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IN THE SUPREME COURT OF THE STATE OF NEVADA

LONNIE LYNN SWEAT,

Petitioner,

v.

THE HONORABLE STEFANY MILEY,
EIGHTH JUDICIAL DISTRICT COURT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party In Interest.

No. Electronically Filed
Aug 25 2016 08:47 a.m.
(District Ct. No. E-16-31552-P)
(Justice Tracie K. Lindeman)
Ct. No. 16107458X
Clerk of Supreme Court

PETITIONER'S APPENDIX TO WRIT OF MANDAMUS

PHILIP J. KOHN
Clark County Public Defender
309 South Third Street
Las Vegas, Nevada 89155-2610

Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

INDEX
LONNIE LYNN SWEAT

PAGE NO.

1		
2		
3	Amended Information filed 06/15/16.....	013-015
4	Criminal Complaint filed 05/09/16.....	001-003
5	Defendant's Motion to Dismiss filed 07/01/16	016-024
6	District Court Minutes from 06/09/16 through 08/08/16	041-046
7	Information filed 06/08/16.....	009-010
8	Justice Court Minutes through 06/07/16	004-008
9	Motion for Stay of District Court Proceedings filed 08/01/16	038-040
10	Notice of Expert Witnesses filed 06/14/16.....	011-012
11	State's Opposition to Defendant's Motion to Dismiss filed 07/18/16.....	031-037
12	State's Opposition to Defendant's Motion to Withdraw Plea filed 07/15/16.....	025-030
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JUSTICE COURT LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED

THE STATE OF NEVADA 2016 MAY -9 P 12:35

Plaintiff, JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 16F07438X

-VS-

BY LG
DEPUTY

DEPT NO: 10

LONNIE LYNN SWEAT #1973400,

Defendant.

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of BATTERY
CONSTITUTING DOMESTIC VIOLENCE (Category C Felony - NRS 200.481, 200.485.1C,
33.018 - NOC 50239), in the manner following, to-wit: That the said Defendant, on or about
the 7th day of May, 2016, at and within the County of Clark, State of Nevada, did then and
there willfully, unlawfully, and feloniously use force or violence upon the person of
LASHAWNDA JAMES, a person with whom Defendant was formerly in a dating
relationship with and with whom he formerly resided with and/or shares a child in common,
by grabbing the said LASHAWNDA JAMES and/or throwing her down to the ground, said
Defendant having committed the offense of Battery Constituting Domestic Violence at least
two times within seven (7) years immediately preceding the date of the principle offense or
after the principle offense charged herein, to-wit:

Date of Offense: April 19, 2011
Conviction: May 1, 2012, Case No. 11F07717X,
Justice Court, Las Vegas Township, Clark County, State of Nevada

Date of Offense: September 6, 2010
Conviction: September 9, 2011, Case No. C1025301,
Las Vegas Municipal Court, Clark County, State of Nevada.

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16F07438X
CRM
Criminal Complaint
6486261



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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27 16F07438X/rmj
28 LVMPD EV# 1605073029; 1605063641
(TK4)

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YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
ADA intends to call the following witnesses:

<u>NAME</u>	<u>ADDRESS</u>
CUSTODIAN OF RECORDS	Communication Bureau Law Enforcement Agency – Clark County, Nevada

These witnesses are in addition to those witnesses noted in the discovery or other documents provided.

DATED May 9, 2016.

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

Department: 3

Court Minutes



L006484109

PC16F07438X State of Nevada vs. Sweat, Lonnie Lynn

**5/9/2016 7:30:00 AM 48 Hour Probable Cause
Review**

Result: Signing Completed

**PARTIES
PRESENT:**

Judge: Tobiasson, Melanie A.

PROCEEDINGS

Hearings: 5/10/2016 8:30:00 AM: 72 Hour Hearing

Added

Events: Probable Cause Arrest Documents

Probable Cause Found

Bail Stands - Cash or Surety

Amount: \$15,000.00

Counts: 001 - \$15,000.00/\$15,000.00 Total Bail

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

Department: 10

Court Minutes



L006491116

16F07438X State of Nevada vs. Sweat, Lonnie Lynn

Lead Atty: Public Defender

5/10/2016 8:30:00 AM Initial Appearance (In Custody)

Result: Matter Heard

PARTIES	Attorney	Public Defender
PRESENT:	Defendant	Sweat, Lonnie Lynn

Judge: Toblasson, Melanie A.

Prosecutor: Luzaich, Lisa

Court Reporter: McCord, Donna

Court Clerk: Carrera, Socorro

PROCEEDINGS

Attorneys:	Public Defender	Sweat, Lonnie Lynn	Added
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Hearings:	5/24/2016 10:00:00 AM: Preliminary Hearing	Added
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Events:	Initial Appearance Completed
	<i>Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i>
	Public Defender Appointed
	Bail Stands - Cash or Surety Amount: \$15,000.00
	<i>Counts: 001 - \$15,000.00/\$15,000.00 Total Bail</i>

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

Department: 10

Court Minutes



L006553839

16F07438X State of Nevada vs. Sweat, Lonnie Lynn

Lead Atty: Public Defender

**5/24/2016 10:00:00 AM Preliminary Hearing (In
Custody)**

Result: Matter Continued

PARTIES PRESENT:	Attorney Defendant	Public Defender Sweat, Lonnie Lynn
-----------------------------	-----------------------	---------------------------------------

Judge: Tobiasson, Melanie A.

Prosecutor: Trippiedi, Hagar

Court Reporter: McCord, Donna

Court Clerk: Carrera, Socorro

PROCEEDINGS

Hearings:	5/31/2016 8:30:00 AM: Order to Show Cause	Added
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	6/7/2016 10:00:00 AM: Preliminary Hearing	Added
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Events: **Bustos Motion by State to Continue - Granted**

Objection by defense - Motion Granted.

Motion by Defense for an O.R. Release

Motion Denied.

Order to Show Cause

filed in open court as to Lashawnda James.

Bail Stands - Cash or Surety

Amount: \$15,000.00

Counts: 001 - \$15,000.00/\$15,000.00 Total Bail

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

Department: 10

Court Minutes



L006580544

16F07438X State of Nevada vs. Sweat, Lonnie Lynn

Lead Atty: Public Defender

**5/31/2016 8:30:00 AM Order to Show Cause (In
Custody)**

Result: Matter Heard

PARTIES Attorney Public Defender
PRESENT: Defendant Sweat, Lonnie Lynn

Judge: Tobiasson, Melanie A.

Prosecutor: Portz, Nick

Court Reporter: McCord, Donna

Court Clerk: Carrera, Socorro

PROCEEDINGS

Events: Order to Show Cause

Lashawnda James present in the courtroom.

Victim admonished to appear at the preliminary hearing date.

Bail Stands - Cash or Surety Amount: \$15,000.00

Counts: 001 - \$15,000.00/\$15,000.00 Total Bail

Future Court Date Stands

6/07/2016 at 10am (Preliminary hearing)

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

Department: 10

Court Minutes



L006610015

16F07438X State of Nevada vs. Sweat, Lonnie Lynn

Lead Atty: Public Defender

6/7/2016 10:00:00 AM Preliminary Hearing (In Custody)

Result: Bound Over

PARTIES PRESENT: Attorney Defendant Public Defender Sweat, Lonnie Lynn

Judge: Tobiasson, Melanie A.

Prosecutor: Smith, Tyler

Court Reporter: McCord, Donna

Court Clerk: Carrera, Socorro

PROCEEDINGS

Events: Admonishment of Rights - BDV

Signed in open court.

Bail Stands - Cash or Surety Amount: \$15,000.00

Counts: 001 - \$15,000.00/\$15,000.00 Total Bail count 1

Not in custody

Counts: 002: count 2

Unconditional Bind Over to District Court

Review Date: 6/8/2016

Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.

District Court Appearance Date Set

Jun 9 2016 10:00AM: In Custody

Case Closed - Bound Over

Judgment Entered

Charges: 002: Domestic battery, first offense

Plea/Disp: 001: Dom battery, (3+) [50239]

Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

002: Dom battery, (1st) [50235]

Plea: Nolo Contendere

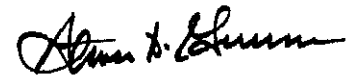
Disposition: Guilty as Charged

Sentence: Misdemeanor Sentence

Credit for Time Served

6/7/2016 -

Satisfied (6/7/2016)



CLERK OF THE COURT

1 **INFM**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TYLER D. SMITH**
6 **Deputy District Attorney**
7 **Nevada Bar #011870**
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. 06/09/16**
13 **10:00 AM**
14 **PD**

15 **THE STATE OF NEVADA,**
16 **Plaintiff,**

17 **-vs-**

18 **LONNIE LYNN SWEAT,**
19 **#1973400,**
20 **Defendant.**

CASE NO: C-16-315552-1

DEPT NO: XXIII

INFORMATION

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 LONNIE LYNN SWEAT, the Defendant(s) above named, having committed the**
26 **crime of BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS**
27 **200.481 - NOC 50214), on or about the 7th day of May, 2016, within the County of Clark,**
28 **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, did willfully, unlawfully,
and feloniously use force or violence upon the person of another, to-wit: LASHAWNDA

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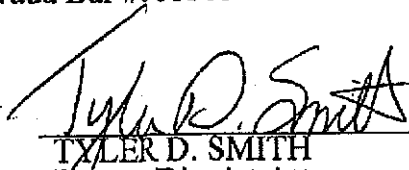
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1 JAMES, by grabbing the said LASHAWNDA JAMES and/or throwing her down to the
2 ground, resulting in substantial bodily harm to LASHAWNDA JAMES.

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

6 BY


7 TYLER D. SMITH
8 Deputy District Attorney
9 Nevada Bar #011870

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27 16F07438X/td/dvu
28 LVMPD EV#1605073029; 1605063641
(TK4)


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TYLER D. SMITH
Deputy District Attorney
Nevada Bar #011870
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-

LONNIE LYNN SWEAT,
#1973400,
Defendant.

CASE NO: C-16-315552-1

DEPT NO: XXIII

NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: LONNIE LYNN SWEAT, Defendant; and

TO: KENTON EICHACKER, Deputy Public Defender, Counsel of Record:

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

1. GREENE, ELYNNE, P #4959, Victim Advocate for the Las Vegas Metropolitan
Police Department or Designee, is an expert in domestic violence and will testify about the
counterintuitive behavior of victims of domestic abuse, the reasons therefore, and other related
topics. Her testimony may include, but is not limited to, the cycle of domestic abuse; the effects
of power and control stratagems on the behavior of victims; coping and avoidance mechanisms
employed by victims; and the tendency of victims to delay reporting, minimize abuse, recant
prior statements, and vacillate affections toward their abusers.

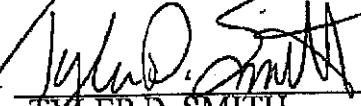
These witnesses are in addition to those witnesses endorsed on the Information or

1 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert
2 Witnesses has been filed.

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

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

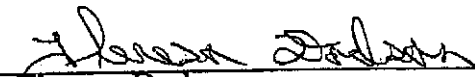
6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY: 
10 TYLER D. SMITH
11 Deputy District Attorney
12 Nevada Bar #011870

13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of Notice of Expert Witnesses, was made this 14th
15 day of June, 2016, by facsimile transmission to:

16 KENTON EICHACKER, Deputy Public Defender
17 FAX #702-366-1911

18 BY: 
19 Theresa Dodson
20 Secretary for the District Attorney's Office

21
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28 td/dvu

ORIGINAL

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TYLER D. SMITH
6 Deputy District Attorney
7 Nevada Bar #011870
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

JUN 15 2016

BY: *Roshonda Mayfield*
ROSHONDA MAYFIELD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 LONNIE LYNN SWEAT,
13 #1973400,

14 Defendant.

CASE NO. C-16-315552-1

DEPT NO. XXIII

AMENDED
INFORMATION

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

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

19 That LONNIE LYNN SWEAT, the Defendant(s) above named, having committed the
20 crime of **BATTERY CONSTITUTING DOMESTIC VIOLENCE (Category C Felony -**
21 **NRS 200.481, 200.485.1C, 33.018 - NOC 50239)**, on or about the 7th day of May, 2016,
22 within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes
23 in such cases made and provided, and against the peace and dignity of the State of Nevada,
24 did then and there willfully, unlawfully, and feloniously use force or violence upon the person
25 of LASHAWNDA JAMES, a person with whom Defendant was formerly in a dating

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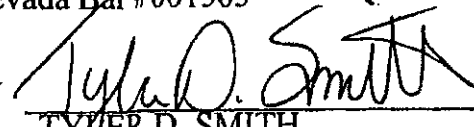
C-16-315552-1
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Amended Information
4655948



1 relationship with and with whom he formerly resided with and/or shares a child in common,
2 by grabbing the said LASHAWNDA JAMES and/or throwing her down to the ground.

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

6 BY


7 TYLER D. SMITH
8 Deputy District Attorney
9 Nevada Bar #011870

10 **DO NOT READ TO THE JURY**

11 Said Defendant having committed the offense of Battery Constituting Domestic
12 Violence at least two times within seven (7) years immediately preceding the date of the
13 principle offense or after the principle offense charged herein, to-wit:

14 Date of Offense: April 19, 2011
15 Conviction: May 1, 2012, Case No. 11F07717X,
16 Justice Court, Las Vegas Township, Clark County, State of Nevada

17 Date of Offense: September 6, 2010
18 Conviction: September 9, 2011, Case No. C1025301,
19 Las Vegas Municipal Court, Clark County, State of Nevada.

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

<u>NAME</u>	<u>ADDRESS</u>
22 ASHENFELTER, DEBORAH	District Attorney Investigator
23 BODDIE, CHRISTOPHER M.	LVMPD #8914
24 CUSTODIAN OF RECORDS	CCDC
25 CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
26 CUSTODIAN OF RECORDS	LVMPD RECORDS
27 HOGANS, DWAYNE	District Attorney Process Server
28 JAMES, LASHAWNDA RANEA	C/O DISTRICT ATTORNEY'S OFFICE
PATTERSON, DEBRA	District Attorney Process Server

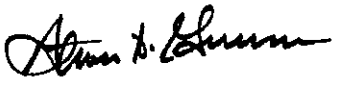
RODRIGUEZ, JAVIER

District Attorney Process Server

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DA#16F07438X/td/dvu
LVMPD EV#1605073029; 1605063641
(TK4)

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


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

LONNIE LYNN SWEAT,

Defendant.

CASE NO. C-16-315552-1

DEPT. NO. XXIII

DATE: July 13, 2016
TIME: 9:30 a.m.

DEFENDANT'S MOTION TO DISMISS

COMES NOW, the defendant, LONNIE SWEAT, by and through KENTON EICHACKER, Deputy Public Defender, and hereby requests the charge of Battery Constituting Domestic Violence be dismissed, since proceeding to trial on those charges would violate the Double Jeopardy clause.

This Motion is based upon the Double Jeopardy clause of the United States and Nevada Constitutions and all the papers and pleadings on file herein, as well as any time permitted by the court for oral argument.

DATED this 1st of July, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Kenton Eichacker
Kenton Eichacker, #13114
Deputy Public Defender

STATEMENT OF CASE

On May 10, 2016 Mr. Lonnie Sweat was arraigned on a charge for Battery Constituting Domestic Violence (NRS 200.481, 200.485.1C, 33.018 – NOC 50239) based on a single event occurring on May 7, 2016. Mr. Sweat received the Criminal Complaint and the matter was set for a Preliminary Hearing.

On June 7, 2016 Mr. Sweat unconditionally waived his right to a Preliminary Hearing. Negotiations were entered into where Mr. Sweat would plead to a fictitious charge in District Court to a Battery Resulting in Substantial Bodily Harm (NRS 200.481 – NOC 50214) and Mr. Sweat would plead to a misdemeanor Battery Constituting Domestic Violence charge in Justice Court. On June 7, 2016, the Honorable Judge Tobiasson adjudicated Mr. Sweat guilty of a misdemeanor Battery Constituting Domestic Violence. Mr. Sweat was sentenced that same day and the misdemeanor was closed. Mr. Sweat was told when he gets to District Court he can go through with the negotiations, but if he decides he doesn't want the negotiations he can go still go to jury trial (PHT, page 4, lines 2-5). However, Mr. Sweat was told that if he did not go through with the negotiations, he would not return to Justice Court for a Preliminary Hearing and that his misdemeanor domestic violence charge would stand (PHT, page 4, lines 5-7).

On June 15, 2016 Mr. Sweat decided that he did not want to go forward with the negotiations. The State then filed an Amended Information with the Court charging Mr. Sweat with one count of felony Battery Constituting Domestic Violence.

SUMMARY OF ARGUMENT

Proceeding to trial on the felony Battery Constituting Domestic Violence charge against Mr. Sweat violates the Double Jeopardy clause of the United States and Nevada Constitutions, because Mr. Sweat already has a Battery Constituting Domestic Violence conviction on his record for the same course of conduct. Mr. Sweat was adjudicated and sentenced to a misdemeanor Battery Constituting Domestic Violence on June 7, 2016 for events arising from a single incident on May 7, 2016. The State is now seeking to try Mr. Sweat for a felony Battery Constituting Domestic Violence charge arising from the same single incident on May 7, 2016 that was the basis

1 for his plea on June 7, 2016. Pursuant to the Double Jeopardy clause, a defendant cannot be
2 prosecuted a second time for the same offense after conviction.

3 The only difference between a misdemeanor Battery Constituting Domestic Violence and a
4 felony Battery Domestic Violence lies in the criminal penalties and punishments under NRS
5 200.481. Since no additional facts are needed to convict Mr. Sweat of Battery Constituting
6 Domestic Violence the two are considered the "same offense" for Double Jeopardy purposes.
7 Therefore, Mr. Sweat cannot now be tried for felony Battery Constituting Domestic Violence
8 without violating the Double Jeopardy clause of the United States and Nevada Constitutions.

9 ARGUMENT

10 LONNIE SWEAT'S MISDEMEANOR CONVICTION BARS PROSECUTION OF THE 11 FELONY OFFENSE.

12 No person shall be "subject for the same offense to be twice put in jeopardy of life or
13 limb."¹ U.S. Const. Amend. V. The Double Jeopardy clause applies to the States through the Due
14 Process Clause of the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056
15 (1969). The theory that a person should not be tried or punished for the same crime twice dates
16 back to common law England. *United States v. Wilson*, 420 U.S. 332, 339-40, 95 S. Ct. 1013,
17 1020, 43 L. Ed. 2d 232 (1975). When a defendant has been convicted and punished for a specific
18 crime, principles of fairness and finality demand he not be subjected again for the same offense to
19 the strains of trial and punishment. *Ohio v. Johnson*, 467 U.S. 493, 498-99, 104 S.Ct. 2536, 2541
20 (1984); *Serfass v. U.S.*, 420 U.S. 377, 388, 95 S.Ct. 1055, 1062 (1975); *Wilson*, 420 U.S. at 343.

21 The Double Jeopardy clause affords three protections to defendants; 1. it protects against a
22 second prosecution for the same offense after acquittal; 2. it protects against a second prosecution
23 for the same offense after conviction; 3. it protects against multiple punishments for the same
24 offense. *Ill. v. Vitale*, 447 U.S. 410, 415, 100 S.Ct. 2260, 2264 (1980); *Wilson*, 420 U.S. at 343;
25 *Williams v. State*, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002); *State v. Lomas*, 114 Nev. 313,
26 315, 955 P.2d 678, 679 (1998).

27
28 ¹ "No person shall be subject to be twice put in jeopardy for the same offense." N.R.S. Const. Art. 1 §8(1).

1 **I. Lonnie Sweat's conviction of the misdemeanor Battery Constituting Domestic Violence**
2 **protects against a second prosecution for the same offense after conviction.**

3 The prosecution of the greater offense is prohibited after a conviction for a lesser offense.
4 See *Ohio v. Johnson*, 467 U.S. 493, 501, 104 S.Ct. 2536, 81 L.Ed.2d 425 (1984) ("[T]he Double
5 Jeopardy Clause prohibits prosecution of a defendant for a greater offense when he has already
6 been tried and acquitted or convicted on the lesser included offense."); *Illinois v. Vitale*, 447 U.S.
7 410, 421, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980) ("[A] conviction on a lesser-included offense
8 bars subsequent trial on the greater offense."); *Brown v. Ohio*, 432 U.S. 161, 169, 97 S.Ct. 2221,
9 53 L.Ed.2d 187 (1977) ("Whatever the sequence may be, the Fifth Amendment forbids successive
10 prosecution and cumulative punishment for a greater and lesser included offense.").

11 The United States Supreme Court has held that the Double Jeopardy clause prohibits a
12 defendant from being prosecuted on a greater offense after he has already been tried and acquitted
13 or convicted on the lesser included offense based upon the same original act. *Johnson*, 467 U.S. at
14 501; *Brown*, 432 U.S. at 168; *Wilson v. Czerniak*, 335 F.3d 1151, 1154 (9th Cir. 2004). Nor may a
15 defendant be prosecuted on a lesser offense after he has already been tried and acquitted or
16 convicted on a greater offense. *Brown*, 432 U.S. at 168. The order of prosecution is immaterial. *Id.*
17 Regardless of the sequence, the Double Jeopardy clause prohibits successive prosecution and
18 cumulative punishment for a greater and lesser included offense. *Id.* at 169.

19 Mr. Sweat has been adjudicated and sentenced for a misdemeanor Battery Constituting
20 Domestic Violence conviction. The facts that gave rise to Mr. Sweat's misdemeanor conviction
21 are the same that are being used as the basis for the felony Battery Domestic Violence charge. The
22 only difference between the misdemeanor charge and the felony charge are the criminal penalties
23 and punishments under NRS 200.481. Mr. Sweat is not charged with two distinct offenses.

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CONCLUSION

For the aforementioned reasons, Mr. Lonnie Sweat requests that the Battery Constituting Domestic Violence felony charge against him be dismissed because to proceed on that charge would violate his Constitutional rights under the Double Jeopardy clause.

Dated 1st day of July, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Kenton Eichacker
KENTON EICHACKER #13114
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 13th day of July, 2016 2016, at 9:30 a.m.

DATED this 1st day of July, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER
By /s/ Kenton Eichacker
Kenton Eichacker, #13114
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing Motion was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 1st day of July, 2016.

By: /s/ Egda Ramirez
Employee of the Public Defender's Office

EXHIBIT A

1 TRAN

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3 IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP

4 COUNTY OF CLARK, STATE OF NEVADA

5

6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 LONNIE LYNN SWEAT,

10 Defendant.

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ORIGINAL

JO CASE NO. 16F07438X
DC CASE NO. C315552

REPORTER'S TRANSCRIPT
OF
WAIVER OF PRELIMINARY HEARING AND BATTERY DOMESTIC
VIOLENCE PLEA
BEFORE THE HONORABLE MELANIE A. TOBIASSON
JUSTICE OF THE PEACE
TUESDAY, JUNE 7, 2016

APPEARANCES:

For the State: TYLER SMITH
Deputy District Attorney

For the Defendant: KENTON EICHACKER
Deputy Public Defender

Reported by: Donna J. McCord, CCR #337

1 LAS VEGAS, NEVADA, JUNE 7, 2016, 10:00 A.M.

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5 THE COURT: 16F07438X, Lonnie Sweat is

6 present in custody. What's the status?

7 MR. EICHACKER: The matter is negotiated,

8 your Honor.

9 THE COURT: All right. What are the

10 negotiations?

11 MR. EICHACKER: With the Court's

12 permission today Mr. Sweat will be unconditionally

13 waiving his right to a preliminary hearing. He'll

14 go to District Court and plead guilty to a battery

15 resulting in substantial bodily harm and to a

16 battery domestic violence misdemeanor. The State

17 will make no recommendation at sentencing. And I

18 believe that's it.

19 THE COURT: All right. Do you want him to

20 plead to the misdemeanor here?

21 MR. SMITH: I prefer he plead to the

22 misdemeanor today.

23 MR. EICHACKER: Okay. I need to do an

24 admonishment.

25 MR. SMITH: And we can just give him

1 credit for time served.

2 THE COURT: I'll trail that for you to do

3 the admonishment.

4 MR. EICHACKER: Thank you.

5 THE COURT: Thank you.

6 (Other matters on calendar heard.)

7 THE COURT: 16F07438X, Lonnie Sweat is

8 present in custody. What's the status? Oh, we

9 already know, okay. It's an unconditional waiver.

10 You're going to plead in District Court to a battery

11 with substantial bodily harm. The State will make

12 no recommendation up there and here you'll plead to

13 a misdemeanor with credit for time served. Do you

14 understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand when you

17 unconditionally waive your right to a preliminary

18 hearing on the felony charge you're giving up that

19 right forever?

20 THE DEFENDANT: Yes.

21 THE COURT: At a preliminary hearing you'd

22 have the right to confront the State's witnesses.

23 You also would have the right to testify and present

24 your own evidence. You're giving up those rights as

25 well. Do you understand?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: When you get up to District

3 Court you can go through with the negotiations. If

4 you decide you don't want to you can still take the

5 felony charge to trial, you just won't come back

6 here for a preliminary hearing and your plea to the

7 misdemeanor domestic violence charge will stand. Do

8 you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. It appears to me

11 from the complaint on file that crimes have been

12 committed, to-wit: Count 1, battery domestic

13 violence third offense, and the defendant having

14 unconditionally waived his right to a preliminary

15 hearing, I hereby order said defendant be held to

16 answer to said charge in the Eighth Judicial

17 District Court, County of Clark, State of Nevada at

18 the following date and time.

19 THE CLERK: June 9th at 10:00 a.m.

20 THE COURT: All right, and the complaint

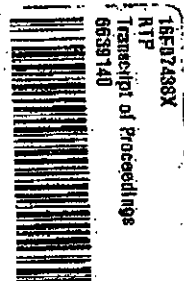
21 will be amended to add a Count 2, misdemeanor

22 domestic violence. I have a form entitled, "Battery

23 Domestic Violence Admonishment of Rights?" Did you

24 read this?

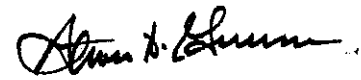
25 THE DEFENDANT: Yes, ma'am.



1 THE COURT: Did you understand it?
 2 THE DEFENDANT: Yes.
 3 THE COURT: And is that your signature?
 4 THE DEFENDANT: Yes.
 5 THE COURT: Do you understand the
 6 consequences for a second or third conviction for
 7 domestic violence?
 8 THE DEFENDANT: Yes, ma'am.
 9 THE COURT: Do you want me to go over
 10 those with you?
 11 THE DEFENDANT: No, ma'am.
 12 THE COURT: All right. Knowing those how
 13 do you wish to plead to the charge of battery
 14 domestic violence?
 15 THE DEFENDANT: No contest.
 16 THE COURT: Parties stipulate to the facts
 17 and relationship?
 18 MR. EICHACKER: Yes, your Honor.
 19 MR. SMITH: Yes.
 20 THE COURT: All right. Based on those
 21 stipulations I'll accept the no contest plea and
 22 adjudicate you guilty of the misdemeanor. I'll
 23 sentence you to credit for time served on that count
 24 and that part of the case will be closed, okay?
 25 THE DEFENDANT: Thank you, your Honor.

1 THE COURT: Thank you.
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 4 Attest: Full, true, accurate transcript of
 5 proceedings.

6 /s/Donna J. McCord
 7 DONNA J. MCCORD CCR #337
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CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 K. NICHOLAS PORTZ
6 Deputy District Attorney
7 Nevada Bar #012473
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 ANTHONY TAYLOR,
13 #1967798,

14 Defendant.

CASE NO: C-15-310905-1

DEPT NO: XIX

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA

16 DATE OF HEARING: May 16, 2016
17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through K. NICHOLAS PORTZ, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Motion To Withdraw
21 Plea.

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 **STATEMENT OF THE CASE**

3 On August 21, 2015, the State filed a Criminal Complaint in Justice Court charging
4 Anthony Taylor ("Defendant") with: Count 1 – Battery Constituting Domestic Violence –
5 Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018) and Battery Constituting
6 Domestic Violence (Misdemeanor – NRS 200.485(1)(A), 200.481(1)(A), 33.018). Defendant
7 and State entered into negotiations. On November 19, 2015, pursuant to a negotiation reached
8 with Defendant, Defendant pled guilty in Justice Court to Count 2 of the Criminal Complaint
9 and received credit for time served. On that same day, also pursuant to negotiations, Defendant
10 unconditionally waived his right to a preliminary hearing on Count 1 and was bound over to
11 district court.

12 On November 20, 2015, pursuant to negotiations, the State filed an Information in
13 District Court charging Defendant with Attempt Battery with Substantial Bodily Harm
14 (Category D Felony/Gross Misdemeanor – NRS 200.481, 193.330). On November 23, 2015,
15 the State filed a Guilty Plea Agreement ("GPA") signed by Defendant. Pursuant to the GPA,
16 the State had no opposition to Defendant's own recognizance release after entry of guilty plea
17 in district court. The State retained the right to argue for felony treatment and the terms and
18 conditions of probation. On the same day, Defendant, who was in custody, was arraigned,
19 canvassed and pled guilty pursuant to the GPA before the Honorable Melisa De La Garza.
20 Pursuant to the agreement, Defendant was released on his own recognizance. Sentencing is
21 currently set for May 16, 2016.

22 On April 20, 2016, Defendant filed a Motion to Withdraw Guilty Plea. The State's
23 Opposition follows.

24 **ARGUMENT**

25 **I. DEFENDANT IS NOT ENTITLED TO WITHDRAW HIS PLEA**

26 Nevada Revised Statute 176.165 states:

27 Except as otherwise provided in this section, a motion to withdraw a plea of
28 guilty or nolo contendere may be made only before sentence is imposed or
imposition of sentence is suspended. To correct manifest injustice, the court

1 after sentence may set aside the judgment of conviction and permit the
2 defendant to withdraw his plea.

3 Before sentencing, "[a] district court may, in its discretion, grant a defendant's motion to
4 withdraw a guilty plea for any 'substantial reason' if it is 'fair and just'" to do so. Woods v.
5 State, 114 Nev. 468, 475, 958 P.2d 91, 95 (1998); NRS 176.165. A guilty plea is
6 presumptively valid; the burden is on the defendant to show that the plea was not voluntarily
7 entered. Bryant, 102 Nev. 272; *see also* Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,
8 1295 (1975).

9 Moreover, a court should not invalidate a plea as long as the totality of the
10 circumstances, as shown by the record, demonstrates that the plea was knowingly and
11 voluntarily made and that the defendant understood the nature of the offense and the
12 consequences of the plea. State v. Freese, 116 Nev. 1097, 13 P.3d 442, 448 (2000). In
13 addition, when a guilty plea is accepted by the trial court after proper canvassing as to whether
14 the defendant freely, knowingly, and intelligently entered his plea, such plea will be deemed
15 properly accepted. Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). However, the
16 failure to conduct a ritualistic oral canvass does not require that the plea be invalidated. State
17 v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

18 Defendant argues that this Court should allow him to withdraw his guilty plea because,
19 *since he has been released from custody*, the named victim has *allegedly* provided a
20 recantation of the allegations of domestic violence. Defendant claims that he entered the plea
21 because "it was his belief that it was his best option at the time of his preliminary hearing..."
22 Defendant's Motion, p. 3. First, the State would not be surprised that a man with a history of
23 pandering and domestic violence was able, once he was out of custody, to get his victim to
24 sign an affidavit. Second, this is not grounds for withdrawal of a plea as an alleged recantation
25 after the fact had no bearing on whether his plea was "freely, knowingly and intelligently"
26 entered at the time of his canvassing. Defendant is blatantly exploiting the terms of a
27 negotiation that included his release from custody at entry of plea to back out of his agreement
28 without any legally justified basis.

1 It is *Defendant's burden* to show that his plea was involuntary. As outlined above, an
2 after the plea recantation has no bearing on the voluntariness of his plea. Thus, Defendant's
3 motion must be denied. Moreover, Defendant was fully canvassed at his plea, which belies
4 any suggestion that he involuntarily entered his plea. Defendant acknowledged having read
5 the GPA with his attorney, fully understanding the GPA, signing the GPA, and acknowledged
6 understanding the crime he was pleading guilty to, that he was not forced to plead guilty, that
7 he was pleading guilty of his own free will, and that he was aware of the sentencing and fine
8 ranges associated with that crime. See Recorder's Transcript of Hearing re: Initial Arraignment
9 (Nov. 23, 2015), pp. 2-5. Defendant also acknowledged feloniously using force or violence on
10 the named victim, Chantel Linear, and he waived all defects in the pleading. *Id.* at 6.

11 Furthermore, the Guilty Plea Agreement ("GPA") Defendant signed is replete with
12 evidence that Defendant understood the terms of his guilty plea, the charges he was pleading
13 to, the sentencing range associated with that charge, and that had discussed with his attorney
14 the consequences stemming therefrom.

15 Specifically, in signing his GPA Defendant expressly acknowledged that he was
16 pleading to Attempt Battery with Substantial Bodily Harm (Category D Felony/Gross
17 Misdemeanor – NRS 200.481, 193.330). See GPA p. 1. Moreover, the record bellies any
18 assertion by Defendant that he entered his plea involuntarily. In the signed GPA, Defendant
19 acknowledged the following:

20 VOLUNTARINESS OF PLEA

21 I have discussed the elements of all of the original charge(s)
22 against me with my attorney and I understand the nature of the
23 charge(s) against me.

24 I understand that the State would have to prove each
25 element of the charge(s) against me at trial.

26 I have discussed with my attorney any possible defenses,
27 defense strategies and circumstances which might be in my favor.

28 All of the foregoing elements, consequences, rights, and
waiver of rights have been thoroughly explained to me by my
attorney.

1 I believe that pleading guilty and accepting this plea
2 bargain is in my best interest, and that a trial would be contrary to
3 my best interest.

4 I am signing this agreement voluntarily, after consultation
5 with my attorney, and I am not acting under duress or coercion or
6 by virtue of any promises of leniency, except for those set forth in
7 this agreement.

8 GPA, p. 5. There is simply no evidence to suggest that the plea was involuntary.

9 Defendant has failed to show that his plea was not made knowingly and voluntarily,
10 nor has he given this Court any "substantial reason" that it would be "fair and just" to allow
11 him now to withdraw from the negotiations. Accordingly, Defendant's motion should be
12 denied.

13 **II. IF DEFENDANT IS ALLOWED TO WITHDRAW HIS PLEA, DEFENDANT**
14 **SHOULD BE REMANDED AT THE ORIGINAL BAIL SETTING**

15 Defendant has exploited his OR Release to obtain an alleged signed recantation of the
16 victim to use to withdraw his plea. While this is not a valid ground to withdraw his plea, the
17 plea agreement Defendant seeks to back out of included an OR Release. If Defendant, who
18 has received the benefit of his negotiation, is permitted to withdraw his plea, the parties should
19 be placed back in their original positions. This includes Defendant's remand into custody with
20 bail set at the amount at the time of his release. Defendant will be facing mandatory prison if
21 the original charges are reinstated and he has already pled guilty and been adjudicated of BDV
22 (misdemeanor) in this case. He will clearly be a flight risk. The fact that he has apparently
23 reached out to his victim since his release from custody to get an alleged recantation shows he
24 will also prove a risk to the victim's safety. His criminal history similarly suggests he will be
25 a risk to the safety of the victim and the community at large.

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CONCLUSION

Based on the foregoing points and authorities, the State respectfully requests that the Court deny Defendant's Motion to Withdraw Plea.

DATED this 13th day of May, 2016.

Respectfully submitted,

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

BY



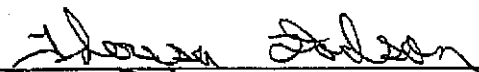
K. NICHOLAS PORTZ
Deputy District Attorney
Nevada Bar #012473

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition to Defendant's Motion To Withdraw Plea, was made this 13th day of May, 2016, by facsimile transmission to:

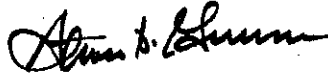
TRAVIS SHETLER, ESQ.
FAX #702-866-0093

BY:



Theresa Dodson
Secretary for the District Attorney's Office

KNP/td/dvu


CLERK OF THE COURT

1 **OPPS**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **TYLER D. SMITH**
6 **Deputy District Attorney**
7 **Nevada Bar #011870**
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 **LONNIE LYNN SWEAT,**
13 **#1973400**

14 **Defendant.**

CASE NO: C-16-315552-1

DEPT NO: XXIII

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

16 **DATE OF HEARING: JULY 27, 2016**
17 **TIME OF HEARING: 9:30 AM**

18 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
19 **District Attorney, through TYLER D. SMITH, Deputy District Attorney, and hereby submits**
20 **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 **///**

25 **///**

26 **///**

27 **///**

28 **///**

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 On May 9, 2016, Lonnie Lynn Sweat, hereinafter "Defendant," was charged by way of
4 Criminal Complaint with Battery Constituting Domestic Violence (Category C Felony). See
5 Exhibit 1. Defendant's preliminary hearing was originally scheduled for May 24, 2016,
6 however it was continued to June 7, 2016. On June 7, 2016, pursuant to negotiations with the
7 State, Defendant agreed to waive his right to a preliminary hearing on the Felony Domestic
8 Violence Count. In District Court, Defendant would plead to Battery Resulting in Substantial
9 Bodily Harm with the State making no recommendation at sentencing. In addition, Defendant
10 would plead guilty to an added Count 2, misdemeanor Battery Constituting Domestic Violence
11 and receive credit for time served on Count 2. RT p. 3.

12 The following are relevant portions of the colloquy which took place during the Justice
13 Court's canvass of Defendant:

14 MR. EICHACKER: With the Court's permission, today Mr. Sweat will be
15 unconditionally waiving his right to a preliminary hearing. He'll go to District Court and plead
16 guilty to a battery resulting in substantial bodily harm and to a batter domestic violence
17 misdemeanor. The State will make no recommendation at sentencing. And I believe that's it.

18 THE COURT: All right. Do you want him to plead to the misdemeanor here?

19 MR. SMITH: I prefer he plead to the misdemeanor today.

20 MR. EICHACKER: Okay, I need to do an admonishment.

21 MR. SMITH: And we can just give him credit for time served.

22 THE COURT: I'll trail that for you to do the admonishment.

23 (Other matter on calendar heard.)

24 THE COURT: ...It's an unconditional waiver. You're going to plead in District Court
25 to battery with substantial bodily harm. The State will make no recommendation up there and
26 here you'll plead to a misdemeanor with credit for time served; do you understand that?

27 THE DEFENDANT: Yes.

28 ...

1 THE COURT: When you get up to District Court you can go through with the
2 negotiations. If you decide you don't want to you can still take the felony charge to trial,
3 you just won't come back here for a preliminary hearing and your plea to the
4 misdemeanor domestic violence charge will stand; do you understand?

5 THE DEFENDANT: Yes.

6 RT p. 2-4.

7 The Court then added a Count 2 misdemeanor battery constituting domestic violence
8 and accepted Defendant's no contest plea. The Court then sentenced him to credit for time
9 served. RT p. 4-5. See Exhibit 2. Defendant also executed an Admonishment of Rights. See
10 Exhibit 3.

11 ARGUMENT

12 The Double Jeopardy Clause protects against three separate abuses: a second
13 prosecution for the same offense after acquittal; a second prosecution for the same offense
14 after conviction; and multiple punishments for the same offense. Williams v. State, 118 Nev.
15 536, 548 (2002). Defendant in this instance claims that by accepting a negotiation offered by
16 the State in Justice Court in which he agreed to plead guilty to a Battery Constituting Domestic
17 Violence (m) in Justice Court and a Felony in District Court, he may withdraw from that
18 agreement and prevent the State from prosecuting him on the original charges. Thereby,
19 essentially successfully duping the State into providing Defendant with a misdemeanor
20 conviction with no additional punishment in a case where it was contemplated by both parties
21 he would be pleading to a felony. Based upon the arguments below, Defendant's argument is
22 clearly in error.

23 I

24 DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE HE IS BEING 25 PROSECUTED FOR TWO SEPARATE OFFENSES

26 As noted above, the Justice Court orally amended the criminal complaint to include a
27 Count 2 - Battery Constituting Domestic Violence. Defendant waived his right to a
28 preliminary hearing on Count 1 and entered a guilty plea to Count 2. In effect, Defendant's

1 waiver and guilty plea was a concession that he was charged with two separate and distinct
2 offenses. While this issue doesn't seem to have been addressed in the current factual scenario
3 of a negotiated plea agreement contemplating pleas in two separate courts, the United States
4 Supreme Court has provided some guidance.

5 In United States v. Broce, 488 U.S. 563, 109 S.Ct. 757 (1989), per a negotiated
6 agreement with the prosecution, two defendants pled guilty to two counts of conspiracy.
7 Subsequently, both defendants attempted to withdraw their pleas arguing that only one
8 conspiracy existed and that double jeopardy required that the conviction and sentence on the
9 second count be set aside. Id. at 565. The lower court found there was factually only a single
10 conspiracy and therefore dismissed the second count. Id. at 568-569.

11 The Supreme Court reversed and reinstated the defendants' convictions and sentences
12 for the second count of conspiracy. It held that a "guilty plea is more than a confession which
13 admits that the accused did various acts...It is an admission that he committed the crime
14 charged against him." Id. at 569 (internal citations and quotations omitted). Moreover, "[b]y
15 entering a plea of guilty, the accused is not simply stating that he did the discrete acts described
16 in the [charging document]; he is admitting guilt of a substantive crime." Id. Defendant also
17 cannot challenge the additional offense based upon the existing record. Id. at 576.

18 In this case Defendant's plea of guilty to the added Count 2 of the criminal complaint
19 was an admission that he committed that specific charge against him. Moreover, that guilty
20 plea in conjunction with his waiver on Count 1 served as a concession that Count 2 constituted
21 a separate and distinct offense. "Just as a defendant who pleads guilty to a single count admits
22 guilt to the specified offense, so too does a defendant who pleads to two counts with facial
23 allegations of distinct offenses concede that he has committed two separate crimes." Id. at 571
24 (emphasis added). While in this case Defendant has not admitted to committing two separate
25 crimes, as he only followed through with his agreement to plead to one, he has admitted to at
26 least being charged with two separate crimes. The added Count 2 had "facial allegations" of a
27 distinct offense. Id. As such, Defendant is not currently facing prosecution for an offense of
28 which he has already been convicted. Defendant had the opportunity to reject the State's offer

1 and demanded a trial on the felony count. Instead, at that time he chose to accept the State's
2 offer of pleading to an added misdemeanor Count 2 in Justice Court and waive his preliminary
3 hearing on the original Count 1. As such, he relinquished his entitlement to challenge the
4 separate counts as a violation of double jeopardy. See Id.

5 II

6 **EVEN IF THE COURT FINDS THE INSTANT CASE RAISES A PLAUSIBLE** 7 **DOUBLE JEOPARDY CLAIM, DEFENDANT HAS WAIVED ANY CLAIMS**

8 While double jeopardy is a constitutional right, a defendant in a criminal proceeding
9 can agree to waive said right. See Ricketts v. Adamson, 483 U.S. 1, 107 S. Ct. 2680 (1987).
10 The defendant in Ricketts had entered into an agreement with the prosecution to testify against
11 two other defendants in a murder case in exchange for a plea to a lesser offense. He testified
12 during trial and was subsequently adjudicated, sentenced and began serving a prison term of
13 48-49 years. Id. at 3. The convictions for the two defendants he had testified against were then
14 reversed. Id. at 4.

15 The State sought Ricketts' testimony a second time for the retrial of the other two
16 defendants. However, Ricketts refused to testify and even invoked his Fifth Amendment
17 privilege against self incrimination when placed on the witness stand. Id. at 5. Thereafter, the
18 State filed a new information charging Ricketts with the original charge of First Degree
19 Murder. He was convicted at trial and given the death penalty. Id. at 7.

20 The defendant challenged his conviction federally. An en banc 9th Circuit Court of
21 Appeals reversed his conviction on the grounds that it violated double jeopardy. Id. The
22 Supreme Court reversed the 9th Circuit and held:

23 The State submits, however, that respondent's breach of the plea arrangement to
24 which the parties had agreed removed the double jeopardy bar to prosecution of
25 respondent on the first-degree murder charge. We agree with the State.

26 Id. at 8. It's also important to note that the Court did not find it significant that "double
27 jeopardy" was not specifically waived by name in the agreement. Id.

28 The Court went on to state:

1 At the plea hearing, the trial judge read the plea agreement to respondent, line
2 by line,¹ and pointedly asked respondent whether he understood the
3 provisions...The terms of the agreement could not be clearer: in the event of
4 respondent's breach occasioned by refusal to testify, parties would be returned
5 to the status quo ante, in which case respondent would have no double jeopardy
6 defense. The approach taken by the Court of Appeals **would render the**
7 **agreement meaningless**: first-degree murder charges could not be reinstated
8 against respondent if he categorically refused to testify after sentencing even if
9 the agreement specifically provided that he would so testify, because under the
10 Court of Appeals view, he never waived his double jeopardy protection.

11 Id. at 11-12 (emphasis added).

12 Here, the record makes it clear that the agreement between the parties was that
13 Defendant would waive his right to a preliminary hearing on the original felony charge and
14 plead guilty to an added count of Battery Constituting Domestic Violence in Justice Court,
15 after which he would plead guilty to an amended count of Battery Resulting in Substantial
16 Bodily harm in district court. RT p. 2-3. The record further makes it clear that the agreement
17 was that should he change his mind regarding the negotiations, he may take the original felony
18 charge to trial and the misdemeanor conviction would stand. RT p. 4. Defendant made it
19 abundantly clear that he understood and agreed with the negotiations. This, just as in Ricketts,
20 carried with it a clearly implied double jeopardy waiver should double jeopardy even be
21 implicated. To hold otherwise would "render the agreement meaningless" and allow
22 Defendant to achieve a clear windfall of walking away with nothing more than a misdemeanor
23 conviction with a sentence of credit for time served by making a personal decision to back out
24 of negotiations. "The Double Jeopardy Clause...does not relieve a defendant from the
25 consequences of his voluntary choice." Id. at 11 (quoting United States v. Scott, 437 U.S. 82,
26 88-89 (1978)).

27 CONCLUSION

28 As Defendant was charged with separate and distinct offenses, continued prosecution
will not violate the Double Jeopardy Clause. Moreover, even if the Court finds that double

¹ While no written plea agreement was filed at this point, the State submits that is irrelevant. The terms of the agreement and Defendant's understanding of those terms were clearly laid out on the record.

Alvin L. Lamm

CLERK OF THE COURT

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 KENTON G. EICHACKER, DEPUTY PUBLIC DEFENDER
4 NEVADA BAR NO. 13114
5 **PUBLIC DEFENDERS OFFICE**
6 309 South Third Street, Suite 226
7 Las Vegas, Nevada 89155
8 Telephone: (702) 455-4685
9 Facsimile: (702) 455-5112
10 *Attorneys for Defendant*

DISTRICT COURT
CLARK COUNTY, NEVADA

DEPARTMENT XXIII
NOTICE OF HEARING

DATE 8/8/16 TIME 9:30am
APPROVED BY ca/De23

11 THE STATE OF NEVADA,
12
13 Plaintiff,
14
15 v.
16 LONNIE LYNN SWEAT,
17 Defendant,

ca/De23

CASE NO. C-16-315552-1
DEPT. NO. XXIII

DATE: August 8, 2016
TIME: 9:30 a.m.

MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS

18 COMES NOW, the Defendant, LONNIE LYNN SWEAT, by and through KENTON G.
19 EICHACKER, Deputy Public Defender and hereby request an order granting a stay of proceedings
20 for the defense to pursue a Petition for a Writ of Mandamus and/or Prohibition from the Supreme
21 Court of Nevada.

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

24 DATED this 1st day of August, 2016.

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/ Kenton Eichacker
28 KENTON G. EICHACKER, #13114
Deputy Public Defender

DECLARATION

KENTON G. EICHACKER makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Lonnie Lynn Sweat in the present matter;

2. On July 27, 2016, this Honorable Court heard arguments and denied the Defendant's Motion to Dismiss Due to Double Jeopardy.

3. I am requesting a stay of the District Court proceedings so the Nevada Supreme Court can grant clarification on the potential double jeopardy issue. As the District Court pointed out there is little guidance in the case law regarding this issue.

4. I am requesting a stay because the trial date in this case is quickly approaching. The trial is currently set for August 15, 2016.

5. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

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

EXECUTED this 1st day of August, 2016.

/s/ Kenton Eichacker
KENTON G. EICHACKER

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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 8th day of August, 2016, at 9:30 a.m.

DATED this 1st day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Kenton Eichacker
KENTON G. EICHACKER, #13114
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this ____ day of August, 2016

By: /s/ Egda Ramirez
An employee of the
Clark County Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 09, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

June 09, 2016 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Eichacker, Kenton G.	Attorney for the Defendant
	Public Defender	Attorney
	Sweat, Lonnie Lynn	Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Matthew Bunnett appearing for the State.

Mr. Eichacker requested matter be CONTINUED to review the plea agreement with the deft.,
COURT SO ORDERED.

CUSTODY

6/15/16 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 15, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

June 15, 2016 10:00 AM Arraignment Continued

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Eichacker, Kenton	Attorney for the Defendant
	Einhorn, Kelsey	Attorney for the State
	Sweat, Lonnie Lynn	Defendant

JOURNAL ENTRIES

DEFT. SWEAT ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

8/10/16 9:30 A.M. CALENDAR CALL (DEPT. 23)

8/15/16 1:00 P.M. JURY TRIAL (DEPT. 23)

PRINT DATE: 06/20/2016

Page 1 of 1

Minutes Date: June 15, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 13, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

**July 13, 2016 10:30 AM Motion to Dismiss Defendant's Motion
to Dismiss**

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Eichacker, Kenton G. Public Defender
 Rhoades, Kristina A. Attorney for the State

 Sweat, Lonnie Lynn Defendant

JOURNAL ENTRIES

- Statement by counsel. Ms. Rhoades advised deputy did not receive motion and requested two week continuance in order to file a response. Argument by counsel. Argument by the State. Court stated this is absolutely right avenue, however, ORDERED, matter CONTINUED.

CUSTODY

07-27-16 9:30 AM DEFT'S MOTION TO DISMISS

PRINT DATE: 07/18/2016

Page 1 of 1

Minutes Date: July 13, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 27, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

July 27, 2016

1:55 PM

Minute Order

Minute Order Re:
Deft's Motion to
Dismiss

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Nevada Supreme Court has held that plea agreements are subject to contract principles. State v. Crockett, 110 Nev. 838, 842, 877 P.2d 1077, 1079 (1994). Court FINDS Deft. violated spirit of the negotiations. COURT ORDERS, State to place matter back on calendar with Justice Court case number to withdraw adjudication on Misdemeanor.

CUSTODY

CLERK'S NOTE: The above minute order has been distributed via e-mail to Deputy District Attorney Tyler Smith and Deputy Public Defender Kenton Eichacker. 07/27/16 kls Flagged for follow up.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 27, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

July 27, 2016 9:30 AM Motion to Dismiss Defendant's Motion to Dismiss

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Eichacker, Kenton G. Smith, Tyler D.	Public Defender Attorney for the State
	Sweat, Lonnie Lynn	Defendant

JOURNAL ENTRIES

- Court noted motion was based upon double jeopardy. Argument by counsel noting the State wanted the misdemeanor entered separately. Court stated counsel understood it would be a misdemeanor and felony and noted it did not comply with spirit of negotiations. Further argument by counsel pointing out Deft. entered fictitious plea to misdemeanor and noted they would proceed on the felony. Argument by the State regarding Broce case, noted count was added to Complaint in Justice Court and pointed out that they are distinct charges. Additional argument by counsel stating there are no separate elements of facts. Further argument by the State. Court advised it would render a decision via minute order.

CUSTODY

PRINT DATE: 08/08/2016

Page 1 of 1

Minutes Date: July 27, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 08, 2016

C-16-315552-1 State of Nevada
 vs
 Lonnie Sweat

August 08, 2016

9:30 AM

Motion For Stay

**Defendant's Motion
for Stay of District
Court Proceedings**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Eichacker, Kenton G.
 Heap, Hilary

Public Defender
Attorney for the State

Sweat, Lonnie Lynn

Defendant

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. FURTHER, matter SET for status check. Trial date VACATED.

CUSTODY

10-10-16 9:30 AM STATUS CHECK: SUPREME COURT DECISION

PRINT DATE: 08/22/2016

Page 1 of 1

Minutes Date: August 08, 2016

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No.
(District Ct. No. C-16-315552-1)
(Justice Ct. No. 16F07438X)

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STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

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

3 HONORABLE DISTRICT STEFANY MILEY
4 DISTRICT COURT, DEPT. XXIII
5 200 LEWIS AVENUE
6 Las Vegas, NV 89101
7

8 BY /s/ Carrie M. Connolly
9 Employee, Clark County Public Defender's Office
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