

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY LEE HOBSON,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Mar 28 2016 01:34 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO: 69981

OPPOSITION TO APPELLANT'S MOTION TO STAY
[EMERGENCY MOTION UNDER NRAP 27(e)]

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, CHRIS BURTON, and files this Opposition to Appellant's Motion to Stay [Emergency Motion under NRAP 27(e)]. This motion is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 28th day of March, 2016.

Respectfully submitted,

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

BY */s/ Chris Burton*

CHRIS BURTON
Deputy District Attorney
Nevada Bar #012940
Office of the Clark County District Attorney

ARGUMENT

Appellant requested an emergency stay of a trial scheduled for April 25, 2016 based on the fact he is appealing the district court's May 18, 2015 denial of his pretrial Petition for Writ of Habeas Corpus. Appellant's Motion should be denied.

Although Appellant's Motion is devoid of any authority outside of NRAP, Robles-Nieves, 129 Nev. Adv. Op. 55, 306 P.3d 399 (2013), provides relevant factors in considering whether a stay is appropriate in civil and criminal cases. Specifically, relevant factors for a stay include (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether appellant will suffer irreparable or serious injury if the stay is denied; (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant is likely to prevail on the merits in the appeal. NRAP 8(c); Robles-Nieves, 129 Nev. Adv. Op. 55, 306 P.3d 399, 402-03 (2013).

Here, the object of Appellant's appeal will not be defeated in the event his request for a stay is denied because his appeal is procedurally improper. Appellant filed a Petition for Writ of Habeas Corpus over one year ago on March 18, 2015, in which he challenged all of the counts and contended they were not supported by sufficient evidence. State's Exhibit 1. After it was denied by the district court,

Appellant filed a Notice of Appeal approximately 12 months later on March 14, 2016. State's Exhibit 2.

Appellant's appeal should be summarily dismissed by this Court as there is no statutory authority permitting criminal defendants to appeal the denial of a pretrial Petition for Writ of Habeas Corpus. NRS 34.575(1) explicitly delineates when applicants of writs of habeas corpus can appeal a district court's denial of the same; it reads:

1. An applicant who, **after conviction or while no criminal action is pending against the applicant**, has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution from the order and judgment of the district court, but the appeal must be made within 30 days after service by the court of written notice of entry of the order or judgment.

(emphasis added). Here, Appellant has not been convicted and there is currently a pending criminal action against him. Thus, he is not entitled to appeal the denial of his pre-trial Petition for Writ of Habeas Corpus. Because the currently pending Notice of Appeal is procedurally defective, Appellant's appeal must be dismissed and the denial of his stay will not defeat the purpose of his meritless appeal. Likewise, as his appeal is procedurally deficient, Appellant will not suffer irreparable harm by the denial of his request for a stay. Finally, Appellant cannot

show that he is likely to succeed on the merits of his instant appeal as it is procedurally defective. As such, the instant Motion should be denied.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court DENY Appellant's Motion to Stay [Emergency Motion under NRAP 27(e)].

Dated this 28th day of March, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Chris Burton*

CHRIS BURTON
Deputy District Attorney
Nevada Bar #012940
Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 28, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

RICHARD E. TANASI, ESQ.
Counsel for Appellant

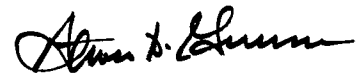
CHRIS BURTON
Deputy District Attorney

BY /s/ j.garcia
Employee, District Attorney's Office

CFB//jg

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

PET
RICHARD E. TANASI, ESQ.
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EIGHTH JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

TONY LEE HOBSON, et al.
Defendants.

Case No.: C-14-303022-1
Dept.: 19

Date of Hearing: 04 / 01 / 15
Time of Hearing: 8 : 30 AM

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 Tony Lee Hobson, submitted by Richard Tanasi, as attorney for the above-captioned individual, respectfully affirms pursuant to NRS 34.700:

1. I am duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, State of Nevada.

2. The 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 Joseph Lombardo, Sheriff.

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3. That the imprisonment and restraint of said Petitioner is unlawful as described more fully herein.

4. That Petitioner has waived and waives his right to be brought to trial within 60 days.

5. That Petitioner personally authorized his aforementioned attorney to commence this action.

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

DATED this 18th of March, 2015.

TANASI LAW OFFICES

/s/ Richard E. Tanasi
RICHARD E. TANASI, ESQ.

DECLARATION

RICHARD TANASI makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the attorney of record for 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 matter, I believe them to be true; that Petitioner, TONY LEE HOBSON, 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 March, 2015.

TANASI LAW OFFICES

/s/ Richard E. Tanasi
RICHARD E. TANASI, ESQ.

NOTICE OF HEARING ON PETITION FOR WRIT OF HABEAS CORPUS

TO: STATE OF NEVADA, Plaintiff; and

TO: DISTRICT ATTORNEY, its attorneys:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Petition for Writ of Habeas Corpus before the above-entitled Court, at Las Vegas, Nevada on the 01 day of April, 2015 at 8:30 Am., or soon thereafter as counsel can be heard.

DATED this 18th of March, 2015.

TANASI LAW OFFICES

/s/ Richard E. Tanasi
RICHARD E. TANASI, ESQ.

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

COMES NOW the Petitioner, TONY LEE HOBSON (hereinafter “Mr. Hobson”), by and through his counsel, RICHARD TANASI, and submits the following Points and Authorities in Support of Defendant’s Petition for a pre-trial Writ of Habeas Corpus.

STATEMENT OF FACTS

On December 12, 2014, Mr. Hobson was charged by way of Indictment. The initial arraignment in District Court occurred on December 22, 2014. On the same day, the undersigned was confirmed as Mr. Hobson's counsel of record.

Support for Mr. Hobson's Petition for a Writ of Habeas Corpus follows.

B. ALLEGED FACTS

October 28, 2014 (El Pollo Loco)(Counts: 1-7, Victims: Jamie Schobel, Diana Mena, Jose Boria, Jennifer Hernandez, David Caallero)

Jamie Schoebel (Count: 3)

Ms. Schoebel testified two people robbed him, and one had a “gun” and one had a “knife”. *See, Grand Jury Transcript (3/4/15), Volume 1*, at p. 17, lines 16-20 (Ex. A). Ms. Schoebel “guesses” the age range of the person who robbed her was in his “early twenties.” *Id.* at p. 21, lines 14-15. She could not describe the gun. *Id.* at p.21, lines 16-19.

Diana Mena (Count: 4)

Ms. Mena testified that one man carried a gun and the other man carried a “knife,” on the night she was robbed. *Id.* at p. 30, line 15-16. Ms. Mena did not see the robbers’ faces. She recalled “black” colored gloves on one of the robbers, but could not recall the gloves on the man with the gun. *Id.* at 31, lines 15-18.

October 29, 2014 (7-11)(Counts: 8-10, Victims: Darnell Butler)

Darnell Butler (Count: 10)

Mr. Butler first saw the suspects wearing “red gloves, red bandannas and like dark clothing...[and hooded jackets]” *Id.* at p. 9 lines 22-23 – p. 10, lines 1-2. He observed a “gun” and a “knife”. *Id.* at p. 10, lines 4-5. He was unable to get a look at the robbers’ face. *Id.* at p.12, lines 8-12.

November 1, 2014 (Pizza Hut) (Counts: 11-15, Victims: Shannon Poole, Daniel Heffner, George Thimaksi)

Shannon Poole (Count: 13)

Ms. Poole testified two men robbed her—one with a knife and one with a gun. *Id.* at p. 36, line 15-17. Ms. Poole did not identify the robbers. Ms. Poole noted, “everything was dark. They had hoodies on, they had hats on, they had handkerchiefs over their face.” *Id.* at p. 39, line 16-18. Ms. Poole “had no idea [whether the gun she saw was a revolver or a semi-automatic].” *Id.* at p. 40, lines 8-9.

November 3, 2014 (Pizza Hut) (Counts: 16-21, Victims: Trevor Farone, Ashley Carmichael, Thomas Bagwell, Guy Brown)

Trevor Farone (Count: 18)

Mr. Farone recalled one robber carried a gun. *Id.* at 46, lines 9-10. However, Mr. Farone does not know the difference between a revolver and semi-automatic. *Id.* at lines 10-12.

He then testified he “believed” he saw a gun with a clip. *Id.* at lines 16-17. Mr. Farone did not identify the robbers. Mr. Farone recalled one of the robbers “had something wrapped over his face. I don’t know what it was.” *Id.* at p. 47, lines 12-13. “I [Mr. Farone] did not get a good look at him [the other robber].” *Id.* at p. 47, line 16-17. The State then led Mr. Farone through his description of what he saw in the still shots of the video surveillance as follows:

Q. And the suspect and it appears he has a firearm in his hand?

A. Yes.

Q. Okay. After the suspects left did you immediately call the police?

A. Yes.

Q. And they responded; correct?

A. Correct.

Q. What did you say with regards to whether or not the second suspect was armed?

A. I only heard later that he had a weapon. I didn’t personally see it.

Id. at p. 52, lines 1-12.

November 4, 2014 (Little Caesars) (Counts: 22-25, Victims: Idania Sacba, Jesus Dorame)

Idania Sacba (Count: 24)

Ms. Sacba identified a “7 foot, 2 inch” robber wearing a “mask.” *Id.* at p.57, lines 6-20.

She did not recall the color of the mask. *Id.*

November 15, 2014 (Popeyes) (Counts: 26-32, Victims: Jeronimo Urbina, Juan Taingo, Angelica Ornelas, Johana Vasquez, Karina Aguilar)

Jeronimo Urbina Ruiz (Count:28)

Mr. Ruiz recalled a “built” guy about “6’2”, 6’3”” whom robbed him. *Id.* at p. 69, line 4-7. He recalled the robber wearing a “hoodie” and “something on his face.” *Id.* at lines 10 15. He could not recall a “baseball cap” on the robber. *Id.* at p. 24-25 and p. 70, line 1. Mr. Ruiz recalled a “revolver.” Mr. Ruiz testified that the robbers used a “Cardenas bag” to hold the contents of the safe. *Id.* at p. 71, line 20-25.

November 17, 2014 (Burger King) (Counts: 33-36, Victims: Cornell Combs, Sonia Soto De Mason)

Jose Romero (Count: Not an alleged Victim)

Mr. Romero testified the robber he saw wore his “hood up.” *Id.* at p.80, line 17-18. The robber also wore a “red bandanna” over his face. *Id.* at p. 81, line 1. The robber “did not have any weapon.” *Id.* at line 7.

November 17, 2014 (Wendys) (Counts: 37-43, Victims: Noemy Marroquin, Janie Fannon, Jesus Lopez, Anthony Moddsford, Juan Mendoza)

Juan Mendoza (Count: 43)

Mr. Mendoza testified that two people robbed him and “he could not openly say” how tall they were or how much they weighed, but “I would say relatively the same.” *Id.* at p. 90, lines 1-3. He also observed one robber wearing a “red bandanna” and “blue gloves,” and the other wearing a “blue bandanna.” *Id.* at p. 90. Both robbers wore a “hoodie.” *Id.* He also recalled the robbers using a “blue grocery bag.” *Id.* at p.92.

November 21, 2014 (Wendys) (Counts: 44-47, Victims: Jessica Hubbard, Jorge Morales)

Jessica Hubbard (Count: 46)

Ms. Hubbard was shown a picture of video stills from the night of the robbery (“Exhibit 14”), and then asked to describe the individuals who robbed her. *Id.* at p. 102, line 10-14. Ms. Hubbard then identified a “black guy...wearing all black...[and] a black hoodie....[and] a surgical mask.” *Id.* at lines 19-20, 25 and p. 103, lines 1-4.

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1 *November 22, 2014 [(Henderson Popeyes)(Unindicted Counts/Counts 77-80 erroneously*
2 *indicted as occurring, on November 24, 2014)(Victims: Maria Sanchez, Gamaliel Enriquez,*
3 *Melissa Loyola-Llamjoa, Guillermo Ramirez, Alejandra Urbe, Skyler Cox, and Silvia*
4 *Villegas]*

5 *Alejandra Uribe (Count: 77)*

6 Ms. Uribe testified to events occurring, on November 22, 2014. However, the State
7 advised the Grand Jury that Ms. Uribe's "testimony pertains to Counts 77, 78, 79, and 80. *Id.* at
8 p. 136, lines 1-2. Counts 77-80 of the Superseding Indictment allege events occurring two days
9 later, on November 24, 2014. These counts should be dismissed, because Counts 77-80 allege
10 events occurring on November 24, not November 22. November 22, 2014 was not indicted.

11 Nonetheless, regarding November 22, 2014, Ms. Uribe testified one of the robbers told
12 her to "get on the floor and open the safe." *Id.* at p.141, lines 22-25. One robber had a gun and
13 the other had "a knife." *Id.* at p. 142. Ms. Uribe recounted that the first guy had "a plastic
14 grocery bag and the second one had a [blue] cloth Walmart bag." *Id.* at p.144, line 7-10. Then,
15 Ms. Uribe could not recall if it was a "Walmart" bag. *Id.* The State then asked the following
16 leading question: "Q. That bright blue that Walmart uses? A. Yes." *Id.* at p.144, line 12-13.

17 *Detective Ebert*

18 Detective Ebert testified about a "Windbreaker" series of robberies with a "similar MO."
19 *Id.* at p. 149 - 151. Detective Ebert described this "MO" as robberies at "fast food restaurants"
20 by robbers wearing "similar style jackets or windbreakers." *Id.* A "taller" man carrying a
21 "revolver type firearm" and a "shorter man" would sometimes be armed with a "knife,
22 sometimes a firearm." *Id.* Detective Ebert then concluded from viewing the video "the
23 suspect's clothing matched to include one of the suspects was wearing a white doctor mask and
24 a red billed hat, and the other suspect was wearing red gloves, same color clothing, dark colored
25 clothing with red gloves." *Id.* at p. 151, lines 1-6.

1 *November 23, 2014 (El Pollo Loco) (Counts: 48-55, Victims: Janais Silva-Rios, Laura Lopez,*
2 *Sergio Bautista, Luis Lopez)*

3 *Yanais Silva (Count: 51-52)*

4 Ms. Silva testified to opening the door in the back “an that’s when one of the robbers
5 came in through the back.” *Id.* at p. 110, lines 14-15. The first robber she saw wore a “mask
6 that covered his face.” *Id.* at p. 111, lines 14-15. He “had his hoodie up as well...[and wore]
7 black gloves.” *Id.* at p. 111, lines 24-25, and p. 112, lines 1-2. Ms. Silva “just saw the black”
8 on the gloves. *Id.* at p. 112, line 6.

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10 Ms. Silva was then “gathered [with] everybody...[in]...the prep station...” *Id.* at p. 113.
11 lines 2-10. Then, “the other guy who was on top of the counter grabs the shift leader and puts
12 us all together.” *Id.* The robbers made them “sit, kneel, and then he asked who was the
13 manager in charge.” *Id.* at p. 15, lines 17-18. The manager was then taken “to her office” with
14 the “big safe.” *Id.* at lines 22-23. The currency in the safe was then put in a “like a bright
15 blue...Walmart reusable bag.” *Id.* at p. 116, lines 9-16. While Ms. Silva was in the prep
16 station, one robber took money from the safe, and the other asked her if she could “open the
17 safe.” *Id.* at p. 117, lines 1-11. The robber was “just making sure nobody would move while
18 Laura put the currency in the bag.” *Id.*

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21 *Laura Lopez (Count: 53)*

22 Ms. Lopez gave no description of the people who robbed her. *Id.* at p. 124 –125. Ms.
23 Lopez testified her “silver [with] black outer box” iPhone 5 was taken from her. *Id.* at p.124,
24 lines 14-20.

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November 23, 2014 (Taco Bell)(Counts: 56-63; Victims: Vanessa Gonzalez-Apericio, Holly Hadeed, Jammie Ward)

Holly Hadeed (Count:61-62)

Ms. Hadeed testified that two black men robbed her, they wore a “white mask,” and they were “probably [in their] early twenties.” *Id.* at p.132-133. She also testified that the man with the gun “pretty much pushes her [Vanessa] in there and he keeps telling her ‘open the safe, open the safe’...”. *Id.* at p. 130, lines 16-20. Ms. Hadeed testified that “he tried to catch Jaime [Ward] and I guess he grabbed her collar and he slipped and that’s when I kind of ran into his arm.” *Id.* at p. 128, lines 1-5. Ms. Hadeed testified, “[Jaime Ward] got away.” *Id.* at p. 128, lines 22-23.

November 24, 2014 (Popeyes)(Counts: 64 – 76, Victims: Alma Gomez, Angelica Abrego, Gabrielle Oyoque, Rafael Valazquez-Barragan, Jose Espinoza)

Ms. Gomez (Count: 67-68)

Ms. Gomez was “in front” of the Popeye’s store when she heard glass break. *See, Grand Jury Transcript 1* (12/29/14), page 7, line 18 (Ex.B). The person she then saw “had a covered face [and] she could not see his face.” *Id.* at p. 9, line 3. She could tell this person was “black” from his “voice”; but she could not tell he was a “boy.” *Id.* at p. 9, line 12. [“Question: You could tell that he was a boy? Answer: No.”]

The robber then said, “who was the manager.” *Id.* at p. 9, line 20-21. On her own, Ms. Gomez “run to the back with my employees...”. *Id.* at p. 9, line 20. Already in the back of the store, were Rafael Velazquez-Borragan and Gabriela Oyoque. *Id.* at p. 10, line 10-25. Ms. Gomez, Mr. Valezquez and Ms. Oyoque tried to go out the exit door, but it was “like someone else was holding the door.” *Id.* at p. 11, lines 2-3. Mr. Valezquez then opened the door. *Id.* at p. 11, line 8. Another purported black man entered the store. Ms. Gomez speculates the man

1 was black, again, because of his “voice.” *Id.* at p. 12, line 1. Shortly after, “the first guy, came
2 first, tell me to, he give me a bag and he say that I have to go to the safe and put all the money
3 in there.” *Id.* at p. 13, line 9-10. The safe was in the office, which was “in the middle of the
4 store.” *Id.* at p. 14, line 6. They all “walk[ed] to the office”. *Id.* at p. 14, line 12. Once the
5 suspects took the money from the safe, “they just told me [Ms. Gomez] to get in [sic] the
6 ground and they just left from the back door.” *Id.* at p. 17, line 20-21.

8 Ms. Gomez also described the guns she saw as “black” and the gloves she saw as
9 “black”. *Id.* at p. 19, line 1-8.

10 *Mr. Valezquez (Count: 73-74)*

12 Mr. Valezquez was a cashier working on the night of the November 24, 2014 robbery.
13 *Id.* at p. 23, line 11-14. He was in the back of the store. *Id.* at p. 24. He “pushed it [the back
14 door], it like opened slowly as if someone was holding it back towards me.” *Id.* at p. 25. He
15 saw a guy that “slipped in” the back door with what he thought was “probably a semi-automatic
16 9-millimeter.” *Id.* at p. 25-26. He also recalled a “.357 revolver” that was “lightish gray.” *Id.*
17 at p. 26, line 19-23. He also recalled the robbers carrying a blue cloth bag. *Id.* at p. 27, line 17-
18 18. Mr. Valezquez testified the robber who came through the back door as being “somewhere
19 between 5’8”, 5’9”, 5’11”. *Id.* at p. 31-32.

21 Mr. Valezquez was not lead anywhere by the robbers. *Id.* at p. 26, lines 4-12 [“Q. Once
22 he was inside did he lead you somewhere? A. He just kind of stood there...we were all grouped
23 in there was one on both sides of us. So the guy in the front, he took over and he said don’t’ try
24 anything, where’s the safe...”]. When the robbers left, they gave no instructions. *Id.* at p. 33,
25 line 5-7.

1 *Officer Theodore Wierauch*

2 The suspect vehicle was a "Dodge Charger." *Id.* at p. 37, line 24-25. The suspect vehicle
3 description was "communicated" to Officer Wierauch via email. *Id.* at p. 36, line 8-10. Officer
4 Wierauch observed the Dodge Charge at a Taco Bell. He observed Defendant Brandon Starr
5 exit the vehicle wearing a "surgical mask...dark hoodie..dark pants..." *Id.* at p. 42, line 12-15.
6 After lead by the State's questioning, Officer Wierauch testified Mr. Hobson was seated in front
7 passenger seat of the Dodge Charger prior to arrest at the Taco Bell. *Id.* at p. 42, line 23-25.
8 The vehicle was registered to Defendant Donte Johns. *Id.* at p.19-20.
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10 Officer Wierauch testified he found a "semi-automatic...silver over black handgun" in
11 the Dodge Charge trunk. *Id.* at p. 45.
12

13 *Officer Linda Turner*

14 Officer Turner testified she helped execute the warrant at residence located at 3555 East
15 Charleston, number 250. *Id.* at p. 50, line 13-17. Officer Turner was lead by the State into
16 testifying this was "Tony Hobson's residence." *Id.* "\$1,000.00" was seized. *Id.* Officer Turner
17 also offered testimony of photocopies of Popeyes' receipts that were located "in the kitchen
18 garbage inside the residence." *Id.* at p. 51, lines 11-25 (also, attached hereto as Exhibit "B" are
19 the Popeyes receipts produced by the State). Officer Turner (and no other witness) testifies that
20 these receipts came from the specific Popeyes store number that was robbed, on November 24,
21 2014. Likewise, no one testifies that these receipts were from one purchase, numerous
22 purchases, or whether the receipts were customer or merchant receipts. Instead, these receipts
23 (hearsay) were offered for the truth of the matter asserted by the State: the receipts were stolen
24 by Mr. Hobson.
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Detective Lorson

Detective Lorson testified the Dodge Charger's trunk had a revolver and a semi-automatic firearm. *Id.* at p. 58, line 15-17. He also testified regarding the gloves in the trunk (gray, red, and black). *Id.* at p. 59.

Detective Abell

The State solicited inadmissible speculative hearsay from Detective Abell. The State showed Detective Abell surveillance footage from inside Popeye's. *Id.* at p. 64. From these photos, Detective Abell speculated:

A. That's the photograph of the person I believe to be Brandon Starr. He's wearing a gray and black hooded jacket, gray gloves, carrying a [sic] ax and a firearm. Black pants and boots, black boots.

Q. What about the photo directly next to it?

A. That's the person I believe to be Tony.

Q. Tony Lee Hobson?

A. Hobson, yes.

Q. And what is he wearing?

A. Black hoodie, he's wearing a surgical, white surgical mask, gray gloves.

Q. Black and red gloves?

A. Yes. He's got dark pants on and he's got gray tennis shoes on with a white stripe at the bottom.

Q. And in the next photograph, what is depicted?

A. That's both the suspects leaving toward the back emergency exit door.

Q. Okay.

A. And you can see that Tony is carrying a blue bag.

Q. Tony Hobson?

A. Hobson is carrying a, yeah, blue bag.

Id. at p. 65, lines 3-25.

The State then asks Detective Abell Tony Hobson's "descriptors" from his "database".

Id. at p. 66. Detective Abell identifies (without admission of the database from which he's testifying from) that Mr. Hobson is listed as "5-foot 7 inches and only 122 pounds." *Id.*

Without showing the Grand Jury the surveillance video, the State then asked Detective Abell to

speculate as to his ability to "observe the height difference on the surveillance footage";

Detective Abell testified he could. *Id* at p. 66-67.

Detective Abell then put the final connection between what he observed in the video (which was not presented to the Grand Jury) and Mr. Hobson together. Detective Abell testified:

Q. Going to the next row. What is this a photograph of?

A. Tony Hobson.

Q. And Anthony Hobson is in one of the interview rooms at Metro headquarters?

A. That is correct.

Q. And he appears to be wearing what?

A. Black hooded jacket, hoodie and black pants, and he's got gray shoes with the white trim at the bottom.

Q. And is that the clothing that you observed in the surveillance footage from the November 24th robbery at Popeye's?

A. Yes, it is.

Id. at 69, lines 4-17.

Detective Abell also speculates from his view of the video that Defendant Brandon Starr possibly wore one of the gloves found in the trunk as follows:

Q. And did you in reviewing the surveillance footage from the November 24, 2014 robbery observe any gloves similar to those gloves on either of the suspects?

A. Possibly one. The top right is possibly the other one worn by Brandon Starr.

Q. Okay. So in the surveillance footage from November 24, 2014 Starr appeared to be wearing one pair, one glove from the pair at the bottom and then the gray glove depicted in the right top?

A. It's hard to tell from the video whether he's wearing one of the bottom gloves or one of the top gloves or which gloves they were actually wearing, but they're both wearing red and black gloves, but Brandon's wearing just the one of the other glove.

Id. at p. 71, lines 16-25, and at p. 72, lines 1-5.

Detective Abell goes on to testify that "[a] blue reusable Walmart bag...was located on Tony Hobson..." *Id.* at p. 72, lines 1-14.

1 Lastly, Detective Abell offers testimony from his interview of Defendant Johns. The
2 State asked Detective about that interview as follows:

- 3 Q. During the course of that interview did he indicate to you that he had in fact been
4 A. Yes.
5 Q. And he was able to provide you with details that were consistent with what had
6 A. Yes.
7 Q. Did he indicate to you that he in fact received a hundred dollars for the role he
8 A. Well, he said he received some money, a hundred dollars for a phone bill?
9 Q. And gas?
 A. And gas.

10 *Id.* at p. 73, lines 5-19.

11 The State alleges that, on October 28, 2014, Mr. Hobson and his codefendants entered El
12 Pollo Loco, which was occupied by Jamie Schoebel, Diana Mena, Jose Boria, Jennifer
13 Hernandez, and David Caballero (“El Pollo Loco Victims”). Therein, the Indictment alleges
14 that the occupants of the El Pollo Loco were each the victim of robbery with use of the deadly
15 weapon (Counts 3-7). The alleged facts are as follows.

16 *Jamie Schoebel (Count: 3)*

17 Ms. Schoebel testified two people robbed him, and one had a “gun” and one had a
18 “knife”. *See, Grand Jury Transcript (3/4/15), Volume 1*, at p. 17, lines 16-20 (Ex.A). Ms.
19 Schoebel “guesses” the age range of the person who robbed her was in his “early twenties.” *Id.*
20 at p. 21, lines 14-15. She could not describe the gun. *Id.* at p.21, lines16-19.

21 *Diana Mena (Count: 4)*

22 Ms. Mena testified that one man carried a gun and the other man carried a “knife,” on
23 the night she was robbed. *Id.* at p. 30, line 15-16. Ms. Mena did not see the robbers’ faces. She
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recalled “black” colored gloves on one of the robbers, but could not recall the gloves on the man with the gun. *Id.* at 31, lines 15-18.

November 25, 2015 (Taco Bell)(Counts 81- 82)

Detective Matlock

Detective Matlock testified about the arrest of “three potential suspects” in the “Windbreaker [robbery] Series occurring between the months of October and November of 2014.” *Id.* at p.154, lines 6-9. Detective Matlock responded to the Taco Bell parking lot. *Id.* at line 15-17. Detective Matlock testified to seizing a “blue bag” that “we weren’t sure about the Walmart.” *Id.* at p. 156, lines 1-4. Specifically, the State led Detective Matlock through connecting the blue bag to Mr. Hobson as follows:

Q. And was it your understanding of the Windbreaker robbery series that a blue Walmart bag had been used in some of the robberies throughout?

A. Yes, it was specifically just a blue, we noticed in some of the robberies there was a blue bag consistent with that. We weren’t sure about the Walmart.

Id.

The Alleged M.O.

Detective Abell

Detective Abell defined “MO” as the “modus operandi”, or “they [the suspects] use the same verbiage, same actions throughout each of the robberies...it is kind of a signature.” *Id.* at p.164, lines 20-25. Detective Abell testified to his impressions of still photographs of surveillance video. *Id.* at p.161-173. The smaller subject “usually wore the red and black gloves with the white lettering.” *Id.* at p.162. The “taller suspect normally wore red and black glove, the other was a gray and red glove, and sometimes he wore two black and red gloves.” *Id.* The suspects “always wore something concealing their face.” *Id.* at p.166, line 2-3. The suspects wore “bandannas”; they were “mostly red in color...there was a few that had blue

bandanna..." *Id.* at p.166, lines 11-19. "And then in the last few robberies in the series beginning from 11/21 up until the point where they were arrested and taken into custody by police," the suspects wore "surgical mask[s]" to conceal their faces. *Id.*

In the first four robberies, one suspect used a "knife" and one suspect used a "firearm." *Id.* at p. 167, lines 1-12. Thereafter, they "largely both had firearms, occasionally one had a knife." *Id.*

According to Detective Abell, Co-Defendant Donte Johns admitted to being the getaway driver in the following robberies: November 3rd, November 23rd, and November 24th. *Id.* at 169-170.

According to Detective Abell, some of the robberies occurred nearby Mr. Hobson's house and others "were on the opposite side of town [i.e. Pizza Hut, Lake Mead, Wendy's, Popeyes in Henderson, El Pollo Loco, and Taco Bell.]"

The only witness who wanted to do a photo line up, because the "suspect's mask slipped for a minute and she thought she might be able to recognize him" was "unable to make any ID". *Id.* at p. 173, lines 10-16; *See also, Detective Matlock's testimony as noted above regarding the Taco Bell event, on November 25, 2015.*

II.

LEGAL ARGUMENT

A. Legal Standard

Since 1912, the Nevada courts have recognized that the writ of habeas corpus is the plain, speedy and adequate remedy by which to determine the legal sufficiency of the evidence supporting a grand jury indictment. *Shelby v. Sixth Judicial Dist. Court*, 82 Nev. 204, 207, 414 P.2d 942 (1966); *Eureka Bank Cases*, 35 Nev. 80, 126 P. 655 (1912). It is fundamentally unfair

to require one to stand trial unless he is committed upon a criminal charge with reasonable or probable cause. *Shelby*, 82 Nev. 2014, 207 (1966). Pursuant to NRS § 172.135:

1. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive ***no other evidence than such as is given by witnesses produced*** and sworn before them or furnished by legal documentary evidence or by the deposition of witnesses taken as provided in this title, except that the grand jury may receive any of the following:

(a) An affidavit or declaration from an expert witness or other person described in NRS 50.315 in lieu of personal testimony or a deposition.

(b) An affidavit of an owner, possessor or occupant of real or personal property or other person described in NRS 172.137 in lieu of personal testimony or a deposition.

2. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.[Emphasis Added]

“The purpose of the preliminary proceedings is to weed out groundless or unsupported charges of grave offenses and to relieve the accused of the degradation and the expense of a criminal trial. Many unjustifiable prosecutions are stopped at that point, where the lack of probable cause is clearly disclosed.” *State v. Von Brincken*, 86 Nev. 769, 772 (1970).

The grand jury does not determine guilt or innocence, but needs only to have before them ***legally sufficient evidence*** to establish probable cause. *See, Franklin v. State*, 89 Nev. 382, 388, 513 P.2d 1252, 1257, 1973 Nev. LEXIS 529, 10 (Nev. 1973) *citing, Kinsey v. Sheriff*, 87 Nev. 361, 487 P.2d 340 (1971)[Emphasis Added].

NRS §171.206 states, in pertinent part, as follows:

If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold him to answer in the district court; otherwise the magistrate shall discharge him...

The probable cause necessary at a preliminary hearing has been defined as slight, even marginal, evidence because it does not involve a determination of guilt or innocence of an accused. *Sheriff, Washoe County v. Dhadda*, 980 P.2d 1062, 115 Nev. 175 (1999), rehearing

1 denied. The Nevada Supreme Court has held that although the State's burden at the preliminary
2 hearing is "slight, it remains incumbent upon the state to produce some evidence" as to each of
3 the State's burdens. *Woodall v. Sheriff*, 95 Nev. 218, 220 (1979); *see also Marcum v. Sheriff*,
4 85 Nev. 175, 178 (1969) ("The state must offer some competent evidence on those points to
5 convince the magistrate that a trial should be held"). If the State fails to meet its burden, "an
6 accused is entitled to be discharged from custody under a writ of habeas corpus." *State v. Plas*,
7 80 Nev. 251, 252 (1964).

9 **B. All Counts in Both Indictments Must be Dismissed Because Not Even Slight or**
10 **Marginal Evidence Supports Mr. Hobson's Presence at Any Alleged Crime.**

11 All Counts in the Superseding Indictment lack any evidence of any witness
12 identification, DNA, fingerprints, video identification, or photo identification of Mr. Hobson.

13 The State will likely argue that the modus operandi supports probable cause. Generally,
14 modus operandi evidence is proper in "situations where a positive identification of the
15 perpetrator has not been made, and the offered evidence establishes a signature crime so clear as
16 to establish the identity of the person on trial." *Rosky v. State*, 121 Nev. 184, 197, 111 P.3d 690
17 (2005); *quoting Mortensen v. State*, 115 Nev. 273, 280-81, 986 P.2d 1105, 1110 (1999).

18 The modus operandi is so inconsistent that it lacks any evidentiary value and fails to
19 amount to probable cause. The grand jury can receive none but legal evidence, and the best
20 evidence in degree, to the exclusion of hearsay or secondary evidence. NRS §172.135. All
21 relevant evidence is admissible; evidence, which is not relevant is not admissible. NRS
22 §48.025. However, although relevant, evidence is not admissible if its probative value is
23 substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of
24 misleading the jury. NRS §48.035(1).
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1 In this alleged robbery series, sometimes firearms are used. Sometimes a revolver is
2 used. Sometimes a semi-automatic used. Sometimes an indescribable firearm is used.
3 Sometimes knives are used. Sometimes an ax or hatchet is used. Sometimes a blue bag is used.
4 Sometimes a blue Walmart bag is used. Sometimes there are three robbers. Once, a Cardenas
5 bag was used. Sometimes there are two robbers. Sometimes blue bandannas are used.
6 Sometimes red bandanas are used. Sometimes a surgical mask is used. One time a handkerchief
7 was used. One robber was 7' 2" tall. Sometimes the gloves the robbers wore looked black, and
8 sometimes they had colors. Some of the robberies were geographically located near Mr.
9 Hobson's house. Some of the robberies were not geographically located near Mr. Hobson's
10 house. Co-Defendant Donte Johns admitted to being the getaway driver for only some of the
11 robberies, not all. The modus operandi is so irrelevant and so inconsistent that it lacks any
12 evidentiary value and fails to amount to probable cause.

13 Moreover, the Grand Jury received hearsay from law enforcement to connect the suspect
14 Dodge Charger to Mr. Hobson. *See, Goldsmith v. Sheriff of Lyon County, Nevada*, 85 Nev. 295;
15 454 P.2d 86; 1969 Nev. LEXIS 359 ("Ordinarily, hearsay statement are excluded partly because
16 the witness is likely to report it inaccurately, but principally because the original declarant
17 cannot be cross-examined."). Here, the State solicited hearsay from Officer Weiruach, when he
18 testified about the suspect vehicle description (The Dodge Charger) that he had obtained from
19 an "email." *See, GJT1*, p. 34-36; *see also*, NRS §172.135 ("The grand jury can receive none but
20 legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary
21 evidence"); *Gordon v. Eighth Judicial Dist. Court*, 112 Nev. 216, 223, 913 P.2d 240, 247
22 (1996).
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1 Moreover, the suspect-vehicle/Dodge Charger (searched and seized at the Taco Bell
2 incident, only after the all other alleged events) was not driven by Mr. Hobson or owned by Mr.
3 Hobson. Likewise, Mr. Hobson did not exit the suspect vehicle in any manner tending to prove
4 his participation in a robbery--i.e. much unlike his Defendant Starr who exited the vehicle
5 wearing a "surgical mask...dark hoodie...dark pants..." *Id.* at p. 42, line 12-15.
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7 Therefore, no probable cause exists to have bound Mr. Hobson over into District Court.
8 Thus, all counts as against Mr. Hobson must be dismissed.

9 Even if this Honorable Court finds probable cause exists on all counts despite the
10 arguments above, the following counts lack probable cause, additionally, because of specific
11 evidentiary deficiencies.

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13 ***November 3, 2014 (Pizza Hut)(Counts: 16-21; Victims: Trevor Farone, Ashley Carmichael,***
14 ***Thomas Bagwell, Guy Brown)***

15 The November 3, 2014 Counts lack probable cause based upon admissible and sufficient
16 evidence, because the victims were led through the description of the robbers. Generally, in
17 Nevada, leading questions are prohibited by NRS §50.115. Thus, because this count was based
18 upon inadmissible evidence, it was insufficient for probable cause, and must be dismissed.

19 ***November 21, 2014 (Wendys) (Counts: 44-47; Victims: Jessica Hubbard, Jorge Morales)***
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21 Likewise, Jessica Hubbard, was led through her description of the robbers. She was also
22 improperly shown the video still-shot photos, and then asked to describe the robbers. This was
23 improper, because her testimony, which is based upon photographs of a video, is not based upon
24 the best evidence of the video itself, and lacks her first hand knowledge. The grand jury can
25 receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or
26 secondary evidence. NRS §§ 51.035, 172.135.
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On the best evidence requirement in a Grand Jury Proceeding, the Nevada Supreme Court in *Lightford v. Sheriff, Clark County*, 88 Nev. 403, 404-405, 498 P.2d 1323, 1324, 1972 Nev. LEXIS 480, 2 (Nev. 1972) held as follows:

The courts have repeatedly held that the Best Evidence Rule is confined to documentary evidence and that the rule does not apply to parol evidence so as to exclude the otherwise competent testimony of a witness on the ground that another witness, who might give more conclusive evidence, ought to be called. The testimony of the eyewitness police officer was "legal evidence, and the best evidence in degree," and it was not hearsay or secondary evidence. The State's failure to call Williams did not render inadmissible the eyewitness police officer's testimony.

Id. at p. 404-405.

In *Lightford* (unlike here), the police officer was an eye-witness. Thus, his testimony was sufficient for probable cause (and the video was not required).

Therefore, the non-eye-witness Officer testimony of what was seen on a video surveillance should not have been admitted to the Grand Jury. Thus, because this count was based upon inadmissible evidence, it was insufficient for probable cause, and must be dismissed.

November 22, 2014 [(Henderson Popeyes)(Unindicted Counts/Counts 77-80/erroneously indicted as occurring, on November 24, 2014)]

Alejandra Uribe (Count: 77)

Ms. Uribe testified to events occurring, on November 22, 2014. However, the State advised the Grand Jury that Ms. Uribe's "testimony pertains to Counts 77, 78, 79, and 80. *Id.* at p. 136, lines 1-2. Counts 77-80 of the Superseding Indictment allege events occurring two days later, on November 24, 2014. These counts should be dismissed, because Counts 77-80 allege events occurring on November 24, not November 22. November 22, 2014 was not indicted.

1 *November 24, 2014 (Popeyes)(Counts: 64 – 76, Victims: Alma Gomez, Angelica Abrego,*
2 *Gabriell Pyoque, Rafael Velazquez-Barragan, Jose Espinoza)*

3 Further, the counts related to the November 24, 2014 event, lack any admissible
4 evidence connecting Mr. Hobson to any of the charges.

5 ***The Identification and Description of the Co-Defendants Was Inadmissible***
6 ***Speculation***

7 The victim speculated the suspects were black because of their voice. Likewise,
8 Detective Abell speculated when he identified Mr. Hobson in the still shots of the video. *See*
9 NRS §48.035 (exclusion of relevant evidence when the probative value is substantially
10 outweighed by the danger of unfair prejudice, confusion of the issues, or of misleading the
11 jury); *see also, Kaczmarek v. State*, 120 Nev. 314, 340, 91 P.3d 16, 32 (2004)(where the court
12 instructed the jury that there decision must be based on evidence alone and not on inferences
13 founded on speculation or guess); *See also*, NRS §50.025 [A witness may not testify to a matter
14 unless: (a) Evidence is introduced sufficient to support a finding that the witness has personal
15 knowledge of the matter...].

16 Here, Detective Abell (with no personal knowledge) speculated/testified he could
17 identify (unlike any of the victim witnesses) Mr. Hobson in the video. Detective Abell testified
18 he could identify (unlike any of the victim witnesses) that the person wearing a surgical mask
19 and a black hoodie (covering his face) was Mr. Hobson. Detective Abell also testified (unlike
20 any of the victim witnesses) that Mr. Hobson carried a blue bag. Detective Abell also testified
21 Mr. Hobson was 5', 7" (unlike Mr. Valequez who identifies his robber as anywhere from 5'8" to
22 5'11").
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The Testimony Regarding the Video Surveillance Was Not the Best Evidence

Further, the Grand Jury received inadmissible testimony about surveillance video. Detective Abell's testimony (not as an eye witness) about the pictures of the video was not the video—the best evidence. *See, Lightford v. Sheriff, Clark County*, 88 Nev. 403, 404-405, 498 P.2d 1323, 1324, 1972 Nev. LEXIS 480, 2 (Nev. 1972). Therefore, the best evidence video should have been presented to the Grand Jury.

The Still-Shots Were Not the Best Evidence and Lacked Authenticity

Additionally, the still shots lacked any authentication. Pursuant to NRS §52.015(1), the requirement of authentication is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims. Here, no one from Popeye's testified to the origin of the video or the pictures. Detective Abell's inadmissible testimony (1) identified Mr. Hobson in the Popeyes' robbery, (2) connected the "blue bag" to Mr. Hobson, (3) served to identify Mr. Hobson in all subsequently charged robberies. The State simply leapfrogged basic foundational requirements and rules of evidence to admit these pictures, and consequently, Mr. Hobson was indicted.

The State will likely argue the pictures were admissible duplicates. NRS §52.255 sets forth the limited circumstances in which the court can admit other evidence to prove the contents of the original. *Id.* NRS 52.255 provides as follows:

The original is not required, and other evidence of the contents of a writing, recording or photograph is admissible, if:

1. All originals are lost or have been destroyed, unless the loss or destruction resulted from the fraudulent act of the proponent.
2. No original can be obtained by any available judicial process or procedure.
3. At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original the hearing.

1 4. The writing, recording *or photograph is not closely related to a controlling*
2 *issue.*

3 [Emphasis added].

4 Here, there is no showing the surveillance videos have been lost or destroyed, and the
5 identification or description gleaned from the still shots were central to the controlling
6 identification issue in this case. Therefore, the best evidence video (not a duplicate still shot)
7 should have been presented to the Grand Jury.

8 *The Popeyes' Receipts Were Inadmissible Hearsay That Lacked Authenticity*

9 The State also offered inadmissible evidence of Popeyes' receipts found in what they
10 speculate/conclude (without evidence) was Mr. Hobson's residence. No admissible evidence
11 was offered to prove Mr. Hobson lived at the residence these receipts were found in.

12 Further, the receipts are hearsay. Generally, "hearsay" means a statement offered in
13 evidence to prove the truth of the matter asserted, unless an exception applies. NRS §51.035.
14 Hearsay is inadmissible unless it falls within one of several exceptions. *Franco v. State*, 109
15 Nev. 1229, 1236, 866 P.2d 247, 252 (1993). The only exception that may apply here is that the
16 receipt is a record of regularly conducted activity. However, even if the court concludes that the
17 receipts fall under this exception, the exception requires that the evidence must be admitted by
18 the testimony or affidavit of the custodian or other qualified person. NRS §51.135. The
19 receipts were presented without the proper foundation to verify its authenticity. *State v.*
20 *Sampson*, 132 N.H. 343, 346-348 (1989). Therefore, it was improper to admit the receipts
21 during the Grand Jury.
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Detective Abell's Testimony Regarding Co-Defendant Johns' Statement Lacked Any Probative Value

The State also solicited testimony from Detective Abell regarding Defendant Johns' statement. All the Grand Jury heard was that Defendant Johns admitted to being the driver in the Popeye's robbery--not that Mr. Hobson participated with him in anyway. In other words, Mr. Johns' statement (at least according to Detective Abell at the Grand Jury proceeding) provided no relevant nexus between Mr. Johns and Mr. Hobson and the Popeyes' robbery. *See* NRS §48.025.

Thus, based upon the totality of the foregoing, because this count was based upon inadmissible evidence, it was insufficient for probable cause, and must be dismissed.

C. Alternatively, All Kidnapping Counts (Counts 51, 59, 61, 63, 67, 69, 71, 73, 76) and All Conspiracy to Commit Kidnapping Counts (Counts 49, 58, 66) Must Be Dismissed, Because All of the Alleged Kidnappings Were Incidental to the Alleged Robberies.

NRS §200.310 states the following of first degree kidnapping (Counts 51, 59 61, 63, 67, 69, 71, 73, 76):

1. A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.

...
[Emphasis Added]

1 Here, Mr. Hobson is charged, by way of Superseding Indictment, with first degree
2 kidnapping (Counts 51, 59 61, 63, 67, 69, 71, 73, 76). However, a separate charge of
3 kidnapping will lie if the movement of the victims is not incidental to the associated offense and
4 there is a substantially increased risk of harm beyond that necessarily present in the associated
5 offense. *Wright v. State*, 94 Nev. 415, 581 P.2d 442, 1978 Nev. LEXIS 580 (1978); *Hampton v.*
6 *Sheriff, Clark County*, 95 Nev. 213, 591 P.2d 1146, 1979 Nev. LEXIS 568 (1979); *Jefferson v.*
7 *State*, 95 Nev. 577, 599 P.2d 1043, 1979 Nev. LEXIS 703 (1979); *Sheriff, Clark County v.*
8 *Medberry*, 96 Nev. 202, 606 P.2d 181, 1980 Nev. LEXIS 550 (1980); *Turner v. State*, 98 Nev.
9 243, 645 P.2d 971, 1982 Nev. LEXIS 441 (1982); *Turner v. Housewright*, 599 F. Supp. 1358,
10 1984 U.S. Dist. LEXIS 21072 (D. Nev. 1984), *aff'd*, 779 F.2d 29 (9th Cir. 1985).

13 For example, in the case of a defendant who was charged with both kidnapping and
14 robbery, to sustain convictions for both robbery and kidnapping arising from the same course of
15 conduct, any movement or restraint must stand-alone with independent significance from the act
16 of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily
17 present in the crime of robbery, or involve movement, seizure or restraint substantially in excess
18 of that necessary to its completion. *Mendoza v. State*, 130 P.3d 176, 2006 Nev. LEXIS 30
19 (2006).

21 Here, the alleged facts show that the victims' movement was completely and
22 consistently part of the criminal scheme in furtherance of the robbery – much like *Wright v.*
23 *State*, 94 Nev. 415, 581 P.2d 442, 1978 Nev. LEXIS 580 (1978). In *Wright*, three young black
24 males entered the lobby of a Las Vegas Motel. *Id.* at 416. One of them, Wright, pulled a
25 revolver on the night clerk, while another drew on the night auditor. *Id.* After emptying the
26 cash register behind the counter the two victims were told to walk to a back office, a distance of
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20 to 40 feet. *Id.* The night auditor subsequently was taken back to the lobby to open the safe. *Id.* Upon his return to the back office he and the clerk were told to lie face down on the floor where they were taped hand and foot. *Id.* A motel guest who had entered the lobby also was taken to the back office and taped. *Id.* The victims were threatened while lying on the floor. *Id.* The robbers then left. The episode lasted three to five minutes. *Id.* The Nevada Supreme Court concluded that the movement of the victims appeared to have been incidental to the robbery and without an increase in danger to them, because their detention was only for the period of time necessary to consummate the robbery. *Id.* at 418.

November 23, 2014 (El Pollo Loco)(Counts: 48-55; Victims: Yanais Silva-Rios, Laura Lopez, Sergio Bautista, Luis Lopez)

Yanais Silva and Laura Lopez (Count 51)

Mrs. Silva was held in the prep-station, while the nearby safe was robbed. As she testified, Mrs. Silva was held by one robber, because the other robber was “just making sure nobody would move while Laura put the currency in the bag.” Laura Lopez’s iPhone 5 was taken from her during the course of the robbery as well. Thus, Mrs. Silva, Ms. Lopez, and everyone else in El Pollo Loco was being confined to carry out the robbery. The victims’ detention was only for the period of time necessary to consummate the robbery. None of the victims’ hands were even restrained like the duct tape in *Wright v. State*, 94 Nev. 415, 581 P.2d 442, 1978 Nev. LEXIS 580 (1978). Thus, this kidnapping count must be dismissed.

November 23, 2014 (Taco Bell)(Counts: 56-63; Victims: Vanessa Gonzalez-Aparicio, Holly Hadeed, Jammie Ward)

Holly Hadeed (Count 59)

Ms. Hadeed testified that the man with the gun “pretty much pushes her [Vanessa] in there and he keeps telling her ‘open the safe, open the safe’ ...”. *Id.* at p. 130, lines 16-20.

1 Thus, she was being confined and moved as part of the robbery. The victim's detention was
2 only for the period of time necessary to consummate the robbery. Therefore, this kidnapping
3 count must be dismissed.

4 *Jammie Ward (Count 63)*

5 Ms. Ward did not testify. Thus, any testimony related to Ms. Ward lacks firsthand
6 knowledge and is improper speculation. Nonetheless, as Ms. Hadeed testified, the man with the
7 gun "pretty much pushes her [Vanessa] in there and he keeps telling her 'open the safe, open the
8 safe'...". Id. at p. 130, lines 16-20. Thus, the alleged victims were being confined only as a part
9 of the robbery. The victims' detention was only for the period of time necessary to consummate
10 the robbery. None of the victims' hands were restrained as in *Wright v. State*, 94 Nev. 415, 581
11 P.2d 442, 1978 Nev. LEXIS 580 (1978). Therefore, these kidnapping counts must be
12 dismissed.
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15 ***November 24, 2014 Kidnappings (Counts: 64-76; Victims: Alma Gomez, Angelica Abrego,***
16 ***Gabrielle Oyoque, Rafael Valazques-Barragan, Jose Espinoza)***

17 *Ms. Gomez (Counts: 67-68)*

18 Here, the Popeyes' Victims were robbed at the same time they were moved and
19 restrained. The back-door/exit was only briefly blocked in an effort to carry out the robbery.
20 The Popeyes Victims were able to open the back door when they pushed it. The Popeye's
21 Victims were robbed and the robbers left, with no instructions and not left in any manner where
22 they were not able to leave and call police.
23

24 *Ms. Gomez (Counts: 67-68)*

25 Ms. Gomez was "in front" of the Popeye's store when she heard glass break. On her
26 own, Ms. Gomez "run to the back with my employees...". See, *Grand Jury*
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1 *Transcript* (3/4/15), V.1., at p. 9, line 20 (Ex.A). Already in the back of the store, was Rafael
2 Velazquez-Borragan and Gabriela Oyoque. *Id.* at p. 10, line 10-25. Ms. Gomez, Mr. Valezuez
3 and Ms. Oyoque tried to go out the exit door, but it was “like someone else was holding the
4 door.” *Id.* at p. 11, lines 2-3. Mr. Valezquez then opened the door. *Id.* at p. 11, line 8. Shortly
5 after, “the first guy, came first, tell me to, he give me a bag and he say that I have to go to the
6 safe and put all the money in there.” *Id.* at p. 13, line 9-10. The safe was in the office, which
7 was “in the middle of the store.” *Id.* at p. 14, line 6. They all “walk[ed] to the office”. *Id.* at p.
8 14, line 12. Once the suspects took the money from the safe, “they just told me [Ms. Gomez] to
9 get in [sic] the ground and they just left from the back door.” *Id.* at p. 17, line 20-21. Thus, the
10 alleged victims were being confined only as a part of the robbery. The victims’ detention was
11 only for the period of time necessary to consummate the robbery. None of the victims’ hands
12 were restrained as in *Wright v. State*, 94 Nev. 415, 581 P.2d 442, 1978 Nev. LEXIS 580 (1978).
13 Therefore, these kidnapping counts must be dismissed.

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16 *Mr. Valezquez (Count: 73-74)*

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18 Mr. Valezquez was a cashier working on the night of the November 24, 2014 robbery.
19 *Id.* at p. 23, line 11-14. He was in the back of the store. *Id.* at p. 24. He “pushed it [the back
20 door], it like opened slowly as if someone was holding it back towards me.” *Id.* at p. 25. He
21 saw a guy that “slipped in” the back door with what he thought was “probably a semi-automatic
22 9-millimeter.” *Id.* at p. 25-26.

23
24 Mr. Valezquez was not lead anywhere by the robbers. *Id.* at p. 26, lines 4-12 [“Q. Once
25 he was inside did he lead you somewhere? A. He just kind of stood there...we were all grouped
26 in there was one on both sides of us. So the guy in the front, he took over and he said don’t try
27 anything, where’s the safe...”]. When the robbers left, they gave no instructions. *Id.* at p. 33,
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1 line 5-7. Thus, the allege victims were being confined only as a part of the robbery. The
2 victims detention was only for the period of time necessary to consummate the robbery. None
3 of the victims' hands were restrained as in *Wright v. State*, 94 Nev. 415, 581 P.2d 442, 1978
4 Nev. LEXIS 580 (1978). Therefore, these kidnapping counts must be dismissed.

5
6 **III.**

7 **CONCLUSION**

8 Based on the foregoing, Defendant requests that this Honorable Court dismiss all Counts
9 in the Superseding Indictment (and collectively between both Indictments).

10 DATED this 18th day of March, 2015.

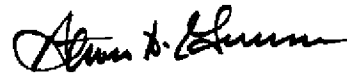
11 **TANASI LAW OFFICE**

12 */s/ Richard E. Tanasi, Esq.*

13
14
15 RICHARD E. TANASI, ESQ.

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 NOTC
2 RICHARD E. TANASI, Esq.
3 Nevada Bar No. 9699
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6 Las Vegas, NV 89101
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10 *Attorney for Defendant*

8 EIGHTH JUDICIAL DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA

11 THE STATE OF NEVADA,
12 Plaintiff,
13 vs.
14 TONY LEE HOBSON, et al,
15 Defendant.

)
) **C-14-303022-1**
) Case No: ~~C-14-313022-1~~
)
) Dept: XIX
)

16 NOTICE OF APPEAL

17 NOTICE is hereby given that Defendant, TONY LEE HOBSON, hereby appeals to the
18 Supreme Court of the State of Nevada from the denial of his Petition OF Writ of Habeas Corpus
19 (Pretrial), which was denied by the Honorable Judge William Kephart on May 18, 2015 by way
20 of minute order. The order having not been entered as of this date.

21 DATED this 11th day of March, 2016.

22 Respectfully submitted,

23 TANASI LAW OFFICES

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED by the undersigned that on the 14th day of March, 2016,
I served a true and correct copy of the foregoing **NOTICE OF APPEAL**, addressed as follows:

X **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with
postage thereon fully prepaid, addressed as indicated on service list below in the
United States mail at Las Vegas, Nevada.

 VIA FACSIMILE: by causing a true copy thereof to be faxed to the number
indicated on the service list below.

Tony Lee Hobson
#05992420
Clark County Detention Center
330 South Casino Center Blvd.
Las Vegas, NV 89101

Adam Paul Laxalt
Las Vegas Office:
Office of the Attorney General
Grant Sawyer Building
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101

Supreme Court Clerk
Supreme Court Building
201 S. Carson Street
Carson City, NV 89701

X **VIA ELECTRONIC SERVICE:** by emailing the address(es) below.

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An employee of **TANASI LAW OFFICES**