ibarra, may have committed said

13 crime.

14 As a result, I'll order that the defendant

15 be bound over to the Eighth Judicial District Court to

16 be arraigned on that charge.

17 THE CLERK: August 20th, 10:00 a.m.,

18 lower-level arraignment.

19 -oOo-

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF

21 PROCEEDINGS.

22

23 /S/Kristine Fluker

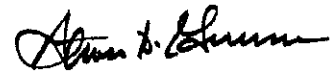
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25 KRISTINE A. FLUKER, CCR NO. 403

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CLERK OF THE COURT

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE SUDANO
6 Deputy District Attorney
7 Nevada Bar #13260
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 GABRIEL IBARRA, #2588689
13 Defendant.

CASE NO: C-15-308774-1

DEPT NO: XVII

NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

17 TO: GABRIEL IBARRA, Defendant; and

18 TO: JEREMY WOOD, Deputy Public Defender, Counsel of Record:

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

21 RENHARD, LOUISE. - LVMPD P#5223 - She is expected to testify regarding the
22 identification, documentation, collection and preservation of evidence in this case.

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

26 ///

27 ///

28 ///

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

7 BY 

8 MICHELLE SUDANO
9 Deputy District Attorney
10 Nevada Bar #13260

11 CERTIFICATE OF FACSIMILE TRANSMISSION

12 I hereby certify that service of Notice of Expert Witnesses, was made this 28th day
13 of September, 2015, by facsimile transmission to:

14 JEREMY WOOD, Deputy Public Defender
15 1702-455-5112

16 BY 

17 C. Jimenez
18 Secretary for the District Attorney's Office

19
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28 cmj/L3

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: RENHARD, Louise

P# 5223

Date: 04-01-13

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.
FORMAL EDUCATION		
Institution	Major	Degree/Date
University of Alaska	Police Administration	AA Degree - 1976
TESTIMONY		
Yes	No	
X		District Court, Justice Court, Juvenile Court, Coroner's Inquest
X		U.S. District Court
EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	10-28-00 to Present
LVMPD	CSA I / II	07-29-96 to 10-28-00


CLERK OF THE COURT

1 NNEW
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 MICHELLE SUDANO
Deputy District Attorney
4 Nevada Bar #13260
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 GABRIEL IBARRA, #2588689
13 Defendant.

CASE NO: C-15-308774-1
DEPT NO: XVII

14
15 NOTICE OF WITNESSES
16 [NRS 174.234(1)(a)]

17 TO: GABRIEL IBARRA, Defendant; and

18 TO: JEREMY WOOD, Deputy Public Defender, Counsel of Record:

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

21 <u>NAME</u>	<u>ADDRESS</u>
22 CUSTODIAN OF RECORDS 23 OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
24 CUSTODIAN OF RECORDS 25 OR DESIGNEE	LVMPD Communications, 400 E. Stewart, Las Vegas, NV
26 CUSTODIAN OF RECORDS 27 OR DESIGNEE	LVMPD Dispatch, 400 E. Stewart, Las Vegas, NV

28 ///

1	CUSTODIAN OF RECORDS	LVMPD Records,
2	OR DESIGNEE	400 E. Stewart, Las Vegas, NV
3	FLETCHER, J.	LVMPD #8072
4	GIESE, J.	LVMPD #9657
5	HIBBETTS, K.	LVMPD #14320
6	KUNZ, P.	LVMPD #10047
7	MANTIKAS, Evangelia M.	C/O District Attorney's Office
8	MCFARLANE, B.	LVMPD #13740
9	MORALES, C.	LVMPD #8788
10	NAVARRO, N.	LVMPD #14754
11	PATTERSON, M.	LVMPD #8409
12	RAFALOVICH, Marco	DA Investigator and/or Designee
13	RENHARD, L.	LVMPD #5223
14	URENA, C.	LVMPD #9037
15	WOODARD, S.	LVMPD #7041

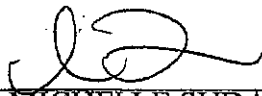
16

17 These witnesses are in addition to those witnesses endorsed on the Information or

18 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert

19 Witnesses has been filed.

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

22 BY 

23 MICHELLE SUDANO
 24 Deputy District Attorney
 Nevada Bar #13260

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CERTIFICATE OF FACSIMILE TRANSMISSION

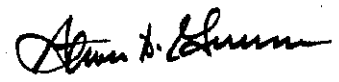
I hereby certify that service of Notice of Witnesses, was made this 20th day of
September, 2015, by facsimile transmission to:

JEREMY WOOD, Deputy Public Defender
702-455-5112

BY


C. Jimenez
Secretary for the District Attorney's Office

cmj/L3



CLERK OF THE COURT

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

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 GABRIEL IBARRA,

11 Defendant.

CASE NO. C-15-308774-1

DEPT. NO. XVII

12 ORDER

13 The Petition of GABRIEL IBARRA submitted by JEREMY B. WOOD, Deputy
14 Public Defender, as attorney for the above-captioned individual, having been filed in the above-
15 entitled matter,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that you, STEVE
17 GRIERSON, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for the
18 County of Clark, issue a Writ of Habeas Corpus.

19 DATED AND DONE at Las Vegas, Nevada, this 24th of September, 2015.

20
21 
22 DISTRICT COURT JUDGE

23 Submitted By:
24 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

25
26 By 
27 JEREMY B. WOOD, #12136
Deputy Public Defender

28 RECEIVED BY
DEPT 17 ON
SEP 18 2015

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CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the District Attorney's
Office at Motions@clarkcountyda.com on this 28th day of September 2015.

By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office

Case Name: GABRIEL IBARRA
Case No.: C-15-308774-1
Dept. No.: XVII


CLERK OF THE COURT

1 WRTH
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,

CASE NO. C-15-308774-1

DEPT. NO. XVII

13 GABRIEL IBARRA,
14
15 Defendant.

16 **WRIT OF HABEAS CORPUS**

17 To: Clark County Sheriff
18 Clark County, Nevada

19 **GREETINGS:**

20 We command that you have the body of the above-captioned person, by you
21 imprisoned and detained, as it is alleged, together with the time and cause of such imprisonment and
22 detention, by whatever name said above-captioned person shall be called or charged, before the
23 Honorable Michael Villiani, District Court Judge, at his chambers or his courtroom in the County
24 Courthouse Building in the City of Las Vegas, County of Clark, State of Nevada, on October 6,
25 2015 at the hour of 8:30 a.m., to do and receive that which shall then and there be considered
26 concerning the said above-captioned person; and have you then and there this Writ.

27 DATED AND DONE this 30 of September, 2015.

28 STEVE GRIERSON, COUNTY CLERK

By: 

DEPUTY

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CERTIFICATE OF FACSIMILE

A COPY of the above and foregoing WRIT was sent via facsimile to the Clark County Detention Center (702) 671-3763 on this 30th day of September, 2015.

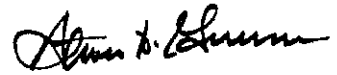
By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing WRIT was sent via electronic to the District Attorney's Office at Motions@clarkcountyda.com on this 30th day of September, 2015.

By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office

Case Name: GABRIEL IBARRA
Case No.: C-15-308774-1
Dept. No. XVII



CLERK OF THE COURT

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

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

7 THE STATE OF NEVADA,)	
8 Plaintiff,	)	CASE NO. C-15-308774-1
9 v.	)	DEPT. NO. XVII
10 GABRIEL IBARRA,	)	DATE: October 15, 2015
11 Defendant.	)	TIME: 8:30 a.m.
12		

13 **MOTION FOR DISCOVERY**

14 COMES NOW, the Defendant, GABRIEL IBARRA, by and through JEREMY B.
15 WOOD, Deputy Public Defender and hereby requests this court to order the State to provide
16 Defendant copies of all evidence material either to guilt or punishment.

17 This Motion is made pursuant to *Brady vs. Maryland*, 373 U.S. 83, the U.S. and Nevada
18 Constitutions and based upon all the papers and pleadings on file herein, the attached Declaration
19 of Counsel, and oral argument at the time set for hearing this Motion.

20 DATED this 2nd day of October, 2015.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23
24 By: /s/ JEREMY B. WOOD
JEREMY B. WOOD, #12136
Deputy Public Defender

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DECLARATION

JEREMY B. WOOD makes the following declaration:

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

2. Defense counsel is **NOT** claiming that defense counsel is compelled to file this motion because the State has refused to disclose the discovery materials requested herein.

3. **Rather, this *Brady* motion is being filed in recognition of the different standard of review applied in determining whether the State committed a *Brady* violation, warranting a reversal of the conviction.** As the court knows, if a defendant makes no request or only a general request for information, the reviewing court will reverse a conviction based on *Brady* if the evidence not disclosed is material as to give rise to a **reasonable probability** that the result would have been different had it been disclosed.¹ However, if the defendant makes a specific request, the evidence is deemed material upon the lesser showing that a **reasonable possibility** exists of a different result had there been disclosure.²

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

EXECUTED this 2nd day of October, 2015.

/s/ JEREMY B. WOOD
JEREMY B. WOOD

¹ *State v. Bennett*, 119 Nev. 599 (2003)

² *Id.*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

4 GABRIEL IBARRA (hereinafter "Mr. Ibarra"), was charged by way of information with
5 one count of Larceny from the Person, for an alleged incident that occurred on or about July 31,
6 2015. This matter is currently set for jury trial on October 19, 2015.

7 **ARGUMENT**

8 **I. The State is Required to Provide Defendant with Discovery per Nevada Statute, as**
9 **well as under the United States and Nevada Constitutions**

10 A. Nevada Statutory Requirements

11 Under NRS 174.235, the State is required to disclose evidence relating to the prosecution
12 of a defendant that is within the possession, custody or control of the State, including:

- 13 • written or recorded statements or confessions made by the defendant;
- 14 • written or recorded statements made by a witness the prosecuting attorney intends
15 to call during the case in chief of the State;
- 16 • results or reports of physical or mental examinations, scientific tests or scientific
17 experiments made in connection with the particular case; and
- 18 • books, papers, documents, tangible objects, or copies thereof, which the prosecuting
19 attorney intends to introduce during the case in chief of the State.

20 NRS 174.235(1)(a)-(c).

21 The District Court has authority to order the production of any non-privileged materials in
22 the possession, control or custody of the State³ under NRS 174.235 if the evidence sought is
23 "material to the preparation of the defense". Riddle v. State, 96 Nev. 589, 590, 613 P.2d 1031
24 (1980).

25
26
27 ³ The State must turn over any documents, papers, or books related to the case that are in the
28 possession, control and custody of any government agent or agency. See Kyles v. Whitley, 514
U.S. 419, 437-38 (1995) (stating that exculpatory evidence "cannot be kept out of the hands of the
defense just because the prosecutor does not have it").

1 NRS 174.235 should be read to create an affirmative duty for the State to disclose *any*
2 statement allegedly made by the defendant, or for which the defendant can be held vicariously
3 liable. Courts have recognized that there is a fundamental fairness involved in “granting the
4 accused equal access to his own words, no matter how the Government came by them.” See, e.g.,
5 U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974). This “fairness” should extend not only to
6 oral statements, but statements for which the defendant is vicariously liable, as well. Under NRS
7 51.035(3)(a)(e), a defendant can be vicariously liable for a statement made by a third party. See
8 also Fields v. State, 220 P.3d 709 (Nev. 2009) (finding evidence of defendant’s silence admissible
9 following his wife’s complaint that she was in jail because his conduct constituted an adoptive
10 admission). Thus, NRS 174.235 should be construed to include within the definition of a
11 defendant’s “statement,” both the words actually uttered by the defendant and any statements for
12 which the defendant may be held vicariously liable.

13 B. Constitutional Requirements

14 The United States and Nevada constitutions require the State to provide the defense with all
15 favorable evidence in its actual or constructive possession prior to trial. See Kyles v. Whitley, 514
16 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83, 86 (1963); Jimenez v. State, 112 Nev. 610, 618
17 (1996). Failure to do so results in a violation of the Due Process clauses of the Fifth and
18 Fourteenth Amendments of the United States Constitution, and Article I, Section 8 of the Nevada
19 Constitution. This rule applies regardless of how the State has chosen to structure its overall
20 discovery process. See Strickler v. Greene, 527 U.S. 263 (1999); Kyles, 514 U.S. 419; Brady, 373
21 U.S. at 86; Jimenez, 112 Nev. at 618. The withholding of exculpatory evidence constitutes a due
22 process violation regardless of the prosecutor’s motive for withholding the evidence. Wallace v.
23 State, 88 Nev. 549, 551-52, 501 P.2d 1036 (1972).

24 Under the law, the State must turn over all evidence that is (1) favorable to the accused, in
25 that it is exculpatory or impeachment evidence, and (2) within the actual or constructive
26 possession of anyone acting on behalf of the State. See Banks v. Dretke, 540 U.S. 668, 691
27 (2004).

1 **II. The State Must Turn Over All Information that is *Favorable* to the Accused, Whether**
2 **or Not It Is the Subject of a Specific Discovery Request**

3 The State's constitutional obligation to produce material evidence exists whether or not the
4 defendant has filed a discovery motion or made specific discovery requests. See, e.g., Kyles v.
5 Whitley, 514 U.S. 419, 434-35 (1995); Pennsylvania v. Ritchie, 480 U.S. 39, 57 (1986); United
6 States v. Bagley, 473 U.S. at 667, 682, 685 (1985); State v. Bennett, 119 Nev. 589 (2003);
7 Jimenez, 112 Nev. at 618; Roberts v. State, 110 Nev. 1121 (1994). Given the important rights
8 involved and the strong potential for reversal if those rights are violated, the U.S. Supreme Court
9 has long counseled that "the prudent prosecutor will resolve doubtful questions in favor of
10 disclosure." U.S. v. Agurs, 427 U.S. 97, 108 (1976).

11 A. Evidence "favorable to the accused" includes all information material to the issue of
12 guilt or punishment, including impeachment evidence

13 The Nevada Supreme Court has directly addressed what is considered "favorable to the
14 accused." In Mazzan v. Warden, the Court stated:

15 Due process does not require simply the disclosure of "exculpatory" evidence.
16 Evidence also must be disclosed if it provides grounds for the defense to attack the
17 reliability, thoroughness, and good faith of the police investigation, to impeach the
18 credibility of the state's witnesses, or to bolster the defense case against
19 prosecutorial attacks. Furthermore, "discovery in a criminal case is not limited to
20 investigative leads or reports that are admissible in evidence." Evidence "need not
21 have been independently admissible to have been material." (Citations omitted).
22 116 Nev. 48, 67 (2000).

23 See also, Strickler, 527 U.S. at 281-82 (stating that a Brady violation occurs when (1) evidence is
24 favorable to the accused because it is exculpatory or impeaching; (2) evidence was suppressed by
25 the State, either willfully or inadvertently; and (3) prejudice ensued). In Mazzan, the Supreme
26 Court provided a non-exclusive list of the type of evidence that the State must turn over:

- 27 1) Forensic testing which was ordered but not completed, or which was completed but did
28 not inculcate the defendant (e.g., fingerprint analysis that returned as "inconclusive");
- 2) Criminal records or other evidence concerning State's witnesses which might show
bias, motive to lie, or otherwise impeach credibility (e.g., civil litigation);

- 1 3) Evidence that the alleged victim in the instant case has claimed to be a victim in other cases;
- 2 4) Leads, evidence, or investigations that law enforcement discounted or failed to pursue;
- 3 5) Evidence that suggests an alternate suspect, or calls into question whether a crime
- 4 actually occurred;
- 5 6) Anything that is inconsistent with prior or present statements of a State's witness,
- 6 including the initial failure to make a statement which is later made or testified to.

7 In addition to the specific types of evidence listed above and discussed in Mazzan, the State is
8 obligated to turn over to Defendant any exculpatory or mitigation evidence.

9 1. Exculpatory Evidence

10 Exculpatory evidence is that which tends to favor the accused. Brady, 373 U.S. at 87.
11 Impeachment evidence, therefore, is exculpatory evidence within the meaning of Brady. See
12 Giglio v. United States, 405 U.S. 150, 154 (1972). In other words, the State's duty to disclose
13 extends to evidence bearing on the credibility of its witnesses. The Nevada Supreme Court has
14 interpreted the meaning of evidence "favorable to the accused" as evidence that "provides grounds
15 for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to
16 impeach the credibility of the state's witnesses" or evidence that may "bolster the defense case
17 against prosecutorial attacks." Mazzan, 116 Nev. at 67.

18 To be clear, exculpatory material includes all information that would tend to affect the
19 reliability and credibility of a witness. Thus, information within government control, which shows
20 that a witness gave inconsistent statements, had motive to lie, tried to recant, expressed reluctance
21 to testify against the accused, received benefits as a result of his or her accusation, or other types of
22 information affecting credibility and reliability, is Brady material and must be disclosed.

23 2. Mitigation Evidence

24 Brady material applies not only to evidence regarding the defendant's innocence or guilt,
25 but also to **mitigation** evidence. For example: the victim of a robbery identifies a defendant as one
26 of two people who robbed her. The victim also tells police that this defendant actively prevented
27 his co-defendant from hitting her during the robbery. Although the victim's statement would
28 clearly go to establishing the defendant's guilt, it would *also* constitute Brady material because, if

1 he is ultimately convicted, the defendant's effort to aid the victim might justify the mitigation of
2 his sentence. Anything which could convince the court to impose less than a maximum sentence
3 or rebut alleged aggravating circumstances is relevant to punishment and, therefore, **must** be
4 produced by the State. See Jimenez, 112 Nev. at 619.

5
6 B. The State's disclosure obligation is the same regardless of the specificity of the
defendant's requests

7 The State's constitutionally-mandated Brady obligation arises regardless of whether a
8 Defendant specifically requests certain favorable evidence. See U.S. v. Bagley, 473 U.S. 667, 682
9 (1985) (plurality) (finding the prosecution's constitutional duty to disclose favorable evidence is
10 governed by the materiality standard and not limited to situations where a defendant requests
11 favorable evidence); see also, Kyles, 514 U.S. at 433 (stating that "regardless of request, favorable
12 evidence is material. . ."). The State must disclose all material evidence favorable to the defense,
13 regardless of the nature of the instant request. Additionally, as more fully addressed below, the
14 prosecutor must meet with detectives, crime scene analysts, investigators, and any other State
15 actors and potential witnesses prior to trial to determine whether they possess evidence favorable
16 to the accused. See, e.g., Strickler, 527 U.S. at 281.

17 **III. The State is Responsible for All Evidence in Its Actual or Constructive Possession, and**
18 **has an Affirmative Duty to Obtain Such Evidence**

19 In Kyles, the United States Supreme Court held that prosecutors have an **affirmative**
20 **obligation** to obtain Brady material and provide it to the defense, even if the prosecutor is initially
21 unaware of its existence. 514 U.S. at 433 (emphasis added). The Supreme Court noted that the
22 affirmative duty "to disclose evidence favorable to a defendant can trace its origins to early 20th
23 century strictures against misrepresentation and is of course most prominently associated with this
24 Court's decision in Brady v. Maryland. . ." Id. at 432. As the Supreme Court made clear, this
25 obligation exists even where the defense does not make a request for such evidence. Id.

26 In finding that the State had breached its duty to Kyles, the Court discussed the
27 prosecutor's "affirmative duty" in detail:
28

1 This in turn means that the individual prosecutor has a **duty to learn** of any
2 favorable evidence known to the others acting on the government's behalf in the
3 case, **including the police** . . . Since then, the prosecutor has the means to
4 discharge the government's Brady responsibility if he will, any argument for
5 excusing a prosecutor from disclosing what he does not happen to know about
6 boils down to a plea to substitute the police for the prosecutor, and even for the
7 courts themselves, as the final arbiter's of the government's obligation to ensure
8 fair trials.

9 Kyles, 514 U.S. at 437-38 (citations and footnotes omitted) (emphasis added).

10 The Nevada Supreme Court addressed the prosecutor's affirmative duty in State v.
11 Jimenez, stating that, "[i]t is a violation of due process for the prosecutor to withhold exculpatory
12 evidence, and his **motive for doing so is immaterial**." 112 Nev. at 618 (emphasis added).
13 Furthermore, the affirmative obligation exists even if law enforcement personnel withhold "their
14 reports without the prosecutor's knowledge," because "the state attorney is charged with
15 **constructive knowledge and possession** of evidence withheld by other state agents, such as law
16 enforcement officers." Id. at 620 (emphasis added). This existence of an "affirmative duty"
17 means that individual prosecutors cannot use ignorance as an excuse for failing to meet discovery
18 obligations. A lack of subjective knowledge on the part of a particular prosecutor does not excuse
19 or assuage a discovery violation because the individual prosecutor is legally **responsible** for
20 contacting all State agents to determine if they are in possession of Brady material.

21 The constructive knowledge imputed to a prosecutor applies even if the evidence is being
22 held by an out-of-jurisdiction agent that is cooperating with local law enforcement. In State v.
23 Bennett, the Nevada Supreme Court ruled, "In this case, a Utah police detective was aware of the
24 evidence. We conclude that it is appropriate to charge the State with constructive knowledge of
25 the evidence because the Utah police assisted in the investigation of this crime. . . ." 119 Nev. at
26 603. Thus, out-of-state police agencies, probation officers, welfare workers, employees of Child
27 Protective Services, jail personnel, and the like are *all* potential State agents from whom the
28 prosecution must affirmatively collect Brady material. "Exculpatory evidence cannot be kept out
of the hands of the defense just because the prosecutor does not have it, where an investigative
agency does." U.S. v. Zuno-Acre, 44 F.3d 1420, 1427 (9th Cir. 1995).

1 When prosecutors fail to uphold this affirmative obligation, they violate constitutional due
2 process. *See* U.S. Const. amend. V, XIV; Nev. Const. Art. 1, §8.

3 **IV. The State Cannot Rely on an “Open File” Policy to Satisfy the Constitutional Duty to**
4 **Obtain and Turn Over Discovery**

5 Prosecutors often respond to discovery motions by referencing their “open file policy” and
6 stating that the requested material is not in their file. The prosecutor’s affirmative duty to turn
7 over Brady material, however, extends to all exculpatory and mitigation evidence in the possession
8 of any state agent or agency even if the evidence does not exist in the prosecutor’s file. *See*
9 Strickler v. Greene, 527 U.S. 263 (1999); Bennett, 119 Nev. at 603. In Strickler v. Greene, the
10 United States Supreme Court explicitly held that a prosecutor’s open file policy **does not** substitute
11 for or diminish the State’s affirmative obligation to seek out and produce Brady material. 527 U.S.
12 at 283. Thus, despite its “open file policy,” the prosecution must actively work to discover, obtain,
13 and produce Brady material, whether it is in the actual possession of the prosecutor, the police
14 department, or any other entity acting on behalf of the State.

15 **V. Defendant’s Specific Discovery Requests**

16 The following specific requests are meant to help assist the State in its duty to find and turn
17 over the required material. The requests are not in any way intended to be a limit on, or a
18 substitute for, the generalized duties described above. The State must produce:

- 19 **1. Any and all field, investigative notes of interviews of any witnesses and**
20 **any potential witnesses in the case⁴, to allegations in this case and/or**
21 **under Las Vegas Metropolitan Police Department (LVMPD) event**
22 **number 150731-0413.**

23 This includes any and all audio and video recordings of such interviews and
24 any notes of interviews that were not later recorded, such as notes of patrol
25 officers, notes of phone calls made to potential witnesses, or attempts to
26 contact such witnesses. The State must produce any law enforcement
27 reports, notes, or other documents that contain information pertaining to this
28 case or any witnesses in this case, no matter what the form or title of the
report.

⁴ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

1 **2. Any information regarding the criminal history of any material witness**
2 **in the case⁵**

3 This includes any juvenile record, misdemeanors, or any other information
4 that would go to the issue of credibility, veracity and bias, whether or not
5 the information is admissible by the rules of evidence.⁶ This request
6 encompasses records⁷ showing that:

- 7 a an informant or State's witness had an arrest, guilty plea, trial, or
8 sentencing pending at the time of the incident in the present case
9 and/or has or had one or more since that date;
- 10 b an informant or State's witness was on juvenile or criminal parole or
11 probation at the time of the incident in the present case and/or has
12 been since;
- 13 c an informant or State's witness has, or has had, any liberty interest
14 that the witness might believe or might have believed to be affected
15 favorably by State action;
- 16 d deals, promises, or inducements that have been made to any
17 informant or State's witness in exchange for his testimony.

18 **3. Any and all reports prepared or generated by Las Vegas Metropolitan**
19 **Police Department (LVMPD) relating to the investigation of the**
20 **allegations for this case number and/or event number 150731-0413.**

21 **4. Any and all photographs, videos, recordings, diagrams, or graphs,**
22 **captured, prepared, or created relating to this case number and/or**
23 **LVMPD event number 150731-0413.**

24 ⁵ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

25 ⁶ The State is usually under the mistaken impression that they must only disclose felony
26 convictions from the last 10 years that can be used as impeachment under NRS 50.095. However,
27 in Davis, 415 U.S. 308, the U.S. Supreme Court found that a witness can be attacked by "revealing
28 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.

⁷ With respect to this information, Defendant requests the charges, docket numbers, dates of
 conviction, and jurisdictions for all such cases.

1 5. A copy of Requests for and/or results of all crime scene analysis and/or
2 testing performed on any of the physical or biological evidence in this
3 case, including, but not limited to, the results of any fingerprint
4 analysis, DNA comparisons, blood analysis and/or medical
5 examinations performed on the complaining witness.

6 6. An exact replica (i.e., if the original photo lineups were in color, the
7 State should produce a color copy of the lineups) of any and all of the
8 photo lineup(s) used in this case number and/or LVMPD event number
9 150731-0413.

10 7. Any inconsistent statements made by any material witnesses in the
11 case⁸

12 This includes any inconsistent statements made to any employee or
13 representative of the District Attorney's office, the police department, or
14 any other State actor. The request also encompasses any prior inconsistent
15 statement that the witness' trial testimony will not reflect, and the failure of
16 any witness to provide the police or the State with information testified to at
17 trial.

18 8. All audio recordings or any calls, including 911 and 311 calls made to
19 the police requesting investigation or prosecution in this case number
20 and/or under LVMPD event number 150731-0413.

21 9. The complete CAD (Computer Aided Dispatch) report.

22 10. Complete names and contact information of all the witnesses the State
23 intends to call in its case in chief.

24 This includes the first and last name to each witness, his/her contact phone
25 number and address, not c/o Clark County District Attorney's Office.

26 11. A copy of the fingerprint lift cards with prints lifted relating to this case
27 number and/or LVMPD event number 150731-0413.

28 12. A copy of defendant, Gabriel Ibarra's archive fingerprint cards, ID#
0928645, used for fingerprint comparison in this case number and/or
under LVMPD event number 150731-0413.

13. A copy of the AFIS report(s) generated in this case number and/or
under LVMPD event number 150731-0413.

⁸ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

14. Details of any compensation or any other benefit that any of the State's witnesses received in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation of any benefit of any kind to be received, or already received, by any State witness. This includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of his/her participation in the prosecution of this case. Additionally, any financial compensation from either OVC Victim Compensation for Nevada, OVC Victim Assistance for Nevada, or any other agency that offers financial compensation, as well as any financial compensation provided to the alleged victim by the District Attorney's Office.

DATED this 2nd day of October, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ JEREMY B. WOOD
JEREMY B. WOOD, #12136
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 15th day of October, 2015, at 8:30 a.m.

DATED this 2nd day of October, 2015.

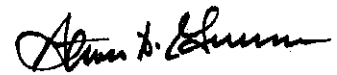
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ JEREMY B. WOOD
JEREMY B. WOOD, #12136
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the District Attorney's Office at Motions@clarkcountyda.com on this 2nd day of October, 2015.

By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office



CLERK OF THE COURT

1 **RET**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MICHELLE SUDANO**
6 **Deputy District Attorney**
7 **Nevada Bar #013260**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **State of Nevada**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of Application,
10 of
11 **GABRIEL IBARRA,**
12 **#2588689**
13 for a Writ of Habeas Corpus.

CASE NO: C-15-308774-1

DEPT NO: XVII

14 RETURN TO WRIT OF HABEAS CORPUS

15 DATE OF HEARING: October 6, 2015
16 TIME OF HEARING: 8:30 A.M.

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
19 MICHELLE SUDANO, Deputy District Attorney, in obedience to a writ of habeas corpus
20 issued out of and under the seal of the above-entitled Court on the 28th day of September,
21 2015, and made returnable on the 6th day of October, 3015, at the hour of 8:30 A.M., before
22 the above-entitled Court, and states as follows:

23 1. Respondent admits the allegations of Paragraph two of the Petitioner's
24 Petition for Writ of Habeas Corpus.

25 2. Respondent denies the allegations of Paragraph three of the Petitioner's
26 Petition for Writ of Habeas Corpus.

27 ///

28 ///

1 3. Paragraphs one, four, five and six do not require admission or denial.

2 4. The Petitioner is in the actual custody of JOE LOMBARDO, Clark
3 County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is
4 attached hereto as Exhibit 1 and incorporated by reference herein.

5 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
6 Petition be dismissed.

7 DATED this 2nd day of October, 2015.

8 Respectfully submitted,

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

12 BY 

13 MICHELLE SUDANO
14 Deputy District Attorney
15 Nevada Bar #013260

16 **STATEMENT OF THE CASE**

17 On August 3, 2015, the State file a Criminal Complaint charging Gabriel Ibarra
18 (hereinafter "Defendant") with one count of Larceny from the Person (Category C Felony –
19 NRS 205.270). A preliminary hearing was held on August 18, 2015. Following testimony of
20 the named victim, Defendant was held to answer on the charge of Larceny from the Person.
21 The State filed an Information on August 18, 2015. Defendant's jury trial is currently
22 scheduled to begin on October 19, 2015.

23 On September 18, 2015, Defendant filed the instant Petition for Writ of Habeas Corpus.
24 The argument on Defendant's Writ is currently scheduled for October 6, 2015. The State's
25 Return follows.

26 **STATEMENT OF FACTS**

27 At approximately 2:50 am on the morning of July 31, 2015, Evangelia Mantikas was
28 waiting for the bus near Boulder Highway and Flamingo. Preliminary Hearing Transcript
(hereinafter "PHT"), Aug. 18, 2015, at 4. Defendant approached the bus stop and sat down

1 next to Mantikas, who was texting with her iPhone. Id. at 5. Defendant asked to borrow
2 Mantikas' phone. Id. at 5-6. Mantikas dialed the number for Defendant and then handed him
3 her phone. Id. at 6. Defendant initially put the phone up to his ear, while holding the phone in
4 the hand closest to Mantikas. Id. at 7. Defendant then switched the phone to his other hand,
5 mumbled something and got up to walk away. Id. Mantikas got up to follow after Defendant
6 and he took off running away from her. Id.

7 Mantikas lost sight of Defendant once he began running. PHT at 7. There was a couple
8 standing nearby so Mantikas asked them for help. Id. at 8. Together with the couple and
9 Mantikas' girlfriend, whom she had called from the couple's phone, Mantikas began tracking
10 the location of her phone using the "Find My iPhone" app. Id. at 8-9. Mantikas also called
11 police and was able to provide them with updated information about the phone's location based
12 on the "Find My iPhone" app. Id. at 9.

13 Eventually, police informed Mantikas that they had located her phone, and potentially
14 the person who had taken it. PHT at 9-10. Mantikas went to a separate location with police
15 and they returned her phone. Id. at 11. Police also conducted a showup with Mantikas and she
16 identified Defendant as the person who had stolen her phone. Id. at 10-11.

17 LEGAL ARGUMENT

18 **I. THE STATE PRESENTED SUFFICIENT EVIDENCE THAT** 19 **DEFENDANT COMMITTED A LARCENY FROM THE PERSON**

20 Defendant alleges that the State failed to present sufficient evidence to support the
21 elements of a larceny from the person. However, the facts at issue are distinguishable from the
22 sole case cited by Defendant. Under the facts at issue here, the question of whether Defendant
23 committed a larceny from the person centers on whether Defendant intended to steal Mantikas'
24 phone before he asked to borrow it. Such questions of intent are properly left to the jury.

25 **A. Standard of Review**

26 The role of a magistrate at a preliminary hearing is not to determine whether a public
27 offense has been committed, but simply to determine whether probable cause exists to believe
28 that a public offense has been committed and whether the defendant has committed it. Overton

1 v. State, 78 Nev. 198, 370 P.2d 677 (1962); NRS 171.206. If the evidence is conflicting at the
2 preliminary hearing as to whether a defendant committed the offense, it is the function of the
3 magistrate to determine the weight to be accorded to the testimony of the witnesses, and if an
4 inference of criminal agency can be drawn from the evidence it is proper for the magistrate to
5 draw it. Sheriff v. Potter, 99 Nev. 389, 391, 663 P.2d 350, 352 (1983). To establish "probable
6 cause" at a preliminary hearing, evidence need only be presented that supports a reasonable
7 inference that the Defendant probably committed the charged offense. Sheriff v. Cunha, 93
8 Nev. 567, 568, 571 P.2d 112, 113 (1977). To establish probable cause, "the State is not
9 required to negate all inferences which might explain his conduct, but only to present enough
10 evidence to support a reasonable inference that the accused committed the offense." Kinsey v.
11 Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

12 During a preliminary hearing the State does not need to produce the quantum of proof
13 that is necessary to establish the guilt or innocence of the defendant. Sheriff v. Hodes, 96 Nev.
14 184, 186, 606 P.2d 178, 180 (1980). A trial, not a preliminary hearing, is the place for the
15 "full and complete exploration of all facets of the case." Marcum v. Sheriff, 85 Nev. 175, 178-
16 179, 451 P.2d 845, 847 (1969). Thus, at a preliminary hearing, the State need only provide
17 enough evidence to show that probable cause exists for each charge, and this can be shown by
18 a reasonable inference that the Defendant committed the crime. Abbott v. Sheriff, 87 Nev.
19 397, 400, 487 P.2d 1067, 1068-1069 (1971). "The finding of probable cause may be based
20 on slight, even 'marginal' evidence, because it does not involve a determination of the guilt or
21 innocence of an accused." Id. at 435, 851 P.2d at 432 (quoting Sheriff v. Hodes, 96 Nev. 184,
22 186, 606 P.2d 178, 180 (1980) (citations omitted)). Probable cause requires that the evidence
23 be weighed toward guilt, though there may be room for doubt. Graves v. Sheriff, 88 Nev. 436,
24 439, 498 P.2d 1324, 1326 (1972). The facts must be such as would lead a person of ordinary
25 caution and prudence to believe and conscientiously entertain a strong suspicion. State v. von
26 Brincken, 86 Nev. 769, 476 P.2d 733 (1970); Ex parte Kline, 71 Nev. 124, 282 P.2d 367
27 (1955).

1 Finally, in pre-trial habeas corpus proceedings, the Court presumes that the restraint of
2 the criminal defendant is proper and the burden is on the defendant to demonstrate otherwise.
3 See Application of Johnson, 75 Nev. 329, 330, 340 P.2d 585, 586 (1959).

4 B. Larceny from the Person Statute

5 Defendant was charged with Larceny from the Person under NRS 205.270, which
6 states:

7 1. A person who, under circumstances not amounting to robbery, with the
8 intent to steal or appropriate to his or her own use, takes property from the person
9 of another, without the other person's consent, is guilty of:

10 (a) If the value of the property taken is less than \$3,500, a category C felony
and shall be punished as provided in NRS 193.130; or

11 (b) If the value of the property taken is \$3,500 or more, a category B felony
and shall be punished by imprisonment in the state prison for a minimum term
12 of not less than 1 year and a maximum term of not more than 10 years, and by a
fine of not more than \$10,000.

13 NRS 205.270.

14 Defendant cites to Terral v. State, 84 Nev. 412, 414, 442 P.2d 465, 466 (1968), for the
15 proposition that the taking in this case does not constitute a larceny from the person. Terral
16 states:

17 It is important to restrict the coverage of NRS 205.270
18 pickpockets, purse snatchers, jewel abstracters and the like, since larceny from
19 the person is a felony, and the value of the property taken is immaterial so long
20 as it has some value. The gravamen of the offense is that the person of another
has been violated and his privacy directly invaded. Thus, an item of little value,
21 \$100 or less, if snatched from the person of another will subject the offender to
punishment as a felon, whereas the same item, if taken from his "presence," and
22 not from his person, would constitute the misdemeanor of petty larceny.

23
24 Id. at 414, 442 P.2d at 466 (1968). Although Terral uses the term "snatched" to described the
25 taking of property from another, the State notes that most snatching would require the use of
26 some force and would then rise to the level of a robbery. Instead, most larcenies from the
27 person rely on stealth, distraction or deceit. In Terral, the Defendant stole several gaming chips
28 from a rack on a craps table while the victim, who was gambling at the table, was in the

1 immediate vicinity. Id. at 413, 442 P.2d at 465. The Nevada Supreme Court determined that
2 the taking in Terral did not constitute a larceny from the person because the property was taken
3 from the immediate presence of the victim, and his constructive possession of the chips was
4 insufficient to satisfy the “from the person” language of the statute.¹ Id.

5 The facts here are distinguishable from Terral. Here, Defendant approached Mantikas
6 after observing her using an iPhone at the bus stop. Defendant asked Mantikas to borrow the
7 phone and then walked away once she handed it to him. Upon seeing that Mantikas was
8 following after him, Defendant began running and was able to shake Mantikas’ pursuit. Unlike
9 Terral, Mantikas’ phone was on her person, rather than merely within her constructive
10 possession, at the time she was approached by Defendant. Defendant used a ruse to obtain
11 control over the phone and then ran away from Mantikas in order to maintain control over the
12 property. Defendant may assert that he did not intend to deprive Mantikas of the phone until
13 after she had already relinquished possession of it. However, this raises a question of
14 Defendant’s intent at the time he obtained the property. Questions regarding a defendant’s
15 state of mind or intent are to be left to the trier of fact at the time of trial. See, e.g., Harvey v.
16 State, 78 Nev. 417, 420, 375 P.2d 225, 226 (1962) (recognizing that, “the question of whether
17 the property was originally taken with [felonious] intent is one of fact, the determination of
18 which is to be made from a consideration of all the circumstances preceding, attending and
19 following the taking of the property”).

20 At the time of the preliminary hearing, the State adduced slight or marginal evidence
21 that Defendant used a ruse to obtain Mantikas’ phone from her person. Defendant then fled to
22 avoid returning the property to Mantikas. Accordingly, Defendant’s Petition should be denied.

23 ///

24 ///

25 ///

26
27 ¹ The State notes that Terral has been criticized by several other jurisdictions due to a split in the interpretation of common
28 law. States such as Nevada strictly interpret the meaning of “from the person” while other jurisdictions interpret larceny
from the person as a lesser-included offense of robbery and include property taken from the immediate vicinity of the
victim within the meaning of “from the person.” See, e.g., People v. Pierce, 226 Ill. 2d 470, 477, 315 Ill. Dec. 656, 659,
877 N.E.2d 408, 411 (2007).

1 CONCLUSION

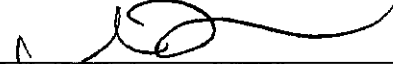
2 For the foregoing reasons, the State respectfully requests that Defendant's Petition for
3 Writ of Habeas Corpus be DENIED.

4 DATED this 2nd day of October, 2015.

5 Respectfully submitted,

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

9 BY


MICHELLE SUDANO
Deputy District Attorney
Nevada Bar #013260

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13
14 CERTIFICATE OF FACSIMILE TRANSMISSION

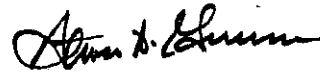
15 I hereby certify that service of Return To Writ of Habeas Corpus, was made this
16 2nd day of October, 2015, by facsimile transmission to:

17
18 JEREMY B. WOOD, Deputy Public Defender
19 702-455-5112

20
21 BY:


C. Jimenez
Employee of the District Attorney's Office

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28 MS/cmj/L3



CLERK OF THE COURT

1 **SLOW**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE SUDANO
6 Deputy District Attorney
7 Nevada Bar #13260
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 GABRIEL IBARRA, #2588689
13 Defendant.

CASE NO: C-15-308774-1
DEPT NO: XVII

15 SUPPLEMENTAL NOTICE OF WITNESSES
16 [NRS 174.234(1)(a)]

17 TO: GABRIEL IBARRA, Defendant; and

18 TO: JEREMY WOOD, Deputy Public Defender, Counsel of Record:

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

21 NAME

ADDRESS

22 CUSTODIAN OF RECORDS
23 OR DESIGNEE

Clark County Detention Center,
330 S. Casino Center Blvd., Las Vegas, NV

24 CUSTODIAN OF RECORDS
25 OR DESIGNEE

LVMPD Communications,
400 E. Stewart, Las Vegas, NV

26 CUSTODIAN OF RECORDS
27 OR DESIGNEE

LVMPD Dispatch,
400 E. Stewart, Las Vegas, NV

28 ///

1	CUSTODIAN OF RECORDS	LVMPD Records,
2	OR DESIGNEE	400 E. Stewart, Las Vegas, NV
3	FLETCHER, J.	LVMPD #8072
4	GIESE, J.	LVMPD #9657
5	HIBBETTS, K.	LVMPD #14320
6	KUNZ, P.	LVMPD #10047
7	MANTIKAS, Evangelia M.	C/O District Attorney's Office
8	MCFARLANE, B.	LVMPD #13740
9	MORALES, C.	LVMPD #8788
10	NAVARRO, N.	LVMPD #14754
11	PATTERSON, M.	LVMPD #8409
12	RAFALOVICH, Marco	DA Investigator and/or Designee
13	RENHARD, L.	LVMPD #5223
14	*ROCHE, Briana	unknown.
15	URENA, C.	LVMPD #9037
16	WOODARD, S.	LVMPD #7041

17

18 These witnesses are in addition to those witnesses endorsed on the Information or

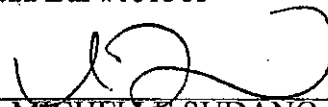
19 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert

20 Witnesses has been filed.

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

23

24 BY


 MICHELLE SUDANO
 Deputy District Attorney
 Nevada Bar #13260

25

26 ///

27 ///

28 ///

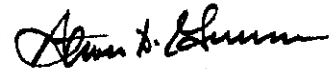
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice of Witnesses, was made this 2nd day of
September, 2015, by facsimile transmission to:

JEREMY WOOD, Deputy Public Defender
702-455-5112

BY C. Jimenez
Secretary for the District Attorney's Office

cmj/L3



CLERK OF THE COURT

1 RSPN
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE SUDANO
6 Deputy District Attorney
7 Nevada Bar #013260
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 GABRIEL IBARRA, #2588689

13 Defendant.

CASE NO: C-15-308774-1

DEPT NO: XVII

14
15 STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY

16 DATE OF HEARING: OCTOBER 15, 2015

17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through MICHELLE SUDANO, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Response to Defendant's Motion for Discovery.

21 This Response 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.

24 //

25 //

26 //

27 //

28

POINTS AND AUTHORITIES
STATEMENT OF FACTS

At approximately 2:50 am on the morning of July 31, 2015, Evangelia Mantikas was waiting for the bus near Boulder Highway and Flamingo. Preliminary Hearing Transcript (hereinafter "PHT"), Aug. 18, 2015, at 4. Defendant approached the bus stop and sat down next to Mantikas, who was texting with her iPhone. Id. at 5. Defendant asked to borrow Mantikas' phone. Id. at 5-6. Mantikas dialed the number for Defendant and then handed him her phone. Id. at 6. Defendant initially put the phone up to his ear, while holding the phone in the hand closest to Mantikas. Id. at 7. Defendant then switched the phone to his other hand, mumbled something and got up to walk away. Id. Mantikas got up to follow after Defendant and he took off running away from her. Id.

Mantikas lost sight of Defendant once he began running. PHT at 7. There was a couple standing nearby so Mantikas asked them for help. Id. at 8. Together with the couple and Mantikas' girlfriend, whom she had called from the couple's phone, Mantikas began tracking the location of her phone using the "Find My iPhone" app. Id. at 8-9. Mantikas also called police and was able to provide them with updated information about the phone's location based on the "Find My iPhone" app. Id. at 9.

Eventually, police informed Mantikas that they had located her phone, and potentially the person who had taken it. PHT at 9-10. Mantikas went to a separate location with police and they returned her phone. Id. at 11. Police also conducted a showup with Mantikas and she identified Defendant as the person who had stolen her phone. Id. at 10-11.

LEGAL ARGUMENT

**I. THE STATE IS AWARE OF ITS STATUTORY AND CONSTITUTIONAL
DISCOVERY OBLIGATIONS**

The State intends to comply with all the requests that are within the ambit of either the discovery statutes of Nevada and/or the constitutional requirements imposed by Brady and its progeny. The State does not intend to comply; and, furthermore, the State objects to all requests that fall outside of those legal requirements.

A. DISCOVERY REQUIRED BY STATUTE

1 The State has no objection to a strict compliance with the provisions and requirements
2 outlined in the criminal discovery statutes. See, NRS 174.233, et seq.

3 **B. DISCLOSURE REQUIRED BY BRADY V. MARYLAND**

4 The State recognizes, and readily accepts, its continuing disclosure obligations as
5 defined in Brady v. Maryland, 83 S. Ct. 1194 (1963), and its interpretive progeny. Pursuant to
6 Brady, the State is required to disclose evidence that is favorable to the defense if it is material
7 either to guilt or punishment. Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000).
8 The State's failure to do so violates the Defendant's due process rights, regardless of the
9 State's motive. Id. Following a specific discovery request, evidence is deemed material if there
10 is a reasonable possibility that the evidence would have affected the outcome, i.e. it
11 undermines the confidence of the outcome in the proceeding. Id.

12 "The character of a piece of evidence as favorable will often turn on the context of the
13 existing or potential evidentiary record." Id. Furthermore, it is the prosecutor's responsibility
14 to determine whether evidence is material and should be disclosed. Id. (citing Kyles v.
15 Whitley, 514 U.S. 419, 439-440, 115 S.Ct. 1555 (1995)). As such, a prosecutor who is
16 "anxious about tacking too close to the wind will disclose a favorable piece of evidence." Id.
17 And, this is as it should be because such disclosure serves to justify trust in the prosecutor as
18 "the representative of a sovereignty...whose interest...in a criminal prosecution is not that it
19 shall win a case, but that justice shall be done." Id. However, Brady does not impose upon the
20 State an obligation "to disclose evidence which is available to the defendant from other
21 sources, including diligent investigation by the defense." Steese v. State, 114 Nev. 479, 495,
22 960 P.2d 321, 331 (1998).

23 In addition, the State acknowledges that its Brady obligations not only apply to
24 materials in its possession, but also extends to materials in the hands of its agents.
25 Nevertheless, the State maintains that rather than being accountable for all evidence in the
26 hands of all State agencies, it is only accountable for that evidence in the hands of State
27 agencies who are actually acting on its behalf in the investigation and prosecution of the case.
28 See, Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567 (1995)("This in turn means

1 that the individual prosecutor has a duty to learn of any favorable evidence known to the others
2 *acting on the government's behalf in the case, including the police.*"); Carriger v. Stewart, 132
3 F.3d 463, 479 (9th Cir. 1997) ("[T]he prosecution has a duty to learn of any exculpatory
4 evidence known to others *acting on the government's behalf.*"). Moreover, "[w]hile the
5 prosecution must disclose any information within the possession or control of law enforcement
6 personnel ... it has no duty to volunteer information that it does not possess or of which it is
7 unaware." United State v. Hsieh Hui Mei Chen, 754 F.2d 817, 824 (9th Cir. 1985).
8 Additionally, the State has no "duty to compile information or pursue an investigative lead
9 simply because it could conceivably develop evidence helpful to the defense..." Evans v.
10 State, 117 Nev. 609, 627, 28 P.3d 498, 511 (2001).

11 Furthermore, while the State acknowledges its discovery obligations under Brady and
12 the applicable rules of discovery, the State submits that its obligations under Brady and the
13 rules of discovery are not without limitation. See e.g., Weatherford v. Bursey, 429 U.S., 545,
14 559, 97 S. Ct. 837, at 845-846 (1977) (There is no general constitutional right to discovery in
15 a criminal case and Brady did not create one;... 'the Due Process Clause has little to say
16 regarding the amount of discovery which the parties must be afforded...'). In addition, courts
17 are limited in their authority to order the disclosure of evidence beyond what is statutorily
18 mandated. See, Franklin v. District Court, 85 Nev. 401, 402-403, 455 P.2d 919, 920-
19 921(1969)("The new criminal code [deals] with criminal discovery...and those provisions
20 represent the legislative intent with respect to the scope of allowable pre-trial discovery and
21 are not lightly to be disregarded.").

22 More specifically, in the case of Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (1980),
23 the Nevada Supreme Court reaffirmed the strictures of the provisions of our discovery statutes
24 by making the following statement:

25 The trial court is vested with the authority to order the discovery and inspection
26 of materials in the possession of the State. The exercise of the court's discretion
27 however is **predicated on a showing that the evidence sought is material to**
28 **the presentation of the defense and the existence of the evidence is known**
or, by the exercise of due diligence may become known to the District
Attorney.

1 Id. at 390 (emphasis added).

2 In Mazzan v. Warden, 116 Nev. 48, 993 P.2d 25 (2000), the Nevada Supreme Court
3 stated:

4 Brady and its progeny require a prosecutor to disclose evidence favorable to the
5 defense when that evidence is **material** either to guilt or to punishment. See
6 Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996).
In other words, evidence is material if there is a reasonable probability that the
result would have been different if the evidence had been disclosed. Id.

7 Id. at 66, 36 (emphasis added).

8 In determining its materiality, the undisclosed evidence must be considered
9 collectively, not item by item. Kyles v. Whitley, 514 U.S. at 436, 115 S.Ct. 1555.
10 "[T]he character of a piece of evidence as favorable will often turn on the context
of the existing or potential evidentiary record." Id. at 439, 1555.

11 Id. at 66-67, 36.

12 In sum, there are three components to a Brady violation: the evidence at issue is
13 favorable to the accused; the evidence was withheld by the state, either
14 intentionally or inadvertently; and prejudice ensued, i.e., the evidence was
material. Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 1948, (1999).

15 Id. at 67, 37 (emphasis added).

16 Based upon the foregoing, this Court is respectfully requested to continue to adhere to
17 the clear legislative scheme regarding criminal discovery embodied in Nevada's statutes, the
18 interpretation thereof by the Supreme Court of this State, and the opinions of the United States
19 Supreme Court in this area.

20 **II. SPECIFIC RESPONSES TO DEFENDANT'S REQUESTS**

21 **Request No. 1—Field and investigative notes and notes of interviews with any witnesses** 22 **or potential witnesses**

23 The State will turn over any memorialized notes kept by investigating officers, provided
24 they do not amount to work product under NRS 174.235(2). Specifically, the State is not
25 required to provide any notes that were prepared on behalf of the State and in preparation for
26 litigation as these notes amount to work product. At this time, the State is not aware of any
27 notes retained in this particular case. Should the State learn of the existence of such notes, this
28 information will be made available to the defense.

1 **Request No. 2 – Any information regarding the criminal histories of any material**
2 **witnesses**

3 The State objects to this request as it is overbroad, beyond the ambit of NRS 174.235
4 and does not comply with relevant legal authority as set forth herein. Furthermore, as it is
5 essentially a request that the State turn over NCICs on all victims and witnesses, it is a request
6 that the State take unlawful action.¹

7 Although a witness or victim's criminal record may be material under some
8 circumstances, it is not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d
9 1353 (1974). In Hill the defense sought production of a witness's felony conviction record.
10 Because the witness was the only eyewitness other than the defendants, and the corroboration
11 of his report was not strong, the court found the requisite materiality and granted the defense
12 motion. However, the court concluded, "[w]e do not hold that good cause exists in every case
13 in which a defendant charged with a felony seeks discovery of any felony convictions any "rap
14 sheet" of prosecution witnesses." Id. at 1358.

15 Similarly, in U.S. v. Flores, 540 F.2d 432 (9th Cir. 1976), prior to trial, defendants
16 moved to compel the government to disclose the criminal histories of informant-witnesses
17 claiming that the information sought was needed for impeachment purposes. Similarly, the
18 defense in the instant matter seeks criminal background information concerning the victim. In
19 both Flores and the instant matter, the defense made claims that the criminal background
20 information was needed to impeach the credibility of the witness. In Flores, the Ninth Circuit
21 affirmed the trial court's denial of that motion by holding that the defendant had made no

22 ¹ Pursuant to 28 C.F.R. §20.33(b) as codified under 28 U.S.C.A. § 534 (2002), criminal history information
23 may only be disseminated to law enforcement agencies, those hired by law enforcement agencies and to those
24 who have entered into signed agreements for the specific and authorized use of criminal background
25 information. Pursuant to 28 C.F.R. §20.25 sets forth the ramifications for a violation of 28 U.S.C.A. § 534
26 (2002). In addition, 28 C.F.R. §20.38 provides that access to NCIC may be cancelled for failure to comply
27 with the provisions of subsection C. Title 28 Code of Federal Regulations (CFR)§ 20.3, describes a criminal
28 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which performs the
administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part
of its annual budget to the administration of criminal justice. Criminal defense attorneys, public or private, are
not within the definition of "criminal justice agency," nor is the criminal defense function considered a
"criminal justice purpose."

1 showing of reasonableness. The court stated, "[t]heir request was tantamount to asking the
2 government to fish through public records and collate information which was equally
3 available to the defense." *Id.* at 437 (emphasis added).

4 If the State learns that any witness has a prior felony conviction within the last ten (10)
5 years, which would be admissible for impeachment purposes under NRS 50.095, or learns of
6 any material information which would be admissible under NRS 50.085, the State will disclose
7 that information to the defense immediately.

8 Although defense counsel may assert that Brady v. Maryland, 373 U.S. 83 (1963) is the
9 basis for his NCIC request, the defense has failed to establish that the requested NCIC
10 information falls within the scope of Brady, that is, that it might in some way be exculpatory
11 or that it might somehow constitute impeachment evidence. Moreover, the defense has not
12 shown how such information might be "material." In other words, the defense has failed to
13 show that the lack of any State witness's NCIC information will somehow result in an unfair
14 trial or will produce a verdict that is not worthy of confidence. *See Kyles v. Whitley*, 514 U.S.
15 419, 434 (1995).

16 The Supreme Court has stated that information is considered material if there is a
17 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
18 proceeding would have been different." United States v. Bagley, 473 U.S. 667, 682 (1985).
19 The Supreme Court defined reasonable probability as probability sufficient to "undermine
20 confidence in the outcome" of the trial. *Id.* In addition, the Court in Bagley, stated that
21 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." *Id.*
22 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
23 that, if disclosed and used effectively, it may make the difference between conviction and
24 acquittal." *Id.* (internal quotes omitted). In the present case, defense counsel has failed to
25 articulate even an arguable use of the witnesses' NCIC information that would comport with
26 the requirements as outlined by the Supreme Court in Brady, Kyles and Bagley.

27 However, the State acknowledges that under NRS 50.095, evidence that a witness has
28 been convicted of a crime (if it is punishable by more than one year) is admissible to impeach

1 the credibility of that witness. Evidence of the conviction may be admissible if a period of ten
2 years has not passed from the date of release of the witness from confinement or the expiration
3 of the period of his parole, probation or sentence, whichever is the later date. See NRS
4 50.095(1)(2). Nonetheless, that statute does not make admissible a witness' prior arrests that
5 did not result in a conviction or an arrest and conviction of a crime that is merely a
6 misdemeanor.

7 Nevada case law and NRS 50.085(3) also permit questioning of a witness in relation to
8 arrests/convictions for crimes not amounting to felonies which bear on the honesty or
9 truthfulness of a witness. See Butler v. State, 120 Nev. 879, 890-91, 102 P.3d 71 (2004) ("This
10 court has held that "NRS 50.085(3) permits impeaching a witness on cross-examination with
11 questions about specific acts as long as the impeachment pertains to truthfulness or
12 untruthfulness...[but] if the witness denies a specific act on cross-examination, the State may
13 not introduce extrinsic evidence to the contrary.") However, no statute or case law in the
14 jurisdiction permits unlimited questioning of a witness in regard to his/her criminal
15 background beyond that permitted by NRS 50.095 and 50.085(3). Furthermore, records
16 pertaining to juvenile records are sealed and not discoverable. Moreover, counsel has not
17 established that the evidence is material to the issue of guilt or punishment.

18 In light of the above-cited legal authority, in the event that the State learns that one of
19 its testifying witnesses has a felony conviction or an arrest/conviction for a crime bearing on
20 honesty or truthfulness, such evidence will be disclosed. The State objects to Defendant's
21 requests for information which extend beyond the ambit of the State's burden as outlined by
22 case law and statute. Should the State learn of any criminal proceeding that may bear on bias,
23 interest and motive, it will be disclosed.

24 **Request No. 3 – Any and all reports generated by the Las Vegas Metropolitan Police**
25 **Department regarding investigation of event number 150731-0413**

26 The State has provided the police reports, CAD log, showup information and crime
27 scene analyst reports to the defense. To the State's knowledge, these reports comprise all
28 information within the State's possession and within the purview of NRS 174.235. If the State

1 obtains additional items that will likely be used in the State's case in chief, they will be
2 provided to the defense.

3 **Request No. 4 – Any photographs, videos, recordings of diagrams prepared by LVMPD**
4 **under event number 150731-0413**

5 The State has previously provided defense counsel with all photographs in its
6 possession. The State is not aware of any additional photographs, videos or records in this
7 case, but will provide such tangible evidence to the defense in the event it is obtained.

8 **Request No. 5 – Copy of all requests and/or results for crime scene analysis or forensic**
9 **testing**

10 The State has not submitted any requests for forensic testing in this case and is not
11 aware of results for the same. Should the State submit a request in this case, the defense will
12 be provided with the results of the same when they become available.

13 **Request No. 6 – Exact replica of any photo lineups used in this case**

14 No photo lineups were conducted in this case.

15 **Request No. 7– Any inconsistent statements made by any material witnesses in the case**

16 The State objects to this request as being vague and overbroad. NRS 174.235 entitles
17 the defense to the written and recorded statements of the witnesses, as well as statements
18 known to the State that are inconsistent. Should the State learn of any inconsistent statements
19 during pretrials that it believes are material, this information will be disclosed to the defense.
20 However, Defendant's request seeks "any prior inconsistent statements that the witnesses' trial
21 testimony will not reflect and the failure of any witness to provide the police or the State with
22 information testified to at trial." The request for *any* inconsistent statement that will not be
23 reflected in the testimony is far outside the scope of the State's obligations to turn over
24 statements that are inconsistent. The State cannot be expected to know of any statements that
25 are inconsistent, regardless of to whom they are made, particularly where these statements will
26 not be shown to be inconsistent by the witnesses' testimony at the time of trial. Additionally,
27 to the extent that the defense seeks information that is inconsistent with witnesses' trial
28

1 testimony, the State cannot be expected to predict how the witnesses will testify at the time of
2 trial.

3 **Request No. 8 – All audio recordings and 911/311 calls made under event number**
4 **150731-0413**

5 The State objects to this request as the defense can obtain the 911/311 calls through
6 their own investigation. Additionally, the State has previously turned over the 911/311 calls
7 made under this event number. The State is unaware of any additional recordings in this case,
8 but in the event that additional recordings are discovered, the State will turn them over to the
9 defense.

10 **Request No. 9 – The complete CAD report**

11 The State objects to this request as the defense can obtain the CAD reports through
12 their own investigation. Additionally, the State has previously turned over the CAD reports in
13 this case. If the State obtains additional reports that are material and not equally available to
14 the defense, they will be provided.

15 **Request No. 10—Complete names and contact information of all witnesses the State**
16 **intends to call in its case in chief**

17 Pursuant to NRS 174.234(1)(2), not less than five judicial days before trial, the State is
18 to serve on the defense a witness list of the names and last known addresses of witnesses that
19 may be called at trial. Other than this requirement and Brady obligations, the State has no
20 obligation to provide any other information to the defense. The defense is not entitled to last
21 known phone numbers for witnesses. Additionally, to the extent that witnesses and victims are
22 listed as c/o Clark County District Attorney's Office, this is done in an attempt to preserve the
23 victim and witnesses' safety and privacy. If counsel has difficulties locating State witnesses,
24 the State will provide an updated address to counsel upon request. The State, however, will
25 not publish the victim's address in a public court record.

26 **Request No. 11—Copy of fingerprint lift cards relating to event number 150731-0413**

27 The State objects to the relevance of this request. No latent print analysis was requested
28 or completed in this case. Additionally, the defense has not noticed a latent print analyst of

1 their own or requested that the prints be made available for independent review. As such,
2 Defendant has failed to demonstrate that a copy of the actual latent print cards collected in this
3 case are in any way relevant or material to the case going forward.

4 **Request No. 12—Copy of Defendant's archived fingerprint cards**

5 The State objects to the relevance of this request. No latent print analysis was requested
6 or completed in this case. Additionally, the defense has not noticed a latent print analyst of
7 their own or requested that the prints be made available for independent review. As such,
8 Defendant has failed to demonstrate that a copy of his archived fingerprints is in any way
9 relevant or material to the case going forward.

10 **Request No. 13—Copy of AFIS reports generated under LVMPD event number 150731-**
11 **0413**

12 As previously stated, no request for latent print analysis was submitted in this case. As
13 such, no AFIS report was generated. Should the State complete a request at a future date, it
14 will provide a copy of the AFIS report to the defense when it becomes available.

15 **Request No. 14—Details of compensation or benefits provided to any of the State's**
16 **witnesses**

17 The State objects to this request as it is overbroad to the extent it deems counseling
18 services as "benefits" provided in exchange for witness testimony. Whether or not a witness
19 or victim has received counseling or other services from organizations such as Victims of
20 Crime is highly sensitive, confidential information. Furthermore, most of these services are
21 provided through agencies outside the District Attorney's Office and are not a "benefit"
22 offered in exchange for a witness's testimony, but a service provided to members of the
23 community after their involvement in a traumatic crime.

24 As of now, the only compensation any witness has received from the District Attorney's
25 Office are statutory witness fees and potentially transportation costs (assuming the witnesses
26 collected them). The State anticipates witnesses will receive additional fees after testifying at
27 trial.

28

1 CONCLUSION

2 Defendant is on a fishing expedition disguised as a request for exculpatory evidence
3 and is attempting to use the mandates of Brady as a tool for discovery. Absent any explanation
4 as to the relevance, reasonableness or materiality of the evidence requested, the State objects
5 to Defendant's overbroad motion. The State believes it has given the defense all items in its
6 possession that are discoverable, and will continue to comply with its obligations under Brady
7 and its progeny. Should the State come into possession of anything further, it will be turned
8 over to the defense immediately. The State invites and urges Defendant's counsel to review
9 the State's file prior to trial.

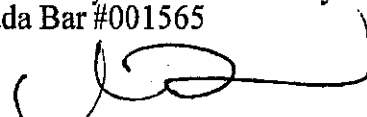
10 The State will continue to provide discovery as required by statutory and constitutional
11 authority. As any new information becomes available, the State will disclose it pursuant to its
12 statutory and constitutional duties.

13 DATED this 13th day of October, 2015.

14 Respectfully submitted,

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

18 BY


19 MICHELLE SUDANO
20 Deputy District Attorney
21 Nevada Bar #013260

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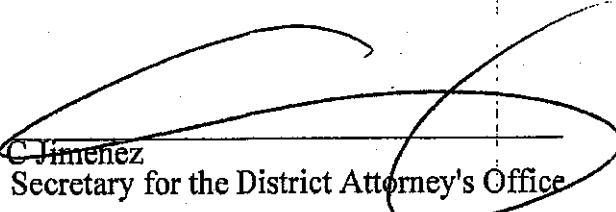
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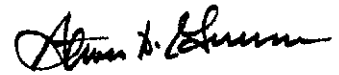
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of STATE'S RESPONSE TO DEFENDANT'S MOTION
FOR DISCOVERY, was made this 13th day of October, 2015, by Electronic Filing to:

JEREMY B. WOOD, Deputy Public Defender
jeremy.wood@clarkcountynv.gov


C. Jimenez
Secretary for the District Attorney's Office

ms/cmj/L-3



CLERK OF THE COURT

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

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

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 GABRIEL IBARRA,

14 Defendant.

CASE NO. C-15-308774-1

DEPT. NO. XVII

DATE: October 19, 2015
TIME: 9:00 a.m.

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

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

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

19 WILLIE SINGLETARY
20 (Investigator)

Public Defenders Officer
309 S. Third St.
Las Vegas, NV 89155

21 DATED this 14th day of October, 2015.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24 By: /s/ JEREMY B. WOOD
25 JEREMY B. WOOD, #12136
26 Deputy Public Defender
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CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the District Attorney's
Office at Motions@clarkcountyda.com on this 14th day of October, 2015.

By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office

25 Case Name: Gabriel Ibarra
26 Case No.: C-15-308774-1
27 Dept. No.: XVII
28

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
OCT 20 2015

BY: Carol Donahoo
CAROL DONAHOO, DEPUTY

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)

12 GABRIEL IBARRA,)

13 Defendant.)

CASE NO. C-15-308774-1

DEPT. NO. XVII

DATE: October 19, 2015
TIME: 9:00 a.m.

14 DEFENDANTS PROPOSED JURY INSTRUCTIONS

15 COMES NOW, the Defendant, GABRIEL IBARRA, by and through JEREMY B.
16 WOOD, Deputy Public Defender and hereby requests this Court issue the following jury
17 instructions.

18 DATED this 23 day of October, 2015.

19 PHILIP J. KOHN
20 CLARK COUNTY PUBLIC DEFENDER

21 By: Jeremy B. Wood
22 JEREMY B. WOOD, #12136
23 Deputy Public Defender
24

25 C-15-308774-1
26 JI
27 Jury Instructions
28 4497343



16

DECLARATION

JEREMY B. WOOD makes the following declaration:

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

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

EXECUTED this 7 day of October, 2015.


JEREMY B. WOOD

INSTRUCTION: _____

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It is the constitutional right of an accused in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the accused on the advice and counsel of his attorney. You may not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION: _____

1
2 Every person charged with the commission of a crime shall be presumed innocent until the
3 contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has
4 been proved against him, and there exists a reasonable doubt as to which of two or more degrees
5 he is guilty, he shall be convicted only of the lowest.
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26 NRS 175.201
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INSTRUCTION: _____

Every person who, under circumstances not amounting to robbery, with intent to steal or appropriate to his own use, takes from the person of another, without his consent, any money, property or thing of value is guilty of Larceny from the Person.

"Taking from the person of another" is an essential element of larceny from the person. The crime requires more than a taking in someone's presence, possession, or constructive control. Thus, the State must prove beyond a reasonable doubt that the defendant committed a larceny from the person of another. If after consideration of all the evidence you are not satisfied beyond a reasonable doubt that property was taken from the person of another, you must return a verdict of not guilty of larceny from the person.

NRS 205.270

Terral v. State, 84 Nev. 412 (1968).

Crawford v. State, 121 Nev. 746 (2005).

INSTRUCTION: _____

The crime of Larceny from the Person may include the crime of Larceny.

You shall find the defendant guilty of Larceny if:

(1) Some of you are not convinced beyond a reasonable doubt that the defendant is guilty of Larceny from the Person, and

(2) All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of Larceny.

Rosas v. State, 122 Nev 1258

INSTRUCTION: _____

1
2 When a person is accused of committing a particular crime and at the same time and by the
3 same conduct may have committed another offense of lesser grade or degree, the latter is with
4 respect to the former, a lesser included offense.

5 If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense
6 charged, he may, however be found guilty of any lesser included offense, if the evidence is
7 sufficient to establish his guilt of the lesser included offense beyond a reasonable doubt.
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INSTRUCTION: _____

The crime of Larceny from the Person is restricted to pickpockets, purse snatchers, jewel abstracters and the like.

You are instructed that Larceny is a lesser included offense of the crime Larceny from the Person.

Terral v. State, 84 Nev. 412

INSTRUCTION: _____

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Larceny from the Person requires that the person of another has been violated and her privacy invaded.

Terral v. State, 84 Nev. 412

INSTRUCTION: _____

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Every person who steals, takes and carries away the personal goods, property or money of another with the intent to permanently deprive the owner of the good, property or money is guilty of larceny.

NRS 205.220, NRS 205.240

INSTRUCTION: _____

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3 If you find a larceny has been committed, you are charged with determining the value of
4 the property or services involved.

5 The test for determining the value of property is the reasonable and fair market value at the
6 time and in the locality of the theft, if there is such a price.

7 Where such a market cannot be reasonably determined, you may consider the purchase
8 price or replacement cost of the property.
9

10 You may consider any expression of opinion on value that the Court has received into
11 evidence. You are not bound to accept any such opinion as conclusive, but you should give it the
12 weight to which you find it to be entitled. You may disregard any such opinion if you find it to be
13 unreasonable.
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25 Bain v. Sherriff, 88 Nev. 699 (1972)

26 Cleveland v. State, 85 Nev. 635 (1969)
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INSTRUCTION: _____

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2 If the evidence permits two reasonable interpretations, one of which points to the
3 Defendant's guilt and the other to the Defendant being not guilty, you must adopt the interpretation
4 that points to the Defendant being not guilty, and reject that interpretation that points to his guilt.

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6 If, on the other hand, one interpretation of this evidence appears to you to be reasonable
7 and the other interpretation to be unreasonable, you must accept the reasonable interpretation and
8 reject the unreasonable.
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25 Crane v. State, 88 Nev. 684, 504 P.2d 12 (1972)

26 Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976)

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INSTRUCTION: _____

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilty, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALJIC 224//CALCRIM 224

State v. Eighth Judicial District Court (Supranovich) (UNPUBLISHED)(Sept. 24, 2015)

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VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GABRIEL IBARRA,

Defendant.

CASE NO: C-15-308774-1
DEPT NO: XVII

VERDICT

We, the jury in the above entitled case, find the Defendant GABRIEL IBARRA, as follows:

COUNT 1 - LARCENY FROM THE PERSON

(please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of LARCENY FROM THE PERSON
- ☐ Guilty of LARCENY value of the property less than \$650.00

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DATED this _____ day of October, 2015

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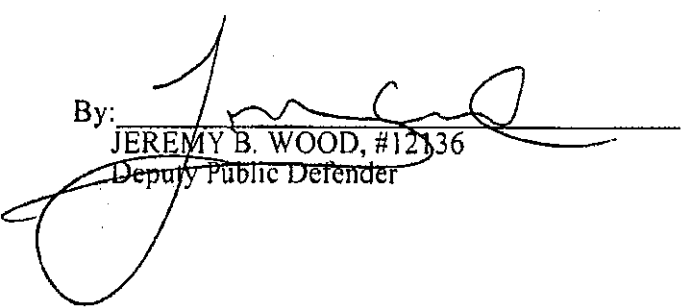
NOTICE OF MOTION

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 19th day of October, 2015, at 9:00 a.m.

DATED this 25 day of October, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
JEREMY B. WOOD, #12136
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Defendants Proposed Jury Instructions is hereby acknowledged this ____ day of October, 2015.

CLARK COUNTY DISTRICT ATTORNEY

By: _____

ORIGINAL

1 INST

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

OCT 20 2015

BY Carol Donahoo
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 GABRIEL IBARRA,

11 Defendant.

CASE

C-15-308774-1

NO:

XVII

DEPT NO:

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

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C-15-308774-1
INST
Instructions to the Jury
4487344



INSTRUCTION NO. 2

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

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Information is but a formal method of accusing a person of a crime and is
3 not of itself any evidence of guilt.

4 In this case, it is charged in an Information that on or about the 31st day of July,
5 2015, the Defendant committed the offense of Larceny from the Person within the
6 County of Clark, State of Nevada contrary to the form, force and effect of statutes in
7 such cases made and provided, and against the peace and dignity of the State of
8 Nevada as follows.

9 COUNT 1 - LARCENY FROM THE PERSON

10 Defendant did then and there willfully, unlawfully, and feloniously, under
11 circumstances not amounting to robbery, with intent to steal or appropriate to his own
12 use, take from the person of another, to-wit: EVANGELIA MANTIKAS, without her
13 consent, personal property, to-wit: an iPhone 5s.

14 It is the duty of the jury to apply the rules of law contained in these instructions
15 to the facts of the case and determine whether or not the Defendant is guilty of the
16 offense charged.
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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

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

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

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

INSTRUCTION: 5

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest.

1
2 The Defendant is presumed innocent until the contrary is proved. This
3 presumption places upon the State the burden of proving beyond a reasonable doubt
4 every element of the crime charged and that the Defendant is the person who
5 committed the offense.

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

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to
13 a verdict of not guilty.
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2 The evidence which you are to consider in this case consists of the testimony of
3 the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

20 Anything you may have seen or heard outside the courtroom is not evidence
21 and must also be disregarded.
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2 The credibility or believability of a witness should be determined by his manner
3 upon the stand, his/her relationship to the parties, his/her fears, motives, interests or
4 feelings, his/her opportunity to have observed the matter to which he/she testified, the
5 reasonableness of his/her statements and the strength or weakness of his/her
6 recollections.

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

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INSTRUCTION NO. 9

Every person who, under circumstances not amounting to robbery, with intent to steal or appropriate to his own use, takes from the person of another, without her consent, any money, property or thing of value is guilty of Larceny From the Person. Property taken must have some value, but there is no required minimum value.

1
2 The offense of Larceny from the Person requires an actual taking from the
3 person of another. This means that the property shall at the time be in some way
4 actually upon or attached to the person, or carried or held in actual physical
5 possession, or by other means, upon the person. The offense is not committed if the
6 property is taken from the immediate presence, or constructive control or possession
7 of the owner.

8 "Taking from the person of another" is an essential element of larceny from the
9 person. The crime requires more than a taking in someone's presence, possession, or
10 constructive control. Thus, the State must prove beyond a reasonable doubt that the
11 defendant committed a larceny from the person of another. If after consideration of all
12 the evidence you are not satisfied beyond a reasonable doubt that property was taken
13 from the person of another, you must return a verdict of not guilty of larceny from the
14 person.

15 The crime of Larceny from the Person is restricted to pickpockets, purse
16 snatchers, jewel abstracters and the like.

17 The gravamen of the offense of Larceny from the Person is that the person of
18 another has been violated and her privacy directly invaded.
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INSTRUCTION NO. 11

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof. If the property taken is valued less than \$650 and was not taken from the person of the victim, a petty larceny was committed.

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2 The term "taking" as that term is used as an element of the crime of larceny
3 means that the personal goods or property of another are taken from the possession of
4 the person who is entitled to them and into the possession of the person accused of the
5 crime.

6 The term "carrying away" as that term is used as an element of the crime of
7 larceny means that the taking is followed by an asportation or carrying away of the
8 property so as to supersede the possession of the owner.

9 The "taking" element is separate and distinct, and a "taking" which is not
10 followed by a carrying away or asportation cannot itself support a larceny conviction.

11 In order to constitute an asportation or carrying away, any removal of the
12 property from its original status, such as would constitute a complete severance from
13 the possession of the owner, constitutes an asportation or carrying away, even though
14 the transfer of possession existed for a very brief period of time. What constitutes
15 sufficient asportation to support a conviction for larceny is a question of fact for the
16 jury.

INSTRUCTION: 13

You shall find the defendant guilty of larceny from the person if you believe the state has proven beyond a reasonable doubt that the defendant committed that offense.

When a person is accused of committing a particular crime and at the same time and by the same conduct may have committed another offense of lesser grade or degree, the latter is with respect to the former, a lesser included offense.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the offense charged, he may, however be found guilty of any lesser included offense, if the evidence is sufficient to establish his guilt of the lesser included offense beyond a reasonable doubt.

You are instructed that petty larceny is a lesser included offense of larceny from the person.

INSTRUCTION NO. 14

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

You are instructed that the facts of this case do not constitute robbery.

INSTRUCTION NO. 15

A larceny victim's consent to a taking is valid only if that consent is freely and unconditionally given. Consent obtained by force, duress, or fraud is ineffective.

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2 Although you are to consider only the evidence in the case in reaching a verdict,
3 you must bring to the consideration of the evidence your everyday common sense and
4 judgment as reasonable men and women. Thus, you are not limited solely to what you
5 see and hear as the witnesses testify. You may draw reasonable inferences from the
6 evidence which you feel are justified in the light of common experience, keeping in
7 mind that such inferences should not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion.
9 Your decision should be the product of sincere judgment and sound discretion in
10 accordance with these rules of law.
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INSTRUCTION: 17

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilty, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

INSTRUCTION NO. 18

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

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INSTRUCTION: 19

It is the constitutional right of an accused in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the accused on the advice and counsel of his attorney. You may not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

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

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

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Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any
3 point of law or hear again portions of the testimony, you must reduce your request to
4 writing signed by the foreperson. The officer will then return you to court where the
5 information sought will be given you in the presence of, and after notice to, the district
6 attorney and the Defendant and his/her counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you
8 deem it a necessity. Should you require a playback, you must carefully describe the
9 testimony to be played back so that the court recorder can arrange his/her notes.
10 Remember, the court is not at liberty to supplement the evidence.

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

GIVEN

October 20, 2015:


DISTRICT JUDGE

ORIGINAL

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

OCT 20 2015 at 4:20 pm.

1 VER

2
3 DISTRICT COURT

BY Carol Donahoo
CAROL DONAHOO, DEPUTY

4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,

7 Plaintiff,

CASE

C-15-308774-1

8 -vs-

NO:

XVII

9
10 GABRIEL IBARRA,

DEPT NO:

11 Defendant.

12
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14 VERDICT

15 We, the jury in the above entitled case, find the Defendant GABRIEL
16 IBARRA, as follows:

17
18 COUNT 1 - LARCENY FROM THE PERSON

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

20 ☐ Not Guilty

21 ☐ Guilty of PETTY LARCENY

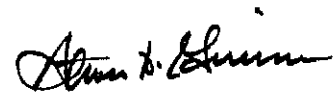
22 ☒ Guilty of LARCENY FROM THE PERSON

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25 DATED this 20 day of October, 2015

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FOREPERSON

C-15-308774-1
VER
Verdict
4497346




CLERK OF THE COURT

0205
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
	)	CASE NO. C-15-308774-1
Plaintiff,)	
	)	DEPT. NO. XVII
v.)	
	)	DATE: November 10, 2015
GABRIEL IBARRA,	)	TIME: 8:30 a.m.
)	
Defendant.)	

**MOTION FOR OWN RECOGNIZANCE RELEASE, OR, IN THE ALTERNATIVE,
FOR SETTING OF REASONABLE BAIL**

COMES NOW, the Defendant, GABRIEL IBARRA, by and through his attorney, JEREMY B. WOOD, Deputy Public Defender, and moves this Honorable Court for an order releasing the Defendant from custody on his own recognizance or, in the alternative, for the setting of bail in a reasonable amount.

This Motion is based upon the attached Declaration of Counsel, any documents attached hereto, argument of Counsel and any information provided to the Court at the time set for hearing this motion.

DATED this 27th of October, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ JEREMY B. WOOD
JEREMY B. WOOD, #12136
Deputy Public Defender

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DECLARATION

JEREMY B. WOOD makes the following declaration:

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

2. That Defendant has resided in Las Vegas Nevada for the past 10 years.

3. That he has the support of family including his mother Suzanna Suady, and his two sisters.

4. That he has obtained his high school diploma and was in the process of working on his business managment degree at CSN.

5. That if released defendant would live with his cousin Chiyeto Martinez.

6. That Defendant did go to trial on the instant offense and was found guilty of Larceny from the Person.

7. That the offense was non violent in nature and revolved around a cell phone which was ultimately returned to the victim.

8. That the defendant has only one prior Felony from 2008 that was a Battery with a Deadly Weapon.

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

EXECUTED this 27th day of October, 2015.

/s/ JEREMY B. WOOD
JEREMY B. WOOD

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion For Own
Recognizance Release, Or, In The Alternative, For Setting Of Reasonable Bail will be heard on 10th
day of November, 2015, at 8:30 a.m. in Department No. XVII District Court.

DATED this 27th day of October, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ JEREMY B. WOOD
JEREMY B. WOOD, #12136
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the District Attorney's
Office at Motions@clarkcountyda.com on this 27th day of October, 2015.

By: /s/ KONIE BALDWIN
An employee of Clark County Public
Defender's Office


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE SUDANO
6 Deputy District Attorney
7 Nevada Bar #013260
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-

CASE NO: C-15-308774-1

12 GABRIEL IBARRA, #2588689

DEPT NO: XVII

13 Defendant.
14

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN RECOGNIZANCE
16 RELEASE, OR, IN THE ALTERNATIVE, FOR SETTING OF REASONABLE BAIL

17 DATE OF HEARING: NOVEMBER 10, 2015
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through MICHELLE SUDANO, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion for Own
22 Recognizance Release, or, in the Alternative, for Setting of Reasonable Bail.

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

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POINTS AND AUTHORITIES
STATEMENT OF THE CASE

On August 3, 2015, the State file a Criminal Complaint charging Gabriel Ibarra (hereinafter "Defendant") with one count of Larceny from the Person (Category C Felony – NRS 205.270). A preliminary hearing was held on August 18, 2015. Following testimony of the named victim, Defendant was held to answer on the charge of Larceny from the Person. The State filed an Information on August 18, 2015.

On September 18, 2015, Defendant filed a Petition for Writ of Habeas Corpus. The State filed its Return on October 2, 2015.

Defendant's jury trial commenced on October 19, 2015. On October 20, 2015, the jury returned a verdict finding Defendant guilty of one count of Larceny from the Person. Following the jury's verdict, Defendant made an oral Motion for Judgment Not Withstanding the Verdict. The Court denied Defendant's motion and ordered that Defendant be held without bail pending his sentencing date. Defendant's sentencing date is currently set for December 10, 2015.

On October 27, 2015, Defendant filed the instant Motion for Own Recognizance Release, or, in the Alternative, for Setting of Reasonable Bail. The State's Opposition follows.

STATEMENT OF FACTS

At approximately 2:50 am on the morning of July 31, 2015, Evangelia Mantikas was waiting for the bus near Boulder Highway and Flamingo. Preliminary Hearing Transcript (hereinafter "PHT"), Aug. 18, 2015, at 4.¹ Defendant approached the bus stop and sat down next to Mantikas, who was texting with her iPhone. Id. at 5. Defendant asked to borrow Mantikas' phone. Id. at 5-6. Mantikas dialed the number for Defendant and then handed him her phone. Id. at 6. Defendant initially put the phone up to his ear, while holding the phone in the hand closest to Mantikas. Id. at 7. Defendant then switched the phone to his other hand, mumbled something and got up to walk away. Id. Mantikas got up to follow after Defendant and he took off running away from her. Id.

¹ Trial transcripts have not yet been prepared. Where available, the State has cited to the preliminary hearing transcript.

1 Mantikas lost sight of Defendant once he began running. PHT at 7. There was a couple
2 standing nearby so Mantikas asked them for help. Id. at 8. Together with the couple and
3 Mantikas' girlfriend, whom she had called from the couple's phone, Mantikas began tracking
4 the location of her phone using the "Find My iPhone" app. Id. at 8-9. Mantikas also called
5 police and was able to provide them with updated information about the phone's location
6 based on the "Find My iPhone" app. Id. at 9.

7 Officer Paul Kunz of the Las Vegas Metropolitan Police Department (LVMPD)
8 testified that on the morning of July 31, 2015, he responded to the Oasis Meadows Apartment
9 Complex after receiving an update that Mantikas' phone was pinging in that area with the Find
10 My iPhone app. Officer Kunz observed Defendant going around the corner of an apartment
11 building and momentarily lost sight of him. When Defendant reappeared around the other side
12 of the building, Officer Kunz stopped him. Officer Kunz then went around the back of the
13 building, and observed Mantikas' cell phone in a bush approximately eight feet away from the
14 path where Defendant had first gone out of Officer Kunz' sight.

15 Eventually, police informed Mantikas that they had located her phone, and potentially
16 the person who had taken it. PHT at 9-10. Mantikas went to a separate location with police
17 and they returned her phone. Id. at 11. Police also conducted a show-up with Mantikas and
18 she identified Defendant as the person who had stolen her phone. Id. at 10-11.

19 LEGAL ARGUMENT

20 As a general rule, a defendant has no constitutional right to bail following conviction
21 and pending appeal. Bergna v. State, 120 Nev. 869, 872, 102 P.3d 549, 551 (2004); NRS
22 176.015. Defendant has been found guilty by a jury of one count of Larceny from the Person.
23 As such, Defendant is no longer cloaked with the presumption of innocence in this case and
24 has no constitutional right to bail pending sentencing.

25 Although this Court has discretion to grant bail pending sentencing or appeal,
26 Defendant is not a suitable candidate for an own recognizance release in this matter. NRS
27 178.4853 and NRS 178.498, which deal with the setting of bail before trial and conviction, are
28 still instructive after Defendant's conviction.

1 NRS 178.498 provides as follows:

2 If the defendant is admitted to bail, the bail must be set at an amount which in
3 the judgment of the magistrate will reasonably ensure the appearance of the
4 defendant and the safety of other persons and of the community, having regard
5 to:

- 6 1. The nature and circumstances of the offense charged;
- 7 2. The financial ability of the defendant to give bail;
- 8 3. The character of the defendant; and
- 9 4. The factors listed in NRS 178.4853.

10 NRS 178.4853 provides as follows:

11 In deciding whether there is good cause to release a person without bail, the
12 court as a minimum shall consider the following factors concerning the person:

- 13 1. The length of his residence in the community;
- 14 2. The status and history of his employment;
- 15 3. His relationship with his spouse and children, parents or other
16 members of his family and with his close friends;
- 17 4. His reputation, character and mental condition;
- 18 5. His prior criminal record, including any record of his
19 appearing or failing to appear after release on bail or without
20 bail;
- 21 6. The identity of responsible members of the community who
22 would vouch for the defendant's reliability;
- 23 7. The nature of the offense with which he is charged, the
24 apparent probability of conviction and the likely sentence,
25 insofar as these facts relate to the risk of his not appearing;
- 26 8. The nature and seriousness of the danger to any person or the
27 community that would be posed by the person's release;
- 28 9. The likelihood of more criminal activity by the person after he
is released; and
10. Any other factors concerning his ties to the community or
bearing on the risk that he may willfully fail to appear.

24 Defendant correctly alleges that he has one prior felony conviction, for Battery with a
25 Deadly Weapon, from case C233552. The facts of that case are particularly concerning to the
26 State in light of Defendant's instant conviction. In C233552, Defendant was originally charged
27 with Robbery with Use of a Deadly Weapon and Battery with Use of a Deadly Weapon. The
28 police report, attached hereto as Exhibit 1, indicates that Defendant ran up behind the victim

1 in an alley and stole a camcorder the man was carrying on his shoulder, punching him in the
2 face in the process. When the victim attempted to retrieve his property, Defendant pulled a
3 knife out of his pocket and began swinging it at the victim, causing multiple cuts to the victim's
4 stomach and arms. Defendant then fled into an apartment complex in an attempt to hide. When
5 confronted by the victim a few moments later, Defendant brandished a hatchet at the victim
6 and threatened to kill him.

7 Defendant's prior conduct is concerning to the State because it indicates that Defendant
8 has a pattern of theft from unsuspecting strangers. As Defendant's conviction in case C233552
9 indicates, Defendant also has a history of violence, which is further evidenced by Defendant's
10 multiple arrests for battery and domestic battery. Where Defendant has a history of stealing
11 from strangers and the potential for violent confrontations, he poses a danger to society should
12 he be released on his own recognizance in this case.

13 In addition to Defendant's history of similar criminal conduct, the State also has
14 concerns about Defendant's likelihood to return to court if released on his own recognizance.
15 In addition to his felony conviction, Defendant also has four misdemeanor convictions and
16 three failures to appear. Perhaps most telling, however, is the fact that Defendant initially
17 received a grant of probation in case C233552, but absconded soon after he was sentenced on
18 August 20, 2007. A bench warrant issued for Defendant's arrest on December 27, 2007. Once
19 Defendant was arrested on the bench warrant, his probation was revoked and his original
20 sentence was imposed.

21 Defendant's bail was originally set at \$5,000 in this case. Defendant never made a
22 request for an own recognizance release prior to his trial date and was evidently unable to post
23 bail. Defendant has since been convicted of his second felony offense and has demonstrated
24 no reason why bail should now be reduced or removed altogether.

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1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests that Defendant's Motion for
3 an Own Recognizance Release, or, in the Alternative, for Bail Reduction be DENIED and that
4 Defendant continue to be held without bail pending his sentencing date.

5 DATED this 2nd day of November, 2015.

6 Respectfully submitted,

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

10 BY 

11 MICHELLE SUDANO
12 Deputy District Attorney
13 Nevada Bar #013260

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION
16 FOR OWN RECOGNIZANCE RELEASE, OR, IN THE ALTERNATIVE, FOR SETTING
17 OF REASONABLE BAIL, was made this 2nd day of November, 2015, by Electronic Filing
18 to:

19 JEREMY B. WOOD, Deputy Public Defender
20 jeremy.wood@clarkcountynv.gov

21 
22 Secretary for the District Attorney's Office
23
24
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28 MS/cmj/L-3

EXHIBIT "1"

ARREST REPORT

07FO8660Y/10

☐ City☒ County☒ Adult☐ Juvenile

Sector/Beat N2

ID/EVENT# 2588689	ARRESTEE'S NAME IBARRA, GABRIEL		(Last, First, Middle)		S.S.#	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 3841 ROYAL CREST ST. #5, LAS VEGAS, NV 89109						
CHARGES: ROBBERY WITH DEADLY WEAPON / NRS 200.380 ASSAULT WITH DEADLY WEAPON / NRS 200.471-2B						
OCCURRED:	DATE 04/30/07	DAY OF WEEK MONDAY	TIME 1317 HRS	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 3841 ROYAL CREST ST, LAS VEGAS, NV 89109		
RACE H	SEX M	D.O.B. 08/17/85	HT 5'7	WT 145	HAIR BALD	EYES BRO
						PLACE OF BIRTH SAN BERNARDINO, CA

CIRCUMSTANCES OF ARREST

OFFICERS INVOLVED:

Officer M. Brewer, P# 7426, 2N9
 Officer L. Smith, P# 7336, 2NB
 Officer M. Dredla, P# 8049, 2NB
 Officer C. Clark, P# 9654 2N7
 Officer K. Lopez, 2N7

ID SPECIALIST:

Morton, P#4935

VICTIM:

Hernandez, Juan

WITNESS:

Jones, Grant

PROPERTY IMPOUNDED:

One brown and silver axe with a wood handle, one black and silver folding knife, one consent to search card (impounded in SCAC), one Canon digital video camcorder was returned to the owner Juan Hernandez.

DETAILS:

On 04/30/07, at approximately 1310 hours, I, Officer M. Brewer, P#7426, operating as marked patrol unit 2N9, received a call to 3841 Royal Crest, regarding a subject that had a hatchet and was trying to cut someone. An update came on the radio, while we were in route that stated that now citizens in the area had the subject on the ground and were waiting for patrol units to arrive.

On arrival I found three subjects holding down an HMA, who was later identified as Ibarra, Gabriel; DOB: 08-17-85, one of the people holding down Ibarra was identified as the victim, Hernandez, Juan, DOB/04-05-76. I then moved up and detained Ibarra and placed him

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
M. BREWER	7426	Lt. B. Quackenbush (3384) 05-01-07 @ 0614 hrs.	070430-1680 PROPERTY IMPOUND REPORT, ICR, TCR, AND DOA
			CONFIDENTIAL

AS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2588689

Page 2 of

into restraints, as Officers Smith, Lourdes, P#7336, and Officer Dredla, Melonie, P#8049, who was operating as marked patrol 2NB arrived to assist.

Officer Smith, who is a spanish speaking officer, interviewed Hernandez. Hernandez stated that he was in the west alley of 3841 Royal Crest walking east toward Royal Crest St. Ibarra came up from behind Hernandez and grabbed a camcorder that Hernandez had on his shoulder. Ibarra punched Hernandez in the left side of his face as he grabbed the camcorder. Hernandez told Ibarra to give the camera back, Hernandez then stated, that Ibarra reached into his pocket and pull out a folding knife, opened it and swung it at Hernandez several times, making minor cuts on his stomach and arm.

Ibarra then ran into the court yard of 3841 Royal Crest. Hernandez walked following Ibarra into the court yard and when he entered the court yard he did not see Ibarra. After looking around for a few minutes he noticed Ibarra was hiding on an upstairs walkway that was outside of apartment #5.

Hernandez told Ibarra to give back the camera. Ibarra at that point grabbed a wood handle hatchet and showed it to Hernandez saying "I'll kill you motherfucker." Hernandez then asked for help from people standing around. The apartment manager Hernandez and apartment security guard held Ibarra to the ground until I arrived and placed him into custody. I then spoke to the witness Jones, Grant who stated he did see Hernandez running to court yard and asked someone to call the police, because his camera was stolen.

I detained Ibarra and I read him his Miranda at approximately 1310 hours, and Ibarra told me he understood. After questioning Ibarra he stated to me that the camera was upstairs in apartment # 5, in a drawer, by the front door. Ibarra stated to me that he had taken the camera from Hernandez, because Hernandez had taken his girlfriends purse. I went to apartment #5 with Officer K. Lopez, P#6707, and spoke to the female who was inside the apartment who stated she rented it, name of Peggy Combs. We explain the situation to Combs and asked Combs if she would sign a consent to search card, so that we could see if we could locate the camera inside the apartment. Combs voluntary signed the consent to search card. Inside the apartment, inside the drawer, right next to the front door we found a silver Canon ZR60 digital video cam-recorder. I showed the camera to Hernandez who admitted that that was the camera that he had with him that Ibarra had stolen from him in the alley.

Based on the fact that Ibarra grabbed the camera from Hernandez and punched him in the face while doing so, then used a folding knife, scratching Hernandez several times, in order to facilitate his escape, Hernandez was arrested for Robbery with a Deadly Weapon in violation of NRS 200.380. Based upon the fact that after the event occurred and Hernandez was looking for Ibarra and he found Ibarra up by apartment #5 hiding and told Hernandez that he wanted his camera back, Ibarra grabbed a hatchet showed it to Hernandez and stated to Hernandez that he would kill him. Ibarra was then charged with Assault with a Deadly Weapon. Ibarra was transported CCDC and booked accordingly on the above stated charges.

AS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2588689

Page 3 of

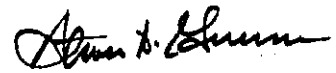
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Job# 73246

Date & Time Dictated: 04/30/7 @ 1626 Hours

Date & Time Transcribed: 04/30/07 @ 0334 Hours

cc: Officer M. Brewer, P#7426, SCAC



CLERK OF THE COURT

1 **ORDR**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **CHARLES THOMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #12649**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **GABRIEL IBARRA, #2588689**

14 **Defendant.**

CASE NO: C-15-308774-1

DEPT NO: XVII

15 **ORDER DENYING DEFENDANT'S MOTION FOR OWN RECOGNIZANCE**
16 **RELEASE, OR, IN THE ALTERNATIVE FOR SETTING OF REASONABLE BAIL**

17 **DATE OF HEARING: November 10, 2015**
18 **TIME OF HEARING: 8:30 A.M.**

19 **THIS MATTER** having come on for hearing before the above entitled Court on the
20 10th day of November, 2015, the Defendant being present, represented by JEREMY WOOD,
21 Deputy Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District
22 Attorney, through CHARLES THOMAN, Deputy District Attorney, and the Court having
23 heard the arguments of counsel, based on the pleadings and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion for Own Recognizance
2 Release, Or, In the Alternative for Setting of Reasonable Bail, shall be, and it is DENIED;
3 Court noted that Deft. has a prior Battery, Deadly Weapon case, three (3) failures to appear,
4 and a prior revocation from probation for absconding.

5 DATED this 24 day of November, 2015.

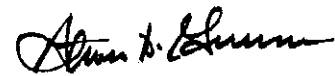
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7 _____
DISTRICT JUDGE

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

10
11 BY


12 CHARLES THOMAN
13 Deputy District Attorney
14 Nevada Bar #12649
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28 cmj/L3



CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

GABRIEL IBARRA
#2588689

Defendant.

CASE NO. C308774-1


DEPT. NO. XVII

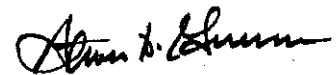
JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of LARCENY FROM PERSON (Category C Felony) in violation of NRS 205.270; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of LARCENY FROM PERSON (Category C Felony) in violation of NRS 205.270; thereafter, on the 10th day of December, 2015, the Defendant was present in court for sentencing with counsel JEREMY WOOD, Deputy Public Defender, and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and
3 \$250.00 Indigent Defense Civil Assessment Fee plus \$3.00 DNA Collection Fee, the
4 Defendant is SENTENCED as follows: a MAXIMUM of THIRTY-SIX (36) MONTHS with
5 a MINIMUM parole eligibility of FOURTEEN (14) MONTHS in the Nevada Department
6 of Corrections (NDC), with ONE HUNDRED THIRTY-THREE (133) DAYS credit for time
7 served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously
8 imposed, the Fee and Testing in the current case are WAIVED.
9

10 DATED this 16 day of December, 2015
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14 
15 MICHAEL VILLANI
16 DISTRICT COURT JUDGE
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CLERK OF THE COURT

1 NOAS
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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)
9)
10 Plaintiff,) CASE NO. C-15-308774-1
11 v.) DEPT. NO. XVII
12)
13 GABRIEL IBARRA,)
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15 Defendant.)
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TO: THE STATE OF NEVADA
STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
NEVADA and DEPARTMENT NO. XVII OF THE EIGHTH JUDICIAL
DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Gabriel Ibarra,
presently incarcerated in the Nevada State Prison, appeals to the
Supreme Court of the State of Nevada from the judgment entered
against said Defendant on the 18th day of December, 2015, whereby
he was convicted of Larceny from the Person and sentenced to \$25
Admin. assessment fee; \$250 Indigent Defense Civil Assessment fee;
\$3 DNA collection fee; 14-36 months in prison with 133 days CTS;
the4 \$150 DNA analysis fee and genetic testing have been
previously imposed, the fee and testing in this case are waived.

DATED this 15th day of January, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Howard S. Brooks
HOWARD S. BROOKS, #3374
Deputy Public Defender

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 15th day of January, 2016, by Electronic Filing to:

District Attorneys Office

E-Mail Address:

PDMotions@clarkcountynvda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountynvda.com

/s/ Carrie M. Connolly

Secretary for the

Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 06, 2015**

C-15-308774-1 State of Nevada
 vs
 Gabriel Ibarra

October 06, 2015 8:30 AM Deft.'s Petition for Writ of Habeas

HEARD BY: Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Michelle Sudano, Dep DA, present on behalf of the State and Jeremy Wood, Dep PD, present on behalf of Deft. Ibarra, who is also present.

This is the time set for hearing on Deft.'s Petition for Writ of Habeas Corpus. Mr. Wood advised that although a crime did occur what happened was not Larceny from the Person. Larceny from the Person requires that the person of another be violated and his/her privacy directly invaded. The cases that cite to this issue specifically deal with pick pockets and purse snatchers. That is not what happened here; the victim handed the phone to the Deft. willingly and after the phone had been handed over, he left.

Argument by Ms. Sudano; the phone starts out on the victim's person. The Deft. then devises a ruse to get the phone from her; i.e. he requested to make a phone call, she hands the phone over, he then takes off. Ms. Sudano believes this incident is akin to purse snatching in that the Deft. used deceit, deception, or stealth in order to effect the crime rather than violence. Additionally, Ms. Sudano believes this is an intent question for the Jury for the reasons stated on the record.

PRINT DATE: 10/07/2015**Page 1 of 2****Minutes Date:** October 06, 2015

Mr. Wood advised that ruse or trickery is not part of the Statute or a part of the cited Case Law; he discussed Terral. It is clear a crime was committed but it is not Larceny from the Person. Court directed counsel to submit any applicable Case Law by 3:00 p.m. on Wednesday, October 7, 2015, to this Court's Law Clerk. ORDERED, matter CONTINUED for decision.

CUSTODY

10/08/15 8:30 AM DECISION: DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 08, 2015

C-15-308774-1 State of Nevada
vs
Gabriel Ibarra

October 08, 2015 8:30 AM Decision: Deft's Motion for Writ of Habeas Corpus

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Shelley Boyle

RECORDER: Michelle Ramsey

PARTIES

PRESENT:	Cannizzaro, Nicole J.	Attorney for State
	Ibarra, Gabriel	Defendant
	Wood, Jeremy	Attorney for Deft.

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Wood argued that Nevada is a "from the person" state; the only the way this could be Larceny from the Person is if Nevada was a state that allowed "larceny in the presence." Further arguing, there are other ways the State could have charged this. Ms. Cannizzaro argued Ms. Sudano did submit case law to the Court, and had previously argued there is a distinction where there is a specific harm to the person, and submitted on the briefings and case law submitted. COURT stated its FINDINGS, and ORDERED, Motion DENIED.

CUSTODY

PRINT DATE: 10/13/2015

Page 1 of 1

Minutes Date: October 08, 2015

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 13, 2015

C-15-308774-1 State of Nevada
vs
Gabriel Ibarra

October 13, 2015 8:30 AM Calendar Call

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Mary Kay Holthus, Chf Dep DA, present on behalf of the State and Jeremy Wood, Dep PD, present on behalf of Deft. Ibarra, who is also present.

This is the time set for Calendar Call. State and Defense announced ready. COURT ORDERED, matter set for trial on Monday, October 19, 2015; the trial is expected to take three (3) days; there are five (5) to seven (7) witnesses. Court instructed both counsel to provide their proposed Jury Instructions to Chambers on the first day of trial. Any special instructions should include case citations.

CUSTODY

10/19/15 9:30 AM JURY TRIAL

PRINT DATE: 10/16/2015

Page 1 of 1

Minutes Date: October 13, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 15, 2015**

C-15-308774-1 State of Nevada
 vs
 Gabriel Ibarra

October 15, 2015 8:30 AM Motion for Discovery

HEARD BY: Villani, Michael**COURTROOM:** RJC Courtroom 11A**COURT CLERK:** Carol Donahoo**RECORDER:** Michelle Ramsey**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Michelle Sudano, Dep DA, present on behalf of the State and Jeremy Wood, Dep PD, present on behalf of Deft. Ibarra, who is also present.

This is the time set for hearing on Deft.'s Motion for Discovery. Upon Court's inquiry, Ms. Sudano advised that the State filed a Response to the Deft.'s Motion on Tuesday, October 13, 2015; however, she believes that everything the State has in its possession has been turned over. Mr. Wood CONCURRED; he spoke with Ms. Sudano. It is part of the Public Defender's office policy to file said Motions to preserve the issue but he does not believe there is any outstanding discovery at this time. COURT ORDERED, Mr. Wood to prepare an Order for the Motion. State should sign off approved as to form and content.

For the Record: Ms. Sudano advised that the State did make an offer to the Deft. for an Attempt Larceny from the Person; state agreed to make no recommendation. The Deft. rejected said offer so it is REVOKED at this time.

CUSTODY**PRINT DATE:** 10/16/2015**Page 1 of 1****Minutes Date:** October 15, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 19, 2015

C-15-308774-1 State of Nevada
 vs
 Gabriel Ibarra

October 19, 2015 9:30 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Michelle Sudano, Dep DA, present on behalf of the State; Jeremy Wood, Dep PD, and Jasmin Spells, Dep PD, present on behalf of Deft., who is also present.

9:47 a.m. Jury Trial commenced. Court and counsel begin Voir Dire examination of the prospective Jurors. Jury and one (1) alternate selected and sworn. Court Clerk read the Information to the Jury and stated the Deft.'s plea thereto.

Opening statements by Ms. Sudano and Ms. Spells. Testimony and exhibits presented (see worksheets).

4:38 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

CONTINUED TO: 10/20/15 10:00 AM

PRINT DATE: 11/20/2015

Page 1 of 1

Minutes Date: October 19, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 20, 2015

C-15-308774-1 State of Nevada
 vs
 Gabriel Ibarra

October 20, 2015 10:00 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Michelle Sudano, Dep DA, present on behalf of the State; Jeremy Wood, Dep PD, and Jasmin Spells, Dep PD, present on behalf of Deft., who is also present.

10:46 a.m. Jury Trial resumed. Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court canvassed Deft. with regard to his right not to testify or to testify in this case. Jury Instructions and Verdict form settled on the record.

JURY PRESENT: Court instructed the Jury. Closing arguments by Ms. Sudano and Mr. Wood; rebuttal by Ms. Sudano.

At the hour of 2:52 p.m., the Jury retired to deliberate. Court thanked and excused the alternate. At the hour of 4:20 p.m., the Jury returned with a verdict as follows: GUILTY of LARCENY FROM THE PERSON (F).

PRINT DATE: 11/20/2015

Page 1 of 2

Minutes Date: October 20, 2015

C-15-308774-1

Jury polled; Court thanked and excused the Jury. COURT ORDERED, Deft. REMANDED to custody, without bail.

4:27 p.m. Court ADJOURNED.

CUSTODY

12/10/15 8:30 AM SENTENCING

PRINT DATE: 11/20/2015

Page 2 of 2

Minutes Date: October 20, 2015

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 10, 2015

C-15-308774-1 State of Nevada
vs
Gabriel Ibarra

November 10, 2015 8:30 AM

Deft.'s Motion for Own Recognizance Release or, in
the Alternative, for Setting of Reasonable Bail

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Charles Thoman, Dep DA, present on behalf of the State and Jeremy Wood, Dep PD, present on behalf of Deft. Ibarra, who is also present.

This is the time set for hearing on Deft.'s Motion for Own Recognizance Release or, in the Alternative, for Setting of Reasonable Bail. A Jury Trial was held in this matter on October 19, 2015.. The victim in this matter handed over her cell phone to the Deft. to make a call and he ran off. The Deft. has one prior Felony, this was a non-violent offense, and the Deft. has ties to the community. Therefore, Mr. Wood believes the Deft. is a good candidate for probation.

Court noted that Deft. has a prior Battery, Deadly Weapon case, three (3) failures to appear, and a prior revocation from probation for absconding. Mr. Thoman CONCURRED. COURT ORDERED, Motion DENIED for the reasons set forth above.

CUSTODY

PRINT DATE: 11/16/2015

Page 1 of 1

Minutes Date: November 10, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 10, 2015

C-15-308774-1 State of Nevada
 vs
 Gabriel Ibarra

December 10, 2015 8:30 AM Sentencing

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Michelle Sudano, Dep DA, present on behalf of the State and Jeremy Wood, Dep PD, present on behalf of Deft. Ibarra, who is also present.

Pursuant to the Jury's verdict, DEFT. IBARRA ADJUDGED GUILTY of LARCENY FROM PERSON (F). The State is requesting a sentence of fourteen (14) to forty-eight (48) months for the reasons stated on the record. Statement by Deft. Argument by Mr. Wood; the Deft. has one (1) prior felony. The Defense contests the nature of the charges and the offense here. For the reasons stated on the record, Mr. Wood is requesting that the Court give the Deft. a chance on probation.

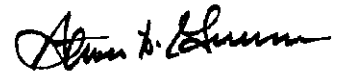
COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the e\$150.00 DNA Analysis fee including testing to determine genetic markers, which was collected on August 31, 2007, the \$3.00 DNA Collection fee, and an Indigent Defense Civil Assessment fee in the amount of \$250.00, Deft. SENTENCED to a MAXIMUM of THIRTY-SIX (36) MONTHS and a MINIMUM of FOURTEEN (14) MONTHS in the Nevada Department of Corrections (NDC), with ONE HUNDRED THIRTY-THREE (133) DAYS credit for time served.

BOND, if any, EXONERATED

PRINT DATE: 12/15/2015

Page 1 of 1

Minutes Date: December 10, 2015



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GABRIEL IBARRA,

Defendant.

CASE NO. C-15-308774-1

DEPT. XVII

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
THURSDAY, AUGUST 20, 2015

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

APPEARANCES:

For the State:

ELANA L. GRAHAM, ESQ.,
Deputy District Attorney

For the Defendant:

KELLI DEVANEY, ESQ.,
Deputy Public Defender

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, AUGUST 20, 2015

2 * * * * *

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

4
5 THE COURT: State of Nevada versus Gabriel Ibarra, C308774. He is
6 present in custody. Ms. Devaney is here on his behalf. Counsel?

7 MS. DEVANEY: Good morning, your Honor. Today, Mr. Ibarra will be
8 entering a not-guilty plea to the charges set out in the Information.

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

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You got to step up to that microphone, sir.

13 THE DEFENDANT: Yes, ma'am.

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

15 THE DEFENDANT: Yes.

16 THE COURT: Do you want to waive a formal reading of the charges?

17 MS. DEVANEY: Do you need it read out loud to you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: How do you plead?

20 THE DEFENDANT: Not guilty.

21 THE COURT: You do have a right to a trial within 60 days. Do you
22 want to waive or invoke that right?

23 THE DEFENDANT: I want to invoke my right.

24 THE COURT: Speedy trial.

25 THE CLERK: Your calendar call is October 13th at 8:30, with a trial date

1 of October 19th at 9:30, in Department 17.

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

5 MS. DEVANEY: And, your Honor, may I request all discovery pursuant
6 to statute?

7 THE COURT: Discovery is granted pursuant to NRS 174.235.

8 THE DEFENDANT: So I will be having a speedy trial, right?

9 THE COURT: You will.

10 MS. DEVANEY: You have a speedy trial.

11 THE COURT: That is speedy. Speedy means within 60 days, sir.

12 THE DEFENDANT: Okay.

13 THE COURT: All right. Thank you.

14 (Whereupon, the proceedings concluded.)

15 * * * * *

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

19 

20 Kiara Schmidt, Court Recorder/Transcriber

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

DEPT. XVII

153

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 6, 2015

2 [Proceeding commenced at 10:06 a.m.]

3
4 THE COURT: This is Defendant's motion for writ of habeas
5 corpus. I see calendar call is next week. Go ahead counsel.

6 MR. WOOD: Your Honor, I think as you've read through the --
7 the writ, clearly something happened. Clearly a crime was
8 committed. But the State has an obligation to follow rules of
9 procedures as well as follow the statutes. And what happened was
10 not a larceny from a person.

11 Nevada Statute regarding larceny from a person and the
12 states that -- and the cases that cite that statute cite to it are
13 very specific. Larceny from a person requires from the person.
14 The reason larceny from a person is a felony regardless of value
15 unlike a petty larceny or a grand larceny it's because it takes
16 from the privacy of an individual.

17 The statute specific -- or the cases that cite to that
18 specifically talk about purse snatchings, they talk about
19 pickpocketing's. That's because when someone pickpockets you, they
20 reach into your privacy, take the wallet and they're gone. Hence,
21 the larceny from a person. That's why it's a felony.

22 Now, unfortunately, that's not what happened here. The
23 preliminary hearing transcript is very clear. The victim testified
24 that she handed the phone willingly. The phone was in her presence
25 and then it was taken and he left. That's not a larceny from a

1 person, Your Honor.

2 THE COURT: I didn't -- I mean, it's alleged. Didn't the
3 Defendant say can I use your phone; I have to make a phone call --

4 MR. WOOD: Absolutely.

5 THE COURT: -- and the phone was turned over --

6 MR. WOOD: Yes.

7 THE COURT: -- and then I guess he hit the road.

8 MS. SUDANO: That's correct, Your Honor.

9 MR. WOOD: Correct.

10 MS. SUDANO: Morning, Your Honor. Michelle Sudano on behalf
11 of the State. I think that this case is very easily
12 distinguishable from the one and only case that was cited by the
13 defense in this case; that Terral case from the 60's where the
14 Supreme Court said that it couldn't be a larceny from a person
15 where somebody reached over and grabbed gaming chips from a table
16 where the victim was just playing and he didn't have those on his
17 person at any time during that theft.

18 I think what's distinguishable here is that the phone
19 very clearly starts out on the victim's person. She's sitting on
20 the phone, using the phone at the bus stop when the Defendant comes
21 up to her. He -- it's the State's position engages in some sort of
22 ruse to get the phone turned over to him. You know, he asked to
23 make the phone call. She turns the phone over to him, thinking
24 that he's going to use it to make a phone call and then he takes
25 off.

1 So, it is more akin to the purse snatching or the
2 pickpocketing or any other sort of theft that goes back to deceit
3 or deception, stealth in order to be effected instead of using the
4 violence.

5 And so here, his ruse was just, hey, can I make the phone
6 call. And so it is that same violation of her privacy and her
7 person because he sat down right next to her, gets her to turn the
8 phone over and then he takes off running.

9 And so it is much more akin to one of those theft by
10 distraction or theft by some sort of ruse than any of the arguments
11 made by Mr. Wood would suggest.

12 And so for that reason I really think that this is an
13 intent question for the jury. Obviously, if he intends to take
14 that phone when it's still on her person and he gets it through
15 that ruse, then that's the question for the jury. Larceny from a
16 person would be the specific intent crime because he has the intent
17 to take the phone and to keep it.

18 And so I think that that's going to be a question for the
19 jury whether or not he intended to take it while it was still on
20 her person or at some point after. With that, I would submit it,
21 Your Honor.

22 THE COURT: Mr. Wood, if someone comes to my home and says
23 your -- your son sent me here 'cause his car broke down and he
24 wants me to pick up your car so he can get home and that was just
25 all bogus. Is -- are you saying there's no crime?

1 MR. WOOD: Exactly. And this is the thing, Your Honor, ruse
2 or trickery to get something is not a part of the statute and it's
3 not a part of any of the case law cited. Terral specifically
4 states the reason a larceny from a person is a larceny from a
5 person is because it's the privacy of your body. It is taken from
6 you. It is not handed over willingly and then someone decides to
7 run with it.

8 There is clearly a crime that happened. And the State
9 has methods where they can correct this, but it is not larceny from
10 a person as the Terral state or the Terral case cites. It -- it's
11 just not. There is no trickery or ruse or anything that is
12 involved in the calculus in deciding whether something is larceny
13 from a person. Trickery is not something that the statute cites.
14 It is not something the case law mentions.

15 THE COURT: All right. What I'm going to do is if counsel
16 either through their own individual law library or through your
17 appellate divisions of your respective offices, want to submit to
18 me any other case law on this matter from the State or any other
19 State in the union or Federal Court, please do so Wednesday -- by
20 Wednesday at 3. You can just send my law clerk an email and just
21 say here's these three or four cases, page 7 for this case, page 9
22 for that case. I mean, it's a 30-page case. I don't want to read
23 the whole case, but if you can just clue us in where it's at that
24 maybe relevant. I would like to -- I will take the time to review
25 those, okay. And we'll come back on Thursday for a decision.

1 MR. WOOD: Understood.

2 THE COURT: So give it to me Wednesday at 3. All you got to
3 do is here are these five cases and just tell us what page or pages
4 that have the relevant language for this issue.

5 MR. WOOD: Understood.

6 THE COURT: Thank you.

7 MS. SUDANO: Thank you, Your Honor.

8 [Proceeding concluded at 10:11 a.m.]

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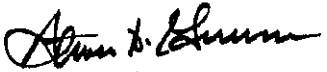
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

GABRIEL IBARRA,

Defendant.

)
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) CASE NO. C-15-308774-1
)
) DEPT. XVII
)
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BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 8, 2015

**ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the State:

NICOLE CANNIZZARO, ESQ.,
Deputy District Attorney

For the Defendant:

JEREMY B. WOOD, ESQ.,
Deputy Public Defender

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

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ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

1 LAS VEGAS, NEVADA; THURSDAY, OCTOBER 8, 2015

2 [Proceeding commenced at 9:19 a.m.]

3
4 THE COURT: This is Ibarra. Gabriel Ibarra. This is
5 continued on the writ of habeas corpus. I think it was on the
6 issue of the taking for -- actually from a person it was -- recap
7 here, it was argued that the Defendant allegedly said can I borrow
8 your phone. The victim willingly turned it over. Again, alleged
9 that the Defendant then hit, you know, beat feet and ran down the
10 street. He didn't return home. That's an old phrase by the way.
11 And then that was the issue.

12 And then I asked both sides to submit to me some case law
13 for their respective positions that this qualified for larceny from
14 the person. The defense was supposed to say it does not qualify
15 larceny from the person. Anything further from the defense?

16 MR. WOOD: I'll be really brief, Your Honor. I just want to
17 indicate I submitted one case from California that kind of go
18 through there's two -- States that have larceny from a person deal
19 with this. It's either in the presence or it's on the person
20 specifically.

21 Unfortunately, for the State in this case, Terral says
22 specifically that Nevada is a, from the person State. And you can
23 take that from the robbery statute which says you take it from
24 someone or in their presence. But the larceny from the person
25 statute not amounting to robbery says specifically from the person.

1 Terral reiterates this. It says specifically Nevada is one of
2 those States that follows taking from the person.

3 So the only way this could be a larceny from the person
4 is if it was one of these States that allows for it in the
5 presence. Not for from the person. And so I'll submit it on that,
6 Your Honor. There are other ways the State could have charged
7 this. I think we don't see many of these issues because most
8 States will charge it as a petty larceny or a grand larceny or
9 attaining money under false pretenses or an embezzlement. They
10 don't charge it as a larceny from the person. That's why you don't
11 get many where this set of circumstances occurs.

12 THE COURT: Thank you. Ms. Cannizzaro.

13 MS. CANNIZZARO: Your Honor, I know that Ms. Sudano did submit
14 some additional case law to this Court. Basically the -- the
15 additional argument from the State in addition to what Ms. Sudano
16 argued at the last Court date was that there is a distinction
17 between cases where there that there is that increased threat of
18 harm to the victim. And I think those cases that she submitted do
19 lay that out as well.

20 So we would submit it on the briefing and the arguments
21 and the remainder of that case law.

22 THE COURT: All right. Thank you. My gut feeling here is
23 that the turning over the item was obtained by fraud or ruse. That
24 would not violate this going forward under Terral case. And I am
25 citing to the California Appellate case People versus Nguyen, 217

1 Cal App 4th 286. And that case victims -- theft victims consent to
2 a taking negates larceny only if the consent is freely and
3 [indecipherable] given. As a result, consent obtained by fraud --
4 excuse me -- force, duress or fraud is ineffective. And I think
5 that's the appropriate statement of law, but the Supreme Court
6 disagrees and so be it and they'll clarify this issue of law.

7 So I'm going to deny the writ for that purpose, so feel
8 free to take that on a writ 'cause it'll be interesting for them to
9 resolve this issue, okay.

10 MR. WOOD: Thank you, Your Honor.

11 THE COURT: And so we just need to -- we have a trial date and
12 we have a calendar date. And we'll see everybody back October 13th.

13 MR. WOOD: Understood.


14 THE COURT: Thank you. Interesting issue, counsel.

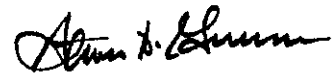
15 [Proceeding concluded at 9:24 a.m.]

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CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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CASE NO. C-15-308774-1

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vs.

)

DEPT. XVII

11

GABRIEL IBARRA,

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Defendant.

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BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15

TUESDAY, OCTOBER 13, 2015

16

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

17

CALENDAR CALL

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19

APPEARANCES:

20

For the State:

MARY KAY HOLTHUS, ESQ.,
Deputy District Attorney

21

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For the Defendant:

JEREMY B. WOOD, ESQ.,
Deputy Public Defender

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RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

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ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 13, 2015

2 [Proceeding commenced at 9:47 a.m.]

3
4 THE CLERK: We have Ibarra, page 7.

5 MS. HOLTHUS: That's the one that both sides are ready on,
6 Judge, Ibarra.

7 THE CLERK: Mr. Wood is ready on that one.

8 THE COURT: You ready on that one --

9 MR. WOOD: Correct.

10 THE COURT: -- and State's ready?

11 MS. HOLTHUS: And Sudano is ready on it as well.

12 THE COURT: All right. Ibarra matter; is Mr. Ibarra here? He
13 is. All right. We'll go Monday, 9:30. Please have -- counsel,
14 please provide the Court with proposed jury instructions at that --
15 at 9:30. Special instructions with case citations. Please feel
16 free to email those instructions to the law clerk.

17 MR. WOOD: Understood.

18 THE CLERK: How many days?

19 MR. WOOD: I would guess three.

20 MS. HOLTHUS: Three to four days.

21 MR. WOOD: Three to four.

22 MS. HOLTHUS: Five to seven witnesses according to --

23 THE CLERK: And who's the DA?

24 MS. HOLTHUS: Michelle Sudano.

25 THE CLERK: Okay. Thank you.

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THE COURT: All right.

[Proceeding concluded at 9:48 a.m.]

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CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-15-308774-1
)	
vs.	)	DEPT. XVII
)	
GABRIEL IBARRA,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 15, 2015

**ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:
DEFENDANT'S REQUEST: MOTION FOR DISCOVERY**

APPEARANCES:

For the State: MICHELLE SUDANO, ESQ.,
Deputy District Attorney

For the Defendant: JEREMY B. WOOD, ESQ.,
Deputy Public Defender

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

1

ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

1 LAS VEGAS, NEVADA; THURSDAY, OCTOBER 15, 2015

2 [Proceeding commenced at 9:56 a.m.]

3
4 THE COURT: How about the Gabriel Ibarra case?

5 MS. SUDANO: Thank you, Your Honor.

6 THE COURT: This is a motion for discovery. Did the State
7 file an opposition?

8 MS. SUDANO: We did file an opposition yesterday or actually
9 I think it was filed Tuesday. I can provide a copy for Your Honor
10 if you need it. However, I think that everything has been turned
11 over to Mr. Wood that the State has in its possession. I don't
12 know that there was anything that we even needed to discuss here
13 today.

14 MR. WOOD: Your -- Your Honor, that's correct. I have spoken
15 with Ms. Sudano. As Your Honor knows based on the standard of
16 review, it's our office policy to file those motions. I don't
17 believe that there's any outstanding issues at this point, but I
18 did file it to preserve the issue.

19 THE COURT: Why don't we do this -- why don't you do this, Mr.
20 Wood, prepare an order for your motion assuming like the State's
21 agreeing to these thing, have them sign approved as to form and
22 content. I'll sign off on it that way everyone is protected if
23 there's a -- you had a discovery motion, you have a discovery
24 order.

25 MR. WOOD: I'll have that done today, Your Honor, and sent to

1 Ms. Sudano.

2 THE COURT: Thank you. I think both sides know how I rule on
3 these matters.

4 MS. SUDANO: Your Honor, if I may while we're here on this
5 case. We are set to start trial on Monday. I just wanted to put
6 the offer on the record at this point.

7 THE COURT: Sure.

8 MS. SUDANO: The offer was an attempt to larceny from a person
9 with the State agreeing to make no recommendation at the time of
10 sentencing. That offer will be revoked at this time.

11 THE COURT: Mr. Wood, is your client aware of that offer?

12 MR. WOOD: Yes. I did speak to him about that offer and he is
13 still -- we are still going to trial.

14 THE COURT: All right. Is that correct, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. That's fine.

17 MS. SUDANO: Thank you, Your Honor.

18 THE COURT: Someone else will be handling that trial by the
19 way.

20 MS. SUDANO: Are we still here --

21 THE COURT: Yes.

22 MS. SUDANO: -- at 9 a.m.? Thank you, Your Honor.

23 [Proceeding concluded at 9:59 a.m.]


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1 LAS VEGAS, NEVADA; MONDAY, OCTOBER 19, 2015

2 [Proceeding commenced at 9:36 a.m.]

3 [Outside the presence of the prospective jury panel]

4
5 THE COURT: Let's cover a few ground rules to see if we're all
6 on the same page. Now we -- we've addressed and we don't have to
7 worry with that business about them filming anything, right?

8 MS. SUDANO: No, Your Honor.

9 THE COURT: Okay. Good. Okay. Can we do this -- how many
10 witnesses?

11 MS. SUDANO: Six from the State, Your Honor.

12 THE COURT: Guys got any?

13 MR. WOOD: Us, just potentially the one.

14 THE COURT: Okay. So, can we do this with one alternate?

15 MS. SPELLS: I think that should be fine, Your Honor.

16 THE COURT: I hate to have any more than we absolutely have
17 to. We can do it with one alternate. We'll have 13 in the jury
18 panel. You guys -- we'll give you five challenges each. We can do
19 this with 23 people up there in the box. And I prefer as we -- as
20 I go through the voir dire, I'll ask -- is there anything in
21 particular that you want me to ask? I do the standard. I ask them
22 if they have been accused of a crime. Anybody close to them ever
23 been accused of a crime. All of that kind of stuff. And anything
24 in particular about this case that you want me to quiz the jury
25 pool about?

1 MS. SUDANO: Nothing particular from the State. No, Your
2 Honor.

3 THE COURT: Okay. Anything?

4 MR. WOOD: I don't think so, Your Honor.

5 THE COURT: Okay. So, as I excuse somebody over here out of
6 the 23 for cause, you guys have your jury list, right? So you know
7 exactly whose -- after -- after you count off 23, 24 is going to be
8 sitting right there and just go 24, 25, blah, blah, blah, right
9 down the list. So, you're going to know exactly who's coming up.
10 And if somebody gets excused, I prefer rather than moving these
11 guys around, just bring in that person and putting them in that
12 chair. Whatever -- so, keep it all pretty much straight.

13 There's 15, 16, 17, 18, 19, 20, 21, 22, 23; we got 23
14 chairs. All right. This pools about what 45? Is that what we --

15 THE MARSHAL: Yes, Your Honor.

16 THE COURT: Okay. All right. We don't have anything else.
17 Let's get going. Oh, by the way --

18 MS. SPELLS: Your Honor, can we --

19 THE COURT: -- I think you're assuming or presuming, guessing
20 that this is going to be about three days.

21 MS. SUDANO: It's possible it'll go into a third day. We're
22 hopeful we'll be done tomorrow, but I would probably advise the
23 jury three days just to be safe.

24 THE COURT: All right. Well, there's one small caveat.
25 Wednesday at 3 I have a commitment that I got to be out of here

1 for. So if this is not done by Wednesday at 3 -- the jurors out
2 somebody else can come in and take the verdict any way. But if
3 it's not done by 3 and we're not -- we're not in jury, we're not
4 deliberating, and we'll have to bump it over 'til Thursday after
5 calendar to finish it up just so everybody is -- is aware of that.

6 Anything else we want to address here?

7 MS. SPELLS: Your Honor, can we address the lunch break?

8 THE COURT: Lunch break?

9 MS. SPELLS: Yes. What was the Court anticipating for the
10 time for the lunch break and how long?

11 THE COURT: Whatever you guys -- what do you normally do? I
12 mean, it's got to be an hour. If you need more than that, I don't
13 want to waste any time. I want to use as much of the day as I can.

14 MS. SPELLS: Sure. I still have a commitment to a small
15 child.

16 THE COURT: Okay.

17 MS. SPELLS: So if we can have like an hour and 20 minutes or
18 an hour and 30 minutes. I just need that additional break to be
19 able to --

20 THE COURT: Yeah. I don't -- anybody have a problem with
21 that?

22 MS. SUDANO: Your Honor, the State doesn't. That actually
23 might work better. I have my first two witnesses coming in at 2
24 o'clock. One of them is a high school student. And so I didn't
25 want to pull her out of school on the chance that she might have to

1 be here earlier. So two is perfect or a longer lunch is perfect
2 for the State as well today.

3 THE COURT: Okay. We could break around -- we can break
4 around 12:30 and say from 12:30 to 2, take an hour and a half. Is
5 that -- will that work?

6 MS. SPELLS: Yes, Your Honor. Thank you.

7 THE COURT: Anything else?

8 MS. SPELLS: No.

9 MS. SUDANO: Not from the State.

10 THE COURT: Okay. All right. Then let's bring in the jury
11 panel.

12 THE MARSHAL: All right, Judge.

13 THE COURT: Were there any offers that you needed to put on
14 the record?

15 MS. SUDANO: We did put the offer on the record --

16 THE COURT: Okay.

17 MS. SUDANO: -- last week when we're at -- in front of Judge
18 Villani.

19 THE MARSHAL: The jurors are present.

20 [In the presence of the prospective jury panel]

21 THE MARSHAL: Jurors are present, Your Honor.

22 THE COURT: All right. Let's all have a seat. Good morning.

23 THE JURORS: Good morning, Your Honor [in unison].

24 THE COURT: My name's James Bixler. I'm a Senior Judge
25 sitting for Judge Villani this week. I'm going to explain to you

1 real quickly how this process works in regards to the jury
2 selection. And I'll give you a few pointers before we get going.
3 The questions that we ask you, it's real important that you give us
4 full, complete, honest answers. So the very first thing we're
5 going to do is swear you all in. So I want everybody to stand,
6 raise your right hand, the Clerk is going to swear everybody in.

7 [Clerk swears prospective jury panel]

8 THE COURT: Everybody have a seat. All right. The next thing
9 we do is we have roll call. We want to make sure that we got the
10 right guys here, okay. So just answer present, here, whatever
11 tickles you answer so that we can have a record of who's here.
12 Just so you're aware.

13 This is Michelle is right there, our recorder. She's in
14 charge of making a record. This is a verbatim record of everything
15 that goes on in the courtroom. Every question, every answer has to
16 be precisely recorded so they can make a transcript. Sometimes
17 you're going to hear somebody, maybe me, could be here stop the
18 proceeding if people are talking on top of each other or they can't
19 hear and we're not going to have a good record. So don't -- don't
20 be embarrassed for somebody if we have to stop the proceeding
21 because somebody's not making a good record, okay.

22 Carol, right here beside me is the Clerk. She's in
23 charge of taking the evidence, marking everything, keeping track of
24 it, swearing in the witnesses just like she sworn in the jury, jury
25 pool.

1 And -- and JR over here is the Marshal. He's the one
2 that brings in the witnesses. He's hopefully the only here that
3 has a gun and he's in charge of security obviously. Most
4 importantly is you guys as the jury can't talk to any of us on this
5 side, me, the Clerk, the Recorder, the Prosecutors, the witnesses,
6 the defense. You can't do any of that. The only person you can
7 converse with is JR, okay. So if you have some information you
8 need to give to us, you give it to JR. He contacts us, okay. So,
9 just -- just a couple of the ground rules. All right.

10 Now, here's how this works. This is the State of Nevada
11 versus Gabriel Ibarra, and it's case number C15308774-1. And just
12 for the record, this is Department 17 of the Eighth Judicial
13 District Court. So this is a criminal case, okay. This case is
14 not going to take very long. We anticipate it's only going to take
15 about three days, okay. So we'll come back and I'll ask everybody
16 if they're okay with sitting on a jury for three days, but we got a
17 few things first of all that we got to do.

18 And the first one is the roll call, okay. So will you go
19 through the roll call first?

20 THE CLERK: Uh-huh.

21 THE COURT: Okay. Just answer present, here, whatever. Go
22 right ahead.

23 THE CLERK: We're just going to use first names; is that okay?

24 THE COURT: Fine with me.

25 THE CLERK: Okay. And just say present if you're here.

1 [Clerk reads roll call of prospective jury panel]

2 THE COURT: Is anyone present whose name was not called?

3 Anybody fall in that category? Okay. Then we got the right group.

4 And what we're going to do is at this point we're going to start

5 the process of voir dire or voir dire. It means questions or

6 testing you for your qualifications to sit on this jury, okay.

7 So a couple of general qualifying questions that need to

8 be asked. Is there anyone here in this group -- and these

9 questions are probably what were asked of you downstairs -- is

10 there anybody in this group that has ever been convicted of a

11 felony offense and have not had your civil rights restored?

12 Anybody fall in that category? Answer is no response from the

13 jury.

14 If I ask a question and there's no response from anybody,

15 then I'll answer the question so that there's a question and an

16 answer like -- like they do that in Court, question and answer. It

17 looks like I'm talking to myself and I might be talking to myself

18 before we're all done. So the answer is no. All right.

19 Is there anyone in this group who is not a citizen of the

20 United States? Anybody fall in that category? No response. The

21 answer is no.

22 How many of the folks in this group have been naturalized

23 citizens? They were not born in the United States, but became

24 naturalized citizens. There's always a few. Okay. Good.

25 Excellent. And I ask that question because for those of us who

1 were born here as opposed to those who went through the
2 naturalization process, that's quite amazing what they had to do.
3 They had to take classes. They had to learn stuff. A lot of us
4 that were born here aren't even aware. And then they had to take a
5 test. And one of the things that's covered in that -- in that
6 information that these folks go through when they become a citizen
7 is jury duty. Jury duty is what you guys got right now.

8 This is the only country in the world that has what we
9 do. I can promise you that none of these folks that were
10 naturalized citizens are -- are -- will be jumping at the chance to
11 get off of this jury because that's one of the things that they
12 really kind of cover thoroughly. And it's amazing that this is the
13 only country in the world that relies on its citizens to do the
14 most important function involved in our entire legal system 'cause
15 we trust our citizens to show up, pay attention, follow the
16 instruction and answer the questions that are posed to them as a
17 jury. No other country trusts their citizens to do what we're
18 asking you guys to do.

19 And before we ever even get going, I want to thank you
20 for being here. In all the years that I've sat on the bench, I
21 have never had a jury with a smoke all cleared and the trial was
22 over. I've never had a jury who did not take the experience of
23 being a jury as a positive in their life, a positive experience.
24 So, thing about before you -- I'm going to ask everybody in just a
25 second if you're going to be able to sit here for a couple of days

1 and be on this jury and follow the instructions. And if you got
2 something outside going on that's going to interfere with your
3 ability to sit on a jury, you're going to get a chance to tell me
4 about it. But I'm going to -- going to beg you if you don't have a
5 real, real good reason for begging off this jury, please don't do
6 it. We need -- we need people that have good common sense that can
7 pay attention, follow the instructions and be fair and impartial to
8 both sides of this case.

9 So what I'm asking you if you got some reason why you
10 can't be here for three days, please be careful. If you got a real
11 reason, trust me, I'm going to let you -- I'm going to let you off.
12 All right.

13 One other quick little thing, as you guys could see when
14 we went through the roll call, you guys are in a very specific
15 order. Juries are selected at random. I always say, you know, I
16 appreciate you guys volunteering for jury duty, but we all know you
17 didn't volunteer, but you showed up. You got a jury summons. You
18 showed up. If you wanted to volunteer for jury duty, you can't do
19 that. Juries have to be selected at random from a large pool of
20 folks and you just can't come down and volunteer for it.

21 And -- and there's -- they have to be a random cross
22 selection from the community for jury duty. And there's folks over
23 here who absolutely do not want to be here. There's folks over
24 here that really don't care one way or the other, they can take it,
25 they can leave it. And believe it or not there's folks over here

1 that actually want to be on a jury that want to serve on a jury.
2 In the olden days there was a jillion exceptions for jury service.
3 I mean, teachers didn't have to serve, cops didn't have to serve,
4 judges didn't have to serve. There are no except -- there are no
5 exemptions these days. Every -- everybody is subject to jury duty.

6 I've been sitting right where you are. And I was looking
7 forward to finally being over there instead of over here once to
8 see how it worked. When they finally get to the part where I say,
9 you know any of these folks, you know any of these people here, I
10 had to say well I know them all. I know everybody on that side. I
11 know everybody on this side. But it's not going to keep me from
12 being fair and impartial. I can promise you I can be fair and
13 impartial. They go, get out. It lasted about five seconds. But
14 that's not the case here.

15 So, I'm going to -- I want these people to -- you know,
16 this is a criminal case. It's not going to take very long. We're
17 going to read to you -- you want to read it to them right now, the
18 information?

19 THE CLERK: Sure.

20 THE COURT: Okay. We're going to read you the information.
21 The information is a charging document, okay. A couple of basic
22 things, in the United States, a Defendant in a criminal case is
23 presumed innocent, presumed innocent. If you were to go to
24 deliberate right now, you have to find the Defendant not guilty no
25 matter what. You have to find him not guilty 'cause there hasn't

1 been any evidence. It is incumbent upon the State of Nevada to
2 prove beyond a reasonable doubt that the Defendant committed the
3 crime that he's charged with. And until the State has proven
4 beyond a reasonable doubt that the Defendant has committed the
5 offense he's charged with, he's not guilty. He's not guilty. He
6 doesn't have to say anything. He doesn't have to do anything. He
7 doesn't have to prove anything. It's the State's burden of proof.

8 Is there anybody in this group that either doesn't
9 understand that, the most basic concept of American jury prudence
10 or going to like it? Is there anybody on either one of those two
11 categories here? It's real important that you understand that
12 because the Defendant doesn't have to put on proof. The Defendant
13 doesn't have to say anything. Defendant doesn't have to do
14 anything. He can sit there and play solitaire. And it's the
15 State's burden of proof, okay.

16 So, here's what we're going to do. I'm going to enter --
17 I'm going to have both the State and the defense introduce
18 themselves, identify their witnesses. You got to pay real close
19 attention to these folks and prove their naming as potential
20 witnesses in the case because the very next question I'm going to
21 ask you is if you know anybody. You know any of these folks, any
22 of these witnesses, okay.

23 So, counsel, you want to -- and also in conjunction with
24 them introducing themselves and identifying the witnesses, I'm
25 going to have them give you a capsule, just a small capsule, not an

1 opening statement, just a small capsule of what this case is going
2 to look like, okay. Go right ahead.

3 MS. SUDANO: Thank you, Your Honor.

4 Good morning, everyone. My name is Michelle Sudano. I'm
5 a Deputy District Attorney with the Clark County District
6 Attorney's Office. I've been assigned to prosecute the case of
7 State of Nevada versus Gabriel Ibarra.

8 Throughout this case the State intends to prove that on
9 or about January 31st of 2015 the Defendant, Gabriel Ibarra,
10 approached Evangelia Mantikas while she was stopped at a bus
11 station or a bus stop, excuse me, about 2 o'clock in the morning.
12 Approached her. Asked to borrow her cellphone which she handed it
13 over to him. He took off running with it. A couple of hours later
14 he was found in the vicinity of that phone by officers of the Las
15 Vegas Metropolitan Police Department.

16 The State anticipates calling some of the following
17 witness although you won't hear from all of them; Evangelia
18 Mantikas, Brianna Roche, an investigator with the District
19 Attorney's Office either Joe Watts or Marco Rafalovich [phonetic],
20 and then several members of the Las Vegas Metropolitan Police
21 Department including Nathaniel Navarro, Paul Kunz, Joshua Giese,
22 Carlos Morales, Mark Patterson, Brandon McFarlane, Jason Fletcher,
23 Carlos Urena, Luis Renhard, Sean Woodhard -- excuse me -- Sean
24 Woodard and Christopher Hibbetts. Thank you all.

25 THE COURT: Thank you very much. Counsel.

1 MR. WOOD: Good morning, ladies and gentlemen. My name is
2 Jeremy Wood. My co-counsel is Ms. Jasmin Spells. And we have the
3 honor today of representing Gabriel Ibarra.

4 At the end of this case you will understand why the State
5 cannot prove that Gabriel is guilty of the crime of larceny from
6 the person.

7 We will be calling potentially Willie Singletary and
8 potentially Gabriel Ibarra. Thank you.

9 THE COURT: Thank you, counsel.

10 Okay. Now, while that's fresh in your mind. Does
11 anybody in the jury pool know any of the counsel, the Defendant or
12 any of those persons that were identified as potential witnesses?
13 Anybody at all? No response, so the answer is no. Perfect.

14 All right. The next thing we're going to do real quick
15 is I'm going to have the Clerk read the information to you all. It
16 will inform you as counsel just did the actual charge against the
17 Defendant, okay. And before she reads this -- before Carol reads
18 this into the record, I need to remind you this is a charging
19 document. It's not any kind of evidence at all, okay. It's just
20 informs the Defendants and now it's going to inform you of the
21 actual formal charges against the Defendant, okay. Defendant is
22 innocent until the State affirmatively proves him guilty beyond a
23 reasonable doubt. How many times have I said that already? Go
24 ahead.

25 [Clerk reads the Information]

1 THE COURT: Which is the Defendant has pled not guilty.

2 Okay. Now, is there anyone in this group -- I'm going to
3 ask questions -- did I tell you that it's -- you were -- you were
4 the random portion of the selection of the jury pool was
5 accomplished downstairs by the Jury Commissioner's Office. Now
6 you're in a particular order. It's real important that you stay in
7 the order that you're in. And so the seat that you're in is your
8 seat, okay. And that's how it will be when we get down to the
9 actual jury.

10 So -- so you have a picture of how this whole process
11 works. There's 23 people over here in this box area, we call the
12 box. The rest of the jury pool is over here. In just a few
13 minutes we're going to start focusing our questions on these 23
14 folks. Once 23 people have been passed for cause by both sides,
15 then we're going to select the parties -- the District Attorney and
16 the defense counsel gets to select out of these 23 folks 13 people
17 to sit on this jury, 12 jurors and 1 alternate. And the alternate
18 will be selected later, so nobody knows who the alternate is until
19 after the evidence has all been adduced, okay. That way everybody
20 is paying real close attention to what's going on. All right.

21 Just so you understand the process. As one of the folks
22 over here in this group of 23 is excused for whatever reason,
23 they'll be replaced by the next person in order. You guys are in a
24 particular order also and it's important that every time we take a
25 break that when you come back, you sit in the exact same seat

1 because everybody needs to know who's coming up next. And there
2 will be plenty of people being replaced.

3 So as we start asking the questions of these 23 people,
4 it's real important that you guys over here in the rest of the jury
5 pool pay attention because when you come up here, I'm going to say
6 all these questions that we've been asking these, were you paying
7 attention, you weren't going to sleep back there were you, and do
8 you have any responses to any of those questions. So I don't have
9 to go back through every single one of them for you guys, okay.

10 So is there anyone in this group in this entire pool who
11 has such a prejudice, sympathy or bias as to a race, religion,
12 sexual preference or anything that's related to any of those
13 subject matters that would prevent them from being able to be on
14 this jury and being fair and impartial to both sides? Pretty wide
15 sloth of questions I just asked. Everybody get what I'm asking?
16 Anybody feel as though they have any of those prejudices or biases
17 that would prevent them from being able to be fair and impartial?
18 The response is no. Good for you guys.

19 All right. We're going to get to the -- the one
20 question. We're anticipating this trial is going to take three
21 days. In the big picture of trials, this is real short. I mean,
22 this is real short. I mean, you could easily get -- picked on a
23 jury pool that goes on for weeks, weeks. Three days is hardly
24 anything. But still there could be something going on in your life
25 that would prevent you from being able to sit on this jury to pay

1 attention.

2 We need people that can focus and pay attention to the
3 evidence. The jury is actually the judge of the facts. The Judge
4 sits up here is the Judge that questions and issues the law. The
5 jury sits over there is actually the judge of what the facts are.
6 And that's what you'll be asked to determine based upon the
7 evidence that comes from the witnesses from this witness stand any
8 exhibits that are admitted. You will listen to that evidence and
9 you will determine what you believe the facts are. And you will
10 apply it to the instructions that the Court gives you and then you
11 will answer the ultimate question; did the State prove beyond a
12 reasonable doubt that the Defendant committed a crime? Okay. And
13 that's in a nutshell. That's how this whole thing works, okay.

14 This trial is anticipated to last three days. Is there
15 anything going on in your life that would prevent you from being
16 able to sit on this jury over the course of the next three days?
17 And we're going to get to everybody in just a second. What I want
18 you to do is raise your hand, identify yourself for the record.
19 You don't need to stand up. Just identify yourself for the record
20 and tell me what it is that's going on in your life that's going to
21 prevent you from being able to sit on this jury for the next three
22 days, okay.

23 Here are the kinds of things that I'm talking about.
24 These are the things that can get you off jury duty. If you have
25 childcare issues, you have nobody to help you. You either got to

1 drop somebody off or pick somebody up and you have nobody to help
2 you do that. Childcare or senior care. You could be taking care
3 of somebody. You could be taking care of some -- an elderly
4 person, same situation. You have no relief, nobody to help or
5 assist you in that endeavor. I'll let you off.

6 If you have a doctor's appointment and you can't change
7 it, you can't move it because it's sometimes the doctor's
8 appointments are real hard to deal with and you have to go. You
9 got a situation like that let me know.

10 If you have a trip or travel plans and you can't move it
11 -- you can't move -- and you can't get your refund, I'm going to
12 let you off, okay.

13 Here's what won't get you off, you got a job and you
14 can't get off work or you don't get paid, you don't go to work or
15 you're in some kind of a business or profession that nobody will
16 cover you. If you're not going to work, I can't let you off for
17 those types of economic business related reasons. What I can do is
18 once we know that we have enough people in this panel, this whole
19 pool to cover and it's a question between you and somebody that
20 doesn't have one of those kind of business related reasons, I'll --
21 I'll let you off. But I can't let you off until I know that we
22 have enough people that cover this trial, okay.

23 So, what I want you to do is I'm going to start and
24 everybody can see how this is going to work real fast. I start in
25 the back row, far right, you guy's left, and go down that line and

1 then come to the next line and then I come to third right here,
2 then I come over here to you guys, go in the first row, second row,
3 third row. So let's hear anybody in that back row can't -- has
4 some reason that would prevent them from being here for the next
5 three days? Yes. You are?

6 JUROR NUMBER NO. 118: Mason.

7 THE COURT: Joseph Mason.

8 JUROR NUMBER NO. 118: Mason, 118.

9 THE COURT: Okay.

10 JUROR NUMBER NO. 118: I have childcare problems.

11 THE COURT: Okay. What's the deal?

12 JUROR NUMBER NO. 118: My wife -- my wife works 9 to 5. I
13 work 2 to 10, so I watch him until I go to work. Bring him to the
14 daycare and then I have to drop my truck off to her 'cause we only
15 have a four door vehicle and pick up hers and then she goes and
16 picks my son up afterwards. So me being here for three days is
17 going to be a little issue.

18 THE COURT: No way you can make some arrangements somewhere?

19 JUROR NUMBER NO. 118: No 'cause her mom -- mom's is in the
20 Philippines for a month and her dad works fulltime as Caesars, so
21 he works all day.

22 THE COURT: Okay. All right. Now here's how this works, when
23 you get -- I'm going to excuse you. You go down the Jury
24 Commissioner's Office on the 3rd floor and let them know. And what
25 they'll do is they're going to roll you into a jury down the road,

1 probably somewhere from three to six months.

2 JUROR NUMBER NO. 118: Uh-huh.

3 THE COURT: But they'll expect you the next time you get a
4 jury summons, they'll expect you to make some prior arrangements.
5 So now you know how it works. They'll expect you to make some
6 prior arrangements before you go out, okay.

7 JUROR NUMBER NO. 118: No problem.

8 THE COURT: Go on downstairs to the Jury Commissioner's office
9 and you'll be replaced by?

10 THE CLERK: Andrea Quimby-Nicols.

11 THE COURT: Okay. You are Andrea. What's your jury number?

12 JUROR NUMBER NO. 146: 146.

13 THE COURT: All right. Anybody else in that back row? You
14 guys all good to go? Okay. Good. Second row, anybody in this
15 second row has problems for the next couple of days? Yes. You
16 are?

17 JUROR NUMBER NO. 134: Yvonne, 134.

18 THE COURT: Yvonne. All right. What's up?

19 JUROR NUMBER NO. 134: Senior care. I am the sole caretaker
20 of my father, 85 years old, disabilities.

21 THE COURT: Go downstairs, third floor. Same thing. They'll
22 probably -- they're going to roll you into a jury pool down the
23 road probably three to six months and they'll expect you to make
24 some arrangements for somebody next time you get a jury summons,
25 okay.

1 JUROR NUMBER NO. 134: Thank you.

2 THE COURT: And Yvonne will be replaced by?

3 THE CLERK: David Hall.

4 THE COURT: David Hall. All right. Second row. Anybody on
5 that second row? You guys all good to go? Perfect. All right
6 down here, anybody got something going on? Yes. You are?

7 JUROR NUMBER NO. 142: Jennifer, number 142.

8 THE COURT: Okay. What's up?

9 JUROR NUMBER NO. 142: I actually have MS and I have to give
10 myself an injection at a specific time everyday, so. Oh, sorry. I
11 have MS and I have to give myself an injection at a certain time
12 everyday, so.

13 THE COURT: Is it the same time everyday?

14 JUROR NUMBER NO. 142: Same time.

15 THE COURT: We can -- we can work around that. I mean, if you
16 -- if you otherwise can be on this jury -- there's something else I
17 need to bring up --

18 JUROR NUMBER NO. 142: Uh-huh.

19 THE COURT: -- if you are, not only have a doctor's
20 appointment, but if you're on medication of some sort, if you're on
21 medication that interferes with your ability to focus and
22 concentrate, you're probably not a good candidate for jury service
23 'cause we really need people that can pay attention, focus and stay
24 alert during the course of the testimony. So, if you got some
25 condition like that, you're probably not a good candidate and at

1 least share that information with us.

2 We can take a break. And something else, if you're
3 feeling like you need to go to the bathroom, let JR know and we'll
4 take a break. And I don't care if we just had a break 15 minutes
5 before. It's real important that the folks sitting on this jury
6 are comfortable. So we try to accommodate you in any way we can.
7 So if you need to take a shot --

8 JUROR NUMBER NO. 142: Uh-huh.

9 THE COURT: -- you let JR know. In fact, you tell us in
10 advance what time you have to --

11 JUROR NUMBER NO. 142: Okay.

12 THE COURT: -- do the shot and we'll just take a break. We'll
13 just take a break right then and we'll do it every day.

14 JUROR NUMBER NO. 142: Okay. All right. Then -- then I'd be
15 okay.

16 THE COURT: Does that accommodate you?

17 JUROR NUMBER NO. 142: Uh-huh.

18 THE COURT: Okay. And otherwise you're all good to go?

19 JUROR NUMBER NO. 142: Yeah. I'd be fine.

20 THE COURT: Perfect.

21 JUROR NUMBER NO. 142: Other than that, I'm okay with it.

22 THE COURT: Perfect.

23 JUROR NUMBER NO. 142: Okay.

24 THE COURT: Thank you very much.

25 By the way, in terms of thanks. When you guys come in

1 and out of the jury room, you will notice that everybody including
2 me stands up. We stand up as a way of saying thank you for giving
3 us your time to come down here to sit on this jury. Just to let
4 you know. I try to do everything I can to induce you guys to stick
5 around.

6 All right. Let's go over here. Anybody in that front
7 row? Are you guys all good to go? All right. Got two on the end.
8 You -- first you, sir. Your name is what?

9 JUROR NUMBER NO. 151: Len Tayong, 151.

10 THE COURT: 151. Len-Aynsley.

11 JUROR NUMBER NO. 151: Yup.

12 THE COURT: Okay. What's up?

13 JUROR NUMBER NO. 151: I have ADHD. It's hard for me to
14 concentrate for a long period of time.

15 THE COURT: You take medication?

16 JUROR NUMBER NO. 151: No. I was diagnosed in the
17 Philippines, so.

18 THE COURT: Okay. You should go to a doctor and you should
19 get something that helps you 'cause they have those things. Go on
20 down --

21 JUROR NUMBER NO. 151: I don't have good insurance, sir.

22 THE COURT: I know the feeling. I feel sorry for you.
23 Hopefully one of these days we'll get things like that fixed. Go
24 on downstairs and let them know that I excused you, okay. If you
25 get to a doctor and you get some treatment and your doctor says --

1 your doctor can write you a little note that says you're not
2 appropriate for -- for jury duty because of whatever, what you've
3 got. So, just keep that in mind, okay.

4 JUROR NUMBER NO. 151: Okay. Thank you, sir.

5 THE COURT: Go on downstairs to the third floor and let them
6 know I excused you, okay.

7 And then right next to him is Amy?

8 JUROR NUMBER NO. 152: Yes, Amy, 152.

9 THE COURT: Okay.

10 JUROR NUMBER NO. 152: My only issue is I have an appointment
11 tomorrow for 4:30 for my son. It's a -- for an IEP. I don't know
12 if you're familiar with that.

13 THE COURT: Oh yeah.

14 JUROR NUMBER NO. 152: So, I can't really change it. So, I
15 mean if I'm done by 4 I can stay, but --

16 THE COURT: That brings up another point. The way that the
17 trial schedule goes the Judge has -- there's a calendar that starts
18 at 8:30. Generally --

19 [Colloquy between the Court and the Clerk]

20 THE COURT: So here's what the calendar -- the trial schedule
21 would look like. We'll go -- today we'll go 'til 5 o'clock. We
22 won't ever stay passed 5 or 5:15, at the very latest. Tomorrow the
23 trial will commence somewhere between 10 and 10:15. We decided
24 that later today when we were breaking and go 'til like Noon. I
25 think we decided we were going to take a lunch break around 12:30

1 for about 90 minutes, then come back and finish the afternoon up.
2 Wednesday we'd probably start somewhere around 9:30. Do the same
3 basic schedule, take a break somewhere around 12:30 for about an
4 hour and a half. And then Wednesday afternoon just to let
5 everybody know, I have a commitment at 3 o'clock. So if we're not
6 done by Wednesday, we'll be breaking around 3 o'clock on Wednesday
7 and then we'd start on Thursday probably around the same time 10
8 o'clock in the morning if we're still here Thursday. We're
9 anticipating that it'll be over with before then, okay. So that
10 kind of gives you a general idea of -- of the schedule and how this
11 would work, okay.

12 'Cause 4:30 is too early. If you got -- is it an

13 JUROR NUMBER NO. 152: It's his initial. His first --

14 THE COURT: First one?

15 JUROR NUMBER NO. 152: Yeah.

16 THE COURT: How old?

17 JUROR NUMBER NO. 152: Three.

18 THE COURT: Really?

19 JUROR NUMBER NO. 152: Uh-huh.

20 THE COURT: Go downstairs. Go downstairs to the Jury
21 Commissioner's office and let them know -- again, they're going to
22 enroll you into -- into another pool down the road somewhere
23 between three to six months, okay. If -- when they do that you'll
24 -- they're going to expect you to make some arrangements or -- this
25 wasn't even a childcare issue. This was just an appointment that

1 hard to move those.

2 JUROR NUMBER NO. 152: Sorry.

3 THE COURT: Thank you. I appreciate you being here.

4 All right. In the next row over there sitting like on
5 the end. Your name is?

6 JUROR NUMBER NO. 163: Sidney James, 163.

7 THE COURT: Okay. There you are.

8 JUROR NUMBER NO. 163: Oh yes. I have a doctor's appointment
9 tomorrow and I have diabetic neuropathy and I'm out of my
10 medication, so I can't miss the appointment 'cause I have to get my
11 medication refilled.

12 THE COURT: Okay. Go on downstairs, third floor. I
13 appreciate you being here. Sidney, thank you very much.

14 Anybody else in that second row? Yes. You are?

15 JUROR NUMBER NO. 161: Osorio, 161.

16 THE COURT: Okay.

17 JUROR NUMBER NO. 161: I have really bad anxieties. I feel
18 like I'm actually going to have one right now. And then I won't be
19 able to be focused.

20 THE COURT: Okay. You -- do you see a doctor for your
21 condition?

22 JUROR NUMBER NO. 161: No. I'm supposed to be going next week
23 for it.

24 THE COURT: Well, go get some help. Go on downstairs to the
25 third floor. I appreciate you being here again.

1 JUROR NUMBER NO. 161: Thank you.

2 THE COURT: Thank you very much.

3 Anybody else in that row? You guys -- okay. What about
4 the back row? You guys in the back row. Yes. Your name is?

5 JUROR NUMBER NO. 168: Schilling, 168.

6 THE COURT: Okay. What's up?

7 JUROR NUMBER NO. 168: Well, I have schizophrenia and I take
8 medication for it and I don't feel that I'm able to serve on a
9 jury.

10 THE COURT: Okay.

11 JUROR NUMBER NO. 168: I see a psychiatrist once every couple
12 of months.

13 THE COURT: Okay.

14 JUROR NUMBER NO. 168: So.

15 THE COURT: Is that -- Okay. Go on downstairs.

16 JUROR NUMBER NO. 168: Thank you.

17 THE COURT: You're out of here. And I appreciate you being
18 here. Thank you.

19 JUROR NUMBER NO. 168: Thank you, sir.

20 THE COURT: Anybody else? Okay. Just us. All right. Here
21 we go. From here on -- well, another question for everybody. I'm
22 going to give you instructions periodically on the law. And I need
23 to have you guys promise me that you will follow the instructions
24 of the law that I give you even if you don't agree. It's real
25 important 'cause you can't make up your own version of what you

1 think the law should be or actually is or should be. You need to
2 promise me that you're going to follow the instructions of the law
3 as I give them to you even if you don't like them. Can everybody
4 promise me that? Is there anybody who cannot promise me that? No
5 responses, so that's good. We're doing good.

6 All right. Now, we're going to start back up here with -
7 - is it Sherilyn?

8 JUROR NUMBER NO. 117: Yes.

9 THE COURT: Okay. We're going to start with you, Sherilyn.
10 And I'm going to ask questions of each one of you and we go right
11 down the line. And then when I get done, I'm going to turn it over
12 to counsel and there -- both sides are going to get a chance to ask
13 any of you questions, they can ask every single one of you
14 questions or they can just piecemeal and ask based upon your
15 answers to these questions, they'll be probably picking out a few
16 of you to see if there's something in your background that would in
17 particular make you an inappropriate candidate for jury service in
18 this case, okay.

19 So, here's a question for everybody. I'm talking about
20 over here now, but you guys pay attention. Is there anybody in
21 this 23 -- group of 23 who has served on prior jury duty? Okay. I
22 knew there would be some. All right. Over here. Your name is?

23 JUROR NUMBER NO. 128: Katrina Bruce, 128.

24 THE COURT: Okay. What kind of jury duty were you on and how
25 long ago was it? Was it --

1 JUROR NUMBER NO. 128: It was about four years ago, a federal
2 court. It was a civil case.

3 THE COURT: Were you by any chance the -- the foreman of that
4 jury?

5 JUROR NUMBER NO. 128: I was not.

6 THE COURT: Okay. Did that jury deliberate?

7 JUROR NUMBER NO. 128: Yes.

8 THE COURT: Criminal and civil cases are -- the only thing
9 that's the same about them is they're held in the same building.
10 But other than that, there is nothing else the same. The issues
11 that are presented to a jury in a civil case have no -- they're not
12 even close to what's going to go on here. Those matters are all
13 money issues and money has nothing to do with what's going on here.

14 So, can you -- can you set that aside in your memory and
15 not let it interfere with your ability to be on this jury, in this
16 kind of a criminal case?

17 JUROR NUMBER NO. 128: Yes, sir.

18 THE COURT: Perfect. Thank you. And who else did I see over
19 here with -- yeah. You are?

20 JUROR NUMBER NO. 132: Phil is my first name and I'm 132.

21 THE COURT: Perfect. All right. So how --

22 JUROR NUMBER NO. 132: I'm not sure how long ago it was, I was
23 -- I've only been a resident of this state for a couple of years
24 and I served on a jury in San Bernardino County maybe eight or ten
25 years ago. It was --

1 THE COURT: Criminal case or civil case?

2 JUROR NUMBER NO. 132: -- it was a criminal case involving a
3 death of a person.

4 THE COURT: Okay.

5 JUROR NUMBER NO. 132: And because I have problems with blood,
6 I wound up fainting in the jury panel and had to be excused in the
7 midst of the trial. So I didn't serve on the jury to the end.

8 THE COURT: That's why we have an alternate jury, people who
9 step in when something like that happens. Well, there's nothing
10 like that involved here, so you think you'd be okay?

11 JUROR NUMBER NO. 132: Yes, sir. I think so.

12 THE COURT: Perfect. So you weren't on the jury long enough
13 to actually get instructed by the Judge on the law of the case,
14 were you?

15 JUROR NUMBER NO. 132: That's correct.

16 THE COURT: Okay. So this will be all new for you. All
17 right. You good to go?

18 JUROR NUMBER NO. 132: Yes, sir.

19 THE COURT: Perfect. Appreciate it.

20 Do I see another hand over here? Yes, sir. And you are?

21 JUROR NUMBER NO. 147: David, 147. I served two civil trials
22 in Arizona. These were about 30 years ago.

23 THE COURT: Okay. Once again, civil cases and criminal cases
24 -- first of all 30 years you probably don't remember much. I know
25 I don't.

1 JUROR NUMBER NO. 147: A little.

2 THE COURT: Is anything about that prior jury service that
3 will interfere with your ability to be on this jury?

4 JUROR NUMBER NO. 147: No.

5 THE COURT: Perfect. Appreciate it.

6 All right. Then we have -- down here we have -- yes.
7 You are?

8 JUROR NUMBER NO. 138: Mary Peterson, 138.

9 THE COURT: 138, Mary Peterson. What's up?

10 JUROR NUMBER NO. 138: I was on a jury 15 years ago in
11 Chicago.

12 THE COURT: In Chicago?

13 JUROR NUMBER NO. 138: Uh-huh.

14 THE COURT: That must have been interesting. Criminal or
15 civil?

16 JUROR NUMBER NO. 138: It was civil.

17 THE COURT: Were you by any chance the foreperson? I forgot
18 to --

19 JUROR NUMBER NO. 138: No. Foreperson did you say? No.

20 THE COURT: Okay. Anything about that experience that would
21 interfere with your ability to be on this jury?

22 JUROR NUMBER NO. 138: Not at all.

23 THE COURT: Okay. Perfect. Appreciate it.

24 Somebody else down there? We're good. Okay.

25 Now, is there anybody in this group of 23 who has -- have

1 been accused of a crime? And then I'm going to ask you to tell us
2 about what kind of crime? Anybody been convicted or accused of a
3 crime? Anybody fall into that category? We have one response.

4 Okay.

5 JUROR NUMBER NO. 146: When I was a teenager I got --

6 THE MARSHAL: [indecipherable] number.

7 JUROR NUMBER NO. 146: Oh, I'm sorry. Andrea, 146.

8 THE COURT: Okay.

9 JUROR NUMBER NO. 146: And I went to Court as a teenager for
10 underage drinking. I don't know if that counts.

11 THE COURT: It's all right. Anything about that experience
12 that would cause you to be unfit for jury service in a case like
13 this?

14 JUROR NUMBER NO. 146: No, sir.

15 THE COURT: And the reason -- I'm going to ask this question
16 specifically, we go through this because if you have -- do we have
17 a police officer witnesses?

18 MS. SUDANO: We do, Your Honor.

19 THE COURT: Okay. You got to make a commitment that you're
20 going to treat the witnesses -- just because a person is a police
21 officer witness, you can't give them extra credit or maybe
22 depending on your background, you might have a -- you might have
23 some bone to pick --

24 JUROR NUMBER NO. 146: Right.

25 THE COURT: -- with a police officer in the passing. Maybe

1 you'll discredit their testimony just because they're a police
2 officer. You got to give us a commitment that you're going to
3 treat a police officer just the same as any other witness.

4 JUROR NUMBER NO. 146: Right. I will.

5 THE COURT: Will you do that?

6 JUROR NUMBER NO. 146: Yes.

7 THE COURT: Okay. Perfect. And nothing about that thing when
8 you were young is going to interfere with your ability to be fair
9 and impartial in this case?

10 JUROR NUMBER NO. 146: No, sir.

11 THE COURT: Okay. Perfect. Did I see somebody else in that
12 back row? Second row, you guys all good? Down here in the front
13 row is the only the other one right here. You -- your name is?

14 JUROR NUMBER NO. 145: Nich, number 145.

15 THE COURT: Okay.

16 JUROR NUMBER NO. 145: Fourteen years ago I was accused of DUI
17 and [indecipherable].

18 THE COURT: Okay. Anything about that experience that would
19 interfere with your ability to -- to be on this jury?

20 JUROR NUMBER NO. 145: Not necessarily.

21 THE COURT: Be fair and impartial to both sides?

22 JUROR NUMBER NO. 145: No. I don't think so.

23 THE COURT: Okay. All right. Good.

24 Anybody in this group of 23 have any training or
25 experience in law enforcement? Anybody in any form or fashion?

1 Okay. We got one in the back row.

2 JUROR NUMBER NO. 125: George Baumer, 125.

3 THE COURT: Okay. What kind of experience or background you
4 got?

5 JUROR NUMBER NO. 125: I work primarily with the law
6 enforcement and the army designing electronic systems for all the
7 vehicles. And so I've done several ride alongs with them, worked
8 with Metro [indecipherable] all that.

9 THE COURT: Okay. You have any kind of a personal
10 relationship or connection with any of Metropolitan Police?

11 JUROR NUMBER NO. 125: If anybody, they're retired.

12 THE COURT: Okay.

13 JUROR NUMBER NO. 125: Uh-huh.

14 THE COURT: Anything about that relationship that would
15 interfere with your ability to be on a jury in a case like this
16 where you're going to hear the testimony of a police officer?

17 JUROR NUMBER NO. 125: No. I don't believe so at all.

18 THE COURT: You'll treat the testimony of the police officer
19 just the same as any other witness?

20 JUROR NUMBER NO. 125: Absolutely.

21 THE COURT: Okay. All right. Good. Perfect. So, I think
22 we're kind of done. Now, we're going to come back and I'm going to
23 start with -- here's what I'm going to ask then and everybody so
24 you're prepared. I want you to tell me how long you've been in Las
25 Vegas, what you do for a living, what your spouse does for a

1 living, what your kids do for a living. We'll start with that and
2 see what happens.

3 JUROR NUMBER NO. 117: Okay. Let me see if I can remember all
4 the questions. I have lived in Las Vegas since I was born. I am
5 45 years old.

6 THE COURT: Badge number. I'm sorry.

7 JUROR NUMBER NO. 117: Oh, sorry. Sherilyn and badge number
8 117.

9 THE COURT: Okay.

10 JUROR NUMBER NO. 117: I was born in Las Vegas. I've been
11 here 45 years. I do not work. I am a stay-at-home grandmother.

12 THE COURT: Perfect.

13 JUROR NUMBER NO. 117: And my husband works for the City of
14 Henderson in the IT department. My children -- one of my children
15 is a security guard at a casino and my other child is a -- works
16 for a banking company. My other child doesn't work.

17 THE COURT: Okay. Do you understand what we're going to ask
18 the jury to do in this case? I mean, you're going to listen to the
19 evidence, you're going to -- based upon the evidence that you hear,
20 you're going to follow the instructions on the law that I give you,
21 then you're going to go back and you're going to deliberate with
22 the other members of the jury and ultimately 12 folks are going to
23 decide whether or not the State has proven the case against the
24 Defendant beyond a reasonable doubt. Can you do that?

25 JUROR NUMBER NO. 117: Yeah. Correct.

1 THE COURT: And if you think that the State failed to prove
2 each element of the crime against the Defendant. Are you going to
3 have any problems coming back and saying the State did not prove
4 the Defendant guilty beyond a reasonable doubt, therefore, he's not
5 guilty?

6 JUROR NUMBER NO. 117: Yes.

7 THE COURT: Can you do that?

8 JUROR NUMBER NO. 117: Absolutely.

9 THE COURT: Can you at the same time just flip that over if
10 you think that the State proved the Defendant guilty beyond a
11 reasonable doubt, can you come back and look at the Defendant and
12 say you're guilty?

13 JUROR NUMBER NO. 117: Correct.

14 THE COURT: Anything about that process is going to cause you
15 a problem?

16 JUROR NUMBER NO. 117: No.

17 THE COURT: Perfect. Okay.

18 And then we have?

19 JUROR NUMBER NO. 146: Andrea, 146.

20 THE COURT: Okay.

21 JUROR NUMBER NO. 146: I'm 30 years old. I don't actually
22 live in Las Vegas. I live in the Moapa Valley area. I've lived
23 there for 30 years. I am a homemaker. My husband is a
24 construction foreman. And we have no children.

25 THE COURT: Okay. Anything you can think of in your

1 background that would cause you a problem and being on this jury
2 and ultimately being asked to decide the question did the State
3 prove the Defendant guilty beyond a reasonable doubt?

4 JUROR NUMBER NO. 146: No.

5 THE COURT: Are you going to have any problems --

6 JUROR NUMBER NO. 146: No problems.

7 THE COURT: -- coming back and saying not guilty if you think
8 the State failed to prove beyond a reasonable doubt any element of
9 the crime the Defendant is charged with?

10 JUROR NUMBER NO. 146: No. No problems with that.

11 THE COURT: And you can also come back and say guilty if you
12 think the State proved their case?

13 JUROR NUMBER NO. 146: Yes.

14 THE COURT: Okay. Perfect. Moapa is more than 60 miles away.

15 JUROR NUMBER NO. 146: It is.

16 THE COURT: Here's how this works. When you live more than 60
17 miles away from the RJC, you can get an option that they either pay
18 you mileage. I mean, I know you already get paid big bucks to be
19 [indecipherable]. Pay you mileage from Moapa down here or
20 alternatively they'll put you up in the -- in the suite at the
21 Golden Nugget.

22 JUROR NUMBER NO. 146: I would rather drive. Thank you.

23 THE COURT: Okay. I don't think they put you in the suite.
24 But they get -- but they will get you a room. Okay. That --
25 you're 146, right?

1 JUROR NUMBER NO. 146: Yes.

2 THE COURT: Okay. And next?

3 JUROR NUMBER NO. 119: Meagan, 119. I am a registered nurse.

4 My husband is a director of operations for a restaurant chain.

5 Born in Las Vegas. Lived here my whole life. I have three small

6 boys at home and so they don't work.

7 THE COURT: Who -- who takes care of them?

8 JUROR NUMBER NO. 119: We both do.

9 THE COURT: You what?

10 JUROR NUMBER NO. 119: They're in school.

11 THE COURT: Oh, okay. All right. Now, hold are they?

12 JUROR NUMBER NO. 119: They're 7, 9 and 11.

13 THE COURT: Okay. So you got no -- you have no problem being

14 here for the next few days?

15 JUROR NUMBER NO. 119: Yeah. No problem.

16 THE COURT: All right. Good. Once again, anything in your

17 background that would interfere with your ability to be on this

18 jury --

19 JUROR NUMBER NO. 119: No.

20 THE COURT: -- and answer the ultimate question?

21 JUROR NUMBER NO. 119: Nah-ah.

22 THE COURT: Do you think the State failed to prove any element

23 that -- that Defendant's charged with and the crimes he's charged

24 with, can you come back and say not guilty?

25 JUROR NUMBER NO. 119: Yes.

1 THE COURT: Can you come back and say guilty if you think the
2 State proved everything they need to prove?

3 JUROR NUMBER NO. 119: Yes.

4 THE COURT: Okay. We go over to Christopher.

5 JUROR NUMBER NO. 120: Chris yes.

6 THE COURT: Your badge number is --

7 JUROR NUMBER NO. 120: 120.

8 THE COURT: -- 120. Okay.

9 JUROR NUMBER NO. 120: I've been in Vegas for 30 years. My
10 first time with jury duty. And I'm a pit boss in a casino. My
11 wife works in a casino also. And I have two girls.

12 THE COURT: How old are they?

13 JUROR NUMBER NO. 120: Fourteen and eleven.

14 THE COURT: Any childcare issues or any problems?

15 JUROR NUMBER NO. 120: No. No problem there.

16 THE COURT: Okay. Anything in your background that would
17 cause you to have an issue or a problem with being on a jury in a
18 case like this?

19 JUROR NUMBER NO. 120: No. I do work swing shift thought, so.

20 THE COURT: How's that going to work?

21 JUROR NUMBER NO. 120: I have no problem. I sleep sometimes.
22 That's the truth. I get up at 6 to take my kids to school.

23 THE COURT: Employers are required by law to allow an employee
24 to serve on a jury duty.

25 JUROR NUMBER NO. 120: Right.

1 THE COURT: Not suffering any adverse consequence. They can't
2 fire you. They can't -- they can't demote you. They can't do
3 anything adverse as a result of you being on jury duty.

4 JUROR NUMBER NO. 120: Right.

5 THE COURT: And the penalties for -- for doing something that
6 -- that they can't do are horrendous. And I mean it's like fifty
7 thousand dollars and it's not like a fine that goes to Court. It's
8 fifty thousand dollars that goes to an employee who may have gotten
9 fired. In addition to just not being able to fire you for being on
10 jury duty, you can't -- they got to give you enough time off so
11 that you can have at least eight hours sleep.

12 JUROR NUMBER NO. 120: Uh-huh.

13 THE COURT: So, you'll be able to work around this?

14 JUROR NUMBER NO. 120: Yes. Yeah.

15 THE COURT: Okay. Okay. Perfect. Great.

16 You are?

17 JUROR NUMBER NO. 124: Loretta, badge 124.

18 THE COURT: Loretta. Okay. Loretta, give us a little bit of
19 your background.

20 JUROR NUMBER NO. 124: I'm a licensed clinical social worker.
21 I work for United Healthcare. My -- I'm a widow. I have two grown
22 daughters, both are teachers.

23 THE COURT: Okay. Anything in your background -- so you work
24 for United Healthcare and is there anything about your employment,
25 your job that -- that's going to cause you an issue or problem with

1 being on a criminal case like this?

2 JUROR NUMBER NO. 124: No..

3 THE COURT: Okay. You understand what we're going to ask this
4 jury to ultimately decide, right?

5 JUROR NUMBER NO. 124: Yes.

6 THE COURT: Is there anything in your background that would
7 cause you a problem or an issue with being charged with that kind
8 of an allegation?

9 JUROR NUMBER NO. 124: No.

10 THE COURT: Can you do that and be fair and impartial to both
11 sides?

12 JUROR NUMBER NO. 124: Yes.

13 THE COURT: Okay. Then we have George.

14 JUROR NUMBER NO. 125: Yup. George, 125. Thirty-four years
15 old. Lived in Las Vegas for 13 years. I'm married.

16 THE COURT: Okay. What do you do for a living?

17 JUROR NUMBER NO. 125: I design and -- and sell industrial
18 mounting solutions, so any time you see a laptop in a cop car or
19 things and MRAP vehicles, things like that.

20 THE COURT: Okay.

21 JUROR NUMBER NO. 125: Uh-huh.

22 THE COURT: Again, anything in your background that would
23 cause you an issue or a problem with doing what we're going to --

24 JUROR NUMBER NO. 125: No.

25 THE COURT: -- the jury to do? Okay. All right.

1 JUROR NUMBER NO. 125: Good.

2 THE COURT: And we have --

3 JUROR NUMBER NO. 126: Christina --

4 THE COURT: All right.

5 JUROR NUMBER NO. 126: -- number 126. I have -- born and
6 raised in Las Vegas. I'm only 19 years old, so I'm probably the
7 youngest one here. I'm a preschool teacher's aide. And I am newly
8 engaged, so not married yet. I think that was it. Is that all the
9 questions?

10 THE COURT: Pretty close. So, at 19, yeah, there's going to
11 be some folks that are going to be on this jury that are going to
12 be a lot older than you.

13 JUROR NUMBER NO. 126: Yes.

14 THE COURT: Can you go back into that jury deliberation room -
15 - the whole point of deliberating is everybody is going to have an
16 opportunity to voice their opinion about the evidence that -- as
17 they saw and voice their opinion on whether or not they believe the
18 State proved that their case beyond a reasonable doubt. That's the
19 whole concept of deliberating is that all 12 jurors are going to be
20 kicking this around. And at 19 it's kind of important that you
21 don't get pushed around, that you're not afraid to voice your own
22 opinion. Can you do that?

23 JUROR NUMBER NO. 126: Yes.

24 THE COURT: Are you strong-willed enough that if you disagree
25 with somebody else on the jury that you can stand your ground?

1 JUROR NUMBER NO. 126: I believe so, yes.

2 THE COURT: Voice your opinion and not get pushed around.

3 JUROR NUMBER NO. 126: Uh-huh.

4 THE COURT: Okay. And you think you're up to the task of

5 answering the ultimate question of whether or not the State proved

6 the case beyond a reasonable doubt?

7 JUROR NUMBER NO. 126: Yes.

8 THE COURT: And you wouldn't hesitate to say not guilty if you

9 think the State failed to do that?

10 JUROR NUMBER NO. 126: No.

11 THE COURT: And you can also not hesitate to say guilty if you

12 think the State did prove it?

13 JUROR NUMBER NO. 126: Yes.

14 THE COURT: Okay. Then we have Richard.

15 JUROR NUMBER NO. 127: Richard, 127. I'm 34 years old. Been

16 in Vegas for 10 years. And I works as a casino surveillance

17 investigator.

18 THE COURT: Okay. Now, go to that part again there; you work

19 as a what?

20 JUROR NUMBER NO. 127: Casino surveillance investigator.

21 THE COURT: Okay.

22 JUROR NUMBER NO. 127: I review video.

23 THE COURT: Good. So do you -- in your capacity as a security

24 investigator, you deal with the police when you see somebody

25 cheating?

1 JUROR NUMBER NO. 127: Yes, sir.

2 THE COURT: Do you have a relationship with any of the
3 employees? I mean, you probably be able to get in control and
4 Metropolitan Police; both I would assume, right?

5 JUROR NUMBER NO. 127: Yes, sir.

6 THE COURT: Have you been involved in any prolonged
7 investigations where you're dealing with somebody from either the
8 Metro or gaming control for a prolonged period of time?

9 JUROR NUMBER NO. 127: I've dealt with a few of them for weeks
10 at a time, but not really anything personal.

11 THE COURT: Anything about having had that kind of an
12 experience that would cause you to treat the testimony of a police
13 officer differently than -- then somebody who's not a police
14 officer?

15 JUROR NUMBER NO. 127: No, sir.

16 THE COURT: Okay. Treat them -- be just as fair and impartial
17 with the police officer witnesses you would be with anybody else?

18 JUROR NUMBER NO. 127: Yes, sir.

19 THE COURT: Okay. Have any interesting cases going on?

20 JUROR NUMBER NO. 127: Yeah. Different ones.

21 THE COURT: You probably shouldn't be even answering my
22 questions. All right. Well good. Anything in your background
23 cause you an issue or problem with being on a jury in a case like
24 this?

25 JUROR NUMBER NO. 127: No, sir.

1 THE COURT: Okay. We're good. All right. We're going to go
2 down to here.

3 JUROR NUMBER NO. 128: I'm Katrina, 128. I have been in Las
4 Vegas for 28 years. I own a small business. I manage non-profit
5 associations, trade and business groups. I also worked on the
6 campaign for Attorney General Adam Laxalt this past year and I'm
7 still in his campaign staff. My husband is a certified public
8 accountant and has his own business. And we have no children.

9 THE COURT: Okay. Anything about your background in any form
10 or fashion that would cause you an issue or problem being on a jury
11 in a criminal case like this?

12 JUROR NUMBER NO. 128: No, sir.

13 THE COURT: So, you're still on his -- Laxalt's political?

14 JUROR NUMBER NO. 128: Yes, sir.

15 THE COURT: Yeah.

16 JUROR NUMBER NO. 128: Yes, sir.

17 THE COURT: What do you do when he's not running for office?

18 JUROR NUMBER NO. 128: We still accept some campaign
19 contributions. We -- I schedule his meetings and his appearances
20 before partisan groups, the Republican clubs and such. Do travel,
21 that kind of thing.

22 THE COURT: If it was to come out that either the prosecutor
23 or the defense or Democrats, would that cause you a problem?

24 JUROR NUMBER NO. 128: No, sir.

25 THE COURT: Just checking. Can you think of anything that in

1 your background that would cause you an issue or problem with being
2 on a jury that would keep you from being able to be fair and
3 impartial to both sides of this case and answer the ultimate
4 question did the State prove the Defendant guilty beyond a
5 reasonable doubt? Can you do that?

6 JUROR NUMBER NO. 128: I can do that. Yes, sir.

7 THE COURT: And you can answer them saying not guilty if you
8 the State fails to prove their case or you could say guilty if they
9 proved everything?

10 JUROR NUMBER NO. 128: Yes, sir.

11 THE COURT: Okay. Perfect.

12 And then we could go to Jean.

13 JUROR NUMBER NO. 129: Jean, 129. I've lived in Las Vegas for
14 26 years. I'm a teacher. My husband is a teacher. We have two
15 children. One is director of operations at a local brewery. And
16 our daughter is a stay-at-home mom.

17 THE COURT: Okay. Where do you teach?

18 JUROR NUMBER NO. 129: I teach at Discovery. It's a -- it's a
19 public charter school. But I have been a public school teacher
20 prior to that.

21 THE COURT: Did you retire out of the school district?

22 JUROR NUMBER NO. 129: I did.

23 THE COURT: Good for you. Good for you. When you were in the
24 school district, where did you teach?

25 JUROR NUMBER NO. 129: Various places. I taught Fremont

1 Middle School, Thurman White Middle School, Fay Herron Elementary.
2 I taught at the juvenile justice center at Child Haven for three
3 years.

4 THE COURT: That must have been interesting.

5 JUROR NUMBER NO. 129: It was very interesting. Yes.

6 THE COURT: Yeah. I had my first gig at family court and
7 Child Haven about a month ago. It was very interesting.

8 JUROR NUMBER NO. 129: Yes. More social work than teaching.

9 THE COURT: So, anything about your background that would
10 cause you an issue or problem in being on a jury in a case like
11 this?

12 JUROR NUMBER NO. 129: No, sir.

13 THE COURT: You can answer the ultimate question whether or
14 not the State's proven the Defendant guilty beyond a reasonable
15 doubt?

16 JUROR NUMBER NO. 129: Yes.

17 THE COURT: You can do that and be fair and impartial to both
18 sides?

19 JUROR NUMBER NO. 129: Yes.

20 THE COURT: Okay. And then we have Timothy, is that right?

21 JUROR NUMBER NO. 131: Timothy, badge number 132. I've been
22 in Las Vegas for about 20 years. I work as a cage -- cage cashier
23 at a casino. Separated from my wife. I got a son 15 and a
24 daughter 9.

25 THE COURT: Okay. Anything in your background that would

1 cause you a problem with being on a jury in a criminal case like
2 this?

3 JUROR NUMBER NO. 131: No.

4 THE COURT: Once again you understand what we're going to ask
5 this jury to do?

6 JUROR NUMBER NO. 131: Yes.

7 THE COURT: Anything that you can think of would cause
8 interference in any respect in your ability to be fair and
9 impartial?

10 JUROR NUMBER NO. 131: No.

11 THE COURT: Okay. Good. All right.

12 We'll go from Timothy to is it --

13 JUROR NUMBER NO. 132: Phil --

14 THE COURT: -- Phil.

15 JUROR NUMBER NO. 132: -- 132. I'm retired. My wife is
16 retired. I have a son who works helping set up convention venues
17 here in Las Vegas. I have a daughter who is a minister in Alloway,
18 Scotland. And that's all those questions I believed you asked.

19 THE COURT: Alloway, Scotland, what's -- where's that?

20 JUROR NUMBER NO. 132: It's probably about 40 miles southwest
21 of Glasgow.

22 THE COURT: And she's a minister?

23 JUROR NUMBER NO. 132: Yes, sir.

24 THE COURT: Okay. You know, a lot of people -- you have a
25 particularly religious background yourself?

1 JUROR NUMBER NO. 132: Nothing unusual I wouldn't think. We
2 regularly go to church and we're choir members, but --

3 THE COURT: The only reason why I'm asking is because some
4 folks have a religious kind of a twist to them that causes them a
5 problem at -- in sitting in judgment more or less on somebody else.
6 Anything in your background cause you a problem in being on a jury
7 in a criminal case like this?

8 JUROR NUMBER NO. 132: No, sir.

9 THE COURT: You can do this and answer the question and be
10 fair and impartial to both sides?

11 JUROR NUMBER NO. 132: Yes, sir.

12 THE COURT: Is in reality you're not really sitting in
13 judgment on anybody. What you're doing is you're being asked to
14 listen to evidence and determine what you believe the facts are
15 based upon the evidence that was submitted, so that's what we're
16 going to ask you to do. Is there any reason why you can't do that?

17 JUROR NUMBER NO. 132: No, sir.

18 THE COURT: Perfect. Good. Okay.

19 Now, we're moving to Deborah.

20 JUROR NUMBER NO. 133: Yes. And it's number 133.

21 THE COURT: So, give us a little background.

22 JUROR NUMBER NO. 133: So, I've been in Vegas for 10 years. I
23 work in business development for one of the casino companies here.
24 My husband is in charge of [indecipherable] and I have a two year
25 old daughter.

1 THE COURT: Okay. Your two year old, do you have any
2 childcare issues going on?

3 JUROR NUMBER NO. 133: As long as we don't go until 7, 8 p.m.

4 THE COURT: No. No. No. No. No. No. No. You know,
5 somebody got in trouble for doing that one time a few years ago.
6 No. It's 5 o'clock, 5 or 5:15. As soon as we get to a convenient
7 spot to take a break, right in that area. You all right with that?

8 JUROR NUMBER NO. 133: Yes.

9 THE COURT: And otherwise your childcare issues are taken care
10 of? Perfect. Anything you can think of in your background that
11 would cause you a problem of being on a jury in a criminal case
12 like this?

13 JUROR NUMBER NO. 133: I don't think so. I'm a naturalized
14 citizen though. I don't know if that --

15 THE COURT: No. That's good.

16 JUROR NUMBER NO. 133: -- made any --

17 THE COURT: That's good. Where are you from?

18 JUROR NUMBER NO. 133: I'm French Italian.

19 THE COURT: Okay. When you went through the process of going
20 through the naturalization process, they covered jury duty and the
21 fact that everybody in America is subject to serving on juries.
22 Did they cover that concept? Did you ever think it was actually
23 going to happen?

24 JUROR NUMBER NO. 133: No.

25 THE COURT: But you understand what we're going to ask this

1 jury to do and you don't have any problems with being on this jury
2 and being fair and impartial and then answering the ultimate
3 question? Can you do all that?

4 JUROR NUMBER NO. 133: I will try.

5 THE COURT: Perfect. All right.

6 And then we have, is it -- what's your name again?

7 JUROR NUMBER NO. 147: I'm David, 147.

8 THE COURT: Okay.

9 JUROR NUMBER NO. 147: Yes.

10 THE COURT: David.

11 JUROR NUMBER NO. 147: I've lived in Las Vegas 30 years. I'm
12 retired. My wife is retired. We have no children.

13 THE COURT: Okay. You retired from doing what?

14 JUROR NUMBER NO. 147: I was a planning manager at Southwest
15 Gas.

16 THE COURT: How long did you work at Southwest Gas?

17 JUROR NUMBER NO. 147: Thirty years.

18 THE COURT: Really? Good for you. Anything in your
19 background that you can think of that would cause you any kind of a
20 problem with being on a jury in a criminal case like this?

21 JUROR NUMBER NO. 147: No, sir.

22 THE COURT: You can be fair and impartial to both sides and
23 answer the ultimate question did the State prove the Defendant
24 guilty beyond a reasonable doubt; can you do all that?

25 JUROR NUMBER NO. 147: Yes, sir.

1 THE COURT: Can you be fair and impartial to both sides?
2 JUROR NUMBER NO. 147: Yes.
3 THE COURT: Perfect. Okay.
4 Is it, Rasool?
5 JUROR NUMBER NO. 135: Yes.
6 THE COURT: Okay. Your badge number is --
7 JUROR NUMBER NO. 135: Rasool Barati, badge number 135. I'm
8 living in Las Vegas for 33 years. Casino table game worker. My
9 wife, homemaker. My son is still in first year college.
10 THE COURT: Okay.
11 JUROR NUMBER NO. 135: I'm here.
12 THE COURT: What do you do for a living?
13 JUROR NUMBER NO. 135: I'm a dealer.
14 THE COURT: Okay. Where do you work?
15 JUROR NUMBER NO. 135: At the Bellagio.
16 THE COURT: Okay. Good job. What do you deal?
17 JUROR NUMBER NO. 135: Blackjack, Baccarat, a few other games.
18 THE COURT: Okay. Have you ever seen that guy behind you
19 looking -- looking through his --
20 JUROR NUMBER NO. 135: He's the one always peeking on me,
21 that's him.
22 THE COURT: Anything in your background that would cause you
23 interference or any kind of an issue with being on a jury in a
24 criminal case like this?
25 JUROR NUMBER NO. 135: No.

1 THE COURT: Can you answer the ultimate question of whether or
2 not the State proved the Defendant guilty beyond a reasonable
3 doubt?

4 JUROR NUMBER NO. 135: Yes.

5 THE COURT: If you think they failed to do that, can you come
6 back and say not guilty?

7 JUROR NUMBER NO. 135: Yes, sir.

8 THE COURT: If you think they proved everything they need to
9 prove, can you come back and say guilty?

10 JUROR NUMBER NO. 135: Yes, sir.

11 THE COURT: Can you keep an open mind and be fair and
12 impartial throughout the entire trial?

13 JUROR NUMBER NO. 135: Yes, sir.

14 THE COURT: Which brings up something that I needed to kind of
15 emphasize; you need to keep a fair and impartial and an open frame
16 of mind until you have heard all of the evidence. Just because you
17 hear a couple of the State's witnesses, you can't start forming an
18 opinion yet. You got to wait 'til the last witness has been called
19 and you've heard every bit of the evidence before you start
20 formulating an opinion. Can you do that?

21 JUROR NUMBER NO. 135: Yes, sir.

22 THE COURT: Perfect. Okay.

23 And let's go down to Susan.

24 JUROR NUMBER NO. 136: Yes. My badge number is 136. My name
25 is Susan Gambarelli. I'm a native Nevadan. Born and raised her.

1 I've been an educator for 29 years. I'm a widow and I have no
2 children.

3 THE COURT: What did you say you did for a living, you were an
4 educator?

5 JUROR NUMBER NO. 136: Yes. I teach second grade.

6 THE COURT: Where do you teach?

7 JUROR NUMBER NO. 136: I teach at Hancock Elementary School.

8 THE COURT: Okay. So, anything about your background that
9 would cause you an issue or problem in being on a jury in a case
10 like this?

11 JUROR NUMBER NO. 136: No. Not at all.

12 THE COURT: You understand what it is we're going to ask this
13 jury to decide?

14 JUROR NUMBER NO. 136: Yes.

15 THE COURT: You think you can pull the trigger and make the
16 ultimate call and answer the question that the State prove the
17 Defendant guilty beyond a reasonable doubt?

18 JUROR NUMBER NO. 136: Yes, I do.

19 THE COURT: You can do that and be fair and impartial to both
20 sides?

21 JUROR NUMBER NO. 136: Yes. Absolutely.

22 THE COURT: Something else. Comes to my mind that I haven't
23 touched upon, believe it or not, you're going to be instructed --
24 everybody that you can't talk about this case. I said earlier that
25 you can't talk to me or the staff or the attorneys, but it's real

1 important that you not discuss any aspect of this case to anybody
2 and especially each other until all the evidence has been admitted
3 and you retire to the jury deliberation room. That's the first
4 time anything about this case should cross your lips.

5 As much of an inconvenience that it is for us to have you
6 guys come down here and answer the call to serve on a jury, what a
7 tragedy it is if -- if somebody else has to come down here later on
8 because of jury misconduct mainly talking and discussing the
9 evidence during the course of the trial is the single biggest
10 reason why cases have to be retried.

11 So when I tell you it's real important that you not talk
12 about the case, it's that important. You don't talk about the
13 case. And if somebody else on the jury starts to say something to
14 you about the case, you got to step up and say the Judge said we
15 can't discuss anything that has to do with this case until we're
16 deliberating. It's a real important instruction and I'll repeat
17 that numerous times before we start getting ready to deliberate.

18 Can you follow those instructions?

19 JUROR NUMBER NO. 136: Yes, I can.

20 THE COURT: Perfect. Perfect.

21 MR. WOOD: Your Honor, I'm having trouble seeing. Can I move
22 the podium and the Elmo --

23 THE COURT: Sure can.

24 MR. WOOD: -- just for voir dire.

25 THE COURT: Absolutely. Move it over here where you can get a

1 clear look.

2 Okay. Is it Anne -- Courtney Anne?

3 JUROR NUMBER NO. 137: Courtney, juror 137.

4 THE COURT: Courtney, tell us about yourself.

5 JUROR NUMBER NO. 137: Currently not working. I've done a lot
6 of different jobs, but most of them around gymnastics and coaching.
7 My husband works at the Wynn as a performer in their show. And
8 we're -- I'm expecting a child December 8th.

9 THE COURT: When are you due?

10 JUROR NUMBER NO. 137: December 8th.

11 THE COURT: You're going to be all right?

12 JUROR NUMBER NO. 137: I believe so as long as we have
13 bathroom breaks.

14 THE COURT: If you need to go to the bathroom, like I said,
15 you -- we'll take a bathroom break any time you need to go. And I
16 don't care if we just had one. You let JR know and we'll have
17 another bathroom break.

18 JUROR NUMBER NO. 137: Okay.

19 THE COURT: Okay.

20 JUROR NUMBER NO. 137: Yes. Thank you.

21 THE COURT: What's your -- what's your husband do, he's a
22 performer and does what?

23 JUROR NUMBER NO. 137: He's like a Cirque de Soleil performer.

24 THE COURT: Oh, okay. Is there anything in your background
25 that would cause you a problem with being on a jury in a case like

1 this?

2 JUROR NUMBER NO. 137: I don't believe so. I have a brother
3 who lives here and works at Verizon, so he works with cellphones.
4 My sister lives here as well, but never been in this process. So
5 it does make me a little bit nervous to make that decision like you
6 were saying earlier, but I think going through it I'll be fine.

7 THE COURT: Perfect. There's no reason to be nervous.

8 JUROR NUMBER NO. 137: Okay.

9 THE COURT: 'Cause what we -- what we have you guys do is just
10 be fair and impartial. Just keep an open and listen carefully to
11 the evidence and then answer the question.

12 JUROR NUMBER NO. 137: Okay. Yes.

13 THE COURT: Can you do that?

14 JUROR NUMBER NO. 137: I can.

15 THE COURT: Perfect. All right.

16 Then we're at Mary.

17 JUROR NUMBER NO. 138: Mary Peterson --

18 THE COURT: Okay, Mary.

19 JUROR NUMBER NO. 138: -- 138. Been here 13 years from
20 Chicago. I must say go cubbies.

21 THE COURT: They didn't play too well last night.

22 JUROR NUMBER NO. 138: I know. My husband and I are retired
23 from education. My husband was a high school teacher for 33 years.
24 I was a teacher assistant in a special ed class. I have -- we have
25 three grown children out-of-state.

1 THE COURT: What do they do?

2 JUROR NUMBER NO. 138: My oldest is -- works for IRI in
3 Chicago. She's back home in research. She works out of her home,
4 sometimes downtown. My son works in Flagstaff. He's an irrigation
5 tech. And my daughter is a nanny and a legal secretary combined
6 for the same family.

7 THE COURT: Good.

8 JUROR NUMBER NO. 138: Yeah. Thirty-three, thirty-nine and
9 forty-six. I'm so proud I could remember.

10 THE COURT: Where does she -- where does she live?

11 JUROR NUMBER NO. 138: My son and my youngest are in Arizona.
12 She lives in Phoenix.

13 THE COURT: Okay. Anything about your background that would
14 interfere with your ability to be a juror in a case like this?

15 JUROR NUMBER NO. 138: No.

16 THE COURT: You can answer the ultimate question of whether or
17 not the State has proven the case beyond a reasonable doubt.

18 JUROR NUMBER NO. 138: Sure.

19 THE COURT: If you think the State failed to do that, you're
20 going to [indecipherable] come back and say not guilty?

21 JUROR NUMBER NO. 138: Yeah.

22 THE COURT: Could you also come back and say guilty if you
23 think the State didn't prove everything?

24 JUROR NUMBER NO. 138: Oh yeah.

25 THE COURT: Good. Okay. Perfect.

1 And then we have, is it --
2 JUROR NUMBER NO. 140: Darlene Drummonds --
3 THE COURT: -- Darlene
4 JUROR NUMBER NO. 140: -- 140.
5 THE COURT: All right. So give us a run down about your
6 background.
7 JUROR NUMBER NO. 140: My husband and I moved to Nevada almost
8 four years ago and we're both retired.
9 THE COURT: Where did you move from?
10 JUROR NUMBER NO. 140: We moved from Murfreesboro, Tennessee,
11 but we were only there a short time. We lived in Denver, Colorado
12 for almost 20 years.
13 THE COURT: All right.
14 JUROR NUMBER NO. 140: My husband is retired Air Force and I
15 most recently was working as a payroll operations manager for
16 Comcast.
17 THE COURT: What did that entail?
18 JUROR NUMBER NO. 140: Being a payroll manager?
19 THE COURT: Payroll manager.
20 JUROR NUMBER NO. 140: Yes.
21 THE COURT: That part I can figure out. I was just in Denver
22 for my 50th high school reunion.
23 JUROR NUMBER NO. 140: Oh my goodness.
24 THE COURT: Yeah, I know. We're old. There are old people
25 there.

1 JUROR NUMBER NO. 140: Our oldest son lives in Phoenix and
2 he's a database manager. And the baby lives in Denver and he works
3 for Triple A.

4 THE COURT: Good. Anything about your background that would
5 interfere with your ability to be on a jury in a criminal case like
6 this and be fair and impartial to both sides?

7 JUROR NUMBER NO. 140: We'd be -- I'd be good with it.

8 THE COURT: Okay. And you think the juror capable of staying
9 open-minded, fair and impartial to both sides of this case until
10 all the evidence is in?

11 JUROR NUMBER NO. 140: Yes.

12 THE COURT: And then going back and in conjunction with 11
13 other people answering the ultimate question of whether or not the
14 State proved their case beyond a reasonable doubt --

15 JUROR NUMBER NO. 140: Yes.

16 THE COURT: -- can you do all that? Perfect. Thank you.

17 All right. Then we have, is it Jennifer?

18 JUROR NUMBER NO. 142: Yes.

19 THE COURT: All right. Jennifer, tell us about yourself?

20 JUROR NUMBER NO. 142: Jennifer Marinacci, number 142. I'm
21 originally from Long Island. Moved here in 2010. I was here for
22 three years, then moved back for a couple of years. And just
23 recently came back two weeks ago. Yeah.

24 THE COURT: You got caught real quick didn't you?

25 JUROR NUMBER NO. 142: Exactly.

1 THE COURT: Holy cow.

2 JUROR NUMBER NO. 142: But maintained residency here, so I had
3 a residency here.

4 THE COURT: Okay.

5 JUROR NUMBER NO. 142: My husband's an elevator mechanic, so
6 he was with his company here and then he went back to New York.
7 So, he's still there right now and I'm here. So we're doing a bi-
8 coastal thing.

9 THE COURT: So -- I mean, not to pry too much, when do you
10 normally give yourself this shot that you take?

11 JUROR NUMBER NO. 142: It's later -- a little bit later in the
12 day, but as long as I can do it between four and five, I should be
13 okay.

14 THE COURT: Absolutely. You just -- you just tell us and
15 we'll take a break. I mean, I realize that sometimes that
16 medication has to be very time specific.

17 JUROR NUMBER NO. 142: Uh-huh.

18 THE COURT: So you let us know and we'll take a break.

19 JUROR NUMBER NO. 142: Okay.

20 THE COURT: All right.

21 JUROR NUMBER NO. 142: That'll be great. Thank you.

22 THE COURT: Okay. Then we go to Brian.

23 JUROR NUMBER NO. 143: Brian. Brian, 143. I am a -- I've
24 been in Las Vegas for 24 years. Union electrician. My wife is a
25 payroll accountant. And I have a son that is eight.

1 THE COURT: Okay. I'm trying to think of the guy that was the
2 head of union. The electrician union, Micky [phonetic] -- I can't
3 think of his last name.

4 JUROR NUMBER NO. 143: Yeah. That was a while ago.

5 THE COURT: It was. I'm old. He's been retired 15 or 20
6 years.

7 JUROR NUMBER NO. 143: Yeah.

8 THE COURT: So anything about your background that would
9 interfere in your ability to be on a jury in a criminal case like
10 this?

11 JUROR NUMBER NO. 143: No, sir.

12 THE COURT: You think you can do this --

13 JUROR NUMBER NO. 143: Yes.

14 THE COURT: -- and can you stay fair and impartial to both
15 sides?

16 JUROR NUMBER NO. 143: Yes, sir.

17 THE COURT: And ultimately answer the question that the State
18 was able to prove beyond a reasonable doubt that the Defendant
19 committed a crime; can you -- can you do all that?

20 JUROR NUMBER NO. 143: Yes, sir.

21 THE COURT: Not hesitate to say not guilty if the State missed
22 something and didn't -- didn't do what they're supposed to do?

23 JUROR NUMBER NO. 143: Not hesitate, no.

24 THE COURT: And if they prove everything that the law
25 requires, can you come back and say guilty?

1 JUROR NUMBER NO. 143: Yes, sir.

2 THE COURT: Okay. All right. And then we come to --

3 JUROR NUMBER NO. 144: My name is Emilio, badge number 144.
4 I've lived in Las Vegas for 20 years. I'm a retail manager. My
5 girlfriend is a stay-at-home mom with our three month old daughter.

6 THE COURT: Okay. You covered all that real quick. What do
7 you do again?

8 JUROR NUMBER NO. 144: I'm a manager in retail.

9 THE COURT: For who? For -- who do you work for?

10 JUROR NUMBER NO. 144: Burberry.

11 THE COURT: It's a good thing they have a recorder in here.
12 They have to play yours back a couple of times to make sure they
13 get everything that you're saying. So anything about your
14 background that would cause you an issue or a problem with being a
15 on a jury in a criminal case?

16 JUROR NUMBER NO. 144: No.

17 THE COURT: Okay. You're not going to have any problem at
18 work for being here for a couple of days?

19 JUROR NUMBER NO. 144: No. I should be fine.

20 THE COURT: Okay. And if there's any kind of an issue, you
21 need any information, I'll be happy to call and talk to your
22 supervisor or whatever and give you a note or whatever you need.
23 That applies to anybody. Anybody that needs some information like
24 that, you let -- you let us know and we'll make sure it gets
25 handled for you. All right. I don't want anybody worrying about

1 something -- having something like that undermine.

2 So you're good to go and answer the ultimate question
3 that 11 other folks, if the State proved their case beyond a
4 reasonable doubt?

5 JUROR NUMBER NO. 144: Yes.

6 THE COURT: Okay. All right. That's good.

7 And then we come to --

8 JUROR NUMBER NO. 145: My name is Nich, badge number 145.
9 I've been in Vegas about six years now. And I am in HR for one of
10 the casinos here.

11 THE COURT: What casino do you work for?

12 JUROR NUMBER NO. 145: Caesars.

13 THE COURT: Okay.

14 JUROR NUMBER NO. 145: No children. Single.

15 THE COURT: Any -- anything background wise that would be
16 problematic in your being on a jury in a criminal case like this?

17 JUROR NUMBER NO. 145: No, sir.

18 THE COURT: You can keep an open mind, stay fair and impartial
19 throughout the entire course of the trial and then go back and
20 deliberate with 11 other people and answer the ultimate question of
21 whether the State proved their case beyond a reasonable doubt? Can
22 you do all that?

23 JUROR NUMBER NO. 145: Yes.

24 THE COURT: Perfect. All right. You kids want to take a
25 couple minute break here to go to the bathroom? I'm going to turn

1 this over to you guys here in just about 30 seconds. So we should
2 take a little break here real fast?

3 MS. SUDANO: That would be the State's request, Your Honor.
4 Yeah.

5 THE COURT: Okay. Let's do this, we're going to take a short
6 five minute recess. I'll admonish all members of the jury not to
7 converse or discuss amongst themselves or with anyone else on any
8 subject connected or related to this trial. Don't form or express
9 any opinions on any subject connect or related to this trial until
10 such time as this case is finally submitted to you for
11 deliberation.

12 So -- now, keep in mind that we're going to take a real
13 short and I mean five minutes 'cause we want -- I don't want to
14 waste your time. I don't want to waste anybody's time. So let's
15 just take five minutes and the Marshal, JR, is going to come get
16 you and bring you back. And don't come in until he's brought you
17 back in. And then stay in the same seat, okay.

18 So we'll take a real short five minute bathroom break and
19 then we'll continue with this process.

20 [Outside the presence of the prospective jury panel]

21 THE COURT: Outside the presence of the jury, anything we need
22 to put on the record here?

23 MR. WOOD: I don't think so, Your Honor.

24 MS. SUDANO: Your Honor, can I just clarify, I can ask general
25 questions of the entire panel and then follow-up questions?

1 THE COURT: Sure. Sure. You --
2 MR. WOOD: Does -- sorry.
3 THE COURT: No. Go ahead.
4 MR. WOOD: Does Your Honor have any sort of preference? Can
5 we switch off or do you want just one of us doing it?
6 THE COURT: Let me put it like this, I don't mind both of you
7 asking, but I don't want both of you asking the same juror
8 questions. You want to take so many of them and you take so many
9 of them, that's fine. But I don't want you guys double teaming the
10 same juror.
11 MR. WOOD: Okay. Understood.
12 THE COURT: Is that all right?
13 MR. WOOD: Yup.
14 THE COURT: Okay. All right. We're in recess.
15 [Recess taken from 11:12 a.m. - 11:32 a.m.]
16 [Outside the presence of the prospective jury panel]
17 THE COURT: We are outside the presence of the jury. Anything
18 we need to address? I'm turning this over to you guys. You're on.
19 MR. WOOD: I don't think so, Your Honor.
20 MS. SUDANO: Not from the State. No.
21 THE COURT: Okay.
22 [In the presence of the prospective jury panel]
23 THE COURT: All right. Now --
24 THE MARSHAL: All present.
25 THE COURT: -- is -- are there any empty seats that weren't

1 empty before we took the break? I don't think there are. Okay.
2 And the record should reflect the presence of the jury pool.
3 All right. Counsel, you ready?
4 MS. SUDANO: Yes, Your Honor.
5 Good morning again, everybody. Again, I'm Michelle
6 Sudano with the District Attorney's Office. Is anybody excited to
7 be here? I got a couple of hands. Is that Mr. Baumer in the back?
8 JUROR NUMBER NO. 125: Yes.
9 MS. SUDANO: And that's 125.
10 JUROR NUMBER NO. 125: Correct.
11 MS. SUDANO: Why are you excited to be here?
12 JUROR NUMBER NO. 125: Because I run my own business out of my
13 home and so it's very nice to actually not have to be working like
14 during the day.
15 MS. SUDANO: So a couple days of vacation, paid vacation.
16 JUROR NUMBER NO. 125: Sure. Sounds good. It's about what I
17 pay myself.
18 MS. SUDANO: Fair. And then, Mr. -- is it Barati?
19 JUROR NUMBER NO. 135: Yes.
20 MS. SUDANO: Number 135.
21 JUROR NUMBER NO. 135: Rasool Barati, 135. Yes.
22 MS. SUDANO: Why are you excited to be here, sir?
23 JUROR NUMBER NO. 135: I get paid. I like to help if I can.
24 MS. SUDANO: Fair enough. Anybody else excited to be here?
25 Anybody think that this is an important -- important part of your

1 civic duty as -- as American citizens? We got a few more hands
2 there. Very back corner, Ms. Nelson.

3 JUROR NUMBER NO. 117: Uh-huh.

4 MS. SUDANO: And that's badge number 117.

5 JUROR NUMBER NO. 117: Yes.

6 MS. SUDANO: So anything else about being here, positive,
7 negative other than just think it is an important part of your
8 civic duty?

9 JUROR NUMBER NO. 117: I've come to jury duty services so many
10 times, but never was actually to this point. So it's kind of cool
11 seeing it all.

12 MS. SUDANO: It's just a new side of the process?

13 JUROR NUMBER NO. 117: Yeah.

14 MS. SUDANO: All right. And I think that two in front of you
15 Bruce, badge number 128.

16 JUROR NUMBER NO. 128: Yes. I just believe in our system and
17 we have to take the time to do what we can.

18 MS. SUDANO: Now, Ms. Bruce, you've been on a jury before
19 haven't you?

20 JUROR NUMBER NO. 128: Yes, I have.

21 MS. SUDANO: Overall, was that a positive experience or a
22 negative experience for you?

23 JUROR NUMBER NO. 128: It was positive.

24 MS. SUDANO: Is there anything about your past jury duty that
25 is going to make it difficult for you to serve on this jury?

1 JUROR NUMBER NO. 128: I don't think so.

2 MS. SUDANO: Now, you were on a civil jury; is that correct?

3 JUROR NUMBER NO. 128: Correct.

4 MS. SUDANO: Do you understand that there's a different burden
5 of proof so the State has to prove this case to you beyond a
6 reasonable doubt so that's different in a civil case?

7 JUROR NUMBER NO. 128: Yes.

8 MS. SUDANO: You're going to have any issues following the
9 laws you're instructed here by the Judge?

10 JUROR NUMBER NO. 128: No.

11 MS. SUDANO: You can set aside all that civil law that you
12 learned from last time?

13 JUROR NUMBER NO. 128: Yes.

14 MS. SUDANO: All right. And then right next door, is it Ms.
15 Marino?

16 JUROR NUMBER NO. 129: Yes.

17 MS. SUDANO: That's badge number 129.

18 JUROR NUMBER NO. 129: Uh-huh.

19 MS. SUDANO: You also said you think it's important to be
20 here?

21 JUROR NUMBER NO. 129: Right. It is. I wouldn't want to live
22 anywhere else and I think that we're privileged to live in this
23 country and this is the corner stone of part of what we stand for.

24 MS. SUDANO: All right. So, now does anybody have kind of
25 duck tailing off that, any strong feelings about the criminal

1 justice system as a whole either positive or negative in addition
2 to it being, you know, that this is part of our civic duty?
3 Nobody. Nope. That wasn't a hand. Okay.

4 Is there anybody that would have a hard time basing their
5 verdict solely on the evidence that's presented to you? So,
6 there's a lot going on in the criminal justice. It's been in the
7 news a lot, right, lately; Ferguson and the case in Baltimore, all
8 of that. Could everybody set aside kind of those overarching
9 thieves in the criminal justice system and just focus on the facts
10 that you've got here in this particular case? Okay. I'm seeing
11 everybody's nodding or staring at me with the eye. Nodding.

12 Now, do any of you have family or friends who are defense
13 attorneys? Seeing no hands again.

14 Now one of the questions you were asked earlier was any -
15 - was whether or not any of you had been accused or convicted of a
16 crime. Do any of you have family members or close friends who are
17 accused or convicted of a crime? Up front, Mr. Guerra, badge
18 number 144. What happened --

19 JUROR NUMBER NO. 144: Yes.

20 MS. SUDANO: -- to you?

21 JUROR NUMBER NO. 144: It was actually my brother. He was
22 charged with attempted murder.

23 MS. SUDANO: Was that here in Las Vegas?

24 JUROR NUMBER NO. 144: It was.

25 MS. SUDANO: Was that the District Attorney's Office that

1 prosecuted or handled that case?

2 JUROR NUMBER NO. 144: Yes, it was.

3 MS. SUDANO: Now, did Metro investigate the case?

4 JUROR NUMBER NO. 144: Yes, they did.

5 MS. SUDANO: Do you think that he was treated fairly

6 throughout that process?

7 JUROR NUMBER NO. 144: I do.

8 MS. SUDANO: So anything about that particular case that would

9 affect your ability to be fair and impartial here today?

10 JUROR NUMBER NO. 144: No.

11 MS. SUDANO: Now, Judge Bixler asked some of you the question

12 earlier of whether or not you would give more or less weight to

13 police officer's testimony just because they're a police officer.

14 Are you going to have any issues with that?

15 JUROR NUMBER NO. 144: No.

16 MS. SUDANO: Can you weigh a police officer's testimony the

17 same way you weigh any other witness' testimony?

18 JUROR NUMBER NO. 144: I can.

19 MS. SUDANO: Okay. And you understand that there are maybe

20 good people and not so good people in every single profession?

21 JUROR NUMBER NO. 144: I do.

22 MS. SUDANO: Okay. Now, does anybody else -- would anybody

23 else have issues with that weighing a police officer's testimony

24 more or less just because they're a police officer? Okay. I'm not

25 seeing any hands.

1 And can everybody give them the same weight that you
2 would give any other witness? Again, I'm not seeing any hands.

3 Now, related to that last question; have any of you ever
4 been the victim of a crime? Mr. Hall --

5 JUROR NUMBER NO. 147: Yes.

6 MS. SUDANO: -- badge number 147.

7 JUROR NUMBER NO. 147: Yeah. Many years ago my home was
8 burglarized.

9 MS. SUDANO: Was that here in Las Vegas?

10 JUROR NUMBER NO. 147: No. It was in Tempe, Arizona.

11 MS. SUDANO: Did they ever catch the person who broke into
12 your home?

13 JUROR NUMBER NO. 147: Believe it or not they actually caught
14 the guy and I had my stuff that was stolen returned to me.

15 MS. SUDANO: Wow, that's good. Anything about that experience
16 that would affect your ability to be fair and impartial in this
17 case?

18 JUROR NUMBER NO. 147: I don't think so.

19 MS. SUDANO: Now, do you think that that person was treated
20 fairly by the criminal justice system?

21 JUROR NUMBER NO. 147: Honestly, I don't know what the outcome
22 of the case was. I just know they arrested him and I don't know
23 what happened after that.

24 MS. SUDANO: Do you think that you were treated fairly by the
25 police and the case was investigated fairly and all of that?

1 JUROR NUMBER NO. 147: Yes.

2 MS. SUDANO: I just asked you, is there anything about that
3 that would affect your ability to be fair and impartial; I did,
4 didn't I?

5 JUROR NUMBER NO. 147: Yeah. Yeah.

6 MS. SUDANO: Okay. Anybody else who is the victim of a crime?
7 Go ahead and pass it one more over.

8 JUROR NUMBER NO. 133: And same line -- well, in directing my
9 parent's house was emptied and this was in Italy a couple of years
10 ago and I had all my belongings stolen from the trunk of my car in
11 San Francisco seven or eight years ago.

12 MS. SUDANO: Okay. And that was for the record Ms. is it
13 Negrel?

14 JUROR NUMBER NO. 133: Yes.

15 MS. SUDANO: Badge number 133.

16 JUROR NUMBER NO. 133: Yes.

17 MS. SUDANO: So your parent's home was burglarized in Italy.

18 JUROR NUMBER NO. 133: Yes.

19 MS. SUDANO: Do you know what the person who did that was ever
20 caught?

21 JUROR NUMBER NO. 133: It was not.

22 MS. SUDANO: Okay. Do you know much at all about that case or
23 were you already over here?

24 JUROR NUMBER NO. 133: I was here.

25 MS. SUDANO: Now, you said that your car was burglarized in

1 San Francisco.

2 JUROR NUMBER NO. 133: It was a rental car, yes.

3 MS. SUDANO: All right. Okay. Do you know if the person who
4 did that was ever caught?

5 JUROR NUMBER NO. 133: No. I mean, I do know that they were
6 never caught for this particular crime.

7 MS. SUDANO: Now, do you think that the case with your car,
8 the rental car, the case with your family's home, to the extent you
9 know anything about it; do you think that those were properly or
10 fairly investigated by law enforcement?

11 JUROR NUMBER NO. 133: The one in Italy, yes. The one in San
12 Francisco I just filled a form and they told me they would let me
13 know about it, but never heard anything about it, so. I don't know
14 if that's -- it's proper procedure, but nothing happened about it.

15 MS. SUDANO: Now, anything about either of those experiences
16 that would affect your ability to be fair and impartial in this
17 particular case?

18 JUROR NUMBER NO. 133: I don't think so.

19 MS. SUDANO: Now, those both happened in jurisdictions other
20 than Las Vegas in Clark County. Any issues with how those cases
21 were investigated or handled? Are you going to hold those against
22 the jurisdiction here, the Metropolitan Police Department?

23 JUROR NUMBER NO. 133: No.

24 MS. SUDANO: So you understand those are totally different?

25 JUROR NUMBER NO. 133: Yes.

1 MS. SUDANO: Okay. We had a bunch more hands.
2 JUROR NUMBER NO. 119: Just the same thing, my home was
3 burglarized and all of my belongings were taken.
4 MS. SUDANO: And that is for the record, is it Ms. Minister?
5 JUROR NUMBER NO. 119: It is, yes, 119.
6 MS. SUDANO: Okay. And was that here in Clark County?
7 JUROR NUMBER NO. 119: Yes.
8 MS. SUDANO: How long ago?
9 JUROR NUMBER NO. 119: Maybe three or four years ago.
10 MS. SUDANO: Did the police come out and investigate that?
11 JUROR NUMBER NO. 119: Yes, they did.
12 MS. SUDANO: Was it Metro?
13 JUROR NUMBER NO. 119: Yes.
14 MS. SUDANO: Were they able to catch anyone?
15 JUROR NUMBER NO. 119: No.
16 MS. SUDANO: Now anything about that particular case that
17 would affect your ability to be fair and impartial here?
18 JUROR NUMBER NO. 119: No, ma'am.
19 MS. SUDANO: And then we had Ms. Bruce --
20 JUROR NUMBER NO. 128: Katrina --
21 MS. SUDANO: -- 128?
22 JUROR NUMBER NO. 128: Yes. About three years ago, our home
23 was broken into and a few items were stolen. It was select items.
24 We didn't realize it for a while. Primarily checks from my
25 husband's sole account.

1 MS. SUDANO: Was there here in Clark County?
2 JUROR NUMBER NO. 128: It was.
3 MS. SUDANO: Did the police come out and investigate that?
4 JUROR NUMBER NO. 128: Yes.
5 MS. SUDANO: Were they able to track anyone down through the
6 checks?
7 JUROR NUMBER NO. 128: No.
8 MS. SUDANO: Now, anything about that that would affect your
9 ability to be fair and impartial?
10 JUROR NUMBER NO. 128: No.
11 MS. SUDANO: And then we had a couple more in the back row,
12 Mr. Valenzuela, badge number 127.
13 JUROR NUMBER NO. 127: Yes. My house was broken into. I
14 wasn't home at the time. My mother was home.
15 MS. SUDANO: How long ago was that?
16 JUROR NUMBER NO. 127: About three years.
17 MS. SUDANO: Was that here in Clark County?
18 JUROR NUMBER NO. 127: Yes.
19 MS. SUDANO: Did the police come out and investigate?
20 JUROR NUMBER NO. 127: Yes.
21 MS. SUDANO: Were they ever able to catch anyone?
22 JUROR NUMBER NO. 127: I believe so.
23 MS. SUDANO: Now, do you know what ended up happening with
24 that case once it kind of got into the system?
25 JUROR NUMBER NO. 127: No.

1 MS. SUDANO: Do you think that -- well, to the extent you
2 know, do you think that the individual who broke into the house was
3 treated fairly by the system?

4 JUROR NUMBER NO. 127: Sure.

5 MS. SUDANO: Do you think that this system worked fairly for
6 you and your family?

7 JUROR NUMBER NO. 127: Yes.

8 MS. SUDANO: Any issues about this incident that would affect
9 your ability to be fair and impartial in the case here?

10 JUROR NUMBER NO. 127: No.

11 MS. SUDANO: And then we had one more. Ms. Gambarelli?

12 JUROR NUMBER NO. 136: Yes.

13 MS. SUDANO: Badge number 136.

14 JUROR NUMBER NO. 136: Uh-huh. About five years ago, I had my
15 car stolen at a car wash.

16 MS. SUDANO: Was that here in the valley?

17 JUROR NUMBER NO. 136: It was. And it was never -- they found
18 it like a year later.

19 MS. SUDANO: Was it still in the valley when they found it?

20 JUROR NUMBER NO. 136: It was in the Tropicana Hotel parking
21 lot with the battery dead. But they did call me and I went down to
22 see if anything was there. Obviously, there wasn't anything, but
23 they never did find the person.

24 MS. SUDANO: Now, was Metro the one who -- or the agency that
25 investigated that?

1 JUROR NUMBER NO. 136: Yes.

2 MS. SUDANO: Anything about that experience that would affect
3 your ability to be fair and impartial in this case here?

4 JUROR NUMBER NO. 136: No. And I also had my storage unit was
5 broken into as well maybe like two years ago.

6 MS. SUDANO: Okay.

7 JUROR NUMBER NO. 136: And I was very impressed because they
8 did a Metro officer out and an investigator called and said, you
9 know, they had checked the pawn shops and things like that, but
10 nothing was ever recouped from that.

11 MS. SUDANO: So even though they never found any of your items
12 or found the individual that took them, you did think Metro did a
13 particularly good job on that investigation?

14 JUROR NUMBER NO. 136: Absolutely.

15 MS. SUDANO: Okay. Anything about that experience that
16 storage unit break-in that would affect your ability to be fair and
17 impartial?

18 JUROR NUMBER NO. 136: No.

19 MS. SUDANO: Did I miss anybody? Anybody else who was the
20 victim of a crime?

21 Now, does anybody have family members or close friends
22 who were the victim of a crime? Seeing no hands on that one.
23 Okay.

24 Now, I'm actually going to pick on you because we were
25 right there, Ms. Gambarelli. So if you were selected as a juror in

1 this particular case and you were in my position representing the
2 State of Nevada, would you want somebody in your state of mind
3 sitting on this jury?

4 JUROR NUMBER NO. 136: Yes.

5 MS. SUDANO: And why is that?

6 JUROR NUMBER NO. 136: Because that -- that individual had
7 already gotten through something as a victim, so on a victim's
8 point of view they understand what happened and how that person
9 would feel.

10 MS. SUDANO: Now, does anybody feel differently than if they
11 were representing the State of Nevada they wouldn't want somebody
12 with their state of mind or their life experiences on the jury?
13 Seeing no hands on that question.

14 JUROR NUMBER NO. 137: Just in case you want this information.
15 About the -- my brother plays basketball a lot and he's gotten his
16 phone kind of just swiped out of his gym bag quite a few times. Oh
17 sorry, Courtney 137. But never did anything about it and always
18 just got a new one.

19 And my state of mind isn't -- I think it's a different
20 one, so it might be nice to have variety, but it's hard for me to
21 make decisions. So I think that could be a positive and a
22 negative.

23 MS. SUDANO: Now -- so anything about how your brother handled
24 that situation when his phone's been taken in the past that you
25 think might affect your ability to be fair and impartial in this

1 particular case?

2 JUROR NUMBER NO. 137: I don't think so. We just never did
3 anything about it.

4 MS. SUDANO: Okay. And so you understand that he didn't do
5 anything about it, but that somebody else might react differently?

6 JUROR NUMBER NO. 137: Correct.

7 MS. SUDANO: And just so because somebody would react
8 differently than maybe you or your brother would; is there any
9 issue with -- with that? You understand I guess that people can
10 react to things differently?

11 JUROR NUMBER NO. 137: Correct.

12 MS. SUDANO: And all of those are valid reactions?

13 JUROR NUMBER NO. 137: Yes.

14 MS. SUDANO: Now, you said something else, you said that you
15 might be a little bit indecisive sometimes?

16 JUROR NUMBER NO. 137: Yes.

17 MS. SUDANO: So, if the State were able to prove this case to
18 you beyond a reasonable doubt, would you have any issue coming back
19 and finding the Defendant guilty?

20 JUROR NUMBER NO. 137: I don't know if I can answer that
21 question now. I think I'd have to go through the whole process and
22 then I think I'd be more sure with knowing everything.

23 MS. SUDANO: And same if, you know, if we couldn't prove this
24 case to you beyond a reasonable doubt, would you have any issue
25 coming back and saying not guilty?

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vi.

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