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Electronically Filed
Feb 08 2017 08:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

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Respondent.

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Counsel for Respondent

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JOHN DEMON MORGAN
Case No. 70424

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1 JUSTICE COURT, LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA

4 Plaintiff
5 JUSTICE COURT
6 LAS VEGAS NEVADA

7 -VS-

8 JOHN DEMON MORGAN, aka,
9 John Morgan #1965837,

10 Defendant.

CASE NO: 14F17110X

DEPT NO: 11

CRIMINAL COMPLAINT

11 The Defendant above named having committed the crimes of BATTERY WITH
12 INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400.2 - NOC 50151) and
13 ROBBERY (Category B Felony - NRS 200.380 - NOC 50137), in the manner following, to-
14 wit: That the said Defendant, on or about the 30th day of October, 2014, at and within the
15 County of Clark, State of Nevada,

16 COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

17 did then and there wilfully, unlawfully, and feloniously use force or violence upon the
18 person of another, to-wit: MARIA VERDUZCO, with intent to commit robbery by punching
19 the said MARIA VERDUZCO in the face, knocking her to the ground.

20 COUNT 2 - ROBBERY

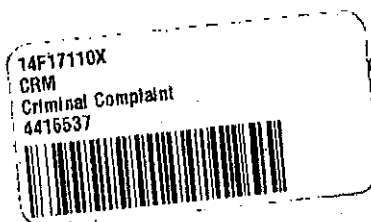
21 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
22 miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by
23 means of force or violence, or fear of injury to, and without the consent and against the will
24 of MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the
25 property, to prevent or overcome resistance to the taking of the property, and/or to facilitate
26 escape.

27 ///

28 ///


///

///



1 All of which is contrary to the form, force and effect of Statutes in such cases made and
2 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
3 this declaration subject to the penalty of perjury.
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11/03/14

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.

27 14F17110X/jw
28 LVMPD EV# 1410300877
(TK11)

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes



14F17110X State of Nevada vs. MORGAN, JOHN DEMON

Lead Atty: Public Defender

11/4/2014 7:30:00 AM Arraignment

Result: Matter Heard

PARTIES
PRESENT: Attorney Public Defender
Attorney Moine, William
Defendant MORGAN, JOHN DEMON

Judge: Goodman, Eric

Prosecutor: Lexis, Agnes

Court Reporter: Smith, Patsy

Court Clerk: Prisbrey, Erin

PROCEEDINGS

Attorneys:	Moine, William	MORGAN, JOHN DEMON	Added
	Public Defender	MORGAN, JOHN DEMON	Added
Hearings:	11/18/2014 9:00:00 AM: Preliminary Hearing		Added
Events:	Arraignment Completed		
	<i>Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i>		
	Public Defender Appointed		

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

Court Minutes



14F17110X State of Nevada vs. MORGAN, JOHN DEMON

Lead Atty: Public Defender

11/18/2014 9:00:00 AM Preliminary Hearing (In Custody)

Result: Bound Over

PARTIES PRESENT:	Attorney Attorney Defendant	Hojjat, Nadia Public Defender MORGAN, JOHN DEMON
Judge:	Goodman, Eric	
Prosecutor:	Graham, Elana	
Court Reporter:	Smith, Patsy	
Court Clerk:	Prisbrey, Erin	

PROCEEDINGS

Attorneys:	Hojjat, Nadia	MORGAN, JOHN DEMON	Added
-------------------	----------------------	--------------------	-------

Events: Preliminary Hearing
Motion to Exclude Witnesses by State - Motion Granted
States Witnesses:
- Maria Verduzco - Witness Identified Defendant
Motion by State to Amend Complaint by Interlineation to Conform to Testimony - 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 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: 11/19/2014

District Court Appearance Date Set

12/01/2014 @ 9:30 am
In Custody

Case Closed - Bound Over

Plea/Disp: 001: Battery to commit mayhem/robbery/grand larc [50151]
Disposition: Bound Over to District Court as Charged (PC Found)

002: Robbery [50137]
Disposition: Bound Over to District Court as Charged (PC Found)

1 CASE NO. C302450

2 DEPT. NO. 11

3

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IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP

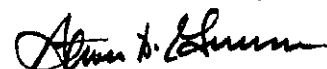
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COUNTY OF CLARK, STATE OF NEVADA Electronically Filed

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THE STATE OF NEVADA,

CLERK OF THE COURT

9

Plaintiff,

10

Vs

) Case No. 14F17110X

11

JOHN DEMON MORGAN,

12

Defendant.

13

14

REPORTER'S TRANSCRIPT
OF

15

PRELIMINARY HEARING

16

BEFORE THE HONORABLE ERIC A. GOODMAN

17

JUSTICE OF THE PEACE

18

TAKEN ON TUESDAY, NOVEMBER 18, 2014
AT 9:00 A.M.

19

20

APPEARANCES:

21

For the State:

ELANA GRAHAM
Deputy District Attorney

22

For the Defendant:

NADIA HOJJAT
WILLIAM MOINE
Deputy Public Defenders

23

24

25

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 18, 2014

2 * * * * *

3

4 THE COURT: All right, we will go on the
5 record with John Morgan.

6 THE DEFENDANT: John Morgan, right here.

7 THE COURT: Sir, we are going to have you
8 take a seat by your attorneys.

9

10 (Off the record discussion not reported.)

11

12 THE COURT: Ms. Hojjat.

13 MS. HOJJAT: Your Honor, I'm sorry, if I
14 could approach?

15 THE COURT: Uh-huh.

16

17 (Off the record discussion not reported.)

18

19 MS. HOJJAT: And we're ready, Judge.

20 THE COURT: All right.

21 We will go on the record with Morgan.

22 Is this going forward or is this

23 negotiated?

24 MS. HOJJAT: We are going forward.

25 THE COURT: Okay, just, for the record, if

1 you could just put on the record what the offer was.

2 MS. GRAHAM: Yes, attempt robbery, the
3 State would retain the right to argue, and the State would
4 agree to not seek habitual criminal treatment.

5 MS. HOJJAT: I have conveyed that offer to
6 him and he does not want to accept that offer.

7 THE COURT: Okay, no problem.

8 All right, State, how many witnesses?

9 MS. GRAHAM: Possibly three, but maybe
10 just one.

11 THE COURT: Okay.

12 Exclusionary rule?

13 MS. HOJJAT: Yes, please, your Honor.

14 THE COURT: Okay, if you are a witness in
15 this case, please remain outside until your name is called.

16 State, please call your first witness.

17 MS. GRAHAM: State calls Maria Verduzco.

18

19 (Off the record discussion not reported.)

20

21

MARIA VERDUZCO,

22 having been first duly sworn to tell the truth, the whole
23 truth and nothing but the truth, testified and said as
24 follows:

25

1 THE CLERK: Please be seated.
2 State your name and spell it for the
3 record.

4 THE WITNESS: Maria Verduzco.

5 THE CLERK: Please spell it.

6 THE WITNESS: M-A-R-I-A and then Verduzco,
7 V-E-R-D-U-Z-C-O.

8 THE COURT: You may proceed.

9 MS. GRAHAM: Thank you, your Honor.

10

11 DIRECT EXAMINATION

12 BY MS. GRAHAM:

13 Q Good morning, Maria.

14 Maria, I want to direct your attention to
15 October 30th, 2014.

16 Okay, were you working at a gas station
17 convenience store at 4605 East Flamingo Road?

18 A Yes.

19 Q Is that here in Las Vegas, Clark County?

20 A Yes.

21 Q What was your position at the time?

22 A I'm manager in there and I was in the back
23 office doing the paperwork.

24 Q Okay.

25 So, on that day, you were in the back

1 office?

2 A Doing my paperwork.

3 Q Was this at about 7:30, 7:00 --

4 A Uh-huh, around.

5 Q -- in the morning?

6 A Around.

7 Q Okay.

8 Do you regularly do office work in the

9 back?

10 A Yes.

11 Q When you are doing office work, do you

12 also have access to live surveillance?

13 A Yes. I have them right next to me.

14 Q Okay, how many angles does that live

15 surveillance right next to you show?

16 A What do you mean?

17 Q Is it just one view or is it different

18 views --

19 A Different views.

20 Q -- in the store?

21 Different views?

22 A All the store.

23 Q Okay.

24 So you can pretty much see the entire

25 store from where you are seated?

1 A Entire store, yes.

2 Q And, on that morning, did you see anything
3 out of the ordinary while you were doing your paperwork?

4 A Yes.

5 Q And looking at the surveillance?

6 A Yes.

7 Q What did you see?

8 A I was doing my paperwork and then I always
9 look at the camera to see if my co-worker is busy or has a
10 line and then there's this guy walking in there and caught
11 my attention.

12 Q Okay.

13 A I keep looking and looking and that's when
14 I --

15 Q Did you see him do anything that gave you
16 concern?

17 A Yes. He put a Frito Lay like little nuts
18 in his pocket.

19 Q Okay.

20 A So when I saw, that I walk out.

21 Q You walked out of the office?

22 A Yeah, of my office. He was already trying
23 to pay and I walk out of my office and I told him nicely if
24 he can take what he put in his pocket, if he can take it
25 out.

1 Q Okay.

2 So let me ask you, when you walked out of
3 your office, the man that you saw putting the peanuts in
4 his pocket, you said he was at the register?

5 A Yes.

6 Q Okay.

7 Do you see that man present in court
8 today?

9 A Yes.

10 Q Can you please point to him and identify
11 something he's wearing?

12 A He's wearing the blue.

13 Q Okay.

14 MS. GRAHAM: Can the record please reflect
15 the identification of the defendant?

16 THE COURT: It will.

17 Q (BY MS. GRAHAM) Maria, when you walked up
18 to the defendant, about how far did you stand up to him?

19 A Like this is one register and the other
20 one is over here.

21 Q Okay.

22 A I stood by the second register.

23 Q Okay.

24 A I was keeping my distance.

25 Q So would you say two to three feet?

1 A Uh-huh.

2 Q Yes?

3 A Around.

4 Q About two, three feet?

5 A About, yeah, and I told him.

6 When I told him to take the stuff out of
7 his pocket, he said a bad word to me.

8 Q If you can tell me what he said exactly?

9 A "Shut the fuck up."

10 Q Okay.

11 A And I move a little bit, like two little
12 steps behind when he said that.

13 Q Did he -- when he said that, did he move
14 towards you at all?

15 A Yes, he started walking towards me and
16 then --

17 Q How did you feel at that point in time?

18 A When he was walking, I never thought he
19 was going to hit me --

20 Q Okay.

21 A -- because it's not the first time I get
22 close to a customer.

23 MS. HOJJAT: And, Judge, I'm going to
24 object as to nonresponsive, narrative.

25 THE COURT: All right.

1 MS. GRAHAM: That's fine.

2 THE COURT: She is probably nervous, so if
3 you'd just clean it up a little bit.

4 MS. GRAHAM: That's fine, okay.

5 THE WITNESS: On the --

6 THE COURT: Okay.

7 Q (BY MS. GRAHAM) Maria, you told him to
8 take the peanuts out of his pocket and he told you, "Shut
9 the fuck up," and he stepped toward you?

10 A Uh-huh.

11 Q Did that scare you?

12 A A little, but I never --

13 Q That's okay.

14 A -- but yeah.

15 Q After he said, Shut the fuck up, did he do
16 anything else?

17 A He hit me.

18 Q Can you tell me about that.

19 A He -- the last thing I remember, when he
20 hit me, I was on the floor already.

21 Q Okay.

22 A And then I got up and then grabbed my --
23 like a -- like a bar where I have my peanuts hanging.

24 Q Yes.

25 A I just grabbed that and hit him.

1 Q Okay.

2 When he hit you, where did he hit you?

3 A Right here.

4 Q Okay, for the record --

5 A It was like with his whole hand.

6 Q For the record, the witness is indicating

7 the defendant used his arm and hit her in the chest?

8 A Right here.

9 Q Did you fall over?

10 A Yes, hard. He hit me really hard.

11 Q Hard.

12 Did you -- did you hurt yourself at all?

13 A My elbow.

14 Q Is that your left elbow?

15 A Yeah, my left elbow.

16 Q Okay.

17 And then you indicated that you got up and

18 grabbed the peanut stick?

19 A The stick and I hit him. I hit his back

20 back -- I didn't hit him. When I hit him, I hit his

21 backpack and ripped it.

22 Q Okay, after he hit you and you fell, did

23 he stay there or did he leave?

24 A He was -- he walk out, but because I rip

25 his backpack, stuff came out of the backpack, so he started

1 like grabbing it. I wanted to like hit him again, but I
2 didn't know what he had in his backpack.

3 So like I thought about it. When I kind
4 of noticed he didn't, that's when I went over there, but
5 then he run.

6 Q He ran away?

7 A Uh-huh.

8 Q Is that yes?

9 A Yes. Sorry.

10 Q It's okay.

11 And, when you hit him, you said you
12 thought his backpack ripped?

13 A His backpack ripped, yes.

14 Q Okay, did anything fall from the backpack?

15 A Some papers fall out of his backpack.

16 Q Okay.

17 Was anybody at the entrance when he was
18 leaving?

19 A Yes, a customer. When I hit him, a
20 customer was coming in. So because he has peanuts and I
21 had peanuts, I was -- when I hit him, peanuts went all over
22 the place and I think I hit the customer too with the
23 peanuts.

24 Q And that customer, did you see him later
25 on that morning?

1 A I saw him. He stood with me in there and
2 then he -- I don't know what else happened. When I was on
3 the phone, he was there.

4 Q Okay.

5 A He was looking for him, walking, looking
6 for him.

7 Q Okay.

8 And you indicated you were on the phone.
9 Did you make a call or did somebody make a call?

10 A My co-worker, I told her to call the
11 police, but she got very nervous.

12 Q Okay.

13 A She didn't know what to call. I told her,
14 Call 911 --

15 Q Right.

16 A -- then she call 911. When they answered,
17 I took the phone and then I started talking to the woman.

18 Q Okay.

19 Then when you were talking to 911, did you
20 tell them what had happened?

21 A Yes.

22 Q Did you see the defendant again while you
23 were on the phone with 911?

24 A Yes. I went outside, I started looking,
25 then he was behind CVS.

1 Q Where is CVS in relation to your store?

2 A Like my store is right there. CVS is
3 right across the street on this side.

4 Q So across the street?

5 A Uh-huh, yes.

6 Q Where did you see him at CVS?

7 A Behind CVS.

8 Q And did you tell the --

9 A The police.

10 Q -- the operator that?

11 A Yeah, I was talking with 911 and telling
12 her where he was at.

13 Q Did police eventually show up?

14 A Yes, they did. They were looking, but
15 they couldn't find him behind CVS, so they went and they
16 approached me and I told him, He hit me, and he was behind
17 CVS. There is no other way you can go instead of they jump
18 the wall. There is a big wall they jump.

19 Q Okay.

20 A I guess he did jump the wall.

21 MS. HOJJAT: Objection, speculation.

22 MS. GRAHAM: That's fine.

23 THE COURT: It will be sustained.

24 MS. GRAHAM: Disregard that last part.

25 THE COURT: All right.

1 MS. GRAHAM: Thank you, your Honor.

2 Q So the police came and you told them that
3 he had hit you?

4 A Yes.

5 Q And did you make contact with the police
6 and tell them what had happened?

7 A That -- yes.

8 Q Okay.

9 A The ambulance showed up too.

10 Q The ambulance showed up? Did you get
11 checked out by the ambulance?

12 A The ambulance, yes, I did and then I wound
13 up going to the hospital.

14 Q You did go to the hospital?

15 A Not in the ambulance.

16 Q You went later?

17 A Yes.

18 Q Was that for your arm?

19 A Yes.

20 Q Okay.

21 Did they do any examination?

22 A They did the X-rays to make sure it wasn't
23 broken.

24 MS. HOJJAT: Your Honor, I'm going to
25 object as to relevance.

1 THE COURT: I will allow it. I will let
2 you ask questions.

3 MS. GRAHAM: Thank you.

4 Q They did an X-ray?

5 A Yes.

6 Q Do you have much pain?

7 A Yes, I still have pain.

8 Q You still have pain today?

9 A Depends the way I put it. If I put it
10 this way, it hurts.

11 Q Would that go on your elbow?

12 A Yes, very pointy.

13 Q Do you have any problems straightening it?

14 A No.

15 Q No, okay.

16 Now after the police showed up and spoke
17 to you, did you go anywhere else with the police?

18 A They took me to recognize -- if I can
19 recognize him. They took me in the car --

20 Q Okay.

21 A -- where he was at --

22 Q Okay.

23 A -- see if I can recognize him.

24 Q Okay.

25 So the police took you some where to see

1 if you could recognize anybody.

2 A Uh-huh.

3 Q Is that yes?

4 A Yes. Sorry.

5 Q That's all right.

6 Did you fill out a piece of paper --

7 A Yes, I did.

8 Q -- when you met with the police?

9 A Yes. I fill out a paper saying if it was

10 him or not and I said, Yes, it was him.

11 Q Okay, before you looked at anybody who the

12 police had, did they read a set of instructions?

13 A Yes, they did.

14 Q Did you sign that you understood those?

15 A Yes, I did. Yes.

16 Q And it wasn't until after that that you

17 viewed the person?

18 A Yes, yes.

19 Q Who was the person that they had?

20 A Him.

21 Q The defendant?

22 A Uh-huh.

23 Q Yes?

24 A Yes. Sorry.

25 Q That's all right.

1 MS. GRAHAM: Court's indulgence, your
2 Honor?

3 THE COURT: Sure.

4 Q (BY MS. GRAHAM) Maria, did you see any
5 property from the store around the defendant at all?

6 A When I rip his back -- when I hit him, he
7 had soup in his backpack.

8 Q A soup?

9 A That I didn't saw before that he took it.

10 Q Okay.

11 A I just saw the nuts that he took.

12 Q Okay.

13 Did you have an opportunity to look at
14 surveillance afterwards?

15 A Yes.

16 Q Did you see him take the soup on
17 surveillance?

18 A Yes, he did, yes.

19 Q Was that before or after he took the
20 peanuts?

21 A That was he already took the soup and then
22 the peanuts.

23 Q Okay.

24 MS. GRAHAM: Okay, pass the witness.

25 THE COURT: Counsel.

1 MS. HOJJAT: Thank you, your Honor.

2

3

CROSS-EXAMINATION

4 BY MS. HOJJAT:

5 Q Good morning.

6 A Good morning.

7 Q How are you doing today?

8 A I'm good.

9 Q You mentioned that you saw on the
10 surveillance the defendant taking peanuts --

11 A Uh-huh, yes.

12 Q -- and putting them in his pocket?

13 He also picked up something else?

14 A Soup.

15 Q Soup.

16 He actually was at the register paying for
17 something, correct?

18 A For another soup.

19 Q For a soup, okay.

20 A Uh-huh.

21 Q So he was at the register with the soup
22 out and he had actually taken out a credit card and had
23 handed it to the cashier, right?

24 A I don't know if he took a credit card or
25 cash.

1 Q Okay.

2 A I'm not sure.

3 Q But he was definitely paying for

4 something?

5 A He was trying to pay for that soup.

6 Q Do you have the receipt from that

7 transaction at all?

8 A No, I don't.

9 Q Okay.

10 And you actually walked up on him while

11 the transaction was happening, right?

12 A Yes, I did.

13 Q He was paying to the cashier before you

14 walked up on him, right?

15 A Yes.

16 Q You don't know what he said to the

17 cashier?

18 A No.

19 Q Okay.

20 And you never seen a receipt from that

21 transaction --

22 A No.

23 Q -- of what happened?

24 So you saw him put something in his

25 pocket?

1 A Yes, I did.

2 Q You walked up to him and said, Can you
3 take that out of your pocket?

4 A Yes, I did.

5 Q You don't know how much he paid the
6 cashier?

7 A No.

8 Q Okay.

9 A I'm not sure that they finished the
10 transaction.

11 Q Okay.

12 So you have no idea whether the
13 transaction finished or how much was given to the cashier,
14 if it was finished?

15 A No.

16 Q Okay.

17 And you said that, when you hit the
18 backpack with the nut rod, you saw the soup in the
19 backpack?

20 A Uh-huh, yes.

21 Q Did the soup fall out of the backpack?

22 A Like a bunch of stuff come out of the
23 backpack.

24 Q Did the soup also come out of the
25 backpack?

1 A Yes.

2 Q So he didn't actually exit the store with
3 the soup, correct?

4 A He didn't actually what, I'm sorry?

5 Q He didn't leave with the soup, right? It
6 fell out of the backpack?

7 A He left already. He was outside already.
8 When the backpack opened, he walk outside.

9 Q But the soup ended up falling down on the
10 ground, right?

11 A No, it's in the backpack.

12 MS. GRAHAM: I object.

13 MS. HOJJAT: I don't understand.

14 MS. GRAHAM: I'm going to object as to
15 vague. There is two cups of soup.

16 MS. HOJJAT: Okay.

17 Q The soup in the backpack --

18 MS. GRAHAM: The one stolen or paid for?

19 THE WITNESS: He walked out --

20 MS. GRAHAM: Which one are you talking
21 about?

22 MS. HOJJAT: Soup in the backpack.

23 THE WITNESS: Soup in the backpack, he
24 walked out with it.

25 Q (BY MS. HOJJAT) The soup in the backpack,

1 you saw it when it was tore up and things were falling out
2 of the backpack, correct?

3 A Things, yes.

4 Q I just need you to say yes or no for the
5 answer. We are confusing each other.

6 So you hit the backpack with the rod,
7 correct?

8 A Yes.

9 Q The backpack broke open?

10 A Yes.

11 Q Stuff was falling out of the backpack?

12 A Yes.

13 Q Did the soup fall out of the backpack?

14 A No.

15 Q Okay. Thank you.

16 You mentioned that you were hitting him
17 with the nut rod, correct?

18 A Where it holds peanuts.

19 Q Peanuts and you said there were kind of
20 peanuts everywhere?

21 A Uh-huh, yes.

22 Q Was it the same peanuts you had seen --

23 A No.

24 Q -- in his pocket?

25 So a different one?

1 A Different one.

2 MS. HOJJAT: Court's indulgence, your

3 Honor.

4

5 (Off the record discussion not reported.)

6

7 MS. HOJJAT: I'll pass the witness, your

8 Honor.

9

THE COURT: All right.

10 Any redirect?

11 MS. GRAHAM: Yes, your Honor.

12

13

REDIRECT EXAMINATION

14 BY MS. GRAHAM:

15 Q Maria, did he put one item on the counter
16 to pay for?

17 A Yes, the soup.

18 Q The soup?

19 A One soup.

20 Q One soup.

21 And then did he have an additional soup in
22 the backpack?

23 A In the backpack.

24 Q He had peanuts in his pocket?

25 A In his pocket.

1 Q Okay.

2 Did you see a piece of paper fall out of
3 his backpack?

4 A Yes.

5 MS. GRAHAM: Nothing more, your Honor.

6 THE COURT: Okay.

7 Did you have another question?

8 MS. HOJJAT: Very brief.

9 THE COURT: All right.

10

11 RECROSS EXAMINATION

12 BY MS. HOJJAT:

13 Q But, again, you said you don't actually
14 know how much money or what happened during the transaction
15 at the register?

16 A No.

17 MS. HOJJAT: Okay, pass the witness, your
18 Honor.

19 THE COURT: Okay, ma'am, thank you for
20 testifying here today. You are free to stick around to
21 find out what happens. You are free to take off at this
22 point.

23 So we will have you come down. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: State, do you need to put on

1 any more witnesses?

2 MS. GRAHAM: No, your Honor.

3 THE COURT: Okay, State rest? I think the
4 only thing we need to do is amend the language in Count 1,
5 line 17. It's charged as a battery, a punch to the face,
6 but it looks like it wasn't to the face. It looks like it
7 was the upper chest area.

8 MS. GRAHAM: That's correct, your Honor,
9 thank you, and if I could, instead of face, chest and/or
10 neck to comport with the testimony.

11 THE COURT: Okay.

12 Okay, you rest?

13 MS. GRAHAM: Yes, your Honor.

14 THE COURT: Have you talked to your client
15 about his right to testify, whether he's going to testify
16 or offer up any other witnesses or evidence on his behalf?

17 MS. HOJJAT: Court's indulgence.

18

19 (Off the record discussion not reported.)

20

21 MS. HOJJAT: Your Honor, I have advised
22 him of his right to testify. He will not be testifying
23 today.

24 With that, the defense rests.

25 THE COURT: Okay, State, waive and

1 reserve?

2 MS. GRAHAM: Yes, your.

3 THE COURT: Counsel, any argument?

4 MS. HOJJAT: I mean I don't know that they
5 actually established it wasn't paid for.

6 I'll submit it with that.

7 THE COURT: State, any argument?

8 MS. GRAHAM: No, your Honor.

9 THE COURT: All right, Mr. Morgan, please
10 stand.

11 Sir, this is not a trial. I don't
12 determine guilt or innocence, only whether there is some
13 evidence to support the charges against you.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The Court finds that burden
16 has been met by the State, as to Count 1, battery with
17 intent to commit a crime, Count 2, robbery, and holds you
18 to answer said charges in the Eighth Judicial District
19 Court, State of Nevada, County of Clark on the following
20 date and time.

21 THE CLERK: December 1st, 9:30 A.M., Lower
22 Level Courtroom A.

23 MS. GRAHAM: Your Honor, I'm just going to
24 walk the witness out.

25 THE COURT: Okay.

1

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4

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF
PROCEEDINGS.

5

6

/s/ Patsy K. Smith
PATSY K. SMITH, C.C.R. #190

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PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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			yourself [1] - 11:12


CLERK OF THE COURT

1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ELANA L. GRAHAM
6 Deputy District Attorney
7 Nevada Bar #011977
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 I.A. 12/01/2014
13 9:30 A.M.
14 PD HOJJAT

15 THE STATE OF NEVADA,

16 Plaintiff,

17 -vs-

18 JOHN DEMON MORGAN,
19 aka, John Morgan, #1965837

20 Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

I N F O R M A T I O N

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

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

25 That JOHN DEMON MORGAN, aka, John Morgan, the Defendant(s) above named,
26 having committed the crimes of **BATTERY WITH INTENT TO COMMIT A CRIME**
27 **(Category B Felony - NRS 200.400.2 - NOC 50151)** and **ROBBERY (Category B Felony**
28 **- NRS 200.380 - NOC 50137)**, on or about the 30th day of October, 2014, within the County
of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there wilfully, unlawfully, and feloniously use force or violence upon the
person of another, to-wit: MARIA VERDUZCO, with intent to commit robbery by punching
the said MARIA VERDUZCO in the chest and/or neck, knocking her to the ground.

1 COUNT 2 - ROBBERY

2 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
3 miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by
4 means of force or violence, or fear of injury to, and without the consent and against the will of
5 MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the
6 property, to prevent or overcome resistance to the taking of the property, and/or to facilitate
7 escape.

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

10
11 BY /s/ Elana L. Graham
 ELANA L. GRAHAM
12 Deputy District Attorney
13 Nevada Bar #011977

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

18 <u>NAME</u>	<u>ADDRESS</u>
19 CUSTODIAN OF RECORDS	Clark County Detention Center,
20 OR DESIGNEE	330 S. Casino Center Blvd., Las Vegas, NV
21 CUSTODIAN OF RECORDS	Clark County Detention Center, Communications
22 OR DESIGNEE	330 S. Casino Center Blvd., Las Vegas, NV
23 CUSTODIAN OF RECORDS	LVMPD Communications, 400 E. Stewart
24 OR DESIGNEE	Las Vegas, NV
25 CUSTODIAN OF RECORDS	LVMPD Records, 400 E. Stewart
26 OR DESIGNEE	Las Vegas, NV
27 DOUGHERTY, Ed	INVESTIGATOR
28 OR DESIGNEE	C.C. DISTRICT ATTORNEY

1	GONZALES, Mario	4010 Baldwin St. #A, Las Vegas, NV 89122
2	IBARRA, Cesar	LVMPD # 8777
3	LAW, Landon V.	LVMPD # 9075
4	MOODY, Michael D.	LVMPD # 14881
5	RIVERA, Nathan Rj	LVMPD # 14872
6	SQUEO, John S.	LVMPD # 14878
7	VERDUZCO, Maria	C/O DISTRICT ATTORNEY'S OFFICE

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27 DA#14F17110X/saj/L-1
LVMPD EV#1410300877
28 (TK11)


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
HILARY HEAP
Deputy District Attorney
Nevada Bar #012395
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JOHN DEMON MORGAN,
aka, John Morgan,
#1965837

Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

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

TO: JOHN DEMON MORGAN, aka, John Morgan, Defendant; and

TO: NADIA HOJJAT, Counsel of Record:

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

<u>NAME</u>	<u>ADDRESS</u>
CRUZ, Rubi	C/O DISTRICT ATTORNEY'S OFFICE
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, 400 E. Stewart Las Vegas, NV

1 CUSTODIAN OF RECORDS
2 OR DESIGNEE

LVMPD Records, 400 E. Stewart
Las Vegas, NV

3 DOUGHERTY, Ed
4 OR DESIGNEE

INVESTIGATOR
C.C. DISTRICT ATTORNEY

5 GONZALES, Mario

4010 Baldwin St. #A, Las Vegas, NV 89122

6 IBARRA, Cesar

LVMPD # 8777

7 LAW, Landon V.

LVMPD # 9075

8 MOODY, Michael D.

LVMPD # 14881

9 RIVERA, Nathan Rj

LVMPD # 14872

10 SQUEO, John S.

LVMPD # 14878

11 VERDUZCO, Maria

C/O DISTRICT ATTORNEY'S OFFICE

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

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

17 BY /s/ Hilary Heap
18 HILARY HEAP
19 Deputy District Attorney
Nevada Bar #012395

20
21 CERTIFICATE OF ELECTRONIC FILING

22 I hereby certify that service of Notice of Witnesses, was made this 1st day of April,
23 2015, by Electronic Filing to:

24 Nadia Hojjat, Deputy Public Defender
25 pdclerk@clarkcountynv.gov

26 /s/ Stephanie Johnson
27 Secretary for the District Attorney's Office

28 14F17110X/saj/L-1

Alan D. Shuman

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
5 (702) 455-4685
6 Attorney for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,
12
13 v.
14 JOHN MORGAN,
15 Defendant.

CASE NO. C-14-302450-1

DEPT. NO. III

DATE: April 16, 2015
TIME: 9:00 a.m.

WMB

16 MOTION FOR DISCOVERY

17 COMES NOW, the Defendant, JOHN MORGAN, by and through NADIA
18 HOJJAT, Deputy Public Defender and hereby requests that the Court order the State of Nevada to
19 produce the discovery discussed herein pursuant to NRS 174.235; NRS 174.285; Kyles v. Whitley,
20 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963) (and their progeny)..

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

23 DATED this 7th day of April, 2015.

24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

26 By: /s/ Nadia Hojjat
27 NADIA HOJJAT, #12401
28 Deputy Public Defender

DECLARATION

NADIA HOJJAT 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 6th day of April, 2015.


~~NADIA HOJJAT~~

FACTS

On October 30, 2014, police were called to an alleged robbery at a business on 4605 E. Flamingo Road. Upon arrival, the alleged victim, Maria Verduzco, told police that she observed a black male removing soup and peanuts from the shelves in her store and placing them in his backpack. The male then went to the cash register to pay for one item. Ms. Verduzco said she then approached the male and asked him to remove the other items from his backpack. At that time, the male allegedly punched her in the chest with a closed fist causing her to fall to the ground. Ms. Verduzco then grabbed a metal stick and began swinging it at the male, striking his backpack and causing the contents of the backpack to fall out. Paperwork from the backpack was retrieved by Ms. Verduzco and had the name "John Morgan" on it.

While officers were taking Ms. Verduzco's statement, an individual named Mario Gonzales, who was assumingly in the store for the interaction, told them he had spotted the male in the area. Police attempted to stop that male that was identified by Mr. Gonzales. That male then began running but was caught by police and identified as John Morgan. Ms. Verduzco positively identified John Morgan as the man who was in her store. Another individual, Rubi Cruz, could not identify John Morgan as the man in the store.

After being read Miranda, the Defendant responded as follows, "I'll talk to you but I'm not agreeing to that."

The police report does not indicate in what capacity Rubi Cruz or Mario Gonzales were witnesses. The police report indicates that Ms. Verduzco received medical attention from AMR, it does not indicate whether she ever sought additional medical attention in relation to this incident.

REQUESTS

The following specific requests are meant to help assist the State in its duty to find and turn over the required discovery material. The requests are not in any way intended to be a limit on, or a substitute for, the duties of the State to comply with Brady and Kyles. The Defense specifically requests:

1. **Any and all records and notes regarding any benefits or assistance given to any witness related to the case, as well as any other evidence of bias of State witnesses**

This includes any monetary benefits received, services or favors. This also includes an estimate of future benefits to be received during or after the trial.¹

Specifically, the defense requests information on any benefits or future benefits to be received by the named victim, Maria Verduzco, this includes financial assistance paying medical bills.

2. **Any and all notes of interviews of any witnesses and any potential witnesses in the case²**

This includes any and all audio and video recordings of such interviews and any notes of interviews.

If any officers were wearing body cameras pursuant to the new Metro policy, the Defense requests to be informed of this and requests a copy of the body camera footage relating to this case.

Specifically, the defense is requesting all of the audio, video, transcripts, and notes of interviews with the following witnesses:

Maria Verduzco, Rubi Cruz, Mario Gonzales

3. **Any information regarding the criminal history of the alleged victim and/or any material witness in the case³**

¹ This is relevant to issues regarding possible bias, credibility, motive to lie, and impeachment. See Davis v. Alaska, 415 U.S. 308 (1974).

² NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

³ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

1 This includes any juvenile record, misdemeanors, or any other information that would
2 go to the issue of credibility, veracity and bias, *whether or not the information is*
3 *admissible by the rules of evidence*.⁴ This request encompasses records⁵ showing that:

4 a. a State's witness had an arrest, guilty plea, trial, or sentencing pending at the time
5 of the incident in the present case and/or has or had one or more since that date;

6 b. an informant or State's witness has, or has had, any liberty interest that the witness
7 might believe or might have believed to be affected favorably by State action;

8 Specifically, the defense requests this information in regards to Maria Verduzco, Rubi
9 Cruz, and Mario Gonzales

10 **4. Any notes of any statements by the defendant, to include any notes of patrol
11 officers or other agents of the State who have had contact with the defendant
12 in this case⁶**

13 This includes any statement allegedly made by the defendant, or for which the
14 defendant can be held vicariously liable.⁷

15 **5. All relevant reports of chain of custody and all reports of any destruction of
16 evidence or failure to collect and/or preserve evidence in the case⁸**

17 ⁴ The State is usually under the mistaken impression that they must only disclose felony
18 convictions from the last 10 years that can be used as impeachment under NRS 50.095. However,
19 in *Davis*, 415 U.S. 308, the U.S. Supreme Court found that a witness can be attacked by "revealing
20 possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to the
21 issues or personalities on the case at hand. The partiality of a witness is...always relevant as
22 discrediting the witness and affecting the weight of his testimony." *Id.* at 354. The Court found
23 that the State's policy interest in protecting the confidentiality of a juvenile offender's record must
24 yield to the defendant's right to cross examine as to bias. *Id.* at 356. *See also, Lobato v. State*, 120
25 Nev. 512 (2004) (discussing the "nine basic modes of impeachment"). Therefore, juvenile
26 records, misdemeanors and older criminal records may yield information relevant to many forms
27 of impeachment other than that outlined in NRS 50.095.

28 ⁵ With respect to this information, Defendant requests the charges, case numbers, dates of
conviction, and jurisdictions for all such cases.

⁶ NRS 171.1965 1(a); NRS 174.235 1(a).

⁷ Under NRS 51.035(3)(a)(e), a defendant can be vicariously liable for a statement made by a third
party. Thus, NRS 174.235 should be construed to include within the definition of a defendant's
"statement," both the words actually uttered by the Defendant and any statements for which the
defendant may be held vicariously liable. *See U.S. v. Caldwell*, 543 F.2d 1333, 1353 (D.D.C.
1974) (finding that there is a fundamental fairness involved in "granting the accused equal access
to his own words, no matter how the Government came by them").

Specifically, all reports about chain of custody of the paperwork retrieved in this case that has the Defendant's name on it. Additionally, chain of custody of the items found on the Defendant at the time of his arrest. This chain of custody request includes a request for all impound paperwork and inventory paperwork of the items seized from the Defendant at the time of his arrest.

6. All statements made by any material witnesses in the case, and any inconsistent statements made by a material witness⁹

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

7. All updated witness contact information in the case, including the witnesses' last known address and phone number¹⁰

8. Any and all books, papers, documents, and tangible objects related to the case¹¹

This includes photographs of any and all books, papers, documents, and tangible objects related to the case.

Specifically, the defense is requesting all photographs taken by the police or provided to the police of the tangible objects related to this case. Including but not limited to: the backpack the Defendant was allegedly carrying, the contents of the backpack, and the paperwork that was allegedly left behind at the store during the incident.

Additionally, the Defense is requesting the AMR reports from the treatment of Maria Verduzco and any medical reports of any follow up medical care she received as a result of this incident.

9. Any and all electronic communications in the case, as well as any reports related to those communications¹²

⁸ Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed favorable to the accused. Sanborn v. State, 107 Nev. 399, 409 (1991); Sparks v. State, 104 Nev. 316, 319 (1988); Crockett v. State, 95 Nev. 859, 865 (1979).

⁹ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

¹⁰ NRS 174.234; 174.235.

¹¹ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

¹² Id.

Specifically, all 311 calls, 911 calls, and CADs, relating to this case.

10. Any and all video recordings related to the case within the possession or control of the State¹³

Video from the inside of the store has been provided by the District Attorney in this case. If there is any outstanding video in the State's possession that has not already been provided, the Defense requests a copy.

11. Any and all documents and notes pertaining to the identification of Defendant as a suspect¹⁴

Specifically, a one on one show up was conducted in this case. If there are any documents or police notes regarding the show up, the Defense requests a copy.

ARGUMENT

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

A. Nevada Statutory Requirements

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

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

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

The District Court has authority to order the production of any non-privileged materials in the possession, control or custody of the State¹⁵ under NRS 174.235 if the evidence sought is

¹³ Id.

¹⁴ Id.

1 “material to the preparation of the defense”. Riddle v. State, 96 Nev. 589, 590, 613 P.2d 1031
2 (1980).

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

15
16 B. Constitutional Requirements

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

25
26
27 ¹⁵ 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 process violation regardless of the prosecutor's motive for withholding the evidence. Wallace v.
2 State, 88 Nev. 549, 551-52, 501 P.2d 1036 (1972).

3 Under the law, the State must turn over all evidence that is (1) favorable to the accused, in
4 that it is exculpatory or impeachment evidence, and (2) within the actual or constructive
5 possession of anyone acting on behalf of the State. See Banks v. Dretke, 540 U.S. 668, 691
6 (2004).

7
8 **II. The State Must Turn Over All Information that is *Favorable* to the Accused, Whether
or Not It Is the Subject of a Specific Discovery Request**

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

17
18 **A. Evidence "favorable to the accused" includes all information material to the issue of
19 guilt or punishment, including impeachment evidence**

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

22 Due process does not require simply the disclosure of "exculpatory" evidence.
23 Evidence also must be disclosed if it provides grounds for the defense to attack the
24 reliability, thoroughness, and good faith of the police investigation, to impeach the
25 credibility of the state's witnesses, or to bolster the defense case against
26 prosecutorial attacks. Furthermore, "discovery in a criminal case is not limited to
investigative leads or reports that are admissible in evidence." Evidence "need not
have been independently admissible to have been material." (internal citations
omitted).

27 116 Nev. 48, 67 (2000).
28

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

- 6 1) Forensic testing which was ordered but not completed, or which was completed but did
7 not inculcate the defendant (*e.g.*, fingerprint analysis that returned as "inconclusive");
- 8 2) Criminal records or other evidence concerning State's witnesses which might show
9 bias, motive to lie, or otherwise impeach credibility (*e.g.*, civil litigation);
- 10 3) Evidence that the alleged victim in the instant case has claimed to be a victim in other
11 cases;
- 12 4) Leads, evidence, or investigations that law enforcement discounted or failed to pursue;
- 13 5) Evidence that suggests an alternate suspect, or calls into question whether a crime
14 actually occurred;
- 15 6) Anything that is inconsistent with prior or present statements of a State's witness,
16 including the initial failure to make a statement which is later made or testified to.

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

19 1. Exculpatory Evidence

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

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

6 2. Mitigation Evidence

7 Brady material applies not only to evidence regarding the defendant's innocence or guilt,
8 but also to **mitigation** evidence. For example: the victim of a robbery identifies a defendant as one
9 of two people who robbed her. The victim also tells police that this defendant actively prevented
10 his co-defendant from hitting her during the robbery. Although the victim's statement would
11 clearly go to establishing the defendant's guilt, it would *also* constitute Brady material because, if
12 he is ultimately convicted, the defendant's effort to aid the victim might justify the mitigation of
13 his sentence. Anything which could convince the court to impose less than a maximum sentence
14 or rebut alleged aggravating circumstances is relevant to punishment and, therefore, **must** be
15 produced by the State. *See Jimenez*, 112 Nev. at 619.

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

18 The State's constitutionally-mandated Brady obligation arises regardless of whether a
19 Defendant specifically requests certain favorable evidence. *See U.S. v. Bagley*, 473 U.S. 667, 682
20 (1985) (plurality) (finding the prosecution's constitutional duty to disclose favorable evidence is
21 governed by the materiality standard and not limited to situations where a defendant requests
22 favorable evidence); *see also, Kyles*, 514 U.S. at 433 (stating that "regardless of request, favorable
23 evidence is material. . ."). The State must disclose all material evidence favorable to the defense,
24 regardless of the nature of the instant request. Additionally, as more fully addressed below, the
25 prosecutor must meet with detectives, crime scene analysts, investigators, and any other State
26 actors and potential witnesses prior to trial to determine whether they possess evidence favorable
27 to the accused. *See, e.g., Strickler*, 527 U.S. at 281.

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

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

10 In finding that the State had breached its duty to Kyles, the Court discussed the
11 prosecutor’s “affirmative duty” in detail:

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

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

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

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

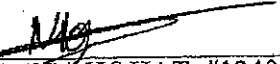
11 When prosecutors fail to uphold this affirmative obligation, they violate constitutional due
12 process. See U.S. Const. amend. V, XIV; Nev. Const. Art. 1, §8.

13 **IV. The State Cannot Rely on an "Open File" Policy to Satisfy the Constitutional Duty to** 14 **Obtain and Turn Over Discovery**

15 Prosecutors often respond to discovery motions by referencing their "open file policy" and
16 stating that the requested material is not in their file. The prosecutor's affirmative duty to turn
17 over Brady material, however, extends to all exculpatory and mitigation evidence in the possession
18 of *any* state agent or agency even if the evidence does not exist in the prosecutor's file. See
19 Strickler v. Greene, 527 U.S. 263 (1999); Bennett, 119 Nev. at 603. In Strickler v. Greene, the
20 United States Supreme Court explicitly held that a prosecutor's open file policy **does not** substitute
21 for or diminish the State's affirmative obligation to seek out and produce Brady material. 527 U.S.
22 at 283. Thus, despite its "open file policy," the prosecution must actively work to discover, obtain,
23 and produce Brady material, whether it is in the actual possession of the prosecutor, the police
24 department, or any other entity acting on behalf of the State.
25
26
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DATED this 6th day of April, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NADIA HOJJAT, #12401
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 16th day of April, 2015, at
9:00 a.m.

DATED this 6th day of April, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: Nadia Hojjat
NADIA HOJJAT, #12401
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion for Discovery is hereby
acknowledged this _____ day of April, 2015.

CLARK COUNTY DISTRICT ATTORNEY

By: _____


CLERK OF THE COURT

ORDR
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

 ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-14-302450-1

DEPT. NO. IX

JOHN MORGAN,


Defendant.

REQUEST TO FILE ORDER UNDER SEAL

Upon the request of the above-named Defendant, JOHN MORGAN, by and through
NADIA HOJJAT, Clark County Deputy Public Defender, and good cause appearing therefor,

IT IS HEREBY ORDERED that upon request of this Court, that NADIA HOJJAT, Deputy
Public Defender, may file an Order under seal.

DATED 30th day of April, 2015.


DISTRICT COURT JUDGE

Submitted by:

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By 
NADIA HOJJAT, #12401
Deputy Public Defender

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CLERK OF THE COURT

ORDR
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

FILED



ORIGINAL

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DISTRICT COURT
CLARK COUNTY, NEVADA

Sharon D. Johnson
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-14-302450-1

DEPT. NO. IX

JOHN MORGAN,

Defendant.

FUS

ORDER

16 R2

THIS MATTER having come before the Court on April 29, 2015, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Clark County Detention Center and/or Naphcare shall provide any representative of the Clark County Public Defender's Office with copies of John Morgan's (ID#1965837) complete medical and psychiatric records and that the Order be sealed, and shall not be opened to inspection except by their attorney, or when required as evidence in another action.

DATED 30th day of April, 2015.

Jennifer P. Dykstra
DISTRICT COURT JUDGE

Submitted by:

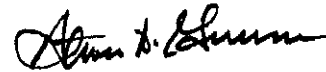
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By *Nadia Hojjat*
NADIA HOJJAT, #12401
Deputy Public Defender

RECEIVED
MAY 06 2015

C-14-302450-1
ORDR
Order
4464382




CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JOHN DEMON MORGAN,
13 #1965837

14 Defendant.

CASE NO: C-14-302450-1

DEPT NO: IX

15 ORDER OF COMMITMENT

16 THIS MATTER came before the Court on the 15th day of May, 2015, when doubt arose
17 as to competence of the Defendant, the Defendant being present with counsel, BELINDA
18 HARRIS, Deputy Public Defender, the State being represented by STEVEN B. WOLFSON,
19 District Attorney, through BARTER PACE, his Deputy, and the Court having considered the
20 reports of Dr. Mark Chambers and Dr. Gary Lenkeit, licensed and practicing psychologists
21 and/or psychiatrists in the State of Nevada, finds the Defendant incompetent, and that he is
22 dangerous to himself and to society and that commitment is required for a determination of his
23 ability to receive treatment to competency and to attain competence, and good cause appearing,
24 it is hereby

25 ORDERED that, pursuant to NRS 178.425(1), the Sheriff and/or a designee(s) of the
26 Division of Mental Health and Developmental Services of the Department of Human
27 Resources, shall convey the Defendant forthwith, together with a copy of the complaint, the
28 commitment and the physicians' certificate, if any, into the custody of the Administrator of

1 the Division of Mental Health and Developmental Services of the Department of Human
2 Resources or his designee for detention and treatment at a secure facility operated by that
3 Division; and, it is

4 FURTHER ORDERED that, pursuant to NRS 433A.165, before the defendant may be
5 transported to a public or private mental health facility he must:

6 1. First be examined by a licensed physician or physician assistant or an
7 advanced practitioner of nursing to determine whether the person has a medical problem, other
8 than a psychiatric problem, which requires immediate treatment; and

9 2. If such treatment is required, be admitted to a hospital for the appropriate
10 medical care; and, it is

11 FURTHER ORDERED that the Defendant is required to submit to said medical
12 examination which may include, but is not limited to, chest x-rays and blood work; and, it is

13 FURTHER ORDERED that the cost of the examination must be paid by Clark County,
14 unless the cost is voluntarily paid by the Defendant or on his behalf, by his insurer or by a state
15 or federal program of medical assistance; and, it is

16 FURTHER ORDERED that, pursuant to NRS 178.425(2), the Defendant must be held
17 in such custody until a court orders his release or until he is returned for trial or judgment as
18 provided in NRS 178.450, 178.455 and 178.460; and, it is

19 FURTHER ORDERED that, pursuant to NRS 178.425(4), these proceedings against
20 the Defendant are suspended until the Administrator or his designee finds him capable of
21 standing trial as provided in NRS 178.400; and, it is

22 FURTHER ORDERED that, pursuant to NRS 178.435, the expenses of the examination
23 and of the transportation of the Defendant to and from the custody of the Administrator of the
24 Division of Mental Health and Developmental Services of the Department of Human
25 Resources or his designee are chargeable to Clark County; and, it is

26 FURTHER ORDERED that the Administrator of the Division of Mental Health and
27 Developmental Services of the Department of Human Resources or his designee shall keep
28 the Defendant under observation and evaluated periodically; and, it is

FURTHER ORDERED that the Administrator or his designee shall report in writing to this Court and the Clark County District Attorney whether, in his opinion, upon medical consultation, the Defendant is of sufficient mentality to be able to understand the nature of the criminal charge against him and, by reason thereof, is able to aid and assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter. The administrator or his designee shall submit such a report within 6 months after this order and at 6 month intervals thereafter. If the opinion of the Administrator or his designee about the Defendant is that he is not of sufficient mentality to understand the nature of the charge against him and assist his own defense, the Administrator or his designee shall also include in the report his opinion whether:

1. There is a substantial probability that the Defendant can receive treatment to competency and will attain competency to stand trial or receive pronouncement of judgment in the foreseeable future; and

2. The Defendant is at that time a danger to himself or to society.

DATED this 21st day of May, 2015.

Jennifer P. Doyle
DISTRICT JUDGE

STEVEN B. WOLFSON
District Attorney
Nevada Bar #001565

BY

CHRISTOPHER J. LALLI
Assistant District Attorney
Nevada Bar #005398

kb

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


CLERK OF THE COURT

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

7 THE STATE OF NEVADA,)	
)	
8 Plaintiff,)	CASE NO. C-15-302450-1
)	
9 v.)	DEPT. NO. IX- Competency Court
)	
10 JOHN DEMON MORGAN,)	DATE: July 31, 2015
)	TIME: 9:00 a.m.
11 Defendant.)	

12
13 **MOTION TO DISMISS**

14 COMES NOW, the Defendant, JOHN MORGAN, by and through CHRISTY
15 CRAIG, Deputy Public Defender and hereby moves this Court for an Order dismissing this case
16 for violation of his/her Constitutional rights.

17 This Motion is made and based upon all the papers and pleadings on file herein, the
18 attached Declaration of Counsel, the Fifth, Eighth and Fourteenth Amendments to the United
19 States Constitution, and the Nevada Constitution, Article 1, Section 8, and oral argument at the
20 time set for hearing this Motion.

21 DATED this 6th day of July, 2015.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24
25 By: /s/ Christy L. Craig
CHRISTY CRAIG #6262
26 Deputy Public Defender
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DECLARATION

CHRISTY CRAIG makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am one of 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 6th day of July, 2015.

/s/ Christy L. Craig
CHRISTY CRAIG

POINTS AND AUTHORITIES

1
2 1. PROCEDURAL AND FACTUAL HISTORY

3 Mr. Morgan is charged with one count of Battery with intent to Commit a Crime and
4 Robbery.

5 On May 15, 2015, District Court IX, Competency Court considered the competency
6 evaluations of Dr. Chambers and Dr. Lenkeit. The Court found that Mr. Morgan is incompetent,
7 and that he is dangerous to himself and to society and that commitment is required for a
8 determination of his ability to receive treatment to competency and to attain competency.

9 Pursuant to NRS 178.425, the court ordered the Sheriff and/or the Division of Mental
10 Health and Developmental Services of the Department of Human Resources ("Division") shall
11 convey Mr. Morgan "forthwith" into the custody of the Administrator of the Division for
12 detention and treatment at a secure facility operated by that Division, the only secure facility
13 currently operating is Lakes Crossing.

14 The Competency Court's Order was filed on May 22, 2015 and served on the Sheriff and
15 the Division. (See exhibit 1).

16 Mr. Morgan is not scheduled to be transferred to Lakes Crossing until September 17, 2015.
17 The total time in custody, from the date the order was filed and served until scheduled transfer to
18 Lakes is 118 days. (See exhibit 2).

19 On June 24, 2013 a civil action for injunctive and declaratory relief was brought by three
20 Clark County Detention Center inmates (Eric Burnside, Jaumal Pugh and Nicolas Duran) against
21 Richard Whitley, in his official capacity of Administrator of the Nevada Division of Public and
22 Behavioral Health; Dr. Elizabeth Neighbors, in her official capacity as Director of Lake's Crossing
23 Center for the Mentally Disordered Offender and Michael Wilden, in his official capacity as
24 Director of the Nevada Department of Health and Human Resources (collectively, "Division").
25 *Burnside et al v. Whitley*, 2:13-cv-01102-MMD-GWF.

26 All three Burnside plaintiffs were pretrial detainees housed at the Clark County Detention
27 Center ("CCDC"). All three had been committed to the custody of the Division pursuant to NRS
28

1 178.425. All three were languishing at CCDC awaiting transport to Lakes.¹ The plaintiff's alleged
2 that the Division and Lake's Crossing failed to provide court ordered treatment within seven (7)
3 days of the Division's receipt of the court's order.

4 The Burnside plaintiffs' alleged that the failure to provide "prompt restorative treatment"
5 within seven (7) days upon receipt of the court's order was a violation of their substantive and
6 procedural due process rights guaranteed by the Fourteenth Amendment of the United States
7 Constitution.

8 On January 29th, 2014 the Burnside defendants entered into a Consent Decree, Order, and
9 Judgment. (See exhibit 3). The Consent Decree required defendants to provide "prompt
10 restorative treatment" to incompetent pretrial detainees. "Prompt restorative treatment" was
11 defined as seven (7) days from the defendant's receipt of the court order. NRS 178.425 requires
12 that upon entry of an order from the Eighth Judicial District Court finding a criminal defendant
13 incompetent the incompetent detainee is required to be immediately, or "forthwith" remanded to
14 the custody of the Division.

15 The Consent Decree required the Burnside defendants to take all necessary steps to meet
16 the goal of providing "prompt restorative treatment" and to that end, Burnside defendant's agreed
17 to follow the plan attached to and incorporated into the Consent Decree. (See exhibit 3, pg. 7 and
18 12).

19 The Burnside defendants failed to meet any of the Consent Decree benchmarks. By
20 January 29, 2015, incompetent defendants were to be transferred within 14 days upon receipt of
21 the court's order. In fact, the current delays meet and/or exceed the delays that existed at time of
22 the filing of the Burnside suit.

23 The Burnside plaintiffs have filed a Demand for Compliance With Consent Decree, Order
24 and Judgment. (See exhibit 4). The Burnside defendants have filed a Response acknowledging
25 that they have been unable to meet the conditions of the Consent Decree. (See exhibit 5).
26 Additionally the Burnside defendants report that the Stein Hospital will not open September 2015
27 as anticipated. Stein will be a secure forensic treatment facility operated by the Division

28 ¹ Eric Burnside's wait for transport at time of filing was 76 days. Jaumal Pugh's wait for transport at time of filing
was 90 days. Nicholas Duran's wait for transport at the time of filing was 98 days.

1 specifically for the treatment of Clark County's incompetent defendants. The Burnside defendants
2 further acknowledge that hiring of staff for Stein cannot begin until October 2015. (See exhibit 5,
3 pg. 4). It is anticipated that the Federal District Court will set a hearing date on the Plaintiff's
4 Demand For Compliance.

5 The State of Nevada's failure to meet the conditions of the Consent Decree by failing to
6 provide "prompt restorative treatment" to incompetent pretrial detainees has resulted in Mr.
7 Morgan's lengthy detention in violation of his substantive and procedural due process rights
8 guaranteed by the Fourteenth Amendment of the United States Constitution. Mr. Morgan has
9 been in held in custody awaiting transport for "prompt restorative treatment" for 118 days well
10 beyond the seven days agreed to in the Consent Decree.

11 Additionally, the 9th circuit has been clear that a lack of funds, staff or facilities cannot
12 justify the state's failure in accepting detainees and providing treatment necessary for prompt
13 rehabilitation. *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1121 (9th cir. 2003).

14 The state's collective failure to provide "prompt restorative treatment" has resulted
15 in Mr. Morgan's lengthy confinement at the Clark County Detention Center. This delay has
16 caused a delay of the time within which Mr. Morgan could have either regained fitness to proceed
17 (including submitting a bail application or resolving his case) or had the charges against him
18 dismissed if there was no substantial probability of attaining competency in the foreseeable future.

19 There is no legitimate state interest that justifies depriving Mr. Morgan of his liberty
20 interest in freedom from incarceration and in "prompt restorative treatment." By holding Mr.
21 Morgan at the Clark County Detention Center for 118 days rather than promptly remanding to the
22 custody of the Division, the State violated Mr. Morgan's rights under the Due Process Clause of
23 the Fourteenth Amendment to the United States Constitution. Thus, Mr. Morgan requests that the
24 court dismiss the pending charges and immediately release him from custody.

25 DATED this 6th day of July, 2015.

26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

28 By: /s/ Christy Craig
CHRISTY CRAIG, #6262
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 31st day of July, 2015, at 9:00
a.m.

DATED this 6th day of July, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Christy L. Craig
CHRISTY CRAIG, #6262
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of MOTION TO DISMISS, was made this 6TH day of
July, 2015, by Electronic Filing to:

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

By: /s/ Sara Ruano
Secretary for the Public Defender's Office

EXHIBIT 1


CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JOHN DEMON MORGAN,
13 #1965837

14 Defendant.

CASE NO: C-14-302450-1

DEPT NO: IX

15 ORDER OF COMMITMENT

16 THIS MATTER came before the Court on the 15th day of May, 2015, when doubt arose
17 as to competence of the Defendant, the Defendant being present with counsel, BELINDA
18 HARRIS, Deputy Public Defender, the State being represented by STEVEN B. WOLFSON,
19 District Attorney, through BARTER PACE, his Deputy, and the Court having considered the
20 reports of Dr. Mark Chambers and Dr. Gary Lenkeit, licensed and practicing psychologists
21 and/or psychiatrists in the State of Nevada, finds the Defendant incompetent, and that he is
22 dangerous to himself and to society and that commitment is required for a determination of his
23 ability to receive treatment to competency and to attain competence, and good cause appearing,
24 it is hereby

25 ORDERED that, pursuant to NRS 178.425(1), the Sheriff and/or a designee(s) of the
26 Division of Mental Health and Developmental Services of the Department of Human
27 Resources, shall convey the Defendant forthwith, together with a copy of the complaint, the
28 commitment and the physicians' certificate, if any, into the custody of the Administrator of

1 the Division of Mental Health and Developmental Services of the Department of Human
2 Resources or his designee for detention and treatment at a secure facility operated by that
3 Division; and, it is

4 FURTHER ORDERED that, pursuant to NRS 433A.165, before the defendant may be
5 transported to a public or private mental health facility he must:

6 1. First be examined by a licensed physician or physician assistant or an
7 advanced practitioner of nursing to determine whether the person has a medical problem, other
8 than a psychiatric problem, which requires immediate treatment; and

9 2. If such treatment is required, be admitted to a hospital for the appropriate
10 medical care; and, it is

11 FURTHER ORDERED that the Defendant is required to submit to said medical
12 examination which may include, but is not limited to, chest x-rays and blood work; and, it is

13 FURTHER ORDERED that the cost of the examination must be paid by Clark County,
14 unless the cost is voluntarily paid by the Defendant or on his behalf, by his insurer or by a state
15 or federal program of medical assistance; and, it is

16 FURTHER ORDERED that, pursuant to NRS 178.425(2), the Defendant must be held
17 in such custody until a court orders his release or until he is returned for trial or judgment as
18 provided in NRS 178.450, 178.455 and 178.460; and, it is

19 FURTHER ORDERED that, pursuant to NRS 178.425(4), these proceedings against
20 the Defendant are suspended until the Administrator or his designee finds him capable of
21 standing trial as provided in NRS 178.400; and, it is

22 FURTHER ORDERED that, pursuant to NRS 178.435, the expenses of the examination
23 and of the transportation of the Defendant to and from the custody of the Administrator of the
24 Division of Mental Health and Developmental Services of the Department of Human
25 Resources or his designee are chargeable to Clark County; and, it is

26 FURTHER ORDERED that the Administrator of the Division of Mental Health and
27 Developmental Services of the Department of Human Resources or his designee shall keep
28 the Defendant under observation and evaluated periodically; and, it is

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FILED
JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff
JUSTICE COURT
CLARK COUNTY, NEVADA
BY: JEFFREY

-VS-

JOHN DEMON MORGAN, aka,
John Morgan #1965837,

Defendant.

CASE NO: 14F17110X

DEPT NO: 11

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400.2 - NOC 50151) and ROBBERY (Category B Felony - NRS 200.380 - NOC 50137), in the manner following, to-wit: That the said Defendant, on or about the 30th day of October, 2014, at and within the County of Clark, State of Nevada,

COUNT 1 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: MARIA VERDUZCO, with intent to commit robbery by punching the said MARIA VERDUZCO in the face, knocking her to the ground.

COUNT 2 - ROBBERY

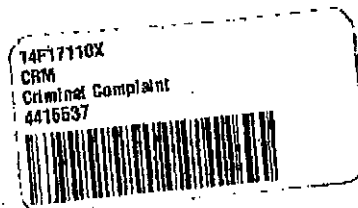
did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

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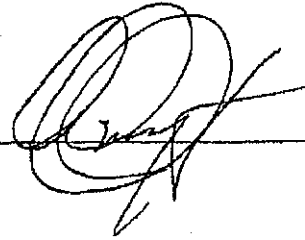
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All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

11/03/14

A handwritten signature in black ink, appearing to be "J. J. Jones", written over a horizontal line.

14F17110X/jw
LVMPD EV# 1410300877
(TK11)

EXHIBIT 2

Future Lakes Move June 30, 2015

Inmate's name (committed to Lakes Crossing)	ID#	Case #	Bkg Date	Dept #	Date Committed	Date Order Received	Release to Lakes
NEXT FLIGHT 7/9/15							
ALTAMARINO, ARMONDO	1525755	C292258	1/22/2015	DC#9	3/27/2015	4/6/2015	
DURAN, NICHOLAS	2877355	C289703	2/7/2015	DC#9	3/27/2015	4/6/2015	
TRASK, ROBERT (FORM VI)	1892114	C304731	1/30/2015	DC#9	3/27/2015	4/6/2015	
KENNERK, JEFFREY	8089668	C304971	1/11/2015	DC#9	4/3/2015	4/10/2015	
BLACK, RONELLA	6004736	C304734	2/9/2015	DC#9	4/3/2015	4/10/2015	
MOODY, JOSEPH	1161668	C305512	3/12/2015	DC#9	4/3/2015	4/10/2015	
NEXT FLIGHT 7/23/15							
STEVEN, DALE AKA: WOODARD	1064485	C298658	2/19/2015	DC#9	4/3/2015	4/10/2015	
WATTS JR, KENNETH	1829273	C303484	4/10/2015	DC#9	4/10/2015	4/17/2015	
BURKETT, CHARLES	1956120	C305716	3/25/2015	DC#9	4/10/2015	4/17/2015	
SANCHEZ, MARIO	7510618	C303038	8/13/2014	DC#9	4/10/2015	4/17/2015	
SHEAFE, ADAM (FUGITIVE)	1798846	C303255	11/21/2014	DC#9	4/17/2015	4/27/2015	
		C303259	12/4/2014	DC#9	4/17/2015	4/27/2015	
		C303275	11/25/2014	DC#9	4/17/2015	4/27/2015	
PALADINO, ISAAC AKA: TREJO-SANTOY	8013059	C298407	4/17/2015	DC#9	4/17/2015	4/27/2015	
NEXT FLIGHT 8/6/15							
LEPORE, MICHAEL	2702534	C304945	2/14/2015	DC#9	4/17/2015	4/27/2015	
GIPSON, DONNA	2807643	C304968	2/20/2015	DC#9	4/17/2015	4/27/2015	
STRONG, Codi	5367552	C305320	3/15/2015	DC#9	4/17/2015	4/27/2015	
PORTER, ALFRED	5312113	C305416	3/7/2015	DC#9	4/17/2015	4/27/2015	
STUDD, LATONYA	2867688	C305788	3/23/2015	DC#9	5/1/2015	5/8/2015	
WILKERSON, RODREEKA	1920698	C305653	4/3/2015	DC#9	5/1/2015	5/8/2015	
NEXT FLIGHT 8/20/15							

STARNE, LAMARIUS	1856508	C305639	4/6/2015	DC#9	5/1/2015	5/8/2015	
MARTIN, DENNIS	2869150	C305595	4/1/2015	DC#9	5/1/2015	5/8/2015	
BERTAGNA, GABRIEL	1850957	C305580	3/17/2015	DC#9	5/1/2015	5/8/2015	
FERGUSON, CHRISTOPHER	2889326	C305237	3/17/2015	DC#9	5/1/2015	5/18/2015	
SANCHEZ, CHRISTINA	1784444	C305157	2/17/2015	DC#9	5/1/2015	5/8/2015	
THOMAS, DONALD	195294	C305640	5/1/2015	DC#9	5/1/2015	5/8/2015	
		C305094	3/13/2015	DC#9	5/1/2015	5/8/2015	
NEXT FLIGHT 9/3/15							
PAGE, MICHAEL	5995810	C305782	4/3/2015	DC#9	5/1/2015	5/8/2015	
		C298151	4/3/2015	DC#9	5/1/2015	5/8/2015	
BENSON, NATHAN (USE CAUTION)	1937923	C290667	4/29/2015	DC#9	5/1/2015	5/8/2015	
RIVERAABARCA, JUAN	7016258	C304437	1/30/2015	DC#9	5/8/2015	5/18/2015	
DOEBO, ERIC	1978357	C305919	3/30/2015	DC#9	5/8/2015	5/18/2015	
WILLIAMSON, KATTAWNA	1156584	C305900	4/11/2015	DC#9	5/8/2015	5/18/2015	
MINIMS, DESIRE	1691540	C305887	3/20/2015	DC#9	5/8/2015	5/18/2015	
MACDONALD, JARED	8095523	C306006	3/29/2015	DC#9	5/8/2015	5/18/2015	
		C305883	3/29/2015	DC#9	5/8/2015	5/18/2015	
PETERSON, MISTIE	2807096	C298115	11/6/2014	DC#9	5/8/2015	5/18/2015	
NEXT FLIGHT 9/17/15							
RUSH III, LOCELL	2755749	C306598	5/14/2015	DC#9	5/15/2015	5/22/2015	
		C306109	3/31/2015	DC#9	5/15/2015	5/22/2015	
GANDAR, LORI	7513782	C305828	3/7/2015	DC#9	5/15/2015	5/22/2015	
CHAVEZVARGAS, MAURICIO	2652365	C305637	3/18/2015	DC#9	5/15/2015	5/22/2015	
CARTER JR, CHARLES	1984216	C305517	3/31/2015	DC#9	5/15/2015	5/22/2015	
LOVE, WILLIE AKA:DEARMOND (FUG)	935479	C305137	1/30/2015	DC#9	5/15/2015	5/22/2015	
MORGAN, JOHN	1965837	C302450	10/30/2014	DC#9	5/15/2015	5/22/2015	
POLANCO, JOSE	2647165	C299532	6/20/2014	DC#9	5/21/2015		
GEER, DAVID	7514688	C305391	3/7/2015	DC#9	5/22/2015	6/5/2015	
NEXT FLIGHT 10/1/15							
FOGLIETTI, GLEN	2661494	C306285	4/14/2015	DC#9	5/22/2015	6/5/2015	
APODACA, RICKY	676841	C306294	4/13/2015	DC#9	5/22/2015	6/5/2015	

GONZALES, RAYMOND(SURR 8/7/15)	1632279	C300296	NIC	DC#9	5/29/2015		SURR 8/7/15
KEMP, PETER	2867168	C306482	4/20/2015	DC#9	5/29/2015	6/5/2015	
OLIVERA, JESUS	2866719	C306486	4/26/2015	DC#9	5/29/2015	6/5/2015	
		C306480	5/29/2015	DC#9	5/29/2015	6/5/2015	
		C306478	5/29/2015	DC#9	5/29/2015	6/5/2015	
ALARCON, BRANDON	2673236	C306398	4/23/2015	DC#9	5/29/2015	6/5/2015	
		C305884	3/28/2015	DC#9	5/29/2015	6/5/2015	
SCOTT, ANGELA	1052643	C305880	4/9/2015	DC#9	5/29/2015	6/5/2015	
CHAMBERS, JIOVAN(SURR 9/4/15)	1856887	C305978	NIC	DC#9	6/5/2015		SURR 9/4/15
NEXT FLIGHT 10/15/15							
AZCARATE, SEBASTIAN	5414847	C306579	5/12/2015	DC#9	6/5/2015	6/12/2015	
TRESVAN, JASON	2624820	C304969	2/19/2015	DC#9	6/5/2015	6/12/2015	
PEREZ, HENRY	1900090	C298709	6/12/2014	DC#9	6/5/2015	6/12/2015	
SYKES, REGINA	977817	C306613	4/22/2015	DC#9	6/5/2015	6/12/2015	
RUSSO, ANTHONY(SURR 9/18/15)	7016092	C306616	nic	DC#9	6/11/2015	6/19/2015	SURR 9/18/15
FENTON, SCOT	8017644	C306804	5/12/2015	DC#9	6/11/2015		
		C307215	5/30/2015	DC#9	6/11/2015		
WALSH, MARK	1734412	C306768	5/15/2015	DC#9	6/11/2015	6/19/2015	
		C307127	5/19/2015	DC#9	6/11/2015	6/19/2015	
JONES, GENE	975302	C306353	4/17/2015	DC#9	6/11/2015	6/19/2015	
NEXT FLIGHT 11/5/15							
RAYMOND, ANTHONY	2829919	C306349	4/12/2015	DC#9	6/11/2015	6/19/2015	
		C306355	4/20/2015	DC#9	6/11/2015	6/19/2015	
CORTEZ, EMANUEL	1979178	C303545	11/19/2014	DC#9	6/11/2015	6/29/2015	
BOLAND, THUY	8010767	C301282	4/30/2015	DC#9	6/19/2015	6/19/2015	
WOODS, PRINCESS(SURR 10/2/15)	6025335	C298312	NIC	DC#9	6/19/2015		SURR 10/2/15
JONES, ZYQUAN	5917567	C306927	5/18/2015	DC#9	6/19/2015	6/22/2015	
MOHAMED, MOHAMED	2701206	C306911	4/11/2015	DC#9	6/19/2015	6/22/2015	
EROLICH, JOSEPH	1972313	C306523	5/5/2015	DC#9	6/19/2015	6/22/2015	
ISAIS, JONATHON	2737377	C306391	4/14/2015	DC#9	6/19/2015	6/22/2015	
NEXT FLIGHT 11/19/15							

VAOGA, COLEMAN	3003231	C303708	1/16/2015	DC#9	6/19/2015	6/22/2015	
THOMAS, STEPHEN	1964439	C300436	5/8/2015	DC#9	6/19/2015	6/22/2015	
		C306958	5/8/2015	DC#9	6/19/2015	6/22/2015	
		C307327	5/18/2015	DC#9	6/19/2015	6/22/2015	
STIMPSON, SHATNI	7512279	C307068	6/19/2015	DC#9	6/19/2015	6/22/2015	
		C307069	5/14/2015	DC#9	6/19/2015	6/22/2015	
HERNANDEZ, RIGOBERTO	5342323	C306265	4/20/2015	DC#9	6/19/2015	6/22/2015	
		C306814	5/8/2015	DC#9	6/19/2015	6/22/2015	
BARNES, WENDY	2666110	C307011	6/2/2015	DC#9	6/26/2015		
PARLOR, DARRIS	2762563	C306805	5/5/2015	DC#9	6/26/2015		
WOLDESENBET, YOHANNES	5370305	C306704	4/30/2015	DC#9	6/26/2015		
JOHNSON, SPENCER	1309619	C306587	4/22/2015	DC#9	6/26/2015		
NEXT FLIGHT 12/3/15							
BAKER JR, JEFFERY	1969433	C303315	11/4/2015	DC#9	6/26/2015		
ELLIS, HARRY	2668061	C306701	4/29/2015	DC#9	6/26/2015		
		C301144	6/5/2015	DC#9	6/26/2015		
OFF LIST							
BAILEY, LEONARD SURRENDER 2/20/15	5997239	C298995	NIC	DC#9	1/23/2015		
JACKSON, DONALD	1119906	C304328	1/29/2015	DC#9	3/6/2015	3/13/2015	
		C304326	2/11/2015	DC#9	3/6/2015	3/13/2015	

EXHIBIT 3

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ERIC BURNSIDE, an individual,
JAUMAL PUGH, an individual, NICHOLAS
DURAN, an individual,

Plaintiffs,

v.

RICHARD WHITLEY, in his official capacity
as acting Administrator of the Nevada Division
of Mental Health and Developmental Services;
DR. ELIZABETH NEIGHBORS, in her
official capacity as Director Of Lake's Crossing
Center for the Mentally Disordered Offender;
and MICHAEL J. WILLDEN, in his official
capacity as Director of the Nevada Department
of Health and Human Resources

Defendants.

Case No. 2:13-cv-01102-MMD-GWF

CONSENT DECREE,
ORDER, AND JUDGMENT

The Court has reviewed and considered the Consent Decree, Order, and Judgment (and attached Plan) entered into by the parties and is of the opinion that it is a fair and reasonable resolution of the issues pending between them. Based thereon, the Court hereby approves the proposed Consent Decree (and attached Plan) and hereby approves the proposed Consent Decree and directs the entry of the Order and Judgment as follows:

BACKGROUND

I. This Consent Decree resolves the above-captioned civil action for injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 brought by Plaintiffs Eric Burnside, Jaumal Pugh, and Nicolas Duran (collectively, "Plaintiffs") against Richard Whitley, in his official capacity as Administrator of the Nevada Division of Public and Behavioral Health; Dr. Elizabeth Neighbors, in her official capacity as Director Of Lake's Crossing Center for the

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1 2. Mentally Disordered Offender; and Michael J. Wilden, in his official capacity as
2 Director of the Nevada Department of Health and Human Services (collectively,
3 "Defendants").

4 3. Plaintiffs are all pretrial detainees who have been or will be committed to the
5 custody of the Division of Public and Behavioral Health pursuant to Nev. Rev. Stat.
6 178.425.

7 4. Section 178.425(1) of the Nev. Rev. Stat. requires that, upon entry of an order
8 from the Eighth Judicial District Court of Nevada finding a criminal defendant incompetent,
9 the judge shall order the Sheriff to convey the defendant forthwith to the custody of the
10 Administrator of the Division of Public and Behavioral Health of the Department of Health and
11 Human Services of the State of Nevada (the "Division"). Lakes Crossing Center for the
12 Mentally Disordered Offender (LCC) is currently the only facility in Nevada operated by the
13 Division for the purpose of treating incompetent detainees such as Plaintiffs.

14 5. Plaintiffs allege that Defendants failed to provide court-ordered treatment to
15 incompetent criminal defendants, in violation of Plaintiffs' substantive and procedural due
16 process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

17 6. The Ninth Circuit has held that incompetent detainees must be transferred to an
18 appropriate mental health treatment facility within seven (7) days of the court's finding of their
19 incapacity to stand trial. *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1123 (9th Cir.
20 2003).

21 7. Similar issues were previously litigated in *Nevada Disability Advocacy and Law*
22 *Center, Inc v. Carlos Brandenburg*, U.S. District Court of Nevada Case No. CV-S-05-0782-
23 RCJ (RJ) ("NDALC Case"). In an April 2008 Settlement Agreement and Release of Claims
24 ("Agreement") entered into in the NDALC Case, the directors of DHHS, MHDS and Lakes
25 Crossing agreed that all incapacitated criminal defendants must be provided "Prompt
26 Restorative Treatment" at an MHDS facility. The Agreement defined "Prompt Restorative
27 Treatment" as providing appropriate treatment to competency within seven (7) days from
28 MHDS's receipt of a court order. In the Agreement, DHHS and MHDS agreed to a minimum

1 of three (3) years of monthly status reports regarding the Prompt Restorative Treatment of all
2 Incapacitated Defendants. The required reporting and oversight ended in 2011.

3 8. In the instant litigation, Plaintiffs have alleged that, less than two (2) years after
4 the "required reporting and oversight" ended, Defendants have returned to the 2005 practice of
5 denying incompetent criminal defendants the required Prompt Restorative Treatment, thereby
6 violating the substantive and procedural due process rights of said defendants. Plaintiffs have
7 also alleged that Defendants are unable to promptly accept incompetent detainees for Prompt
8 Restorative Treatment by Lakes Crossing that incompetent detainees have routinely spent
9 weeks and, in most cases, months, at detention facilities where the conditions are punitive and
10 no Prompt Restorative Treatment is available.

11 9. Prior to this litigation, the Governor requested and the Legislature approved the
12 addition of ten forensic beds for Lake's Crossing to be housed in a remodeled section of the
13 current civil hospital. This ten bed unit, referred to as Lake's Annex 2 expanded the number of
14 available beds from 66 to 76. This unit was opened and accepting patients by January 1, 2014.

15 10. Defendants deny any liability to Plaintiff in connection with the claims asserted
16 in this lawsuit, and the willingness to enter this Consent Decree in no way whatsoever
17 constitutes an admission of liability in this action.

18 11. Plaintiffs and Defendants (collectively, "the parties") agree that it is in the
19 parties' best interests, and in the public interest, to resolve this lawsuit on mutually agreeable
20 terms without further litigation. Accordingly, the parties agree to the entry of this Consent
21 Decree without trial or further adjudication of any issues of fact or law raised in the Complaint.

22 Accordingly, the parties hereby AGREE and the Court expressly APPROVES, ENTERS
23 AND ORDERS THE FOLLOWING:

24 JURISDICTION AND VENUE

25 1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1331 and
26 1343. The parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391(b)(2).
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1 DEFINITIONS

2 1. "Incapacitated Detainee" is defined for the purposes of this Consent Decree as a
3 person committed to the custody of the Division of Public and Behavioral Health pursuant to
4 Nev. Rev. Stat. 178.425.

5 2. "Treatment to Competency" is defined for the purposes of this Consent Decree
6 as treatment provided to an Incapacitated Detainee to attempt to cause him to attain
7 competency to stand trial or receive pronouncement of judgment.

8 3. "Prompt Restorative Treatment" is defined for the purposes of this Consent
9 Decree as providing appropriate treatment to competency within seven (7) days from the
10 Division of Public and Behavioral Health's receipt of a court order.

11 4. The "Plan" means the plan of action developed by Defendants to reach the goal
12 of providing Prompt Restorative Treatment to all Incapacitated Detainees in Nevada as soon as
13 possible, and accepted by Plaintiffs. The Plan is attached hereto as Exhibit A.

14 INJUNCTIVE RELIEF

15 5. Defendants shall immediately implement the Plan (Exhibit A).

16 6. Defendants shall take all necessary steps to meet the goal of providing Prompt
17 Restorative Treatment to Incapacitated Detainees in Nevada as soon as possible.

18 7. Should Defendants determine that meeting the goal of providing Prompt
19 Restorative Treatment to Incapacitated Detainees in Nevada as soon as possible requires
20 changes to the Plan, Defendants shall include that information in the reports set forth below in
21 Paragraph 10 and provide Plaintiffs with the opportunity to raise objections and pursue any
22 necessary motion practice as set forth below in Paragraphs 13 before making said changes. In
23 no case shall Defendants implement proposed changes to the Plan sooner than sixty (60) days
24 from providing Plaintiffs with a report detailing the changes as set forth in Paragraph 10 absent
25 the express consent of Plaintiffs.

26 8. In implementing the Plan, Defendants shall meet the following goals on the
27 following deadlines:

28 ///

<u>Goal</u>	<u>Deadline</u>
Providing Treatment to Competency to Incapacitated Detainees within no more than 21 days from MHDS's receipt of a court order.	Within 60 days from the effective date of this consent decree.
Providing Treatment to Competency to Incapacitated Detainees within no more than 14 days from MHDS's receipt of a court order.	Within one year from the effective date of this consent decree. ¹
Providing Treatment to Competency to Incapacitated Detainees within no more than seven days from MHDS's receipt of a court order.	No later than September 1, 2015 and continuously thereafter.

9. Defendant shall designate a representative to have the authority to implement the requirements of this Consent Decree and the Plan and to provide written reports as set forth below ("Designee").

10. Six (6) months after the effective date of this Decree, and every six (6) months thereafter during the term of this Decree or at any time that a change is proposed to the Plan, Defendants, through the Designee, shall provide a written report ("Report") to Plaintiffs regarding the State of Nevada's efforts to comply with this Decree. The Report shall include, for the preceding six-month period:

- (a) A report on the implementation of the Plan;
- (b) A list of, and explanations for, any proposed changes to the Plan.
- (c) A specific acknowledgment that Defendants have for the instant reporting period, complied with the requirements of the Decree, including the requirements set forth in paragraphs 2 - 9 above.

¹ If this goal is not met within six months, the Defendants shall propose a mechanism for meeting it in the first report issued pursuant to this Decree.

(d) A table detailing, for all orders received during the prior six months, the date the order was received, the date a bed was available for the incapacitated detainee and the date the incapacitated detainee was received at Lake's Crossing.

All information provided pursuant to the above reporting requirements under this Decree should be provided to Plaintiffs via email and U.S. Mail to: the Clark County Public Defender, or a recipient designated by the Clark County Public Defender's designee.

IMPLEMENTATION AND ENFORCEMENT

11. Failure by Plaintiffs to enforce any provision of this Consent Decree shall not be construed as a waiver of their right to enforce other provisions of this Decree, nor as a waiver of their right to enforce that provision in the future.

12. If any term of this Consent Decree is determined by any court to be unenforceable, the other terms of this Consent Decree shall nonetheless remain in full force and effect.

13. Plaintiffs may review compliance with this Consent Decree at any time. If Plaintiffs believe that this Consent Decree or any portion of it has been violated, or have any objections to any proposed changes to the Plan, Plaintiffs will raise their concerns with the Designee and the parties will attempt to resolve those concerns in good faith. Plaintiffs will give Defendants thirty (30) days from the date it notifies the Designee of any breach of this Consent Decree to cure that breach before filing a motion for contempt or taking any other enforcement action.

14. Plaintiffs may seek additional attorneys' fees and costs for the purposes of enforcing this Consent Decree, and filing a motion for contempt or taking any other enforcement action as set forth in Paragraph 13.

15. Any delay in prompt restorative treatment not attributable to the Defendants shall not constitute a violation of this consent decree.

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1 OTHER RELIEF

2 16. Defendants shall compensate Plaintiffs for attorneys' fees and costs to date as
3 follows: \$2109.52 for costs payable to the Clark County Public Defender and \$21,890.48 for
4 costs and fees to Langford McLechie LLC.

5 GENERAL PROVISIONS

6 17. This Consent Decree shall be binding upon Defendants, the Nevada Division of
7 Public and Behavioral Health, Lake's Crossing Center for the Mentally Disordered Offender,
8 and the Nevada Department of Health and Human Services.

9 18. This Consent Decree constitutes the entire agreement between the parties on the
10 matters raised herein and no other statement, promise, or agreement, either written or oral,
11 made by any party or agents of any party, that is not contained in this written Consent Decree,
12 including its attachments, shall be enforceable.

13 19. This Consent Decree is not intended to remedy any other potential violations of
14 the rights of pretrial detainees or any law that is not specifically addressed in this Consent
15 Decree. Further, this Consent Decree does not constitute res judicata or collateral estoppel
16 with respect to any individual not a party hereto who has or will be committed to the custody
17 of the Division of Mental Health and Developmental Services pursuant to Nev. Rev. Stat.
18 178.425.

19 20. The parties signing this Consent Decree in a representative capacity
20 acknowledge and warrant that they have the right to do so.

21 21. The effective date of this Consent Decree is the date the Court enters the
22 Decree.

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1 22. The duration of this Consent Decree will be five (5) years from the effective
2 date.

3 IT IS SO ORDERED.

4 Dated: January 28, 2014

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8 THE HONORABLE MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE
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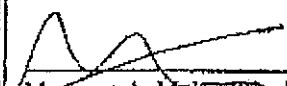
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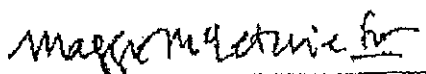
2 LANGFORD MCLETTCHIE LLC

PHILIP J. KOHN
Clark County Public Defender

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4 Date: 1/28/14

Date: 1/28/14

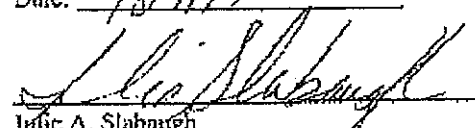
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Margaret A. McLettchie, Esquire
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Attorneys for Plaintiffs

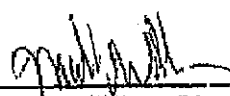

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Attorneys for Plaintiffs

10 CATHERINE CORTEZ MASTO
Attorney General

11
12 Date: 1/27/14

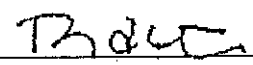
Date: 1-27-14

13
14 
Julie A. Slabough
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Carson City, Nevada 89701
(775) 684-1131
Attorneys for Plaintiff


Michael J. Willden, Director
Nevada Department of Health
and Human Services, Defendant

18 Date: 1-27-14

Date: 1-27-14

20 
Richard Whitley, Administrator
Division of Public and Behavioral Health.
Defendant

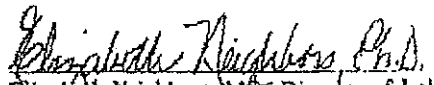

Elizabeth Neighbors, M.P., Director of Lakes
Crossing Center, Defendant

Exhibit A

Defendant's Plan of Action

Actions already taken:

Prior to this lawsuit, both the Governor and the Legislature supported providing ten additional forensic beds for the Lake's Crossing Hospital housed in a remodeled section of the current Civil hospital. This 10 bed unit referred to as Lakes Annex 2 expanded the number of available beds from 66 to 76. This unit was open on and accepting patients on January 1, 2014.

In addition, the DPBH began a misdemeanor assessment and triage program at Clark County Detention Center allowing for some of the individuals on the wait list to be re-assessed for their charges and ultimately served at the local Civil Hospital. The implementation of the Misdemeanor program has also reduced the number of individuals on the waiting list.

Short term solutions to be implemented:

- Expansion of the misdemeanor program to include some Gross Misdemeanors.
 - a. The courts and the DPBH have agreed upon a list of gross-misdemeanors that can be added to the list of misdemeanor charges. These additional individuals can be evaluated in the jail and if appropriate charges can be dropped and the individual sent to the local Civil Hospital.
- Expansion of staff to enhance the capacity of the restoration/treatment teams.
 - a. Rehiring previously trained expert staff (2)
 - b. Enhancing current Clinical Psychology staff by using Rural services Clinical Psychologists to increase the availability of psychologists on the forensic team.
- Addition of 10 beds in the current expansions by assessing individuals that can reside in a room with another patient.
 - a. 5 beds will be added on each of the two annexes. Currently all clients are in a room without a roommate but the rooms are built to house two individuals and clients are being evaluated and these extra beds will be incorporated into the population.

- Expand the use of Administrative transfers to allow those that can be treated in a less restrictive environment to get services more rapidly in the civil hospital.

These solutions can be implemented within 60 days (some immediately). DHHS/OPBH will take necessary action to employ additional staff to ensure safety of patients, necessary treatment, and administrative functions.

These actions should bring waiting times below 21 days, with a goal of 7 seven days.

Mid-term options:

If after the implementation (up to 60 days) of short-term solutions, and an operational evaluation period (90 days), waiting times are still above 14 days; the following options will be evaluated and one or both implemented. The Defendants will report on which option will be pursued in the first six month report required under this Consent Decree.

Up to 60 days would be allowed to train staff, make facility improvements and implement options necessary.

- Use of 10 additional civil beds at Dini-Townsend Hospital
 - a. Clients will be assessed by Lakes Crossing staff for appropriateness to receive services in the civil hospital.
- Use of 10 additional civil beds at the Southern Nevada Adult Mental Health campus (Building 3A or Rawson Neal Hospital)
 - a. Clients will be assessed by Lakes Crossing staff for appropriateness to receive services in the civil hospital.

Long term:

- Stein Hospital remodel
 - a. 46 beds with estimated date of completion of August 2015.
 - b. The Governor is committed to providing funding for sufficient staffing of the additional beds at Stein Hospital

EXHIBIT 4

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16 craigcl@co.clark.nv.us
17 *Attorneys for Plaintiffs*

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

29 ERIC BURNSIDE, an individual,
30 JAUMAL PUGH, an individual, NICHOLAS
31 DURAN, an individual,
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33 Plaintiffs,

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35 v.

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37) Case No. 2:13-cv-01102-MMD-GWF
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Pursuant to the Consent Decree, Order, and Judgment ("Consent Decree," Dekt. # 25)

1 stipulated to by the Parties and ordered by this Court on January 29, Plaintiffs are writing to
2 review compliance and raise concerns regarding Defendants' ongoing failure to comply with the
3 Order (Consent Decree, p. 8, "Implementation and Enforcement," ¶ 13).

4 Plaintiffs respectfully request that Defendants cure the ongoing breaches detailed below,
5 as required by the Consent Decree (*id.*). Further, Plaintiffs request attorneys' fees incurred in
6 connection with seeking enforcement of the Consent Decree (*id.*).

7 DATED this 15th day of May, 2015.

8
9
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26 Attorneys for Plaintiffs
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28

1 DEMAND FOR COMPLIANCE

2 The Consent Decree required Defendants provide Prompt Restorative Treatment to
3 Incapacitated Detainees in Nevada as soon as possible. "Prompt Restorative Treatment" is
4 defined for the purposes of the Consent Decree as providing appropriate treatment to
5 competency within seven (7) days from the Division of Public and Behavioral Health's receipt
6 of a court order (Consent Decree, p. 6, "Definitions," ¶3).¹

7 Defendants are also required to "take all necessary steps to meet the goal of providing
8 Prompt Restorative Treatment to Incapacitated Detainees in Nevada as soon as possible" (*id.*, p.
9 6, "Injunctive Relief," ¶ 6). To do so, Defendants are both required to follow the plan attached
10 to and incorporated into the Consent Decree (the "Plan," Exhibit A to Consent Decree) and, if
11 the Plan is not working, to propose necessary changes (*id.*, p.6, ¶ 7.)

12 In working with Defendants to resolve this matter, Plaintiffs recognized that the goal of
13 providing Prompt Restorative Treatment could not be met overnight. Thus, the Consent Decree
14 established three consecutive bench marks with specific deadlines (*id.*, pp.6-7, "Injunctive
15 Relief," ¶ 8 (table)).

16 Two of the three deadlines have now passed. Defendants failed to meet those deadlines
17 and, in fact, it appears that waiting times are increasing.

18 Thus, while the final goal—transfers within 7 days of court order—is not set until
19 September, 2015, as detailed below ("*Current Status*"), it does not appear that Defendants are
20 in fact working towards this goal. Further, as also detailed below ("*Reporting Issues*"), more
21 specificity is required with regard to the reports that Defendants are required to submit pursuant
22 to the Consent Decree, and the Second Report fails to show how Defendants will cure their
23 ongoing violations of the Consent Decree.

24
25 ¹ The Consent Decree (p.6, 1-4), also includes the following definitions:

- 26 • "Incapacitated Detainee" is defined for the purposes of this Consent Decree as a person
27 committed to the custody of the Division of Public and Behavioral Health pursuant to
28 Nev. Rev. Stat. 178.425.
• "Treatment to Competency" is defined for the purposes of this Consent Decree as
treatment provided to an Incapacitated Detainee to attempt to cause him to attain
competency to stand trial or receive pronouncement of judgment.

Current Status

The table below details the status and ongoing failures to reach the goals:

Goal	Deadline	Status
FIRST GOAL: Providing Treatment to Competency to Incapacitated Detainees within no more than 21 days from MHDS's receipt of a court order.	Within 60 days from the effective date of this consent decree (March 29, 2014).	<p><u>Defendants failed to meet this goal within 60 days and, in fact, have still not met this goal, over a year later.</u></p> <p>Defendants' First Report (submitted on June 27, 2014, approximately 5 months after effective date) states that "Lakes is very close to the goal of admissions within 21 days" and indicates that planning for reaching 14 days has begun (First Report, p. 2, D).</p>
SECOND GOAL: Providing Treatment to Competency to Incapacitated Detainees within no more than 14 days from MHDS's receipt of a court order.	Within one year from the effective date of this consent decree (January 29, 2015).	<p><u>Defendants failed to meet this goal and are increasing, not decreasing wait times.</u></p> <p>Defendants' Second Report (submitted on December 30, 2014) does not explicitly discuss waiting times (compare Second Report, p. 2, C to First Report). However, Exhibit A to the Report shows that wait times were well in excess of 14 days. Even in many of the instances where Defendants attribute the delay to, plane issues, the date noted for "bed available" is not within 14 days.</p> <p>Current wait times (<i>see</i> Exhs. 1 and 2) exceed 6 months in some cases and the average is approximately 80 days (<i>see</i> Exh. 1). For example, some individuals that have been found incompetent as far back as February 17, 2015 are not scheduled to be transferred to Lakes Crossing until August 6, 2015, and some estimated wait times are as long as 104 days (<i>see</i> Exh. 1 and 2). Notably, these</p>

Goal	Deadline	Status
		wait times may be even longer than currently estimated (<i>see</i> Exh.1, fn. 2).
Providing Treatment to Competency to Incapacitated Detainees within no more than seven days from MHDS's receipt of a court order.	No later than September 1, 2015 and continuously thereafter.	<u>Does not appear possible to meet, and Defendants should be meeting 14 day benchmark while new beds are being built.</u>

Not only have Defendants failed to meet these goals, they have failed to meet their obligation to propose mechanisms for doing so (*see, e.g.*, Consent Decree, "Injunctive Relief," p. 7, fn. 1). They failed to propose ways to address their violations, let alone comply with their obligation to "take all necessary steps to meet the goal of providing Prompt Restorative Treatment to Incapacitated Detainees in Nevada as soon as possible" (*id.*, p. 6, "Injunctive Relief," ¶ 6).

Thus, Defendants appear to both be blatantly breaching the Consent Decree and also failing to take steps to come into compliance and address the breaches.

Reporting Issues

The Consent Decree requires that each report, to be submitted every 6 months from the date of the entry of the decree,² include the following:

- (a) A report on the implementation of the Plan;
- (b) A list of, and explanations for, any proposed changes to the Plan.
- (c) A specific acknowledgment that Defendants have for the instant reporting period, complied with the requirements of the Decree, including the requirements that:
 - a. Defendants provide Prompt Restorative Treatment to Incapacitated Detainees in Nevada as soon as possible; and
 - b. Defendants meet the benchmarks set

² As the First Report was submitted early and covered only five months from January 29, 2015, an additional report will need to be submitted at the close of the matter to include the final month.

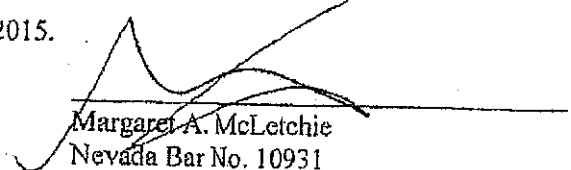
1 (d) A table detailing, for all orders received during the prior six months, the date the
2 order was received, the date a bed was available for the incapacitated detainee and --
3 the date the incapacitated detainee was received at Lakes' Crossing.

4 The Second Report should acknowledge lack of compliance and suggest ways to reach the
5 goals at hand (*compare* First Report, p. 2, D) ("Defendants recognize that the goal of
6 treatment... has not been met and planning for implementation of the midterm options has
7 begun.").

8 Conclusion

9 As set forth above, Plaintiffs are concerned by Defendants' noncompliance. However,
10 as ever, counsel for Plaintiffs will make themselves available to work with counsel for
11 Defendants to solve the problems at hand. Plaintiffs look forward to Defendants' response
12 within 30 days. Upon resolution, Plaintiffs will also submit their request for reimbursement for
13 related fees and costs.

14 DATED this 15th day of May, 2015.

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EXHIBIT 1

BURNSIDE V. WHITELEY, U.S. DIST. NV. CASE NO. 2:13-cv-0111020MMD-GWF
PLAINTIFFS' ANALYSIS OF WAITING PERIODS AS OF 5/12/2015

Inmate's name ¹ (committed to Lakes Crossing)	ID#	Case #(s)	Booking Date	Dept. #	Date Committed	Date Order Received	Date of Next Flight ²	Total Estimated Days Waiting ³
LARIOS, ANTHONY	2706708	C280407; C300314	8/4/2014	DC#9	2/6/2015	2/13/2015	5/14/2015	90
POE, CHRISTIAN	2840166	C286484; C302476	10/30/2014	DC#9	2/13/2015	2/27/2015	5/14/2015	76
MILLIRON, JOHN	1879677	C303873; C306421	1/14/2015; 3/28/2015	DC#9	2/13/2015; 5/8/2015	2/27/2015	5/14/2015	76
CABACUNGAN, EDGAR	1583374	C303842	12/5/1/2014	DC#9	2/13/2015	2/27/2015	5/14/2015	76
WEINDL, JAIME	2706409	C303833	12/29/2014	DC#9	2/13/2015	2/27/2015	5/14/2015	76
WALEMA, LAWRENCE	1770275	C301363	9/13/2014	DC#9	2/13/2015	2/27/2015	5/14/2015	76
ROBINSON, CHRISTOPHER	640672	C303907	1/14/2015	DC#9	2/20/2015	2/27/2015	5/14/2015	76
HILL, LAKIESHIA	1621931	C297735	2/18/2015	DC#9	4/25/2015	4/25/2015	5/14/2015	19
WINTERS, GEORGE	1922037	C303301	12/7/2014	DC#9	2/20/2015	2/27/2015	5/28/2015	90
STARKS, SAMANTHA	1915112	C303690; C301863	12/5/2014; 2/20/2015	DC#9	2/20/2015	2/27/2015	5/28/2015	90
MARTINEZ, SANDY	1830220	C298186	10/16/2014	DC#9	2/20/2015	2/27/2015	5/28/2015	90
RICHMOND, MILTON	209137	C301732	9/26/2014	DC#9	2/20/2015	3/6/2015	5/28/2015	76
TURNER, DOMINIC	5567330	C304187	12/23/2014	DC#9	2/27/2015	3/6/2015	5/28/2015	83
BENSON, LEMARC	2704145	C302474; C302764	11/1/2014	DC#9	2/27/2015; 3/13/2015	3/6/2015; 3/20/2015	5/28/2015	83
SILVA, ANTONIO	2770411	C304727; C304401	3/6/2015; 1/27/2015	DC#9	3/6/2015	3/13/2015	6/4/2015	83
JACKSON, DONALD	1119906	C304328; C304326	1/29/2015; 2/11/2015	DC#9	3/6/2015	3/13/2015	6/4/2015	83
ARRIETA, BRUCE	7015535	C303781	12/31/2014	DC#9	3/6/2015	3/13/2015	6/4/2015	83
FORTH, DANIEL	1892603	C303135; C301547	12/4/2014; 9/18/2014	DC#9	3/20/2015	3/13/2015	6/4/2015	83
OROZCO, JULIAN	5796174	C303644	12/26/2014	DC#9	3/20/2015	3/20/2015	6/4/2015	76
BLAIR, CHRISTINA	2867054	C304108; C304728	3/5/2015; 1/14/2015	DC#9	3/20/2015	3/27/2015	6/4/2015	69
JOHNSON, SARA AKA: CUNNINGHAM	964352	C304567	2/5/2015	DC#9	3/20/2015	3/27/2015	6/4/2015	69
DELACERDA, CESAR	2677380	C304721; C304726	3/20/2015; 2/7/2015	DC#9	3/20/2015	3/27/2015	6/4/2015	69

¹ All data is based on the May 12, 2015 email setting forth the Lakes Crossing flight schedule (Exh. 2).

² Notably, the May 12, 2015 email on which this table is based states that "[d]ue to the bed availability at Lakes they have reduced the amount of inmates for the 5/28/15 flight. There is also a possibility that the 6/4/15 flight might also be reduced because of bed availability." (Exh. 1.)

³ The total was calculated from the Date Order Received to the scheduled Date of Next Flight, unless no date is available for the order. If there is no order date (rare), the Date Committed was used.

BURNSIDE V. WHITELEY, U.S. DIST. NV. CASE NO. 2:13-CV-0111020MMD-GWF
PLAINTIFFS' ANALYSIS OF WAITING PERIODS AS OF 5/12/2015

Inmate's name ¹ (committed to Lakes Crossing)	ID#	Case #(s)	Booking Date	Dept. #	Date Committed	Date Order Received	Date of Next Flight ²	Total Estimated Days Waiting ³
LOPEZ, BENJAMIN	7512172	C304720	2/7/2015	DC#9	3/20/2015	3/27/2015	6/18/2015	83
CLEVELAND, SHANNON	1225516	C301837	3/17/2015	DC#9	3/27/2015	4/6/2015	6/18/2015	73
TRUMBLE, ZACHARY	5973674	C304413; C306260	1/13/2015; 3/27/2015	DC#9	3/27/2015; 5/8/2015	4/6/2015	6/18/2015	73
RODRIGUEZ, TAZ	5109228	C304330	1/8/2015	DC#9	3/27/2015	4/6/2015	6/18/2015	73
ROSE JR, CLARENCE	2795515	C301989	9/9/2014	DC#9	3/27/2015	4/6/2015	6/18/2015	73
ALTAMARINO, ARMONDO	1525755	C292258	1/22/2015	DC#9	3/27/2015	4/6/2015	6/18/2015	73
DURAN, NICHOLAS	2877355	C289703	2/7/2015	DC#9	3/27/2015	4/6/2015	6/18/2015	73
TRASK, ROBERT (FORM VI)	1892114	C304731	1/30/2015	DC#9	3/27/2015	4/6/2015	6/18/2015	73
KENNERK, JEFFREY	8089668	C304971	1/11/2015	DC#9	4/3/2015	4/10/2015	7/2/2015	83
BLACK, RONELLA	6004736	C304734	2/9/2015	DC#9	4/3/2015	4/10/2015	7/2/2015	83
MOODY, JOSEPH	1161668	C305512; C303234	3/12/2015; 11/5/2014	DC#9	4/3/2015	4/10/2015	7/2/2015	83
STEVEN, DALE AKA: WOODARD	1064485	C298658	2/19/2015	DC#9	4/3/2015	4/10/2015	7/2/2015	83
WATTS JR, KENNETH	1829273	C303484; C305716	4/10/2015; 3/25/2015	DC#9	4/10/2015	4/17/2015	7/2/2015	90
BURKETT, CHARLES	1956120	C300644	8/13/2014	DC#9	4/10/2015	4/17/2015	7/2/2015	76
SANCHEZ, MARIO	7510618	C303038	11/21/2014	DC#9	4/17/2015	4/27/2015	7/2/2015	66
SHEAFE, ADAM (FUGITIVE)	1798846	C303255; C303259; C304917; C303275	12/4/2014; 11/25/2015; 1/28/2015; 11/25/2014	DC#9	4/17/2015	4/27/2015	7/2/2015	66
PALADINO, ISAAC AKA: TREJO-SANTOYO	8013059	C298407	4/17/2015	DC#9	4/17/2015	4/27/2015	7/16/2015	80
LEFORE, MICHAEL	2702534	C304945	2/14/2015	DC#9	4/17/2015	4/27/2015	7/16/2015	80
GIPSON, DONNA	2807643	C304968	2/20/2015	DC#9	4/17/2015	4/27/2015	7/16/2015	80
STRONG, ODDI	5367552	C305320	3/15/2015	DC#9	4/17/2015	4/27/2015	7/16/2015	80
PORTER, ALFRED	5312113	C305416	3/7/2015	DC#9	4/17/2015	4/27/2015	7/16/2015	80
STUDT, LATONYA	2867688	C305788	3/23/2015	DC#9	5/1/2015	5/8/2015	7/16/2015	69
WILKERSON, RODREEKA	1920698	C305653	4/5/2015	DC#9	5/1/2015	5/8/2015	7/16/2015	69
STARNES, LAMARIUS	1856508	C305639	4/6/2015	DC#9	5/1/2015	5/8/2015	7/16/2015	69
MARTIN, DENNIS	2869150	C305595	4/1/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
BERTAGNA, GABRIEL	1850957	C305580	3/17/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
FERGUSON, CHRISTOPHER	2889326	C305257	3/17/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	97

BURNSIDE V. WHITELEY, U.S. DIST. NV. CASE NO. 2:13-CV-0111020MMD-GWF
PLAINTIFFS' ANALYSIS OF WAITING PERIODS AS OF 5/12/2015

Inmate's name ¹ (committed to Lakes Crossing)	ID#	Case #(s)	Booking Date	Dept. #	Date Committed	Date Order Received	Date of Next Flight ²	Total Estimated Days Waiting ³
SANCHEZ, CHRISTINA	178444	C305157	2/17/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
THOMAS, DONALD	195294	C305640; C305094	5/1/2015; 3/13/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
PAGE, MICHAEL	5995810	C305782; C298151	4/3/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
BENSON, NATHAN	1937923	C290667	4/29/2015	DC#9	5/1/2015	5/8/2015	8/6/2015	90
RIVERAABARCA, JUAN	7016258	C304437	1/30/2015	DC#9	5/8/2015	5/8/2015	8/6/2015	90
DOEBO, ERIC	1978357	C305919	3/30/2015	DC#9	5/8/2015		8/6/2015	90
WILLIAMSON, KATTAWNA	1156584	C305900	4/11/2015	DC#9	5/8/2015		8/20/2015	104
MIMMS, DESIRE	1691540	C305887	3/20/2015	DC#9	5/8/2015		8/20/2015	104
MACDONALD, JARED	8095523	C306006; C305883	3/29/2015	DC#9	5/8/2015		8/20/2015	104
PETERSON, MISTIE	2807096	C298115	11/6/2014	DC#9	5/8/2015		8/20/2015	104
							8/20/2015	104
OFF LIST								
BAILEY, LEONARD								
SURRENDER 2/20/15	5997239	C298995	NIC	DC#9	1/23/2015			

WAIT TIME AVERAGES (in days):

Mean: 80.5 (4749 days / 59 inmates)
Median: 80

EXHIBIT 2

From: Paula Axe [mailto:P9125A@LVMPD.COM]

Sent: Tuesday, May 12, 2015 11:56 AM

To: CCDC DST; Christina Greene; Christy Craig; Craig, Christy; Darren Hardin; David Devaney; David Escobar; Dr Ronald Schwartz; Dr. Betsy Neighbors; Estee DelPadre; Fred Meyer; Inmate Accounts; Janet Ashby; Jennifer Togliatti; Jenny Belka; Juancho Trinidad; Kathryn Russell; KATHY BANTO; Kendra Ngadjou; Nancy Patterson; Patricia Berry; patricia vaughns; Paula Axe; Rob Reed; Robert Wolfe; Rose Najera; Sandra Molina; Sharilyn Ethridge; Susanne M. Sliwa; Tess Driver; Thomas Richards; Trevor Neville; William Teel; Zarina Licalde

Subject: FUTURE LAKES MOVES

Due to the bed availability at Lakes they have reduced the amount of inmates for the 5/28/15 flight. There is also a possibility that the 6/4/15 flight might also be reduced because of bed availability.

Inmate's name (committed to Lakes Crossing)	ID#	Case #	Bkg Date	Dept #	Date	Committed
NEXT FLIGHT 5/14/15						
LARIOS, ANTHONY	2706708	C280407	8/4/2014	DC#9		2/6/2015
		C300314	8/4/2014	DC#9		2/6/2015
POE, CHRISTIAN	2840166	C286484	10/30/2014	DC#9		2/13/2015
		C302476	10/30/2014	DC#9		2/13/2015
MILLIRON, JOHN	1879677	C303873	1/14/2015	DC#9		2/13/2015
		C306421	3/28/2015	DC#9		5/8/2015
CABACUNGAN, EDGAR	1583374	C303842	12/31/2014	DC#9		2/13/2015
WEINDL, JAIME	2706409	C303835	12/29/2014	DC#9		2/13/2015
WALEMA, LAWRENCE	1770275	C301363	9/13/2014	DC#9		2/13/2015
ROBINSON, CHRISTOPHER	640672	C303907	1/14/2015	DC#9		2/20/2015
HILL, LAKIESHIA(NXT FLGT PER JUDGE)	1621931	C297735	2/18/2015	DC#9		4/25/2015
NEXT FLIGHT 5/28/15						
WINTERS, GEORGE	1922037	C303301	12/7/2014	DC#9		2/20/2015
STARKS, SAMANTHA	1915112	C303690	12/5/2014	DC#9		2/20/2015
		C301863	2/20/2015	DC#9		2/20/2015
MARTINEZ, SANDY	1830220	C298186	10/16/2014	DC#9		2/20/2015
RICHMOND, MILTON	209137	C301732	9/26/2014	DC#9		2/20/2015
TURNER, DOMINIC	5567330	C304187	12/23/2014	DC#9		2/27/2015
BENSON, LEMARC	2704145	C302474	11/1/2014	DC#9		2/27/2015
		C302764	11/1/2014	DC#9		3/13/2015
NEXT FLIGHT 6/4/15						
SILVA, ANTONIO	2770411	C304727	3/6/2015	DC#9		3/6/2015
		C304401	1/27/2015	DC#9		3/6/2015
JACKSON, DONALD	1119906	C304328	1/29/2015	DC#9		3/6/2015
		C304326	2/11/2015	DC#9		3/6/2015
ARRIETA, BRUCE	7015635	C303781	12/31/2014	DC#9		3/6/2015
FORTH, DANIEL	1802603	C303135	12/31/2014	DC#9		3/6/2015

		C301547	9/18/2014	DC#9	3/20/2015
OROZCO, JULIAN	5796174	C303644	12/26/2014	DC#9	3/20/2015
BLAIR, CHRISTINA	2867054	C304108	3/5/2015	DC#9	3/20/2015
		C304728	1/14/2016	DC#9	3/20/2015
JOHNSON, SARA AKA: CUNNINGHAM	964352	C304567	2/5/2015	DC#8	3/20/2015
DELACERDA, CESAR	2677380	C304721	3/20/2015	DC#9	3/20/2015
		C304726	2/7/2015	DC#9	3/20/2015
NEXT FLIGHT 6/18/15					
LOPEZ, BENJAMIN	7512172	C304720	2/7/2015	DC#9	3/20/2015
CLEVELAND, SHANNON	1225516	C301837	3/17/2015	DC#9	3/27/2015
TRUMBLE, ZACHARY	5973674	C304413	1/13/2015	DC#9	3/27/2015
		C306260	3/27/2015	DC#9	5/8/2015
RODRIGUEZ, TAZ	5109228	C304330	1/8/2015	DC#9	3/27/2015
ROSE JR, CLARENCE	2795515	C301989	9/9/2014	DC#8	3/27/2015
ALTAMARINO, ARMONDO	1525755	C292258	1/22/2015	DC#9	3/27/2015
DURAN, NICHOLAS	2877355	C289703	2/7/2015	DC#9	3/27/2015
TRASK, ROBERT (FORM VI)	1892114	C304731	1/30/2015	DC#9	3/27/2015

NEXT FLIGHT 7/2/15					
KENNERK, JEFFREY	8089668	C304971	1/11/2015	DC#9	4/3/2015
BLACK, RONELLA	6004736	C304734	2/8/2015	DC#9	4/3/2015
MOODY, JOSEPH	1161668	C305512	3/12/2015	DC#9	4/3/2015
		C303234	11/5/2014	DC#9	4/3/2015
STEVEN, DALE AKA: WOODARD	1064485	C298658	2/19/2015	DC#9	4/3/2015
WATTS JR, KENNETH	1829273	C303484	4/10/2015	DC#9	4/10/2015
		C305716	3/25/2015	DC#9	4/10/2015
BURKETT, CHARLES	1956120	C300644	8/13/2014	DC#9	4/10/2015
SANCHEZ, MARIO	7510618	C303038	11/21/2014	DC#9	4/17/2015
SHEAFE, ADAM (FUGITIVE)	1798846	C303255	12/4/2014	DC#9	4/17/2015
		C303259	11/25/2015	DC#9	4/17/2015
		C304917	1/28/2015	DC#9	4/17/2015
		C303275	11/25/2014	DC#9	4/17/2015
NEXT FLIGHT 7/16/15					
PALADINO, ISAAC AKA: TREJO-SANTOYO	8013059	C296407	4/17/2015	DC#9	4/17/2015
LEPORE, MICHAEL	2702534	C304945	2/14/2015	DC#9	4/17/2015
GIPSON, DONNA	2807643	C304968	2/20/2015	DC#9	4/17/2015
STRONG, CODI	5367562	C305320	3/15/2015	DC#9	4/17/2015
PORTER, ALFRED	5312113	C305416	3/7/2015	DC#9	4/17/2015
STUDT, LATONYA	2867688	C305788	3/23/2015	DC#9	5/1/2015
WILKERSON, RODREEKA	1920698	C305653	4/3/2015	DC#9	5/1/2015
STARNES, LAMARIUS	1856508	C305639	4/6/2015	DC#9	5/1/2015
NEXT FLIGHT 8/6/15					
MARTIN, DENNIS	2889150	C305595	4/1/2015	DC#9	5/1/2015
BERTAGNA, GABRIEL	1850957	C305580	3/17/2015	DC#9	5/1/2015
FERGUSON, CHRISTOPHER	2889326	C305237	3/17/2015	DC#9	5/1/2015
SANCHEZ, CHRISTINA	1784444	C305157	2/17/2015	DC#9	5/1/2015
THOMAS, DONALD	195294	C305640	5/1/2015	DC#9	5/1/2015
		C305094	3/13/2015	DC#9	5/1/2015
PAGE, MICHAEL	5995810	C305782	4/3/2015	DC#9	5/1/2015
		C298151	4/3/2015	DC#9	5/1/2015
BENSON, NATHAN	1937923	C290667	4/29/2015	DC#9	5/1/2015

RIVERAABARCA, JUAN	7016258	C304437	1/30/2015	DC#9	5/8/2015
NEXT FLIGHT 8/20/15					
DOEBO, ERIC	1978357	C305919	3/30/2015	DC#9	5/8/2015
WILLIAMSON, KATTAWNA	1156584	C305900	4/11/2015	DC#9	5/8/2015
MIMMS, DESIRE	1891540	C305887	3/20/2015	DC#9	5/8/2015
MACDONALD, JARED	8095523	C306006	3/29/2015	DC#9	5/8/2015
		C305883	3/29/2015	DC#9	5/8/2015
PETERSON, MISTIE	2807096	C298115	11/6/2014	DC#9	5/8/2015
OFF LIST					
BAILEY, LEONARD SURRENDER 2/20/15	5997239	C298995	NIC	DC#9	1/23/2015

Paula Axe
 NSP/Lakes Liason
 L.E.S.T/CCDC
 PH# 702-671-5913
 Fax# 702-671-3763

EXHIBIT 5

1 ADAM PAUL LAXALT
2 Attorney General
3 JULIE A. SLABAUGH
4 Senior Deputy Attorney General
5 Nevada Bar No. 5783
6 Bureau of Government Affairs
7 Health and Human Services
8 100 North Carson Street
9 Carson City, Nevada 89701
10 (775) 684-1131

11 *Attorneys for Defendants Richard Whitley,*
12 *Dr. Elizabeth Neighbors and Michael Willden*

13
14
15 **IN THE UNITED STATES DISTRICT COURT OF THE STATE OF NEVADA**
16 **DISTRICT OF NEVADA**

17 ERIC BURNSIDE; JAUMAL PUGH;
18 NICHOLAS DURAN, ,

19 Plaintiffs,

20 v.

21 RICHARD WHITLEY, in his official capacity as
22 acting Administrator of the Nevada Division of
23 Mental Health and Developmental Services, et
24 al.,

25 Defendants.

CASE NO. 2:13-cv-01102-MMD-GWF

26 **DEFENDANTS' RESPONSE TO**
27 **PLAINTIFFS' DEMAND FOR**
28 **COMPLIANCE WITH CONSENT**
DECREE, ORDER AND JUDGMENT

29 Defendants, by and through counsel, Adam Paul Laxalt, Attorney General of the State
30 of Nevada, and Julie A. Slabaugh, Senior Deputy Attorney General, hereby respond to
31 Plaintiffs' Demand for Compliance with Consent Decree, Order and Judgment.

32 Date this 17th day of June, 2015.

33 ADAM PAUL LAXALT
34 Attorney General

35 By: 

36 JULIE A. SLABAUGH
37 Senior Deputy Attorney General
38 Bureau of Government Affairs
39 Health & Human Services
40 Attorneys for Defendants

1 **PLAN TO ACHIEVE COMPLIANCE**

2 Defendants acknowledge that they have been unable to attain the goals set forth in the
3 consent decree within the timeframes set forth in the decree.¹ The number of commitments
4 from Clark County increased at an unanticipated rate and the length of stay has also
5 increased combining to thwart Defendants' attempts at compliance. In addition, the
6 movement of civil clients into private psychiatric beds was slower than anticipated. This
7 resulted in the civil beds at the Rawson-Neal hospital remaining full and the backup of civil
8 clients in local emergency rooms remaining high until recently. However, the MCO and
9 Medicaid process has begun moving forward and additional private beds have opened for
10 these individuals in Las Vegas resulting in open beds at the Rawson-Neal hospital inpatient
11 unit available for use for forensic clients.

12 Defendants are working to open the Rapid Stabilization Unit (RSU, formerly the POU)
13 at the Rawson-Neal hospital for forensic clients. The RSU has been used as the entry unit for
14 civil clients committed to the Rawson-Neal hospital. The RSU will begin housing forensic
15 clients on July 8, 2015. Staff from Lake's Crossing have traveled to Las Vegas and conducted
16 two days of training with RSU staff regarding the security necessary for the forensic clients as
17 well as training clinicians in restoration treatment. Another training on the process used in
18 receiving and restoring forensic clients will take place prior to the initial placement of forensic
19 clients at the RSU.

20 Defendants anticipate approximately twelve (12) forensic clients currently housed at
21 Lake's Crossing will be able to be moved to the RSU. The clients will be transported down by
22 Lake's Crossing staff three at a time in order to make the transition for both the clients and the
23 RSU staff as smooth as possible. In addition, the Division of Public and Behavioral Health
24 (DPBH) will be contracting with Michael Mason, the former Lieutenant at Lake's Crossing, to

25 /////

26 /////

27
28 ¹ Defendants would note that in Exhibit 2, attached to Plaintiffs' demand, thirteen of the inmates listed were committed to Lake's pursuant to NRS 178.415 not NRS 178.425. Therefore, the consent decree does not apply to those individuals.

1 travel to Las Vegas and assist with evaluating the security needs at the RSU as well as
2 training staff in areas pertaining to security. It is anticipated that Mr. Mason will remain as a
3 contract consultant for the Stein hospital when it opens in the fall.

4 In addition to the above Lake's Crossing is proposing sending a Psychologist down to
5 reevaluate individuals on the wait list that are currently cooperative and accepting treatment in
6 the Clark County Detention Center. The candidates could be chosen by reviewing the pre-
7 commitment reports and discussions with the medical provider at CCDC.

8 In Washoe County, Lake's Crossing is entering into discussions with the jail and the
9 medical provider at the jail to institute some further evaluation, and where determined
10 appropriate, treatment while the individuals are waiting for a bed at Lake's Crossing.² This
11 would involve beginning the legal process classes with individuals at the jail and an evaluation
12 to determine if medication is necessary. If medication is necessary and the individual will
13 accept medication, Lake's staff will work with the medical provider at the jail to provide the
14 medications. If the individual refuses medication Lake's is exploring the possibility of
15 instituting a process to initiate a Sell hearing with the intent being that, at the time a bed is
16 available at Lake's, a Sell hearing will at least be scheduled. In addition, if an individual is
17 identified that needs symptom directed individual therapy Lake's Crossing staff can initiate
18 that therapy while the individual is waiting for a bed at Lake's Crossing. All individuals that
19 accept treatment while waiting in the jail will still be transferred to Lake's Crossing as soon as
20 a bed becomes available. DPBH is open to discussing a similar approach in Clark County.

21 An assessment of the client's housed in the main building and the annex is conducted
22 every Tuesday to identify individuals who have progressed in their treatment to the point
23 where they can be safely double bunked with another client. Lake's Crossing continues to
24 double bunk as many individuals as possible. This assessment is done twice in the weeks
25 when a plane arrives from Clark County. There are currently eight clients double bunked.

26 Finally, Stein hospital is scheduled to be turned over from State Building and Grounds,
27 to DPBH on October 1, 2015, which is a slight delay from the date that was anticipated when
28

² This discussion was initiated at the behest of Judge Stiglich of the Second Judicial District Court.

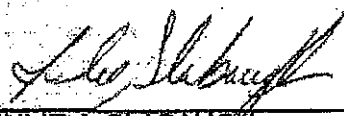
1 entering into the consent decree. DPBH is meeting biweekly to plan for the opening and
2 staffing of Stein. Unfortunately the Legislature set many of the positions for hire for Stein on
3 October 1, 2015. As a result most of the forensic staff cannot actually be hired until that date.
4 The Legislature did approve ninety-one (91) positions to be hired and an additional sixty-three
5 (63) current positions will transfer to the Stein hospital for a total of 154 staff. DPBH has sixty
6 staff, currently employed at Rawson-Neal, who have expressed an interest in transferring to
7 Stein and those positions can be moved as soon as Stein is opened. In addition, the process
8 of recruitment, for forensic staff, has begun which would include the application process, the
9 background checks, the physical testing required by P.O.S.T. and the psychological testing.
10 Finally, the Sergeant's position can be hired on July 1, 2015, and recruitment is beginning for
11 that position. It is anticipated that Mr. Mason and the Sergeant will assist in the hiring of the
12 remaining forensic staff.

13 Defendants are well aware that they have not met the goals set forth in the consent
14 decree and continue to struggle to meet those goals. Defendants welcome any input the
15 Plaintiffs can offer in an attempt to improve the process with an ultimate goal of meeting the
16 required timeframes once the Stein hospital opens.

17 Date this 17th day of June, 2015.

18 ADAM PAUL LAXALT
19 Attorney General

20
21 By:

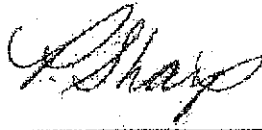

22 JULIE A. SLABAUGH
23 Senior Deputy Attorney General
24 Bureau of Government Affairs
25 Health & Human Services
26 Attorneys for Defendants
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 17th day of June, 2015, I served a true and correct copy of the foregoing "Defendants' Response to Plaintiffs' Demand for Compliance with Consent Decree, Order and Judgment" on the following parties by depositing a true and correct copy with the U. S. Postal Service:

Ms. Christy Craig
Chief Deputy Public Defender
Clark County Public Defender's Office
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
craigcl@co.clark.nv.us

Ms. Margaret A. McLetchie, Esquire
Langford McLetchie, LLC
616 South 8th Street
Las Vegas, Nevada 89101
Maggie@nvlitigation.com



1838 Account No.

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. CARSON STREET

CARSON CITY, NEVADA 89701-4717

Return Service Requested

1030

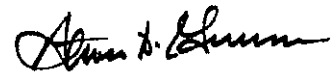
MS CHRISTY CRAIG
CHIEF DEPUTY PUBLIC DEFENDER
CLARK COUNTY PUBLIC DEFENDERS
OFFICE
309 S THIRD ST STE 226
LAS VEGAS NV 89155

ES10136001 COT5

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CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 BARTER PACE
6 Chief Deputy District Attorney
7 Nevada Bar #4353
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 JOHN DEMON MORGAN,
13 #1965837

14 Defendant.

CASE NO: C-14-302450-1

DEPT NO: IX

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

16 DATE OF HEARING: 7/31/15
17 TIME OF HEARING: 9:00 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through BARTER PACE, Chief Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss.

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

24 **POINTS AND AUTHORITIES**

25 The defendant has moved this Court to dismiss this case because of the time the
26 defendant is having to wait before the defendant can be transported to Lakes Crossing for
27 further evaluation and/or restoration of competency. The defendant is seeking a remedy in
28 this criminal case that is not cognizable at law and has failed to cite a single precedent in

1 support of the defendant's position. The defendant does cite an unpublished federal civil case
2 against Lakes Crossing and the Director of the Nevada Department of Health and Human
3 Services (*Burnside et al v. Whitley*, 2:13-cv-01102-MMD-GWF) but that case is not only
4 unpublished but has no precedential bearing on this case. The Defendant also cites to *Oregon*
5 *Advocacy Center v. Mink*, 322 F.3d 1101 (9th cir. 2003). This matter is also a civil matter
6 requiring the State of Oregon to transport defendants from jail to the Oregon State Hospital
7 within a specific time period under Oregon's statutes and law. *Advocacy Center v. Mink*, has
8 never been cited in a criminal case for the proposition that the criminal case should be
9 dismissed. Failure to cite relevant authority is sufficient grounds alone to deny the defendant's
10 Motion. *Leaders v. State*, 92 Nev. 250, 252, 548 P.2d 1374 (1976).

11 The State of Nevada has taken substantial and very expensive steps to alleviate the
12 waiting period for the transport of prisoners to Lakes Crossing. A little more than a year ago
13 Lakes Crossing opened ten additional beds at the Lakes Crossing Annex. Also earlier this
14 month Lakes Crossing opened twelve new beds at Rawson-Neal, here in Las Vegas, for Lakes
15 commitments. The new Unit is called the Rapid Stabilization Unit. Both openings required
16 additional funding.

17 Lakes has also gone to double bunking defendants who have been committed to Lakes.
18 The double bunking is only utilized after the defendants have been screened for
19 appropriateness for the shared quarters and that appropriateness is regularly reviewed.

20 Pursuant to lobbying by the Administrator, the Nevada Legislature approved funding
21 for Stein Hospital. Stein Hospital will be turned over to the Administrator and all staff should
22 be hired by October 1, 2015. Stein Hospital will house forty two of the patients currently
23 under Lakes Crossing commitments. This facility should be open and accepting patients in
24 the middle of November.

25 The State has also participated in the Competency Court Task Force. Through the Task
26 Force the State is attempting to introduce plans for doctors from the State to travel to the jail
27 and further screen those committed to Lakes to see if they have been stabilized and can be
28 removed from the list. For all of the above representations regarding the Administrator's

1 efforts see attached Defendants' Third Report Required Under The Consent Decree; *Burnside*
2 *et al v. Whitley*, 2:13-cv-01102-MMD-GWF.

3 The Clark County District Attorney has likewise done everything within its power to
4 assist this Court and the State of Nevada in meeting the statutory requirements and reduce the
5 waiting time for every defendants' transport to Lakes Crossing. The Clark County District
6 Attorney has attended every Competency Task Force Meeting scheduled and actively
7 participated in the process of identifying individuals that could be diverted from the Lakes
8 Crossing transport waiting list. Through regular participation the Task Force was able to
9 reduce the waiting period to about forty five days at the point when the Task Force meetings
10 were discontinued. The Task Force was discontinued because of apparent satisfactory
11 progress in reducing the waiting period. Because of unanticipated increases in the number of
12 Commitments to Lakes Crossing the numbers have risen again in the last few months. The
13 Attorney General and District Attorney have been attempting to restart the task force meetings
14 but have been receiving resistance from the Public Defender's Office in actually setting a
15 meeting. At those meetings individuals are regularly identified who could be diverted from
16 the waiting list. Clark County Detention Center staff and medical contractors attend the task
17 force meetings and make recommendations for individuals that might be diverted from the
18 waiting list. Just last week the Assistant District Attorney, Christopher Lalli, met with Clark
19 County Detention Center administration and representatives of NaphCare. The purpose of the
20 meeting was to enlist their assistance in identifying individuals who have stabilized on
21 medications or detoxed from drugs where it might be useful to re-evaluate them for
22 competence. The District Attorney also participated with the Public Defender in establishing
23 the Misdemeanor Diversion Program. All defendants who have been found incompetent in
24 misdemeanor cases have been diverted through the Misdemeanor Diversion Program since
25 late 2013. The State has also agreed to divert most gross misdemeanor and even some non-
26 violent low level felonies through the Misdemeanor Diversion Program. The main reason this
27 was done was to reduce the number of defendant's having to go to Lakes Crossing for
28 restoration to competence.

1 CONCLUSION

2 It is clear that the defendant has sought a remedy that is not cognizable before this
3 Court. Likewise, the State of Nevada and the Clark County District Attorney has done all
4 that can be done at this point to alleviate to backlog of those waiting for transport to Lakes
5 Crossing. Therefore, the defendant's Motion to Dismiss should be denied.

6
7 DATED this 27th day of July, 2015.

8 Respectfully submitted,

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

11 BY /s/ Barter Pace
12 BARTER PACE
13 Chief Deputy District Attorney
Nevada Bar #4353
14
15

16 CERTIFICATE OF ELECTRONIC FILING

17 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S MOTION
18 TO DISMISS, was made this 27th day of July, 2015, by Electronic Filing to:

19 Clark County Public Defender's Office
20 Email: pdclerk@clarkcountynv.gov
21

22 /s/ K. Banto
23 Secretary for the District Attorney's Office
24
25
26
27

28 BP/kb

1 ADAM PAUL LAXALT
Attorney General
2 JULIE A. SLABAUGH
Senior Deputy Attorney General
3 Nevada Bar No. 5783
Bureau of Government Affairs
4 Health and Human Services
100 North Carson Street
5 Carson City, Nevada 89701
(775) 684-1131
6 *Attorneys for Defendants Richard Whitley,
Dr. Elizabeth Neighbors and Michael Willden*

7
8 **IN THE UNITED STATES DISTRICT COURT OF THE STATE OF NEVADA**
9 **DISTRICT OF NEVADA**

10 ERIC BURNSIDE; JAUMAL PUGH;
NICHOLAS DURAN, ,

11 Plaintiffs,

12 v.

13 RICHARD WHITLEY, in his official capacity as
14 acting Administrator of the Nevada Division of
Mental Health and Developmental Services, *et*
15 *al.*,

16 Defendants.

CASE NO. 2:13-cv-01102-MMD-GWF

**DEFENDANTS' THIRD REPORT
REQUIRED UNDER CONSENT DECREE**

17 Defendants, by and through counsel, Adam Paul Laxalt, Attorney General of the State
18 of Nevada, and Julie A. Slabaugh, Senior Deputy Attorney General, submit their third report to
19 Plaintiffs' counsel pursuant to the consent decree filed January 29, 2014. Defendants have
20 attempted to comply with the requirements of the consent decree to the best of their ability
21 during this reporting period. However, Defendants acknowledge that they have been unable
22 to attain the goals set forth in the consent decree within the timeframes set forth in the decree.

23 The number of commitments from Clark County increased at an unanticipated rate and
24 the length of stay has also increased combining to thwart Defendants' attempts at compliance.
25 In addition, the movement of civil clients into private psychiatric beds was slower than
26 anticipated. This resulted in the civil beds at the Rawson-Neal Hospital remaining full and the
27 backup of civil clients in local emergency rooms remaining high until recently. However, the
28 MCO and Medicaid process has begun moving forward and additional private beds have

1 opened for these individuals in Las Vegas resulting in open beds at the Rawson-Neal Hospital
2 inpatient unit available for use for forensic clients.

3 I. Report on Implementation of Plan

4 A. Interim Measures

5 Defendants are working to open the Rapid Stabilization Unit (RSU, formerly the POU)
6 at the Rawson-Neal Hospital for forensic clients. The RSU has been used as the entry unit for
7 civil clients committed to the Rawson-Neal Hospital. The RSU will begin housing forensic
8 clients on July 8, 2015. Staff from Lake's Crossing have traveled to Las Vegas and conducted
9 two days of training with RSU staff regarding the security necessary for the forensic clients, as
10 well as training clinicians in restoration treatment. Prior to the initial placement of forensic
11 clients at the RSU, a second training on the process used in receiving and restoring forensic
12 clients will take place.

13 Defendants anticipate approximately twelve (12) forensic clients currently housed at
14 Lake's Crossing will be able to be moved to the RSU. The clients will be transported down by
15 Lake's Crossing staff three at a time, in order to make the transition for both the clients and
16 the RSU staff as smooth as possible. In addition, the Division of Public and Behavioral Health
17 (DPBH) will be contracting with Michael Mason, the former Lieutenant at Lake's Crossing, to
18 travel to Las Vegas and assist with evaluating the security needs at the RSU as well as
19 training staff in areas pertaining to security. It is anticipated that Mr. Mason will remain as a
20 contract consultant for the Stein Hospital when it opens in the fall.

21 In addition to the above, Lake's Crossing is proposing sending a psychologist down to
22 re-evaluate individuals on the wait list that are currently cooperative and accepting treatment
23 in the Clark County Detention Center. The candidates could be chosen by reviewing the pre-
24 commitment reports and discussions with the medical provider at CCDC.

25 In Washoe County, Lake's Crossing has entered into discussions with the jail and the
26 medical provider at the jail to institute some further evaluation, and where determined
27 appropriate, treatment while the individuals are waiting for a bed at Lake's Crossing. The
28 protocol Lake's has worked out with the jail involves:

1. Establishing a point of contact with the medical provider to obtain updates on client's care and progress;
2. Generating a list of clients to be reassessed on a biweekly basis;
3. Visiting the client at the jail and completing a consultation sheet for an update to the court and medical staff;
4. Determining if the client would benefit from possible interventions or if the client has accepted treatment and attained competency;
5. Including recommendations in the consultation report and contacting appropriate providers for: a) medical staff for referral for medications; b) legal process educator for legal process class; c) therapist for brief focused therapeutic interventions;
6. Completing suggested recommended interventions, if the client consents;
7. Reassessing the client when the interventions are complete if they have not already been transferred to Lake's;
8. Transfer any client for whom a bed becomes available immediately if they are not competent, but are deemed to be restorable.

Lake's will begin the above referenced protocols as soon as the final approval from Washoe County has been obtained. DPBH is open to discussing a similar approach in Clark County.

An assessment of the client's housed in the main building and the annex is conducted every Tuesday to identify individuals who have progressed in their treatment to the point where they can be safely double bunked with another client. Lake's Crossing continues to double bunk as many individuals as possible. This assessment is done twice in the weeks when a plane arrives from Clark County. There are currently six clients double bunked.

B. Stein Hospital

Stein hospital is scheduled to be turned over from State Building and Grounds, to DPBH on October 1, 2015, which is a slight delay from the date that was anticipated when entering into the consent decree. DPBH is meeting biweekly to plan for the opening and

1 staffing of Stein. Unfortunately, the Legislature set many of the positions for hire for Stein on
2 October 1, 2015. As a result, most of the forensic staff cannot actually be hired until that date.
3 The Legislature did approve ninety-one (91) positions to be hired and an additional sixty-three
4 (63) current positions will transfer to the Stein Hospital, for a total of one hundred fifty-four
5 (154) staff. DPBH has sixty (60) staff, currently employed at Rawson-Neal, who have
6 expressed an interest in transferring to Stein and those positions can be moved as soon as
7 Stein is opened. In addition, the process of recruitment, for forensic staff, has begun which
8 would include the application process, the background checks, the physical testing required
9 by P.O.S.T. and the psychological testing. Finally, the Sergeant's position can be hired on
10 July 1, 2015, and recruitment is beginning for that position. It is anticipated that Mr. Mason
11 and the Sergeant will assist in the hiring of the remaining forensic staff.

12 C. Admissions to Lakes

13 Attached as Exhibit A is a table listing, for the last six months, the date orders were
14 received at Lakes, the date a bed was available, and the date the client was admitted.
15 Admissions continue to be constrained by the biweekly plane and flying clients up from Clark.

16 Date this 30th day of June, 2015.

17 ADAM PAUL LAXALT
18 Attorney General

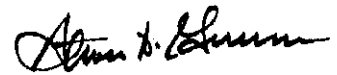
19 By: JULIE A. SLABAUGH
20 Senior Deputy Attorney General
21 Bureau of Government Affairs
22 Health & Human Services
23 Attorneys for Defendants
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada,
and that on the 30th day of June, 2015, I served a true and correct copy of the foregoing
"Defendants' Third Report Required Under Consent Decree" on the following party by
depositing for mailing with the U. S. Postal Service and by electronic mail:

Ms. Christy Craig
Chief Deputy Public Defender
Clark County Public Defender's Office
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
craigcl@co.clark.nv.us



CLERK OF THE COURT

1 ORDR
2
3
4

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

CASE NO. C-15-302450-1
DEPT NO. III

10 JOHN MORGAN,

11 Defendant.
12 _____

13 ORDER
14

15 This matter having come on for hearing on August 6, 2015 before the Honorable
16 DAVID BARKER, sitting for the Honorable DOUGLAS HERNDON with the agreement of
17 the parties. Defendant was present and represented by CHRISTY CRAIG, Chief Deputy
18 Public Defender; the Plaintiff was represented by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHRISTOPHER J. LALLI, Assistant District Attorney. Also
20 present was SUSANNE SLIWA, Senior Deputy Attorney General, representing Lakes
21 Crossing. Defendant's Motion to Dismiss seeks to dismiss the criminal action herein filed by
22 the Clark County District Attorney alleging Count I - Battery with Intent to Commit a Crime
23 and Count II - Robbery.
24

25 On May 15, 2015, District Court IX, presiding as competency court pursuant to
26 Administrative Order 07-7, considered the competency evaluations of Dr. Chambers and Dr.
27 Lenkeit. The court found that Mr. Morgan is incompetent and that he is dangerous to himself
28

1 and to society and that commitment is required for a determination of his ability to receive
2 treatment to competency and to attain competency.

3 Pursuant to NRS 178.425, the court thereafter ordered the Sheriff and/or the Division of
4 Mental Health and Developmental Services of the Department of Human Resources
5 ("Division") to convey Mr. Morgan "forthwith" into the custody of the Administrator of the
6 Division for detention and treatment at a secure facility operated by that Division. The only
7 secure facility currently operating is Lakes Crossing located in Sparks, Nevada.
8

9 The competency court's order was filed on May 22, 2015 and served on the Sheriff and
10 the Division.
11

12 Mr. Morgan is not scheduled to be transferred to Lakes Crossing until September 17,
13 2015. The total time in custody, from the date the order was filed and served until scheduled
14 transfer to Lakes is 118 days.

15 The Defendant argues that the 118 days awaiting transport and the history of systematic
16 delay, including the 2005 Federal Consent Decree that has not been followed, constitute a
17 violation of the Defendant's due process warranting dismissal of the underlying action.
18 Defendant acknowledges the problem does not lay with the Clark County District Attorney or
19 the Las Vegas Metropolitan Police Department who are responsible for the underlying action
20 and detaining the Defendant, but falls on the Division.
21

22 The State of Nevada does not dispute the history of systematic delay presented by the
23 Defendant. The State of Nevada asks the court instead to look forward not backward.
24

25 The State argues that it has taken substantial and very expensive steps to alleviate the
26 waiting period for the transport of defendants to Lakes Crossing. A little more than a year ago
27 Lakes Crossing opened 10 additional beds at the Lakes Crossing Annex. Also earlier this
28

1 month Lakes Crossing opened 12 new beds at Rawson-Neal, here in Las Vegas, for Lakes
2 commitments. The new unit is called the Rapid Stabilization Unit. Both openings required
3 additional funding.
4

5 Lakes has also gone to double bunking of defendants who have been committed to
6 Lakes. The double bunking is only utilized after the defendants have been screened for
7 appropriateness for the shared quarters and that appropriateness is regularly reviewed.

8 Pursuant to lobbying by the Administrator, the Nevada legislature approved funding for
9 Stein Hospital. Stein Hospital will be turned over to the Administrator and all staff should be
10 hired by October 1, 2015. Stein Hospital will house 42 of the patients currently under Lakes
11 Crossing commitments. This facility should be open and accepting patients in the middle of
12 November.
13

14 The State has also participated in the Competency Court Task Force. Through the task
15 force, the State is attempting to introduce plans for doctors from the State to travel to the jail
16 and further screen those committed to Lakes to see if they have been stabilized and can be
17 removed from the list.
18

19 The State argues that these new or renewed efforts demonstrate their collective
20 commitment to meeting their statutory and constitutional responsibilities and the Motion to
21 Dismiss should be denied.
22

23 THE COURT FINDS dismissal of the primary action to be an extreme remedy. It is
24 necessary to balance the interests of the individual, who has been deemed by two experts to be
25 a danger to himself and to society, with the interests of the community. Now, therefore,

26 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is denied. Though the
27 Court articulated at the hearing on this matter the Defendant be conveyed within seven days to
28

1 Lake's Crossing, after additional consideration as outlined in this order and in a manner
2 consistent with the competency court order filed on May 22, 2015, it is further,

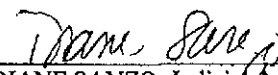
3 ORDERED that the Sheriff and/or designee of the Division of Mental Health and
4 Developmental Services of the Department of Human Resources convey the Defendant
5 forthwith.
6

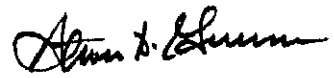
7 DATED this 13th day of August, 2015.

8
9
10 
11 DISTRICT COURT JUDGE

12 I hereby certify that on the date filed, a copy of this
13 Order was electronically served through the Eighth
Judicial District Court EFP system:

14 Christy Craig, Chief Deputy Public Defender
15 Christopher J. Lalli, Assistant District Attorney
Susanne M. Sliwa, Senior Deputy Attorney General

16 
17 DIANE SANZO, Judicial Assistant
18
19
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21
22
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26
27
28


CLERK OF THE COURT

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

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

10 THE STATE OF NEVADA,
11
12 Plaintiff,

CASE NO. C-14-302450-1
DEPT. NO. IX


13 JOHN MORGAN,
14
15 Defendant.

16 **EX PARTE ORDER FOR EXPEDITED TRANSCRIPT**

17 Upon the ex parte application of the above-named Defendant, JOHN MORGAN, by
18 and through, CHRISTY L. CRAIG, Deputy Public Defender, and good cause appearing therefor,

19 IT IS HEREBY ORDERED that the Certified Court Recorder YVETTE G. SISON,
20 prepare at State expense, an expedited transcript of the proceedings for case C-14-302450-1 heard
21 on July 31, 2015 in District Court Department 9.

22 DATED this 13th day of August, 2015.

23 
24 DISTRICT COURT JUDGE

25 Submitted by:
26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

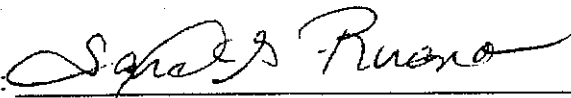
28 By 
CHRISTY L. CRAIG, #6262
Deputy Public Defender

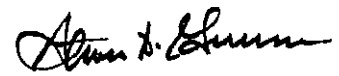
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of Ex Parte Order For Expedited Transcript for hearing heard on July 31, 2015 in District Department 9, was made this 25TH day of August, 2015 by Electronic Filings to:

COURT RECORDER YVETTE G. SISON
sisony@clarkcountycourts.us

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



CLERK OF THE COURT

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

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

10 THE STATE OF NEVADA,

11 Plaintiff,

CASE NO. C-14-302450-1

DEPT. NO. III

12 JOHN MORGAN,

13 Defendant.

14 **EX PARTE ORDER FOR EXPEDITED TRANSCRIPT**

15 Upon the ex parte application of the above-named Defendant, JOHN MORGAN, by
16 and through, CHRISTY L. CRAIG, Deputy Public Defender, and good cause appearing therefor,

17 IT IS HEREBY ORDERED that the Certified Court Recorder SARA
18 RICHARDSON, prepare at State expense, an expedited transcript of the proceedings for case C-
19 14-302450-1 heard on August 6, 2015 in District Court by Chief Judge David Barker.

20 DATED this 12th day of August, 2015.

21
22 
23 DISTRICT COURT JUDGE 

24
25 Submitted by:
26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

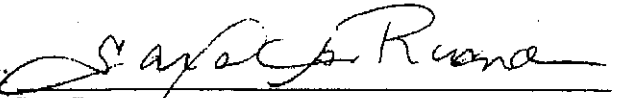
28 By 
CHRISTY L. CRAIG, #6262
Deputy Public Defender

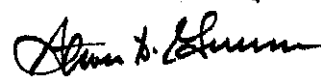
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of Ex Parte Order For Expedited Transcript for hearing heard on August 6, 2015 in District Department 3, was made this 25TH day of August, 2015 by Electronic Filings to:

COURT RECORDER SARA RICHARDSON
RichardsonS@clarkcountycourts.us

By 
Sara Ruano
Secretary for the Public Defender's Office



CLERK OF THE COURT

ORDR

Jennifer P. Togliatti
District Court Judge, Department IX
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-4395

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

John D. Morgan,

ID# 1965837,

Defendant.

Case No: C-14-302450-1

Dept. No: IX

ORDER TO TRANSPORT DEFENDANT FROM LAKE'S CROSSING

TO: LAKE'S CROSSING CENTER AND/OR CLARK COUNTY DETENTION
CENTER:

WHEREAS, on the **22nd day of May, 2015** pursuant to Order of the above-entitled Court, you were directed to transport the above-named Defendant to the custody of the Division of Mental Health and Developmental Services of the Department of Human Resources, or his designee, for necessary care and treatment; and,

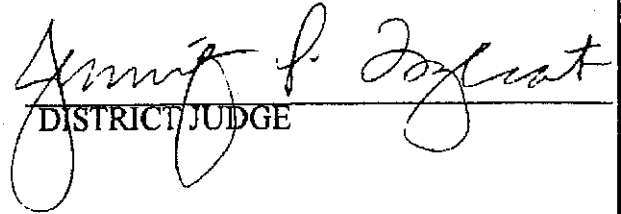
WHEREAS, the Defendant having been examined by **Drs. Henson, Fletcher & Wright** pursuant to NRS 178.455, with the reports of that examination being forwarded to the Court for its review thereof;

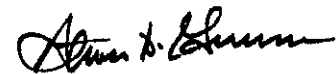
IT IS ORDERED that you, the Sheriff of Clark County and/or designee(s) of the Division of Mental Health and Developmental Services of the Department of Human Resources, are hereby ordered to transport the Defendant from the Lake's Crossing Center, Washoe County, Nevada, to the Clark County Detention Center, Las Vegas, Nevada, by **Friday, December 11, 2015 at 9:00 a.m.** when further proceedings have been scheduled by the Court in this matter.

IT IS FURTHER ORDERED that the Sheriff of Clark County, Nevada, shall accept

1 and retain custody of said Defendant in the Clark County Detention Center pending
2 completion of proceedings in the above-captioned matter, or until the further Order of this
3 Court, and that you continue the course of treatment of the Defendant as prescribed by the
4 Administrator of the Division of Mental Health and Developmental Services of the
5 Department of Human Resources or his designee.

6 DATED this 2nd day of December, 2015.

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9 DISTRICT JUDGE
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CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER J. LALLI
Assistant District Attorney
Nevada Bar #005398
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-VS-

JOHN DEMON MORGAN,
#1965837

Defendant.

CASE NO: C-14-302450-1

DEPT NO: IX

FINDINGS OF COMPETENCY

THIS MATTER having come on for hearing before the above-entitled Court on the 2nd day of December, 2015, and it appearing to the Court that, pursuant to NRS 178.425(1), the Sheriff was ordered to convey the Defendant forthwith, together with a copy of the complaint, the commitment and the physicians' certificate, if any, into the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Human Resources or his designee for detention or treatment at a secure facility operated by that Division or his designee; and, it appearing that, upon medical consultation, the Administrator or his designee has reported to the Court in writing his specific findings and opinion that the Defendant is of sufficient mentality to be able to understand the nature of the criminal charge against him and, by reason thereof, is able to assist his counsel in the defense interposed upon the trial or against the pronouncement of the judgment thereafter; now, therefore,

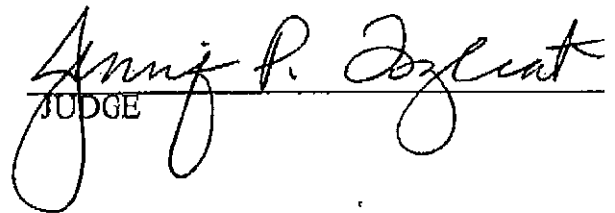
THE COURT FINDS, pursuant to NRS 178.460, that the said Defendant is competent

1 to stand trial in the above-entitled matter; and,

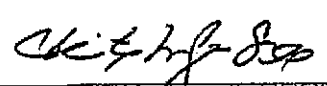
2 IT IS HEREBY ORDERED that you, the Administrator of the Division of Mental
3 Health and Developmental Services of the Department of Human Resources or your designee,
4 shall provide forthwith to the Director of Mental Health of the Clark County Detention Center,
5 true and complete copies of the Defendant's psychological evaluations, hospital course of
6 treatment and discharge summary; and,

7 IT IS FURTHER ORDERED that you, the Sheriff of Clark County, Nevada, shall
8 accept and retain custody of said Defendant in the Clark County Detention Center pending
9 completion of proceedings in the above-captioned matter, or until the further Order of this
10 Court.

11 DATED this 18th day of December, 2015.

12
13 
14 JUDGE

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

17
18 BY 
19 CHRISTOPHER J. LALLI
20 Assistant District Attorney
Nevada Bar #005398

21
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27 aew/Admin
28


CLERK OF THE COURT

0250
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOHN MORGAN,

Defendant.

CASE NO. C-14-302450-1

DEPT. NO. III

DATE: January 7, 2016
TIME: 9:00 a.m.

MOTION FOR OWN RECOGNIZANCE RELEASE

COMES NOW, the defendant, JOHN MORGAN, by and through NADIA HOJJAT, Deputy Public Defender, and hereby asks this Honorable Court to release the Defendant on his own recognizance.

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

DATED this 31st of December, 2015.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Nadia Hojjat
NADIA HOJJAT, #12401
Deputy Public Defender

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FACTS AND PROCEDURAL HISTORY

The following are the facts as alleged in the police report: On October 30, 2014, police were called to an alleged robbery at a business on 4605 E. Flamingo Road. Upon arrival, the alleged victim, Maria Verduzco, told police that she observed a black male removing soup and peanuts from the shelves in her store and placing them in his backpack. The male then went to the cash register to pay for one item. Ms. Verduzco said she then approached the male and asked him to remove the other items from his backpack. At that time, the male allegedly punched her in the chest with a closed fist causing her to fall to the ground. Ms. Verduzco then grabbed a metal stick and began swinging it at the male, striking his backpack and causing the contents of the backpack to fall out. Paperwork from the backpack was retrieved by Ms. Verduzco and had the name "John Morgan" on it.

While officers were taking Ms. Verduzco's statement, an individual named Mario Gonzales, who was assumingly in the store for the interaction, told them he had spotted the male in the area. Police attempted to stop that male that was identified by Mr. Gonzales. That male then began running but was caught by police and identified as John Morgan. Ms. Verduzco positively identified John Morgan as the man who was in her store. Another individual, Rubi Cruz, could not identify John Morgan as the man in the store.

After being read Miranda, the Defendant responded as follows, "I'll talk to you but I'm not agreeing to that."

The police report does not indicate in what capacity Rubi Cruz or Mario Gonzales were witnesses. The police report indicates that Ms. Verduzco received medical attention from AMR, it does not indicate whether she ever sought additional medical attention in relation to this incident.

Mr. Morgan was arrested and charged with Robbery and Battery with Intent to Commit a Crime. He had a preliminary hearing in Justice Court and both counts were bound over for trial. At that time, his bail was set in the amount of \$20,000.

On December 1, 2014, after Mr. Morgan refused to enter a plea of Not Guilty to the charges in Lower Level Arraignment, the Defense requested that Mr. Morgan be evaluated to determine whether he was competent to proceed to trial. The evaluations returned split, with one doctor finding Mr. Morgan competent to proceed to trial and another finding him incompetent. A third evaluator

1 found Mr. Morgan competent to proceed and, after a challenge hearing was held before the
2 Honorable Judge Joseph Bonaventure Sr., the Defendant was declared competent to proceed to trial.

3 On February 12, 2015, Mr. Morgan appeared before this Honorable Court for his initial
4 arraignment. At that time, Defense Counsel again asserted that I did not believe Mr. Morgan was
5 competent to proceed to trial. This Honorable Court held that Judge Bonaventure Sr.'s ruling on the
6 issue of competency would stand. Mr. Morgan continued to refuse to enter a plea to the charges
7 against him. The Court entered a plea of Not Guilty on Mr. Morgan's behalf and set a trial date.

8 On April 16, 2015, Defense Counsel again raised the issue of competency before the Court.
9 At that time, Mr. Morgan appeared in court with half of his head shaved with random patches of hair
10 in various clumps around his head. He informed the Court that he wanted to represent himself in the
11 case. Defense Counsel again raised the issue of competency and asked for a new evaluation on
12 whether the Defendant was competent to proceed to trial. Mr. Morgan was sent to Competency
13 Court where both doctors who evaluated him found him not competent to proceed to trial. Mr.
14 Morgan was Ordered to be transported to Lakes Crossing on May 22, 2015.

15 On December 2, 2015, Mr. Morgan was deemed by the doctors at Lakes Crossing to be
16 competent to proceed to trial. Upon being returned to the Clark County Detention Center, Mr.
17 Morgan is now being held on a no bail hold, despite the fact that bail has never been addressed in
18 this case and no motion was made to change Mr. Morgan's bail to a no bail hold.

LAW AND ARGUMENT

Nevada Revised Statute ("NRS") 178.484 provides that bail must be set at an amount which in the judgment of the Court will reasonably ensure the appearance of the defendant and the safety of other persons and the community. In doing so, the statute directs that the Court consider the following factors in setting bail: 1) nature and circumstances of the offense charged; 2) financial ability of the defendant to give bail; 3) character of the defendant; 4) length of residence in the community; 5) status and history of employment; 6) relationships with the person's spouse and children, parents or other family members and with close friends; 7) reputation, character and mental condition; 8) prior criminal record, including, without limitation, any record of appearing or failing to appear after release on bail or without bail; 9) identity of responsible members of the community who would vouch for the reliability of the person; 10) nature of the offense with which the person is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing; 11) nature and seriousness of the danger to the alleged victim, any other person or the community that would be posed by the person's release; 12) likelihood of more criminal activity by the person after release; and 13) any other factors concerning the person's ties to the community or bearing on the risk that the person may willfully fail to appear. NRS 178.484; NRS 178.4853.

Under this standard, Mr. Morgan asks to be released on his Own Recognizance. Looking at Mr. Morgan's criminal record, there is some indication that the Pretrial Services Information Sheet for Mr. Morgan is incorrect. While the Defense does not have access to NCIC, a search through the New Mexico court database has revealed that Mr. Morgan has no criminal history in the state of New Mexico. Mr. Morgan does have a limited criminal history from the state of Minnesota; however the information reflected in the Pretrial Services Sheet still does not appear to accurately reflect Mr. Morgan's criminal history. Without the benefit of NCIC, the defense has been able to find the following convictions for Mr. Morgan: 4 misdemeanor convictions from 2006, 1 Gross Misdemeanor conviction from 2007, 1 felony conviction from 2007.

1 If the Defense is correct that this is the full criminal record of Mr. Morgan, he has not had a
2 criminal conviction in 9 years, almost a decade. Additionally, the grouping of Mr. Morgan's
3 convictions and then lack of any further convictions demonstrates that his mental health issues may
4 play a major role in his criminal behavior.

5 When medicated, Mr. Morgan appears to be a normal, functioning member of society,
6 working, going to school, and living his life. It is when Mr. Morgan is not on his medications that it
7 appears he begins having contact with law enforcement and getting arrested for crimes. Included in
8 Mr. Morgan's belongings when he was impounded was a resume. Even when mentally ill and
9 unmedicated at the time of this alleged crime, Mr. Morgan was actively trying to seek work and be a
10 productive member of society.

11 Currently, Mr. Morgan has received treatment from the doctors at Lakes Crossing and is
12 taking his medications, so his likelihood to commit a new crime, which is a factor the Court may
13 consider, is low. The Pretrial Services Sheet indicated that Mr. Morgan has only ever had 1 failure to
14 appear to court, so his history indicates that he does make his court appearances.

15 Additionally, Mr. Morgan has been in custody since October 30, 2014, which is fourteen
16 months as of the filing of this motion.

17
18 **CONCLUSION**

19 Mr. Morgan asks this Honorable Court to release him on his own recognizance or, in the
20 alternative, to set a reasonable bail in this case.

21 DATED this 31st of December, 2015.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24
25 By /s/ Nadia Hojjat
26 NADIA HOJJAT, #12401
27 Deputy Public Defender
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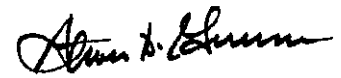
PLEASE TAKE NOTICE that the Clark County Public Defender's Office has set the foregoing Motion for hearing on the 7th day of January, 2016, at 9:00 a.m. in Department No. III of the District Court.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC FILING

District Attorneys Office
E-Mail Address:

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



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ELANA L. GRAHAM
6 Deputy District Attorney
7 Nevada Bar #011977
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 JOHN DEMON MORGAN, aka,
13 John Morgan,
14 #1965837

Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR OWN RECOGNIZANCE
16 RELEASE

17 DATE OF HEARING: 01/07/2016
18 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through ELANA L. GRAHAM, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Motion For Own
21 Recognizance Release.

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

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1 **POINTS AND AUTHORITIES**

2 Nevada Revised Statute 178.4853 states:

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

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

18 The State objects to Defendant being released on his own recognizance and also
19 requests this Court not lower Defendant's bail. Defendant is not a proper candidate for such
20 treatment considering the facts of the instant case and his criminal history.

21 The instant offense was captured on surveillance and a preliminary hearing was held.
22 On October 30, 2014, Defendant entered a convenience store and concealed a number of items
23 before approaching the checkout counter. Defendant put some items, other than what he had
24 concealed, on the counter to apparently purchase. Maria Verduzco, a clerk working at the store
25 observed, from closed circuit television in her office, Defendant preparing to steal the items
26 he concealed. Maria walked for her office to the counter and requested Defendant return the
27 concealed items. In response, Defendant violently struck Maria with such force that Maria
28 was forced from her feet and pushed back onto the ground. At this point, Defendant began to

1 flee the store. Maria jumped up and started trying to whack Defendant with a long and thin
2 metal clip used to display store merchandise. Defendant dropped from his backpack
3 paperwork, including two Clark County misdemeanor citations and an Own Recognizance
4 Release form with Defendant's name and identifiers. A witness who was in the store, Mario
5 Gonzalez, alerted police on the scene that he saw Defendant a walking a short distance from
6 the store. Police were able to apprehend Defendant.

7 Considering the factors in NRS 178.4853 in turn, this Honorable Court should not
8 release Defendant without bail and should not adjust his bail. First, the State is unsure how
9 long Defendant has been in Nevada but appears to not have been here long, as most of his
10 criminal history is from Minnesota and Illinois, as recently as 2013. Secondly, Defendant is
11 unemployed. The State cannot speak to the third factor in NRS 178.4853 other than to point
12 out that based on his criminal convictions, Defendant appears to have administered a steady
13 diet of violence and fearful conduct directed at the mother of his child. For the fourth factor,
14 Defendant's argument that he is mentally unstable does not support a release.

15 For the fifth factor, according to records received by the Clark County District
16 Attorney's Office, Defendant has a Minnesota 2007 misdemeanor Domestic Assault
17 conviction. He has a 2006 Minnesota misdemeanor Domestic Assault conviction, as well as a
18 2006 Minnesota misdemeanor Violation of Order for Protection conviction. All of
19 Defendant's Minnesota convictions involve the same victim, Chappelle Belcher, who is the
20 mother of Defendant's child. Defendant also has an Illinois 2001 misdemeanor Assault
21 conviction. Out of Nevada, Defendant has a 2005 misdemeanor Battery Domestic Violence
22 conviction involving Chappelle Belcher.

23 Defendant also has a Minnesota 2006 felony Theft conviction. For that offense,
24 Defendant surprised the mother of his child, Chappelle Belcher, at a nail salon with the
25 couple's child. Ms. Belcher had an Order for Protection against the Defendant during this
26 event. While Ms. Belcher was paying for her services, Defendant snatched the phone out of
27 her hand and ran out of the salon after swinging the phone at Ms. Belcher. Defendant then
28 called Ms. Belcher's mother and told her "I just killed your daughter, bitch." and then called

1 a second time, telling Ms. Belcher's mother, "She's gone. She's gone. I've killed her." A count
2 of felony Terroristic Threats was later dismissed.

3 Defendant has multiple entries in his NCIC as recently as 2012 for Aggravated Assault
4 with a Firearm and a 2013 Assault and Battery/Bodily Harm. There is no known disposition
5 for these more recent entries. Defendant has demonstrated a consistent and steady behavior of
6 violence and criminal conduct. The fifth factor alone is sufficient to deny Defendant's motion.

7 Regarding the sixth factor, the State does not believe Defendant has any support. For
8 the seventh factor, Defendant has been charged with a Category B crime which carries a
9 substantial prison sentence and the probability of conviction is great.

10 For the eighth and ninth factor, as stated earlier, Defendant's record prior to the instant
11 offense is comprised of a mainly violent convictions against a woman; the current crimes is a
12 crime of violence and the victim is a woman. Defendant is violent and indeed poses a danger
13 to the community should he be released. Weighing each factor, Defendant is undoubtedly is
14 not a candidate for release or for an adjustment of his bail. Defendant's motion should be
15 denied.

16
17 DATED this 5th day of January, 2016.

18 Respectfully submitted,

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

21 BY /s/ Elana L. Graham
22 ELANA L. GRAHAM
23 Deputy District Attorney
24 Nevada Bar #011977
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion for Own
Recognizance Release, was made this 5th day of January, 2016, by Electronic Filing to:

NADIA HOJJAT, Deputy Public Defender
Nadia.Hojjat@ClarkCountyNV.gov

/s/ Stephanie Johnson
Secretary for the District Attorney's Office

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OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ELANA L. GRAHAM
Deputy District Attorney
Nevada Bar #011977
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

JAN 21 2016

BY, *Deborah Miller*
DEBORAH MILLER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOHN DEMON MORGAN, aka, John
Morgan,
#1965837

Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY

DATE OF HEARING: 01/21/2016
TIME OF HEARING: 10:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ELANA L. GRAHAM, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Discovery.

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

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C-14-302450-1
OPPM
Opposition to Motion
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NRS 174.235 outlines what discovery is to be provided by the State of Nevada. It includes:

- The statute makes clear the defense is not entitled to any internal report, document or memorandum prepared by the State in connection with the investigation or prosecution of the case. (2)(a). Nor is the defense entitled to any report or document that is privileged.

There is no general constitutional right to discovery in a criminal case, and Brady did not create one... 'the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded....' *Wardius v. Oregon*, 412 U.S. 470, 474 [93 S.Ct. 2208, 2212, 37 L.Ed.2d 82] (1973).

2

1 which the defense would not be able to obtain itself in an ordinary exercise of diligence.
2 Defendant's request for essentially anything that might become helpful to his defense is both
3 overbroad and not supported by law.

4 Giglio v. United States, 405 U.S. 150 (1972), requires that certain impeaching material
5 be disclosed as to those persons actually called as witnesses.

6 The State will address each of Defendant's requests in turn.

- 7 1. Witness benefits
Other than the statutory witness fee, there are no witness benefits for this case.
- 8 2. Interview witnesses
Defendant has been provided all statements of witnesses.
- 9 3. Criminal history of witnesses
10 The State will comply with its Brady and statutory obligations relating to this request.
11 Most of Defendant's specific request is overly broad.
- 12 4. Defendant's Statements
The State will comply with its Brady and statutory obligations relating to this request.
- 13 5. Chain of Custody and Destruction of Evidence
14 The State does not believe any such evidence exists.
- 15 6. All Statements of Material Witnesses
The State will comply with its Brady and statutory obligations relating to this request.
- 16 7. Updated Contact Information
17 The State will comply with its Brady and statutory obligations relating to this request.
- 18 8. Books, Papers and Documents
The State will comply with its Brady and statutory obligations relating to this request.
- 19 9. 911/311 and CAD
20 This evidence has already been provided.

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1 10. Surveillance

2 This evidence has already been provided.

3 11. Documents and Notes Relating to Identification of Defendant

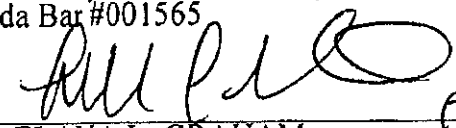
4 The State will comply with its Brady and statutory obligations relating to this request.

5 DATED this 21st day of January, 2016.

6 Respectfully submitted,

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

10 BY

11  *per*
12 ELANA L. GRAHAM
13 Deputy District Attorney
14 Nevada Bar #011977

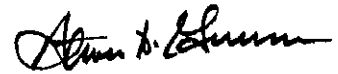
15
16 CERTIFICATE OF ELECTRONIC FILING

17 I hereby certify that service of Opposition to Defendant's Motion for Discovery, was
18 made this 21st day of January, 2016, by Electronic Filing to:

19 NADIA HOJJAT, Deputy Public Defender
20 Nadia.Hojjat@ClarkCountyNV.gov

21
22
23 /s/ Stephanie Johnson
24 Secretary for the District Attorney's Office

25
26
27
28 14F17110X/ELG/saj/L-1



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
5 (702) 455-4685
6 Attorney for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO. C-14-302450-1

11 v.

DEPT. NO. III

12 JOHN MORGAN,

13 Defendant.

DATE: February 18, 2016
TIME: 9:00 a.m.

14 MOTION FOR DISMISSAL OR, IN THE ALTERNATIVE, A BILL OF PARTICULARS

15 COMES NOW, the Defendant, JOHN MORGAN, by and through NADIA
16 HOJJAT, Deputy Public Defender and hereby asks this Honorable Court to dismiss Count 2 of the
17 Information for failure to provide specificity of the allegations or, on the alternative, to direct the
18 District Attorney to amend the Information to provide specificity regarding the underlying facts
19 used to allege Count 2 of the Information.

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

22 DATED this 5th day of February, 2016.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

25 By: /s/ Nadia Hojjat
26 NADIA HOJJAT, #12401
27 Deputy Public Defender
28

DECLARATION

NADIA HOJJAT 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 5th day of February, 2016.

/s/ Nadia Hojjat
NADIA HOJJAT

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FACTS

Mr. Morgan stands accused of robbing the Am-Pm convenience store located at 4605 East Flamingo Road in Clark County Nevada. It is alleged that on October 30, 2014 Mr. Morgan entered the convenience store at approximately 7:00AM and began walking around the store (Preliminary Hearing Transcript, hereinafter "PHT", p.6). Marie Verduzco, an employee of the store, noticed Mr. Morgan on video surveillance and claims she saw him put a snack item in his pocket (PHT p. 7). Ms. Verduzco exited the back office and approached Mr. Morgan, who at this point was attempting to pay for an item (PHT p. 7).

Ms. Verduzco approached Mr. Morgan and asked him to remove the snack from his pocket, at which point Mr. Morgan allegedly told Ms. Verduzco to "shut the fuck up" and hit her once in the chest, knocking her down (PHT p. 9-11). Ms. Verduzco hit Mr. Morgan with a display rack, ripping his backpack. At this point Mr. Morgan fled the store. Mr. Morgan was apprehended shortly after fleeing the store, at which point Ms. Verduzco identified Mr. Morgan as the man that had hit her in the store (PHT p. 17). Mr. Morgan was then placed under arrest.

Count 2 of the Information in this case reads as follows:

"did then and there wilfully [sic], unlawfully, and feloniously take personal property, to-wit: miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape."

ARGUMENT

I. THE AMENDED INFORMATION FAILS TO PROVIDE CONSTITUTIONALLY ADEQUATE NOTICE OF THE ACCUSATIONS.

The Information in this case contains absolutely no notice of the factual basis for the force or fear of force that Mr. Morgan used in allegedly committing a robbery. The Defendant is entitled to have the factual basis for each element of the charge provided in the Information.

~~The Sixth Amendment of the United States Constitution provides that "[i]n all criminal~~ prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation." The Fourteenth Amendment of the United States Constitution prohibits the State from depriving an individual of "life, liberty, or property, without due process of law." Under the Sixth Amendment to the United States Constitution and Article 1, Section 8 of the Nevada Constitution a criminal defendant has a "substantial and fundamental right to be informed of the charges against him so that he can prepare an adequate defense." Viray v. State, 121 Nev. 159, 162 (2005) citing Jennings v. State, 116 Nev. 488, 490 (2000). See also, Russell v. State, 369 U.S. 749, 763-764 (1962). Accordingly, the United States Supreme Court held:

The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defence, [sic] and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.

United States v. Cruikshank, 92 U.S. 542, 558 (1875) (emphasis added). Similarly, NRS 173.075 requires that a charging document "must be a plain, concise, and definite written statement of the essential facts constituting the offense charged."

1 The test for determining whether an information is sufficient is set forth in Laney v. State,
2 86 Nev. 173 (1970):

3 The sufficiency of an indictment or information is to be determined by
4 practical rather than technical considerations. The test is not whether the
5 indictment could have been made more definite and certain. Rather, before
6 a conviction, the indictment standing alone must contain the elements of
7 the offense intended to be charged and must be sufficient to apprise the
8 accused of the nature of the offense so that he may adequately prepare a
9 defense. ... Prejudice to the defendant is, of course, a controlling
consideration in determining whether an indictment or information is
sufficient.' (Citations omitted.) Duke v. United States, 233 F.2d 897
(CA5th 1956); Hayes v. United States, 296 F.2d 657 (CA8th 1961);
Medrano v. United States, 285 F.2d 23 (CA9th 1960).

10 Furthermore, due process entitles Mr. Morgan to be informed of the state's theory of the
11 case, the elements it intends to prove, and the facts in support of the elements.

12 While common sense in this case would suggest that the factual basis for the force element
13 of the robbery will that fact that Mr. Morgan hit Ms. Verduzco, those facts must actually be
14 articulated in the Information in order to have a constitutionally sound charging document. This is
15 to prevent the State from suddenly changing their theory of prosecution mid-way through a trial if
16 the evidence does not comport with their original theory. The due process clause prevents a
17 defendant from being convicted via "trial by surprise" where the defense rebuts the presumed
18 theory of the case only to have a wholly new theory presented to the jury after the close of
19 evidence. It is for this reason that charging documents must be filed in the first place, providing the
20 defense with particulars of the State's theory of the case.
21

22 In Barren v. State, 99 Nev. 661, 669 P.2d 725 (1983), the Court examined the requirements
23 of adequate notice in a charging document in the context of "aider and abettor" liability. The Court
24 required the State to "provide additional information as to the specific acts constituting the means
25 of the aiding and abetting so as to afford the defendant adequate notice to prepare his defense."
26 Barren, 99 Nev. at 668 (citations omitted). The constitutional underpinnings of Barren apply
27
28

1 equally to the deficiencies in the case at bar. The Court noted that Barren "may have fallen victim
2 to the basic danger that insufficient indictments create" by being forced to proceed to trial with no
3 direct notice of the State's theories. *Id.*, at 667-668. The defendant is entitled to be informed of the
4 state's theory of the case, the elements it intends to prove, and the facts in support of the elements.

5 It is for these reasons that Mr. Morgan moves the Court to dismiss the Information for
6 failure to comply with the Due Process rights of the Sixth Amendment to the United States
7 Constitution, Article 1, Section 8 of the Nevada Constitution, NRS 173.075 and the binding case
8 law of this jurisdiction.
9

10
11 **II. IN THE ALTERNATIVE, MR. MORGAN REQUESTS THAT THE COURT ORDER THE STATE TO**
12 **AMEND THE INFORMATION TO PROVIDE ADEQUATE NOTICE.**

13 A motion for a bill of particulars is within the sound discretion of the trial court. *Ellis v.*
14 *United States*, 321 F.2d 931, 933. The Ninth Circuit has explained that the purpose of a bill of
15 particulars is threefold: "To inform the defendant of the nature of the charges against him with
16 sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at
17 the time of trial, and to enable him to plead his acquittal or conviction in bar of another
18 prosecution for the same offense when the indictment itself is too vague and indefinite for such
19 purposes." *United States v. Ayers*, 924 F.2d 1468, 1483 (9th Cir. 1991) (quoting *United States v.*
20 *Giese*, 597 F.2d 1170, 1180 (9th Cir.); *United States v. Butler*, 822 F.2d 1191, (D.C. Cir. 1987);
21 See also, *United States v. Mitchell*, 744 F.2d 701, 705 (9th Cir. 1984); *United States v. Buckner*, 610
22 F.2d 570, 573 (9th Cir. 1979).
23
24

25 Granted, it is not the function of a bill of particulars to furnish the defendant with a detailed
26 description of the State's *proof* at trial. *Wong Tai v United States*, 273 U.S. 77 (192&). But, as is
27 the case here, Mr. Morgan has the right to seek certain particulars about the State's *theory* and
28

1 what the factual allegations are that support that theory in order to permit him to adequately
2 prepare his defense.

3 As stated, an Information, standing alone, must contain: (1) each and every element of the
4 crime charged and (2) the facts showing how the defendant allegedly committed each element of
5 the crime charged. U.S. v. Hooker, 841 F.2d 1225 (4th Cir. 1988). Facts are important because "the
6 State is required to give adequate notice to the accused of the various theories of prosecution."
7 State v. Eighth Jud. Dist. Ct., 116 Nev. 374, 997 P.2d 126 (2000). In State v. Hancock, 114 Nev.
8 161, 955 P.2d 183 (1998), this Court affirmed the dismissal of a security fraud case when the
9

10 underlying facts in support of the charges were vague, indefinite, and imprecise. See also,
11 Jennings v. State, 116 Nev. 488, 998 P. 2d 557 (2000).

12 Not only do facts provide notice, facts form the basis of a guilty plea, facts are needed to
13 support an Alford plea, facts determine whether the statute of limitations has passed, facts are
14 needed to ensure the protections of Double Jeopardy, and facts are looked at on appeal. See
15 Henderson v. Morgan, 426 U.S. 637 (1976) (where the Court reviewed the transcripts to determine
16 that there was no factual statement or admission to uphold the guilty plea); Koerschner v. State,
17 111 Nev. 384, 892 P.2d 942 (1995)(requiring plea canvass to be on the record); Ebeling v. State,
18 120 Nev. -, 91 P.3d 599 (2004) (where the Court reversed redundant convictions for sexual assault
19 and lewdness with a minor that involved a single act).
20

21 As such, in lieu of dismissal, Mr. Morgan, is requesting that a bill of particulars be filed to
22 specify the facts the State is alleging support the "force or fear" element in Count 2.
23

24 CONCLUSION

25 The Information filed in this case is not a plain, concise, and definite written statement of
26 the essential facts constituting the offense charged and it fails to meet the constitutional safeguards
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1 in place to assure that a criminal defendant is on notice of the charges he faces. Accordingly, Mr.
2 Morgan respectfully requests that this Honorable Court dismiss Count 2 or, in the alternative, order
3 the State to amend the Information to comply with the notice provisions discussed.

4 DATED this 5th day of February, 2016.

5 PHILIP J. KOHN
6 CLARK COUNTY PUBLIC DEFENDER

7
8 By: /s/ Nadia Hojjat
9 NADIA HOJJAT, #12401
Deputy Public Defender

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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of February, 2016, at 9:00 a.m.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

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I hereby certify that service of the above and foregoing was made this 5th day of February, 2016, by Electronic Filing to:

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


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,

9 v.

10 JOHN MORGAN,

11 Defendant.

CASE NO. C-14-302450-1

DEPT. NO. III

DATE: February 18, 2016
TIME: 9:00 a.m.

12
13 **MOTION TO COMPEL COUNTS 1 AND 2 TO BE PLED IN THE ALTERNATIVE**

14 COMES NOW, the Defendant, JOHN MORGAN, by and through NADIA
15 HOJJAT, Deputy Public Defender and hereby asks this Honorable Court to rule that Counts 1 and
16 2 of the Information must be presented to the jury as alternatives.

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

19 DATED this 5th day of February, 2016.

20 PHILIP J. KOHN
21 CLARK COUNTY PUBLIC DEFENDER

22
23 By: /s/ Nadia Hojjat
24 NADIA HOJJAT, #12401
25 Deputy Public Defender
26
27
28

DECLARATION

NADIA HOJJAT 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 5th day of February, 2016.

/s/ Nadia Hojjat
NADIA HOJJAT

PROCEDURAL HISTORY

John Morgan was arrested on October 30, 2014 in connection with the instant case and charged with one (1) count Robbery and one (1) count Battery With Intent to Commit a Crime. A Preliminary Hearing was held on November 18, 2014 wherein the State called one (1) witness. The Court found sufficient probable cause and the case was bound over to District Court.

On December 1, 2014 Mr. Morgan was charged by way of information with one (1) count Robbery and one (1) count Battery With Intent to Commit a Crime. Trial is set to commence on February 22, 2016.

FACTS

Mr. Morgan stands accused of robbing the Am-Pm convenience store located at 4605 East Flamingo Road in Clark County Nevada. It is alleged that on October 30, 2014 Mr. Morgan entered the convenience store at approximately 7:00AM and began walking around the store (Preliminary Hearing Transcript, hereinafter "PHT", p.6). Marie Verduzco, an employee of the store, noticed Mr. Morgan on video surveillance and claims she saw him put a snack item in his pocket (PHT p. 7). Ms. Verduzco exited the back office and approached Mr. Morgan, who at this point was attempting to pay for an item (PHT p. 7).

Ms. Verduzco approached Mr. Morgan and asked him to remove the snack from his pocket, at which point Mr. Morgan allegedly told Ms. Verduzco to "shut the fuck up" and hit her once in the chest, knocking her down (PHT p. 9-11). Ms. Verduzco hit Mr. Morgan with a display rack, ripping his backpack. At this point Mr. Morgan fled the store. Mr. Morgan was apprehended shortly after fleeing the store, at which point Ms. Verduzco identified Mr. Morgan as the man that had hit her in the store (PHT p. 17). Mr. Morgan was then placed under arrest.

ARGUMENT

A CHARGE OF BATTERY WITH INTENT TO COMMIT A ROBBERY CANNOT BE SUSTAINED HERE AS IT REQUIRES SOME PART OF THE ROBBERY TO OCCUR AFTER THE BATTERY.

N.R.S. 200.400 defines the crime of "battery" as "any unlawful use of force or violence upon the person of another." Intent is defined as: "the state of mind accompanying an act, esp a forbidden act." Black's Law Dictionary (10th ed. 2014). NRS 200.400(2) states that "A person who is convicted of battery with the intent to commit...robbery...is guilty of a category B felony..."

Taking this definition at face value, in order to satisfy the elements of Battery with Intent to Commit Robbery, the battery must occur with the intent of a *future action* that would be robbery. In the simplest terms, the intent cannot be aimed at accomplishing a past action; it must be focused on some future objective.

In this case, Mr. Morgan hit Ms. Verduzco only once. The State alleges that, prior to hitting her, he had concealed upon his person items from the Am-Pm which he escaped the store with. If the jury finds this is accurate, the State's position is that the elements of Robbery would be completed by the taking of the items and then the single hit.

However, Mr. Morgan is charged with Battery with Intent to Commit Robbery for the *same hit*. This hit was the only use of force by Mr. Morgan against anyone inside the Am-Pm. So, the State has alleged that, because of one hit, Mr. Morgan is guilty of both Battery with Intent to Commit Robbery and also guilty of Robbery.

Turning back to the definitions, above, however, a charge of Battery With Intent to Commit a Crime is impossible to sustain in addition to a charge of Robbery. The plain meaning of this statute and the words "intent to commit" make it clear seeks to punish a Battery committed with the intent to commit a *future* Robbery. Thus, some element of the Robbery, either the taking or the use of force, must come after the Battery.

1 This is analogous to NRS 200.400(3) which states that "A person who is convicted of
2 battery with the intent to kill is guilty of a category B felony and shall be punished by
3 imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term
4 of not more than 20 years." The language in this section is identical to that of Section 2 above it
5 when describing the battery occurring "with the intent to commit..." A defendant cannot be
6 convicted of Battery with Intent to Kill and also Murder for a single punch. If the Murder results
7 from the punch, then the defendant is only guilty of Murder. This is because the battery must
8 precede the act that caused the killing. If a defendant punches a victim to knock him to the ground,
9 then punches him again to kill him, the first punch can be charged as Battery with Intent to Kill,
10 the second punch can be charged as Murder. Similarly here, if Mr. Morgan had walked into the
11 store, hit the clerk, then grabbed items and hit the clerk again on the way out, the first hit could be
12 charged as Battery with Intent to Commit Robbery, and the second hit could be charged as
13 Robbery.
14

15 In this case, there was no further criminal activity after Mr. Morgan hit Ms. Verduzco one
16 time. Thus, if the jury finds that a Robbery was completed, then the Battery was not committed
17 before all of the elements of the alleged Robbery itself had already occurred. In contrast, if the jury
18 finds that a Robbery was *not* completed, then they can find that a Battery with Intent to Commit
19 Robbery occurred. Thus, these two charges should be given to the jury as alternative charges.
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CONCLUSION

The Defense does not move to dismiss either count. Instead, because Mr. Morgan is charged with both Battery with Intent to Commit Robbery and also with Robbery, the defense asks that the two counts be presented to the jury as alternatives.

DATED this 5th day of February, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Nadia Hojjat
NADIA HOJJAT, #12401
Deputy Public Defender

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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of February, 2016, at 9:00 a.m.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

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I hereby certify that service of the above and foregoing was made this 5th day of February, 2016, by Electronic Filing to:

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


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
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 JOHN MORGAN,

13 Defendant.

CASE NO. C-14-302450-1

DEPT. NO. III

DATE: February 18, 2016
TIME: 9:00 a.m.



14 **MOTION IN LIMINE**

15 COMES NOW, the Defendant, JOHN MORGAN, by and through NADIA HOJJAT,
16 Deputy Public Defender, and hereby requests an Order excluding the admission of and reference to
17 any prejudicial court case documents at the time of trial.

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

20 DATED this 8th day of February, 2016.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: /s/ Nadia Hojjat
24 NADIA HOJJAT, #12401
25 Deputy Public Defender
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DECLARATION

NADIA HOJJAT 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 8th day of February, 2016.

/s/ Nadia Hojjat
NADIA HOJJAT

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

John Morgan ("Mr. Morgan") was arrested on October 30, 2014 in connection with the instant case and charged with one (1) count Robbery and one (1) count Battery with Intent to Commit a Crime. A Preliminary Hearing was held on November 18, 2014 wherein the State called one (1) witness. The Court found sufficient probable cause and the case was bound over to District Court.

On December 1, 2014 Mr. Morgan was charged by way of information with one (1) count Robbery and one (1) count Battery with Intent to Commit a Crime. Trial is set to commence on February 22, 2016.

II. STATEMENT OF FACTS

Mr. Morgan stands accused of robbing the Am-Pm convenience store located at 4605 East Flamingo Road in Clark County Nevada. It is alleged that on October 30, 2014 Mr. Morgan entered the convenience store at approximately 7:00AM and began walking around the store (Preliminary Hearing Transcript, hereinafter "PHT", p.6). Marie Verduzco, an employee of the store, noticed Mr. Morgan on video surveillance and claims she saw him put a snack item in his pocket (PHT p. 7). Ms. Verduzco exited the back office and approached Mr. Morgan, who at this point was attempting to pay for an item (PHT p. 7).

Ms. Verduzco approached Mr. Morgan and asked him to remove the snack from his pocket, at which point Mr. Morgan allegedly told Ms. Verduzco to "shut the fuck up" and hit her once in the chest, knocking her down (PHT p. 9-11). Ms. Verduzco hit Mr. Morgan with a display rack, ripping his backpack. At this point Mr. Morgan fled the store. Mr. Morgan was apprehended shortly after fleeing the store, at which point Ms. Verduzco identified Mr. Morgan as the man that had hit her in the store (PHT p. 17). An inventory of the items purported to be inside the backpack was performed, which included some resumes with Mr. Morgan's name, a justice court case summary printout listing his name and several other documents naming him and relating to details of court case(s).

1 At this time, the defense seeks the exclusion of said court case documents as they have no
2 relevance to this case and only serve to prejudice Mr. Morgan.

3 III. LEGAL ARGUMENT

4 THE STATE SHOULD BE PRECLUDED FROM PRESENTING ANY 5 DOCUMENTS REGARDING MR. MORGAN HAVING PRIOR AND/OR 6 PENDING COURT CASE(S) AND ANY REFERENCE THERETO.

7 NRS 48.025(2) states that "evidence which is not relevant is not admissible." Relevant
8 evidence means evidence having any tendency to make the existence of any fact that is of
9 consequence to the determination of the action more or less probable than it would be without the
10 evidence. See NRS 48.015. Even if relevant, however, the court has discretion to exclude
11 evidence on grounds of prejudice, confusion, or waste of time. See NRS 48.035. NRS 48.035
12 states, in relevant part:

13 1. Although relevant, evidence is not admissible if its probative value is
14 substantially outweighed by the danger of unfair prejudice, of confusion of the
15 issues or of misleading the jury.

16 2. Although relevant, evidence may be excluded if its probative value is
17 substantially outweighed by considerations of undue delay, waste of time or
18 needless presentation of cumulative evidence.

19 NRS 48.035. Thus, the court must perform a balancing review to weigh the probative value of
20 evidence against its potentially prejudicial nature.

21 Furthermore, evidence of prior bad acts is not admissible and is heavily disfavored. See
22 NRS 48.045. Evidence of any misconduct is likewise inadmissible character evidence. As the
23 Nevada Supreme Court highlighted in *Taylor v. State*: "absen[t] certain exceptions, evidence of a
24 person's character or trait of her character is not permissible for the purpose of proving that she
25 acted in conformity there with on a particular occasion. Further, evidence of other crimes, wrongs
26 or acts is not admissible to prove the character of a person in order to show that she acted in
27 conformity therewith." *Taylor v. State*, 109 Nev. 849, 853, 858 P.2d 843 (1993).

28 Evidence of a prior bad act *may* be admissible only if certain conditions are met. See NRS
48.045. Those conditions are: (1) the bad act is relevant to the crime charged; (2) the prior act is

1 proven by clear and convincing evidence; (3) the evidence is more probative than prejudicial. See
2 *Felder v. State*, 107 Nev. 237 (1991). Accordingly, "even where evidence is relevant and tends to
3 establish motive, intent, plan, identity, absence of mistake or accident, or some other relevant fact
4 within any of those exceptions, it may not be admitted if its prejudicial effect outweighs its
5 probative value." *Williams v. State*, 95 Nev. 830, 833 (1979); see also *Kelly v. State*, 108 Nev. 545
6 (1992). Moreover, if the State wishes to prove that the evidence is admissible under NRS
7 48.045(2) for the purpose of establishing proof of motive, opportunity, intent, preparation, plan,
8 knowledge, identity, or absent of the mistake or accident, the State must prove how these
9 exceptions to the general rule specifically relate to the facts of this case.

10 In this case, the admission and/or referenced to any court case documents listing Mr.
11 Morgan is a form of character evidence that the statutes and case law prohibit. Any evidence
12 concerning his prior and/or pending court case(s) is not relevant to the charges, or, if there is some
13 slight relevance, its probative value is substantially outweighed by the probability that their
14 admission will create danger of undue prejudice, confusion of the issues, or misleading the jury.
15 For one, the existence and content of the court case documents in his purported backpack do not
16 make any of the State's allegations more or less probative. Secondly, if the State wishes to admit
17 any of the documents for purposes of identification, it can present his resumes to serve that
18 purpose. Otherwise, any reference to or testimony regarding the court case documents represents a
19 means for the State to unfairly impugn Mr. Morgan's character. Furthermore, the danger of unfair
20 prejudice and confusion is apparent in that the jury may question Mr. Morgan's morality and
21 potentially convict on that basis and not on the true value of the State's evidence with respect to
22 the pending charges. Thus, any evidence about Mr. Morgan having any prior and/or pending court
23 case(s) is therefore inadmissible pursuant to NRS 48.035(1) and must be excluded.

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IV. CONCLUSION

Based on the forgoing arguments, the defense respectfully requests that the instant motion be granted in its entirety.

DATED this 8th day of February, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Nadia Hojjat
NADIA HOJJAT, #12401
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 18th day of February, 2016, at 9:00 a.m.

DATED this 8th day of February, 2016.

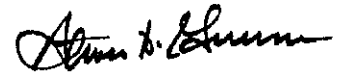
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Nadia Hojjat
NADIA HOJJAT, #12401
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing MOTION IN LIMINE was served via electronic e-filing to the District Attorney's Office on this 8th day of February, 2016.

By /s/ Patty Barber-Bair
An employee of the 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 **ELANA L. GRAHAM**
6 **Deputy District Attorney**
7 **Nevada Bar #011977**
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 **JOHN DEMON MORGAN,**
13 **aka, John Morgan,**
14 **#1965837**

Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE**

16 **DATE OF HEARING: 02/18/2016**
17 **TIME OF HEARING: 9:00 A.M.**

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through ELANA L. GRAHAM, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Motion In Limine.

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

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POINTS AND AUTHORITIES

Facts

On October 30th, 2014, Maria Verduzco was working as a manager at a gas station and convenience store at 4605 East Flamingo Road. Preliminary Hearing Transcript (hereinafter PHT) p. 5 attached hereto as Exhibit 1. At about 7 in the morning, Maria was in the back office doing paperwork when she noticed on the surveillance video at her desk a guy putting merchandise in his pocket. PHT p. 5-7. After observing the man putting merchandise in his pocket, she left her office and went to the man who was at the front clerk and "told him nicely if he can take what he put in his pocket, if he can take it out." PHT p. 7. The man, in response, told Maria "shut the fuck up" and started walking towards Maria. Then the man struck Maria and she immediately was sent to the floor. PHT p. 10. Maria jumped up and hit the man and the man's backpack with a rack used to hang peanuts. PHT p. 11. The man's backpack ripped as a result of Maria's use of the peanut rack and a number of papers fell from his bag, as well as a soup he had concealed in his bag. PHT p. 11-12, 18. Maria then backed off for fear of what was in the man's backpack. PHT p. 11. Police arrived and eventually took Maria to conduct a show up where she positively identified Defendant as the person who struck her and fled the store. PHT p. 16.

Argument

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. All relevant evidence is admissible. NRS 48.025(1). Only when the probative value of relevant evidence is substantially outweighed by the danger of unfair prejudice, is the evidence not admissible. NRS 48.035(1).

There are two things the State of Nevada must prove in every criminal case: (1) that a crime was committed and, (2) that the Defendant is the person who committed the crime. In this case, the actions of Defendant were captured on surveillance- that is, the fact that a crime was committed is supported, in part, by the surveillance. When Defendant left the store in a rush, his back broke and a piece of paper fell from his backpack. The piece of paper contained

1 information regarding the identity of Defendant. The piece of paper had Defendant's name on
2 it, and if memory serves¹, other identifying information. While the piece of paper was provided
3 to Defendant from the Clark County Detention Center, the document, nonetheless, has an
4 extremely high probative value regarding the identity of Defendant. Given the level of
5 probative value the document has, any prejudicial effect is outweighed by the probative nature
6 of the evidence. Additionally, the jury may be instructed they are not to draw any negative
7 inference regarding the other portions of the document. Finally, if possible, the document
8 could potentially be redacted, so long as the redactions do not affect the integrity of the
9 document in so far as it relates to the identity of Defendant.

10 **Conclusion**

11 Based on the foregoing, that identify is an issue in the instant case and that Defendant left
12 behind a document the fell from his backpack which contains his name, the evidence is
13 relevant and its probative value is not substantially outweighed by the danger of unfair
14 prejudice, the State should be allowed to introduce the very important piece of evidence at
15 trial.

16 DATED this 11th day of February, 2016.

17 Respectfully submitted,

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

20 BY /s/ Elana L. Graham
21 ELANA L. GRAHAM
22 Deputy District Attorney
23 Nevada Bar #011977
24
25

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27 _____
28 ¹ At this time, the State has not yet viewed the evidence in the vault but hopes to do so prior to the hearing
on the instant motion to provide this Court with more detail regarding the contents of the document in
question.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion in Limine,
was made this 11th day of February, 2016, by Electronic Filing to:

NADIA HOJJAT, Deputy Public Defender
nadia.hojjat@clarkcountynv.gov

/s/ Stephanie Johnson
Secretary for the District Attorney's Office

14F17110X/ELG/saj/L-1


CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ELANA L. GRAHAM
6 Deputy District Attorney
7 Nevada Bar #011977
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 JOHN DEMON MORGAN,
13 aka, John Morgan,
14 #1965837

Defendant.

CASE NO: C-14-302450-1

DEPT NO: III

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISMISSAL OR, IN THE
16 ALTERNATIVE, A BILL OF PARTICULARS

17 DATE OF HEARING: 02/18/2016
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through ELANA L. GRAHAM, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion For
22 Dismissal Or, In The Alternative, A Bill Of Particulars.

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.

26 ///

27 ///

28 ///

1 POINTS AND AUTHORITIES

2 ARGUMENT

3 Fundamentally, a criminal Information or Indictment need only provide a defendant
4 with "reasonable notice" of the nature of the charges against him so that he can prepare a
5 defense. Under Nevada law, the charging document must set forth sufficient facts to inform
6 the defendant of the nature of the crime charged. NRS 173.075(1); Wright v. State, 101 Nev.
7 269, 271, 701 P.2d 743, 744 (1985). However, the primary inquiry is not into whether the
8 Information could have been more artfully drafted, but whether the defendant was given
9 adequate notice of the crime charged. Sheriff v. Levinson, 95 Nev. 436, 437, 596 P.2d 232,
10 234 (1979). A pleading need contain no more than is necessary to enable a person of common
11 understanding to know what is intended by the state. See Wright v. State, 101 Nev. 269, 701
12 P.2d 743 (1985); State v. Jones, 96 Nev. 71, 605 P.2d 202 (1980); Brimmage v. State, 93 Nev.
13 434, 567 P.2d 54 (1977); Siriani v. Sheriff, 93 Nev. 559, 571 P.2d 111 (1977); State v. Wright,
14 92 Nev. 734, 558 P.2d 1139 (1976); Watkins v. Sheriff, 87 Nev. 233, 484 P. 2d 1086 (1971).

15 Here, for counts 1 and 2, the State specifically alleged certain facts regarding
16 Defendant's actions involving Maria and alleged a specific date when the conduct occurred.
17 Certainly, Defendant is on notice of what conduct caused him to be charged in counts 1 and
18 2. Specifically, Defendant is charged in Count 1, Battery with Intent to Commit Robbery:

19
20 "...the person of another, to wit: MARIA VERDUZCO, with intent to commit robbery
21 by punching the said MARIA VERDUZCO in the chest and/or neck, knocking her to the
22 ground."

23 And in Count 2, Robbery:

24 "...take personal property, to wit: miscellaneous food items, from the person of MARIA
25 VERDUZCO, or in her presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of MARIA VERDUZCO, Defendant using force or
27 fear to obtain or retain possession of the property, to prevent or overcome resistance to the
28 taking of the property, and/or to facilitate escape."

///

///

1 The pleading is plain, concise, and a definite written statement of the essential facts
2 constituting the charge. Perhaps Defendant struggles with the broad nature of the robbery
3 statute wherein more than one aspect of his conduct in this case could satisfy the elements of
4 Count 2. The allegations in counts 1 and 2 are sufficient to apprise Defendant of the nature of
5 the charge he is expected to defend against.

6 **CONCLUSION**

7 Based on the aforementioned Points and Authorities, the State respectfully requests that
8 the Defendant's Motion For Dismissal Or, In The Alternative, A Bill Of Particulars be denied.

9 DATED this 16th day of February, 2016.

10 Respectfully submitted,

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

13 BY /s/ Elana L. Graham
14 ELANA L. GRAHAM
15 Deputy District Attorney
Nevada Bar #011977

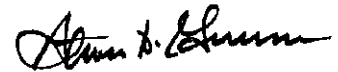
16
17
18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of State's Opposition to Defendant's Motion For Dismissal
20 Or, In The Alternative, A Bill Of Particulars, was made this 16th day of February, 2016, by
21 Electronic Filing to:

22 NADIA HOJJAT, Deputy Public Defender
23 Nadia.Hojjat@ClarkCountyNV.gov

24
25 /s/ Stephanie Johnson
26 Secretary for the District Attorney's Office
27

28 14F17110X/ELG/saj/L-1



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ELANA L. GRAHAM
6 Deputy District Attorney
7 Nevada Bar #011977
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **JOHN DEMON MORGAN,**
18 **aka, John Morgan,**
19 **#1965837**

20 **Defendant.**

CASE NO: C-14-302450-1

DEPT NO: III

21 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL COUNTS 1 & 2 TO**
22 **BE PLED IN THE ALTERNATIVE**

23 **DATE OF HEARING: 02/18/2016**
24 **TIME OF HEARING: 9:00 A.M.**

25 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
26 District Attorney, through ELANA L. GRAHAM, Deputy District Attorney, and hereby
27 submits the attached Points and Authorities in Opposition to Defendant's Motion to Compel
28 Counts 1 & 2 to Be Pled in the Alternative.

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

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///

1 POINTS AND AUTHORITIES

2 FACTS

3 On October 30th, 2014, Maria Verduzco was working as a manager at a gas station and
4 convenience store at 4605 East Flamingo Road. Preliminary Hearing Transcript (hereinafter
5 PHT) p. 5 attached hereto as Exhibit 1. At about 7 in the morning, Maria was in the back office
6 doing paperwork when she noticed on the surveillance video at her desk a guy putting
7 merchandise in his pocket. PHT p. 5-7. After observing the man putting merchandise in his
8 pocket, she left her office and went to the man who was at the front clerk and "told him nicely
9 if he can take what he put in his pocket, if he can take it out." PHT p. 7. The man, in response,
10 told Maria "shut the fuck up" and started walking towards Maria. Then the man struck Maria
11 and she immediately was sent to the floor. PHT p. 10. Maria jumped up and hit the man and
12 the man's backpack with a rack used to hang peanuts. PHT p. 11. The man's backpack ripped
13 as a result of Maria's use of the peanut rack and a number of papers fell from his bag, as well
14 as a soup he had concealed in his bag. PHT p. 11-12, 18. Maria then backed off for fear of
15 what was in the man's backpack. PHT p. 11. Police arrived and eventually took Maria to
16 conduct a show up where she positively identified Defendant as the person who struck her and
17 fled the store. PHT p. 16.

18
19 ARGUMENT

20 The State opposes Defendant's Motion to compel Counts 1 and 2 to be Pled in the
21 Alternative as doing so before the State has presented any evidence to a jury, would be
22 premature. The State also objects on the basis of Defendant's argument that Counts 1 and 2
23 must stand alone because the crimes are, potentially and most likely based on the evidence,
24 distinct, separate crimes of which the jury would be permitted to return a guilty verdict for
25 either or both. Even if the crimes in Count 1 and Count 2 did merge, the jury could return a
26 verdict for both counts and this Court would have the choice of not adjudicating Defendant on
27 either crime. However, under Jackson v. State, Defendant may be convicted and adjudicated
28 of both the Robbery and the Battery with Intent to Commit Robbery.

1 In Jackson, the Nevada Supreme Court rejected a “fact-based” analysis to instead rely
2 on the test of statutory construction stated in Blockburger to determine whether Congress
3 intended the same conduct to be punishable under two criminal provisions. Jackson v. State,
4 128 Nev. Adv. Op. 55, 291 P.3d 1274 citing Estes v. State, 122. Nev. 1123, 1143, 146 P.3d
5 1114, 1127 (2006). The Blockburger Court inquired whether “each offense contains an
6 element not contained in the other; if not, they are the ‘same offence’ and double jeopardy
7 bars additional punishment and successive prosecution.” Id. citing United States v. Dixon,
8 509 U.S. 688, 696, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993).

9 In Jackson v. State, the Court explained that when determining whether the Legislature
10 has authorized multiple punishments for multiple convictions, “we look first to statutory text.”
11 Id. at 1280. The Court in that case analyzed Nevada’s attempt statute and pointed out, “NRS
12 193.330(2), by its terms, authorizes conviction of and punishment for attempted murder in
13 tandem with assault and/or battery...” Id. The language of NRS 193.330(1)(a)(2) specifically
14 provides for cumulative punishment; the statutes states in part, “(N)othing in this section
15 protects a person who, in an unsuccessful attempt to commit one crime, does commit another
16 and different one, from the punishment prescribed for the crime actually committed...” Id.

17 Here, the elements of Robbery and Battery with Intent to Commit Robbery are
18 different. Defendant’s fact-based approach in his motion is no longer accepted by the Nevada
19 Supreme Court and before any evidence is heard regarding use of force, intimidation, violence,
20 obtaining property or retaining property, and more, this issue is premature and the motion
21 should be denied.

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1 CONCLUSION

2 Based on the aforementioned Points and Authorities, the State respectfully requests that
3 the Defendant's Motion to Compel Counts 1 & 2 to Be Pled in the Alternative be denied.

4 DATED this 16th day of February, 2016.

5 Respectfully submitted,

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

9 BY /s/ Elana L. Graham
10 ELANA L. GRAHAM
11 Deputy District Attorney
12 Nevada Bar #011977

13 CERTIFICATE OF ELECTRONIC FILING

14 I hereby certify that service of Opposition to Defendant's Motion to Compel Counts 1
15 & 2 to Be Pled in the Alternative, was made this 16th day of February, 2016, by Electronic
16 Filing to:

17 NADIA HOJJAT, Deputy Public Defender
18 Nadia.Hojjat@ClarkCountyNV.gov

19 /s/ Stephanie Johnson
20 Secretary for the District Attorney's Office

21 14F17110X/ELG/saj/L-1

ORIGINAL

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

FEB 23 2016

BY Melissa Murphy
MELISSA MURPHY, DEPUTY

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ELANA L. GRAHAM
Deputy District Attorney
Nevada Bar #011977
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-14-302450-1
AINF
Amended Information
4526176



THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-14-302450-1

-vs-

DEPT NO: XXII

JOHN DEMON MORGAN,
aka, John Morgan, #1965837

AMENDED

INFORMATION

Defendant.

STATE OF NEVADA }
COUNTY OF CLARK } ss.

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

That JOHN DEMON MORGAN, aka, John Morgan, the Defendant(s) above named, having committed the crimes of **ROBBERY (Category B Felony - NRS 200.380 - NOC 50137)** and **BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400.2 - NOC 50151)**, on or about the 30th day of October, 2014, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - ROBBERY

did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of

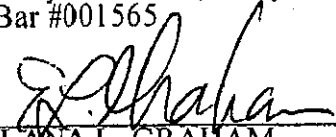
MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: MARIA VERDUZCO, with intent to commit robbery by punching the said MARIA VERDUZCO in the chest and/or neck, knocking her to the ground.

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

BY


ELANA L. GRAHAM
Deputy District Attorney
Nevada Bar #011977

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

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, 400 E. Stewart Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 E. Stewart Las Vegas, NV
DOUGHERTY, Ed OR DESIGNEE	INVESTIGATOR C.C. DISTRICT ATTORNEY

1	GONZALES, Mario	4010 Baldwin St. #A, Las Vegas, NV 89122
2	IBARRA, Cesar	LVMPD # 8777
3	LAW, Landon V.	LVMPD # 9075
4	MOODY, Michael D.	LVMPD # 14881
5	RIVERA, Nathan Rj	LVMPD # 14872
6	SQUEO, John S.	LVMPD # 14878
7	VERDUZCO, Maria	C/O DISTRICT ATTORNEY'S OFFICE

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27 DA#14F17110X/saj/L-1
LVMPD EV#1410300877
28 (TK11)

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

FEB 22 2016

BY 
MELISSA MURPHY, DEPUTY

1 JURL

2
3 DISTRICT COURT

4
5 CLARK COUNTY, NEVADA

6 STATE OF NEVADA
7 Plaintiff(s),

8 -vs-

CASE NO. C302450-1

9 JOHN MORGAN
10 Defendant(s).

DEPT. NO. XXII

11
12 JURY LIST

13 1. RICHARD CAMUSO

8. GREGORIO FLORES

14 2. NANCY POZDOL

9. TINA PAST

15 3. SEAN LARSCHIEDT

10. BRUCE GRAFF

16 4. ASHLEY HERNANDEZ

11. BRISA VILLARREAL

17 5. EVAN WALSH

12. SON NEAL

18 6. WILLIAM TOWNSEND

13. AUBREY BAYANG

19 7. ALFONSO PALMA

20
21 ALTERNATES

22 Secret from above

23
24
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27 C-14-302450-1
JURL
Jury List
4526174



18602

FEB 24 2016

BY, Melissa Murphy
MELISSA MURPHY, DEPUTY

1 JURL

2
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5
6 STATE OF NEVADA
7 Plaintiff(s),

8 -vs-

CASE NO. C302450-1

9 JOHN MORGAN
10 Defendant(s).

DEPT. NO. XXII

11
12 AMENDED JURY LIST

13 1. RICHARD CAMUSO

8. GREGORIO FLORES

14 2. NANCY POZDOL

9. TINA PAST

15 3. SEAN LARSCHIEDT

10. BRUCE GRAFF

16 4. ASHLEY HERNANDEZ

11. BRISA VILLARREAL

17 5. EVAN WALSH

12. SON NEAL

18 6. WILLIAM TOWNSEND

19 7. ALFONSO PALMA

20
21 ALTERNATES

22 13. AUBREY BAYANG

23
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27 C-14-302450-1
AJUR
Amended Jury List
28 4528171



1866

FEB 24 2016

BY: Melissa Murphy
MELISSA MURPHY, DEPUTY

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,

9 v.

10 JOHN MORGAN,

11 Defendant.

CASE NO. C-14-302450-1

DEPT. NO. III

12
13 DEFENSE PROPOSED JURY INSTRUCTIONS

14 COMES NOW, the Defendant, JOHN MORGAN, by and through NADIA
15 HOJJAT, Deputy Public Defender and hereby submits the following proposed jury instructions.

16
17 DATED this 24th day of February, 2016.

18 PHILIP J. KOHN
19 CLARK COUNTY PUBLIC DEFENDER

20
21 By: Nadia Hojjat
22 NADIA HOJJAT, #12401
Deputy Public Defender

23
24
25
26 C-14-302450-1
PINU
27 Proposed Jury Instructions Not Used At Trial
4628173



DEFENSE PROPOSED INSTRUCTION NO. A

1 Mere presence at the scene of the alleged crime is not sufficient to establish that a
2 defendant is guilty of an offense.
3

4
5 Brooks v. State, 103 Nev. 611, 747 P.2d 893 (1987).
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If the State failed to prove beyond a reasonable doubt that John Morgan hit Maria Verduzco for the purpose of taking merchandise, you must find him Not Guilty of Robbery.

Crawford v. State, 121 P.3d 582, 121 Nev. Adv. Rep. 74 (2005)

Margetts v. State, 107 Nev. 616 (1991)

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3 If the State failed to prove beyond a reasonable doubt that John Morgan hit Maria
4 Verduzco for the specific intent of committing Robbery, you must find him Not Guilty of Battery
5 with Intent to Commit Robbery.
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9 Crawford v. State, 121 P.3d 582, 121 Nev. Adv. Rep. 74 (2005)

10 Margetts v. State, 107 Nev. 616 (1991)
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If the State failed to prove beyond a reasonable doubt that John Morgan took merchandise from the AM/PM without paying for it, you must find him Not Guilty of Robbery.

Crawford v. State, 121 P.3d 582, 121 Nev. Adv. Rep. 74 (2005)

Margetts v. State, 107 Nev. 616 (1991)

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It is a constitutional right of a defendant 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 Defendant on the advice and counsel of his attorney. You must 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.

Carter v. Kentucky, 450 US 288.

Circumstantial Evidence

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 proven 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 the Defendant being not guilty and another to the Defendant's guilt, you must accept the one that points to the Defendant being not guilty. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

CALCRIM 224

Supranovich v. State (2015)

DEFENSE PROPOSED JURY INSTRUCTION NO. G

In order to find Defendant guilty of the crime charged, you must reach a subjective state of near certitude on the facts in issue.

Reasonable doubt instruction should impress on a jury the need to reach a "subjective state of near certitude" on the facts in issue". *Randolph v. State*, 117 Nev. 970, 980-81, 36 P.3d 424, 431 (2001). See also *Holmes v. State*, 114 Nev. 1357, 1365-66, 972 P.2d 337, 342-43 (1998) (citing *McCullough v. State*, 99 Nev. 72, 75, 657 P.2d 1157, 1158-59 (1983)). While NRS 175.211 states the definition of reasonable doubt, the Nevada Supreme Court has maintained that the "subjective state of near certitude" remains the requirement for a jury determining the facts in issue. *Randolph*, 117 Nev. at 980-81.

DEFENSE PROPOSED INSTRUCTION NO. H

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 Battery
6 with the Intent to Commit a Crime, or you are all unable to agree whether he is guilty of Battery
7 with Intent to Commit a Crime, he may, however be found guilty of an uncharged lesser included
8 offense of Battery.
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10 If you have a reasonable doubt between the charges of Battery with the Intent to Commit a
11 Crime and the lesser included offense of Battery, you must give the defendant the benefit of that
12 doubt and return a verdict of Guilty of Battery.
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DEFENSE PROPOSED INSTRUCTION NO. 1

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of Robbery, or you are all unable to agree whether he is guilty of Robbery, he may, however be found guilty of an uncharged lesser included offense of Larceny from the Person.

If you have a reasonable doubt between the charges of Robbery and the lesser included offense of Larceny from the Person, you must give the defendant the benefit of that doubt and return a verdict of Guilty of Larceny from the Person.

Green v. State, 119 Nev. 542 (2003).

DEFENSE PROPOSED INSTRUCTION NO. J

Larceny from the Person is the intentional taking of property from the person of another,
without the person's consent, under circumstances not amounting to Robbery.

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOHN MORGAN,

Defendant.

CASE NO: C-14-302450-1

DEPT NO: XXII

VERDICT

We, the jury in the above entitled case, find the Defendant JOHN MORGAN, as follows:

COUNT 1 – ROBBERY

(please check the appropriate box, select only one)

☐ Not Guilty

☐ Guilty of Larceny from the Person

☐ Guilty of Robbery

COUNT 2 – BATTERY WITH THE INTENT TO COMMIT A CRIME

(please check the appropriate box, select only one)

☐ Not Guilty

☐ Guilty of Battery

☐ Guilty of Battery with the Intent to Commit a Crime

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DATED this 24th day of February, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
NADIA HOJJAT, #12401
Deputy Public Defender

ORIGINAL

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

FEB 24 2016

BY: *M. Murphy*
MELISSA MURPHY, DEPUTY

1 INST

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

CASE NO: C-14-302450-1

10 JOHN DEMON MORGAN, aka,
11 John Morgan,

DEPT NO: XXII

12 Defendant.

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

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25 C-14-302450-1
26 INST
Instructions to the Jury
4626172



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.

An Amended Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Amended Information that on or about the 30th day of October, 2015, the Defendant committed the offense(s) of ROBBERY (Category B Felony - NRS 200.380 - NOC 50137) and BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400.2 - NOC 50151),.

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

COUNT 1 - ROBBERY

did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: miscellaneous food items, from the person of MARIA VERDUZCO, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of MARIA VERDUZCO, Defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of another, to-wit: MARIA VERDUZCO, with intent to commit robbery by punching the said MARIA VERDUZCO in the chest and/or neck, knocking her to the ground.

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 NO. 5

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

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

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

INSTRUCTION NO. 6

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

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

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

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

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

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

INSTRUCTION NO. 7

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

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

INSTRUCTION NO. 8

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

INSTRUCTION NO. 9

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

INSTRUCTION NO. 10

The State is not required to recover or produce the proceeds of a robbery at trial.

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INSTRUCTION NO. 11

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2 It is unnecessary to prove both violence and intimidation. If the fact be attended with
3 circumstances of threatening word or gesture as in common experience and is likely to create
4 an apprehension of danger and induce a man to part with his property for the safety of his
5 person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such
6 a case.
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2 Robbery is the unlawful taking of personal property from the person of another, or in
3 his presence, against his will, by means of force or violence or fear of injury, immediate or
4 future, to his person or property, or the person or property of a member of his family, or of
5 anyone in his company at the time of the robbery. Such force or fear must be used to obtain
6 or retain possession of the property, to prevent or overcome resistance to the taking, or to
7 facilitate escape, in either of which cases the degree of force is immaterial if used to compel
8 acquiescence to the taking of or escaping with the property.

9 The value of property or money taken is not an element of the crime of Robbery, and it
10 is only necessary that the State prove the taking of some property or money.
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INSTRUCTION NO. 13

It is a constitutional right of a defendant 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 defendant on the advice and counsel of his attorney. You must 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.

When a person is accused of committing a particular crime and at the same time and by the same conduct 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 charge of Battery with Intent to Commit a Crime, then he may be found guilty of the uncharged lesser included offense of Battery, if the evidence is sufficient to establish guilty of such a lesser offense beyond a reasonable doubt.

The defendant may not be convicted of both the charged offense and the lesser included offense.

INSTRUCTION NO. 15

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

1 Before you may rely on circumstantial evidence to conclude that a fact necessary to find
2 the Defendant guilty has been proved, you must be convinced that the State has proven each fact
3 essential to that conclusion beyond a reasonable doubt.
4

5 Also, before you may rely on circumstantial evidence to find the Defendant guilty, you
6 must be convinced that the only reasonable conclusion supported by the circumstantial evidence is
7 that the Defendant is guilty. If you can draw two or more reasonable conclusions from the
8 circumstantial evidence, and one of those reasonable conclusions points to the Defendant being not
9 guilty and another to the Defendant's guilt, you must accept the one that points to the Defendant
10 being not guilty. However, when considering circumstantial evidence, you must accept only
11 reasonable conclusions and reject any that are unreasonable.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

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

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INSTRUCTION NO. 19

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3 If the State failed to prove beyond a reasonable doubt that John Morgan hit Maria
4 Verduzco for the specific intent of committing Robbery, you must find him Not Guilty of Battery
5 with Intent to Commit Robbery.
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INSTRUCTION NO. 20

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2 If the State failed to prove beyond a reasonable doubt that John Morgan took merchandise
3 from the AM/PM without paying for it, you must find him Not Guilty of Robbery.
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INSTRUCTION NO. 21

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.

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.

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.

1
2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed by
4 the foreperson. The officer will then return you to court where the information sought will be
5 given you in the presence of, and after notice to, the district attorney and the Defendant and
6 his/her counsel.

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

INSTRUCTION NO. 23

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

GIVEN:


DISTRICT JUDGE

2/24/16

1 VER

2 ORIGINAL

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

3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

FEB 24 2016 At 2:50 PM

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 JOHN DEMON MORGAN, aka,
9 John Morgan,
Defendant.

BY Melissa Murphy
MELISSA MURPHY, DEPUTY

CASE NO: C-14-302450-1

DEPT NO: III

10 VERDICT

11 We, the jury in the above entitled case, find the Defendant JOHN DEMON MORGAN,
12 aka, John Morgan, as follows:

13 COUNT 1 - ROBBERY

14 *(Please check the appropriate box, select only one)*

- 15 ☒ Guilty of Robbery
16 ☐ Not Guilty

17
18 We, the jury in the above entitled case, find the Defendant JOHN DEMON MORGAN,
19 aka, John Morgan, as follows:

20 COUNT 2 - BATTERY WITH INTENT TO COMMIT A CRIME

21 *(Please check the appropriate box, select only one)*

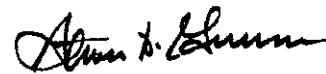
- 22 ☐ Guilty of Battery with Intent to Commit a Crime
23 ☒ Guilty of Battery
24 ☐ Not Guilty

25 DATED this 24th day of February, 2016

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27 C-14-302450-1
VER
Verdict
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28 A Neal NEAL, SON K
FOREPERSON



CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

JOHN DEMON MORGAN
aka John Morgan
#1965837

Defendant.

CASE NO. C302450-1

DEPT. NO. XXII

JUDGMENT OF CONVICTION
(JURY TRIAL)

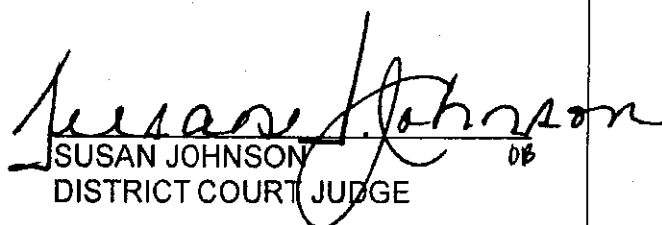
The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY (Category B Felony) in violation of NRS 200.380, COUNT 2 – BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony) in violation of NRS 200.400.2; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – ROBBERY (Category B Felony) in violation of NRS 200.380; and COUNT 2 – BATTERY (Misdemeanor) in violation of NRS 200.481; thereafter, on the 14th day of April, 2016, the Defendant was present in court for sentencing with his counsel NADIA HOJJAT, Deputy Public Defender, and good cause appearing,

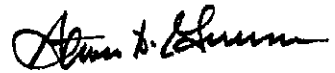
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<input type="checkbox"/> Not to Prosecute (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
2 addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil
3 Assessment Fee, and \$150.00 DNA Analysis Fee including testing to determine genetic
4 markers, plus a \$3.00 DNA Collection Fee, the Defendant is SENTENCED as follows:
5 AS TO COUNT 1 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with
6 a MINIMUM parole eligibility of TWENTY-SIX (26) MONTHS in the Nevada Department
7 of Corrections (NDC); and AS TO COUNT 2 – SIX (6) MONTHS in the Clark County
8 Detention Center (CCDC), Count 2 to run CONCURRENT with Count 1; with FIVE
9 HUNDRED THIRTY-THREE (533) DAYS credit for time served.
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13 DATED this 18th day of April, 2016.

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16 SUSAN JOHNSON DB
17 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

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 JOHN MORGAN,

14 Defendant.

CASE NO. C-14-302450-1

DEPT. NO. XXII

NOTICE OF APPEAL

15 TO: THE STATE OF NEVADA

16 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
17 NEVADA and DEPARTMENT NO. XXII OF THE EIGHTH JUDICIAL
18 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
19 COUNTY OF CLARK.

20 NOTICE is hereby given that Defendant, John Morgan,
21 presently incarcerated in the Nevada State Prison, appeals to the
22 Supreme Court of the State of Nevada from the judgment entered
23 against said Defendant on the 19th day of April, 2016, whereby he
24 was convicted of Ct. 1 - Robbery; Ct. 2 - Battery and sentenced to
25 \$25 Admin. Fee; \$250 Indigent Defense Civil Assessment fee; \$150
26 DNA analysis fee; genetic markers plus \$3 DNA collection fee; Ct.
27 1 - 26-120 months in prison; Ct. 2 - 6 months in CCDC; Ct. 2 to
28 run concurrent with Ct. 1 - 533 days CTS.

DATED this 17th day of May, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

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

DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 17th day of May, 2016, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. John Morgan, Case No. C-14-302450-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to John Morgan, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. That there is a regular communication by mail between the place of mailing and the place so addressed.

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

EXECUTED on the 17th day of May, 2016.

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

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District Attorneys Office
E-Mail Address:
PDMotions@clarkcountyyda.com
Jennifer.Garcia@clarkcountyyda.com
Eileen.Davis@clarkcountyyda.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 01, 2014

C-14-302450-1 State of Nevada
 vs
 John Morgan

December 01, 2014 9:30 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Monique Alberto (ma); Treva Palmer; Adrienne Theeck; Delma Sobers;
Anntoinette Naumec-Miller

RECORDER: Kiara Schmidt

PARTIES

PRESENT: Hojjat, Nadia
 Miller, James J.

Attorney for Defendant
Attorney for State of Nevada

JOURNAL ENTRIES

- Defendant not present. Correctional Officer advised the Court Defendant was returned to his cell due to misconduct. Ms. Hojjat requested matter be referred to Competency Court. COURT SO ORDERED.

CUSTODY

12/26/14 9:00 A.M. FURTHER PROCEEDINGS; COMPETENCY HEARING (DEPT 7)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 26, 2014

C-14-302450-1 State of Nevada
 vs
 John Morgan

December 26, 2014

9:00 AM

Further Proceedings: Competency

HEARD BY: Bonaventure, Joseph T.

COURTROOM: RJC Courtroom 03F

COURT CLERK: Emma Knauss

RECORDER: Renee Vincent

PARTIES

PRESENT:	Harris, Belinda T.	Attorney for Defendant
	Morgan, John Demon	Defendant
	Pace, Barter G	Attorney for State

JOURNAL ENTRIES

- C.J. Yao of the Specialty Courts present.

Ms. Harris advised Doctor reports were split and requested matter be continued for third evaluation.
COURT SO ORDERED.

CUSTODY

CONTINUED TO: 1/16/15 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 16, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

**January 16, 2015 9:00 AM Further Proceedings:
Competency**

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Sylvia Perez

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Morgan, John Demon Defendant

JOURNAL ENTRIES

- Appearances Continued: Bart Pace, Deputy District Attorney, Belinda Harris and Claudia Romney, Deputy Public Defenders with Christina Greene of the Specialty Courts.

Court noted, Drs Colosimo and Kapel find the Defendant meets the criteria to be considered competent to proceed with adjudication, however Dr. Slagle finds the Defendant incompetent. Ms. Romney requested a challenge hearing be set. There being no opposition by the State, COURT ORDERED, a CHALLENGE HEARING to be SET.

CUSTODY

2/6/15 10:00 AM CHALLENGE HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 06, 2015**

C-14-302450-1 State of Nevada
 vs
 John Morgan

**February 06, 2015 10:00 AM Challenge Hearing
(Competency Court)**

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Sylvia Perez

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT: Morgan, John Demon Defendant

JOURNAL ENTRIES

- Appearances Continued: Bart Pace, Deputy District Attorney, Nadia Hojjat, Deputy Public Defenders with Christina Greene of the Specialty Courts.

Mr. Pace advised the State was not prepared for witnesses but will proceed.

Dr. Dodge Slagle sworn and testified.

Court noted, Drs. Colosimo and Kapel find that Defendant meets the criteria to be considered competent to proceed with adjudication, however Dr. Slagle finds the Defendant incompetent. Arguments by Ms. Hojjat requesting the Court to find the Defendant incompetent or to send the Defendant to Lake's Crossing pursuant to NRS 178.415 for further evaluation. Ms. Hojjat further advised Defendant who does not have appropriate courtroom behavior, does not understand his charges and will not enter a plea and stated as per Dr. Slagle, Defendant could be returned to competent after a medication regimen. Arguments by Mr. Pace in support of the Court finding the Defendant competent and sending him back to the originating department. Further arguments by Counsel. Court NOTED Drs. Colosimo and Kapel indicate competent; therefore, FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature

PRINT DATE: 02/23/2015

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Minutes Date: February 06, 2015

C-14-302450-1

of the charges against him/her and is able to assist counsel in his/her defense and ORDERED, matter TRANSFERRED back to the originating court for further proceedings.

CUSTODY

2/12/15 9:00 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT (DEPT. 3)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 12, 2015**

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 12, 2015**9:00 AM****Further Proceedings: Return from
Competency Court****HEARD BY:** Herndon, Douglas W.**COURTROOM:** RJC Courtroom 16C**COURT CLERK:** Tia Everett/te
Deborah Miller**RECORDER:** Sara Richardson

PARTIES Hilary Heap, Deputy District Attorney, present on behalf of the State. Defendant
PRESENT: present in custody and represented by Nadia Hojjat, Deputy Public Defender.

JOURNAL ENTRIES

- Hilary Heap, Deputy District Attorney, present on behalf of the State. Defendant present in custody and represented by Nadia Hojjat, Deputy Public Defender.

Ms. Hojjat noted her concerns with the finding of competency and maintains her belief that Defendant is not competent. Further, Ms. Hojjat advised Defendant refuses to plead not guilty today. Court noted based upon the findings by Competency Court last week the Court Finds Defendant to be competent; although advised counsel if she believes anything has changed she may request to have Defendant referred back to Competency Court. Statement by Defendant. DEFT. MORGAN ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. Defendant requested to be released on his own recognizance. Court stated Defendant needs to speak with counsel and a written motion will need to be filed. Further Defendant stated he would like to represent himself. Court informed Defendant that he will need to file a written motion stating why he would like to dismiss counsel and why he would like to represent himself. Defendant additionally requested the tape recording. Court stated he will instruct counsel to have her investigator meet with Defendant to discuss the discovery. Upon Court's inquiry, Ms. Hojjat advised the transcript has not been filed. COURT FURTHER ORDERED, counsel shall have twenty-one (21) days from the filing of the transcript to file any writs deemed necessary.

PRINT DATE: 02/18/2015

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Minutes Date: February 12, 2015

C-14-302450-1

CUSTODY

4/16/2015 9:00 AM CALENDAR CALL

4/20/2015 10:00 AM JURY TRIAL

PRINT DATE: 02/18/2015

Page 2 of 2

Minutes Date: February 12, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 16, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

April 16, 2015 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT:	Heap, Hilary	Deputy District Attorney
	Hojjat, Nadia	Deputy Public Defender
	Morgan, John Demon	Defendant

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT'S MOTION FOR DISCOVERY

Court noted that Ms. Hojjat had contacted the Court advising that she would be requesting a competency evaluation. Ms. Hojjat provided court with form and advised she has spoken to the State regarding competency. Upon Court's inquiry, Defendant wishes to represent himself. Court noted representation may be discussed after determination in Competency Court is made. COURT ORDERED, Trial Date VACATED and Matter REFERRED to Competency Court; Defendant's Motion for Discover OFF CALENDAR.

CUSTODY

5/15/15 9:00 AM FURTHER PROCEEDINGS: COMPETENCY COURT (DEPT. 9)

PRINT DATE: 04/20/2015

Page 1 of 1

Minutes Date: April 16, 2015

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 15, 2015

C-14-302450-1 State of Nevada
vs
John Morgan

May 15, 2015 9:00 AM Further Proceedings:
Competency

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES Barter Pace, Chief Deputy District Attorney, present for the State of Nevada.
PRESENT: Claudia Romney, Deputy Public Defender, present on behalf of Defendant Morgan.
 Defendant Morgan present in custody.
 Also present: Christina Greene of the Specialty Courts.

JOURNAL ENTRIES

Court NOTED Drs. Chambers and Lenkeit indicate not competent; therefore, pursuant to the doctors' reports and the Dusky Standard, FINDS Defendant NOT COMPETENT as he/she is not capable of understanding the charges against him/her and is unable to assist counsel in his/her defense. Pursuant to NRS 178.425, COURT ORDERED, Defendant is REMANDED to the custody of the Administrator of the Division of Mental Health Development Services for the Department of Human Resources for detention and treatment at a secure facility operated by that Division. Once competency has been established, Defendant will be returned to this court for findings and referred back to the originating department for further proceedings.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

July 31, 2015

1:30 PM

Motion to Dismiss

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Craig-Rohan, Christy L.	Attorney
	Pace, Barter G	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant not present.

COURT ORDERED, Defendant's presence WAIVED for the purposes of this hearing. Court noted it has spoken to counsel and advised that Chief Judge Barker has advised these motions are not for this Court to decide and that it is confined to matters of the Dusky Standard and challenges associated thereto. Ms. Craig disagreed and argued that the motions are squarely a competency matter and requested a decision. State advised it understands the Court's ruling. Court noted Ms. Craig's objection to the reassignment. COURT ORDERED, matter REFERRED to the originating department for argument on the motion. Court further advised that the Defendants are to remain on the transport list for Lakes Crossing and if transported, their appearances will be waived in the originating department.

CUSTODY

08/06/15 9:00 AM MOTION TO DISMISS

PRINT DATE: 07/31/2015

Page 1 of 2

Minutes Date: July 31, 2015

C-14-302450-1

PRINT DATE: 07/31/2015

Page 2 of 2

Minutes Date: July 31, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 06, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

August 06, 2015 9:00 AM Motion to Dismiss

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT:	Craig-Rohan, Christy L.	Deputy Public Defender
	Lalli, Christopher J	Deputy District Attorney
	Morgan, John Demon	Defendant
	Sliwa, Susanne M	Deputy Attorney General

JOURNAL ENTRIES

- Ms. Craig stated the history of the case, noting Competency Court ordered Defendant to be transferred to Lake's Crossing on May 22, 2015. Further, counsel argued Defendant's due process rights have been violated, therefore, requested court dismiss charges and release him from custody. Ms. Sliwa noted there is a Federal lawsuit and a consent decree was entered, and efforts have been made on the process. Upon court's inquiry, Ms. Sliwa acknowledged they are not in compliance; however, dismissal is not the appropriate remedy. Ms. Lalli argued as to the lack of legal authority to dismiss, consent decree, and the substantial steps that have been done to alleviate the waiting period. Further arguments by Ms. Craig. Court stating FINDINGS, and ORDERED, Motion DENIED, noting dismissal is extreme and appropriate remedy is for State to comply with the order. Ms. Craig to provide an order to transport Defendant within seven (7) days.

CUSTODY

PRINT DATE: 08/07/2015

Page 1 of 1

Minutes Date: August 06, 2015

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 04, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

September 04, 2015 9:00 AM Status Check

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Harris, Belinda T.	Attorney
	Pace, Barter G	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT noted the Defendant was transported to Lakes Crossing on 09/03/15 and ORDERED, matter OFF CALENDAR.

CUSTODY (L. C.)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 11, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

December 11, 2015 9:00 AM

**Further Proceedings:
Competency-Return From
Lakes Crossing**

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT:	Morgan, John Demon	Defendant
	Pace, Barter G	Attorney
	Romney, Claudia	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Also present: Christina Greene of the Specialty Courts. Defendant not present.

Ms. Romney advised she will not be making a challenge. COURT ORDERED, matter CONTINUED for the Defendant's presence.

CUSTODY

CONTINUED TO: 12/18/15 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 18, 2015

C-14-302450-1 State of Nevada
 vs
 John Morgan

December 18, 2015 9:00 AM

**Further Proceedings: Competency-Return From Lakes
Crossing**

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo
 Skye Endresen/se

RECORDER: Yvette G. Sison

PARTIES

PRESENT:	Morgan, John Demon	Defendant
	Pace, Barter G	Deputy District Attorney
	Romney, Claudia	Deputy Public Defender

JOURNAL ENTRIES

- Also present: Christina Greene of the Specialty Courts.

There being no challenge by Defense Counsel, COURT FINDS Defendant COMPETENT pursuant to the Dusky Standard as Defendant is capable of understanding the nature of the charges against him and is able to assist counsel in his defense and ORDERED, pursuant to 178.420, matter TRANSFERRED back to the originating court for further proceedings.

CUSTODY

1/7/16 9:00 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT - DC 3

PRINT DATE: 12/21/2015

Page 1 of 1

Minutes Date: December 18, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 07, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

January 07, 2016 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES Elana Graham, Deputy District Attorney, present on behalf of the State.
PRESENT: Defendant Morgan present, in custody, represented by Nadia Hojjat, Deputy Public
 Defender.

JOURNAL ENTRIES

FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT...DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE.

Ms. Hojjat advised that she also filed a motion for discovery and requested it be heard today. State requested time to file an opposition. COURT ORDERED, motion SET for hearing. Ms. Hojjat noted the bail was not reinstated after returning from Lake's Crossing and submitted on the motion. Ms. Graham argued in opposition, requesting bail be set at \$40,000. Ms. Hojjat further argued as to Defendant taking his medications, requesting reinstatement of the original bail of \$20,000. COURT ORDERED, Bail SET at \$50,000, noting amount is appropriate after reviewing all documents.

CUSTODY

1/21/16 9:00 AM MOTION TO DISCOVERY

PRINT DATE: 01/11/2016

Page 1 of 2

Minutes Date: January 07, 2016

C-14-302450-1

2/18/16 9:00 AM CALENDAR CALL

2/22/16 10:00 AM JURY TRIAL

PRINT DATE: 01/11/2016

Page 2 of 2

Minutes Date: January 07, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 21, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

January 21, 2016 10:30 AM Motion for Discovery

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES Elana Graham, Deputy District Attorney, present on behalf of the State.
PRESENT: Defendant Morgan present, in custody, represented by Nadia Hojjat, Deputy Public
 Defender.

JOURNAL ENTRIES

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY FILED IN OPEN COURT.

Arguments by Ms. Hojjat and Ms. Graham regarding Motion for Discovery. COURT ORDERED, as to

- # 1 - Benefits - GRANTED as to any fees paid to witnesses.
- # 2 - Notes and videos - GRANTED if exists.
- # 3 - Criminal History - GRANTED if exculpatory.
- # 4 - Notes and statements by Defendant - GRANTED if exist.
- # 5 - Chain of Custody Reports - GRANTED.
- # 6 - Statements - GRANTED.
- # 7 - Contact Lists - GRANTED.
- # 8 - Documents or photos - GRANTED, excluding AMR Medical Reports. Counsel may prepare order.
- # 9 - Electronic Communications - GRANTED.
- # 10 - Video - GRANTED.
- # 11- Documents and notes pertaining to the identification of Defendant - GRANTED, if exists.

PRINT DATE: 02/17/2016

Page 1 of 2

Minutes Date: January 21, 2016

C-14-302450-1

CUSTODY

PRINT DATE: 02/17/2016

Page 2 of 2

Minutes Date: January 21, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 18, 2016 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES Elana Graham, Deputy District Attorney, present on behalf of the State.
PRESENT: Defendant Morgan present, in custody, represented by Nadia Hojjat, Deputy Public
 Defender.

JOURNAL ENTRIES

CALENDAR CALL....DEFENDANT'S MOTION FOR DISMISSAL OR, IN THE ALTERNATIVE, A
BILL OF PARTICULARS...DEFENDANT'S MOTION TO COMPEL COUNTS 1 AND 2 TO BE PLED
IN THE ALTERNATIVE...DEFENDANT'S MOTION IN LIMINE

State provided photos of the court documents that fell out of the Defendant's bag. As to the
Defendant's Motion to Compel Counts 1 and 2 to be Pled in the Alternative, Ms. Hojjat submitted on
the motion. State submitted. COURT ORDERED, motion DENIED, noting charges can exist
separately.

As to Defendant's Motion in Limine. Arguments by Ms. Hojjat as to Defendant's identity is not being
disputed, therefore, documents should be excluded. Ms. Graham argued identity is an issue, noting
papers are proof of identity. COURT ORDERED, motion GRANTED as to any court related
paperwork.

As to Defendant's Motion for Dismissal or, in the Alternative, a Bill of Particulars, Arguments by
counsel. COURT ORDERED, motion DENIED, noting pleadings are sufficient.

PRINT DATE: 02/19/2016

Page 1 of 2

Minutes Date: February 18, 2016

Ms. Hojjat announced ready. State announced ready, noting 5-7 witnesses and 2-3 days for trial. COURT ORDERED, trial VACATED; matter REFERRED to Overflow.

CUSTODY

2/19/16 8:30 AM OVERFLOW (DEPT. 18 10-C) (GRAHAM/HOJJAT/2-3 DAYS/5-7 WITNESSES)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 19, 2016

C-14-302450-1 State of Nevada
 vs
 John Morgan

February 19, 2016 8:30 AM Overflow

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 10C

COURT CLERK: Billie Jo Craig

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Hojjat, Nadia Attorney
 Morgan, John Demon Defendant

JOURNAL ENTRIES

- Deputy District Attorney Elana Graham present. Deputy Public Defender Arlene Heshmati present with Ms. Hojjat.

COURT ORDERED, matter REFERRED to Dept. 22, Judge Susan Johnson, for a 2 to 3-day Jury Trial. Ms. Hojjat advised defendant's head was partially shaved and she would submit an Order to have defendant cleaned up for Trial. COURT SO ORDERED to have defendant presentable for Trial.

CUSTODY

2/22/16 8:30 AM JURY TRIAL - DEPT. 22

E. GRAHAM/N. HOJJAT

2-3 DAYS

5-7 WITNESSES

PRINT DATE: 02/19/2016

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Minutes Date: February 19, 2016

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