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Clerk of Supreme Court

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JAMES COOPER
Case No. 72091

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CLERK OF THE COURT

1 PHILIP J. KOHN, PUBLIC DEFENDER
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11 Attorneys for Defendant

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

9 THE STATE OF NEVADA,)	
)	
10 Plaintiff,	)	CASE NO. C-16-312970-1
)	
11 v.	)	DEPT. NO. X
)	
12 JAMES COOPER,)	
)	
13 Defendant,	)	DATE: October 31, 2016
	)	TIME: 8:30 a.m.

14
15 **OPPOSITION TO STATE'S MOTION IN LIMINE TO ADMIT A CERTIFIED COPY OF**
16 **SUNRISE HOSPITAL MEDICAL RECORDS, RECORDED 911 CALL,**
17 **AND RECORDED JAIL CALLS**

18 COMES NOW, the Defendant, JAMES COOPER, by and through TALIA L.
19 WALKENSHAW, Deputy Public Defender and hereby requests that the State's Motion in Limine
20 be denied in full.

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 24th day of October, 2016.

24 PHILIP J. KOHN
25 CLARK COUNTY PUBLIC DEFENDER

26
27 By: /s/ Talia L. Walkenshaw
28 TALIA L. WALKENSHAW, #12891
Deputy Public Defender

FACTS AND PROCEDURAL HISTORY

On January 22, 2016, police were dispatched to 356 E. Desert Inn Road, Apartment 111 in reference to a possible domestic violence. Upon arriving, officers came into contact with the named victim, Brittney Jensen, and her two children, James Blair and Kaylee Jensen. At the time, James Blair was approximately eight (8) years old and Kaylee Jensen was approximately six (6) years old. Brittney appeared to be injured. Officers also made contact with Mr. Cooper who remained on-scene.

At the time, according to Officer Pickens, Brittney was very intoxicated and uncooperative with officers. Throughout the duration of their time on-scene, Brittney refused to provide officers with any information regarding what had happened. Any information that officers received regarding what had occurred was from James Blair, Brittney's eight (8) year old son.

Officers also interviewed Mr. Cooper who was compliant with officers and remained on-scene. At the preliminary hearing, Officer Pickens testified that during his interview with Mr. Cooper, Mr. Cooper advised that Brittney was highly intoxicated and had finished an entire bottle of rum. In fact, Mr. Cooper was the first to call police and advised that Brittney was drunk, had jumped on him in bed, and began attacking him and pulling out his dreadlocks.

Based on what James Blair had told officers as well as Brittney's apparent injuries, Mr. Cooper was arrested and charged with one (1) count of Battery Constituting Domestic Violence (Category C Felony), one (1) count of Battery Constituting Domestic Violence- Strangulation (Category C Felony), and two (2) counts of Child Abuse, Neglect, or Endangerment (Category B Felony). The preliminary hearing was scheduled for February 25, 2016.

At the time set for the preliminary hearing, Brittney Jensen refused to appear and refused to bring James Blair or Kaylee Jensen to testify in court. The State proceeded with the preliminary hearing and only one witness testified- Officer Pickens. Over the defense's objection, the Court allowed Officer Pickens' hearsay testimony in under NRS 171.196. Thus, Brittney Jensen, James Blair, and Kaylee Jensen were never subject to cross-examination at the time of the preliminary hearing. At the conclusion of the preliminary hearing, the Court bound Mr. Cooper up to District

1 Court on all of the charges listed in the Information. Mr. Cooper is currently set for trial on
2 November 14, 2016, with a Calendar Call on November 7, 2016.

3 LEGAL ARGUMENT

4 The Sixth Amendment Confrontation Clause provides that “[i]n all criminal prosecutions,
5 the accused shall enjoy the right . . . to be confronted with the witnesses against him.” “[T]he
6 United States Supreme Court held that the right granted to an accused by the Sixth Amendment to
7 confront the witnesses against him, which includes the right of cross examination, is a fundamental
8 right essential to a fair trial and is made obligatory on the states by the Fourteenth Amendment.”
9 Messmore v. Fogliani, 82 Nev. 153, 154-55, 413 P.2d 306, 307 (1966) (citing to Pointer v. Texas,
10 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965)). Thus, the Confrontation Clause is an
11 affirmative guarantee that testimony introduced against an accused defendant must be offered
12 subject to a prescribed procedure – in the presence of the accused and subject to cross-
13 examination.

14 In Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004), the
15 United States Supreme Court overruled its previous decision in Ohio v. Roberts, 448 U.S. 56, 100
16 S.Ct. 2531, 65 L.Ed.2d 597 (1980) concerning a hearsay statement’s compliance with the
17 Confrontation Clause. In Crawford, the trial court admitted a recorded statement of the
18 defendant’s wife into evidence against the defendant. The defendant’s wife was unavailable
19 because of the marital privilege. Despite the hearsay problem the statement presented, the trial
20 court admitted the statement and determined that the hearsay statement was sufficiently
21 trustworthy in that the statement paralleled defendant’s statement to the police. The U.S. Supreme
22 Court reversed the conviction. The Court reasoned that when a hearsay statement is testimonial in
23 nature, such a statement cannot be admitted against a defendant, in a criminal proceeding, who has
24 not had a prior opportunity to cross examine the declarant.

25 The Supreme Court began its analysis of the Confrontation Clause in Crawford by stating
26 “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the
27 witnesses against him.” Crawford at 1359. The court relied on a historical analysis of the pitfalls
28

1 of testimonial out-of-court statements and concluded that such statements amount to impermissible
2 hearsay. The Supreme Court stated:

3 An accuser who makes a formal statement to government officers
4 bears testimony in a sense that a person who makes a casual remark
5 to an acquaintance does not. The constitutional text, like the history
6 underlying the common-law right of confrontation, thus reflects an
especially acute concern with a specific type of out-of-court
statement.

7 Various formulations of this core class of "testimonial" statements
8 exist: "ex parte in-court testimony or its functional equivalent – that
9 is, material such as affidavits, custodial examinations, prior
10 testimony that the defendant was unable to cross-examine, or similar
11 pretrial statements that declarants would reasonably expect to be
12 used prosecutorially. . . extrajudicial statements. . . contained in
13 formalized testimonial materials, such as affidavits, depositions,
14 proper testimony, or confessions. . . statements that were made under
15 circumstances which would lead an objective witness reasonably to
believe that the statement would be available for use at a later trial.
These formulations all share a common nucleus and then define the
Clause's coverage at various levels of abstraction around it.
Regardless of the precise articulation, some statements qualify under
any definition – for example, ex parte testimony at a preliminary
hearing.

16 Id. at 1364 (internal citations omitted).

17 The Crawford Court further noted

18 Admitting statements deemed reliable by a judge is fundamentally at
19 odds with the right of confrontation. To be sure, the Clause's
20 ultimate goal is to ensure reliability of evidence, but it is a
21 procedural rather than a substantive guarantee. It commands, not
22 that evidence be reliable, but that that reliability be assessed in a
23 particular manner: by testing in the crucible of cross-examination.
The Clause thus reflects a judgment, not only about the desirability of
reliable evidence. . . but about how reliability can best be
determined.

24 Id. at 1370. The Court further stated, "Dispensing with confrontation because testimony is
25 obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty.
26 This is not what the Sixth Amendment prescribes." Id. at 1371.

27 In other words, hearsay statements which fall within a hearsay exception are
28 nonetheless inadmissible when they violate the defendant's right to confrontation pursuant to

1 Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004).

2 Analysis of an out of statement's compliance with Confrontation Clause of the Sixth
3 Amendment to the U.S. Constitution has been altered. After Crawford, reliability is now a by-
4 product of a procedure mandated by the Confrontation Clause. In other words, a defendant must
5 be given the opportunity to cross examine the witness to determine the "reliability" of the out of
6 court statement.

7 Therefore, the first question that this Court must determine is whether the hearsay evidence
8 is "testimonial." Once it is determined that the statement is "testimonial", no exception under the
9 hearsay rules will deem the statement admissible under the Confrontation Clause. **Testimonial**
10 **statements are only admissible under the Confrontation Clause upon a showing by the State**
11 **that the witness is unavailable and the defendant has had an opportunity to cross examine**
12 **the declarant.** In the instant case, the State has yet to present evidence that Brittney Jensen, James
13 Blair, and Kaylee Jense are unavailable.¹ Furthermore, Mr. Cooper has not had an opportunity to
14 cross examine either.

15 Where testimonial evidence is at issue, however, the Sixth
16 Amendment demands what the common law required: unavailability
17 and a prior opportunity for cross examination. We leave for another
18 day any effort to spell out a comprehensive definition of
19 'testimonial.' Whatever else the term covers, it applies at a
20 minimum to prior testimony at a preliminary hearing, before a grand
21 jury, or at a former trial; and to police interrogations.

22 Id. at 1374.

23 I. CERTIFIED COPY OF SUNRISE MEDICAL RECORDS

24 ¹ NRS 51.055 "Unavailable as a witness" defined.

25 1. A declarant is "unavailable as a witness" if he is:

26 (a) Exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter
27 of his statement;

28 (b) Persistent in refusing to testify despite an order of the judge to do so;

(c) Unable to be present or to testify at the hearing because of death or then existing physical or mental illness
or infirmity; or

(d) Absent from the hearing and beyond the jurisdiction of the court to compel appearance and the proponent
of his statement has exercised reasonable diligence but has been unable to procure his attendance or to take his
deposition.

2. A declarant is not "unavailable as a witness" if his exemption, refusal, inability or absence is due to the
procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending
or testifying.

(Added to NRS by 1971, 794)

1 The State seeks to introduce copies of the medical records from Sunrise Hospital as related
2 to Brittney Jensen. Although such evidence is hearsay, the State cites to the "Record of Regularly
3 Conducted Activity" exception under NRS 51.135 as a basis to admit them.

4 The defense has received copies of the Sunrise Hospital medical records that the State
5 references. However, the State also references Desert Springs Hospital records. See State's Motion
6 at 6:19. The defense has not received any records from Desert Springs Hospital and if such records
7 exist, the defense requests a copy of them.

8 However, as to the admission of any hospital records, the defense submits that the
9 admission of these records would be inappropriate. The information contained within the hospital
10 records is hearsay and despite their being subject to an exception, Mr. Cooper has not had an
11 opportunity to cross-examine any of the named victims in this matter regarding the information
12 contained within the records. In fact, the hospital records pertain only to Brittney Jensen and
13 multiple times throughout those records it is noted that Ms. Jensen is uncooperative and a poor
14 historian. Thus, in addition to the fact that Mr. Cooper has been deprived of the right to confront
15 his accusers, the reliability of the statements contained within the hospital records is called into
16 question.

17 II. CERTIFIED COPY OF RECORDED 911 CALL

18 The U.S. Supreme Court stated, "We reiterate, . . . that the existence vel non of an ongoing
19 emergency is not the touchstone of the testimonial inquiry; rather, the ultimate inquiry is whether
20 the 'primary purpose of the interrogation [was] to enable police assistance to meet the ongoing
21 emergency.'" Michigan v. Bryant, 562 U.S. 344, 374, 131 S.Ct. 1143, 1165, 179 L.Ed.2d 93,
22 (emphasis added).

23 Harkins v. State, 122 Nev. 974, 987, 143 P.3d 706, 714 (2006), is instructive to this court
24 in determining whether a statement is testimonial. The Nevada Supreme Court opined:

25 Based on the United States Supreme Court and Nevada precedent
26 addressing the issue of whether a hearsay statement is testimonial, it
27 is abundantly clear that the inquiry requires examination of the
28 totality of the circumstances surrounding the making of the
statement. We have begun with a general rule: whether the
statement would, under the circumstances of its making "lead an

1 objective witness reasonably to believe that the statement would be
2 available for use at a later trial." We now take the opportunity to
3 further refine this rule by presenting a nonexhaustive list of factors
4 for courts to consider in determining whether a statement is
5 testimonial: (1) to whom the statement was made, a government
6 agent or an acquaintance; (2) whether the statement was
7 spontaneous, or made in response to a question (e.g. whether
8 statement was the product of a police interrogation; (3) whether the
9 inquiry eliciting the statement was for the purpose of gathering
10 evidence for possible use at a later trial, or whether it was to provide
11 assistance in an emergency; (4) whether the statement was made
12 while an emergency was ongoing, or whether it was a recount of past
13 events made in a more formal setting sometime after the exigency
14 had ended. No one factor is necessarily dispositive, and no one
15 factor carries more weight than another.

16 For example, if the 911 operator asks investigation-oriented questions, the statements made
17 in response may be considered testimonial in nature and thus subject to the Defendant's
18 confrontation rights. Investigative statements are testimonial hearsay because the declarant makes
19 the statements with prosecutorial intent. Moore v. State, 125 Nev. 1063, 281 P.3d 1202, (2009)
20 unpublished opinion, citing Davis v. Washington, 547 U.S. 813, 827, 126 S.Ct. 2266, 165 L.Ed.2d
21 224 (2006); see also People v. Cortez, 4 Misc. 3d 575, 781 N.Y.S.2d 401 (N.Y. Sup. Ct. 2004)
22 (911 call constituted interrogation by the operator when questions were asked about the suspect's
23 "location, description, and direction of movement" because such information was "necessary for
24 the police to conduct their investigation."); Washington v. Powers, 124 Wash.App. 92, 99 P.3d
25 1262 (Wash. Ct. App. 2004) (statements made in 911 call held testimonial because the
26 complainant called to report a violation of an existing protective order and to describe the
27 defendant so as "to assist in his apprehension and prosecution," rather than to request help or
28 protection).

29 The statements made on the 911 calls are hearsay and testimonial in nature. They do not
30 "bear[] particularized guarantees of trustworthiness based on the totality of circumstances that
31 surround the making of the statement and that render the declarant particularly worthy of belief[.]"
32 and the statements must be excluded as inadmissible hearsay not within any exception. Ramirez v.
33 State, 114 Nev. 550, 558, 958 P.2d 724, 729 (1998), *reh'g denied* (internal citations omitted).

1 The State, in its motion, also discussed that the jail call falls within the excited utterance
2 and/or present sense impression hearsay exceptions. However, because an accused has a
3 fundamental right to confront the witnesses against him, as discussed above, neither hearsay
4 exception applies to testimonial statements which Mr. Cooper has not had an opportunity to cross-
5 examine. James Blair and/or Brittney Jensen's call to 911 is testimonial in nature and cannot be
6 admitted without the live testimony of James Blair and/or Brittney Jensen subject to cross-
7 examination. Brittney Jensen refused to appear at the preliminary hearing and refused to bring
8 James Blair to the preliminary hearing. Thus, neither she nor James Blair have ever been subject to
9 cross-examination and the 911 call must not be admitted without an opportunity for cross-
10 examination.

11 III. CERTIFIED COPIES OF RECORDED JAIL CALLS

12 Similarly, the State seeks to introduce the recorded jail calls that were made between
13 January 23, 2016 and January 27, 2016. The State asserts that these calls are to be used to establish
14 the relationship between Mr. Cooper and Brittney, and the fact that they cohabitated. Mr. Cooper
15 acknowledged to officers during his interview that he and Ms. Jensen were in a relationship and
16 had been for approximately five (5) years. He also acknowledged that they had lived together at
17 the 356 E. Desert Inn Road residence for approximately one (1) year. Therefore, introduction of
18 the phone calls are unnecessary to establish this relationship and the fact that they cohabitated as
19 both of those facts were already acknowledged by Mr. Cooper during his interview. The State
20 provides no other basis for introducing these phone calls and they should therefore be excluded
21 from evidence.

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1 **CONCLUSION**

2 The Defense requests that the State's Motion in Limine be denied in its entirety as the
3 admission of the requested items are unnecessary and violate Mr. Cooper's right to confrontation.

4 DATED this 24th day of October, 2016.

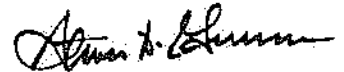
5 PHILIP J. KOHN
6 CLARK COUNTY PUBLIC DEFENDER

7
8 By: /s/ Talia L. Walkenshaw
9 TALIA L. WALKENSHAW, #12891
Deputy Public Defender

10
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14
15 **CERTIFICATE OF ELECTRONIC SERVICE**

16 I hereby certify that service of the above and forgoing MOTION was served via
17 electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountysda.com
18 on this 24th day of October, 2016

19 By: /s/ Patty Barber-Bair
20 An employee of the
21 Clark County Public Defender's Office
22
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28



CLERK OF THE COURT

1 RPLY

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

5 KRISTINA RHOADES
6 Deputy District Attorney
7 Nevada Bar #12480
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 JAMES COOPER, aka,
16 James Marlin Cooper, #2634475,

17 Defendant.

CASE NO: C-16-312970-1

DEPT NO: X

18 STATE'S REPLY TO DEFENDANT'S OPPOSITION TO STATE'S MOTION IN LIMINE

19 DATE OF HEARING: OCTOBER 31, 2016
20 TIME OF HEARING: 8:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through KRISTINA RHOADES, Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in Reply to Defendant's Opposition to State's
24 Motion In Limine.

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

28 ///

///

///

///

POINTS AND AUTHORITIES

Defendant objects to the admission of the Sunrise Medical Records,¹ the 911 call, and jail calls made by the Defendant himself, based on the allegation that the admission of these items would violate his rights under the Confrontation Clause. This argument is incorrect. Both the medical records and the 911 call are non-testimonial and therefore, their admission does not run afoul of the Confrontation Clause. Defendant's jail calls are his own statements, and therefore cannot violate the Confrontation Clause. With regard to Brittney's statements on those jail calls, they are not offered for the truth of the matter asserted, but rather to provide context to Defendant's own statements, to provide context to the relationship between the Defendant and Brittney, and to show Brittney's state of mind regarding this criminal case. Brittney's statements on these jail calls are in no way "testimonial hearsay" and can therefore be admitted at trial.

The Sixth Amendment Confrontation Clause, applicable to the states through the Fourteenth Amendment, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him." The United States Supreme Court held in Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354 (2004), that the Confrontation Clause bars the introduction of testimonial hearsay, unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant.

While the Crawford Court expressly declined to provide a comprehensive definition of the term "testimonial," it did go on to identify several "formulations of [a] core class of 'testimonial' hearsay" from the briefs submitted, including: (1) "ex parte in-court testimony or its functional equivalent," e.g., "affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially"; (2) "extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions"; and (3) "statements that were made under circumstances which would lead an

¹ There are no Desert Springs Hospital Records. That was a typographical error. The State is in possession of medical records from Sunrise Hospital only, and Defendant has also been provided with these medical records.

1 objective witness reasonably to believe that the statement would be available for use at a later
2 trial." Id. at 51-52.

3 I. SUNRISE MEDICAL RECORDS

4 Following the Crawford decision, courts have examined the admissibility of statements
5 made by victims to medical care providers, and have held that they are non-testimonial and
6 therefore admissible, even if the victim is unavailable to testify at trial. In Chavez v. State,
7 125 Nev. 328, 213 P.3d 476 (2009), the Nevada Supreme Court considered whether Chavez's
8 Confrontation Clause rights were violated when the deceased child-victim's therapist was
9 allowed to testify that the victim had written on a medical form that at "five years old, her dad
10 ripped open her vagina." Id. at 342, 213 P.3d at 486. In analyzing the confrontation issue, the
11 Chavez Court held:

12 We first consider Crawford's threshold question of whether the
13 statement being offered is testimonial in nature. While we
14 acknowledge that the police likely referred D.C. to Evarts, there is
15 no evidence that Evarts' time with D.C. served the purpose of
16 furthering the investigation of D.C.'s sexual abuse allegations.
17 Rather, their time together served the primary purpose of helping
18 D.C. psychologically heal from five years of abuse. One quarter
19 of Evarts' practice was made up of child assault victims. Her
20 general practice was to have patients fill out a medical form upon
their first visit. The question that elicited the response at issue did
not ask anything specific about an act of sexual assault. Rather, it
asked if the patient had been to the hospital or required stitches.
Given the context in which it was asked, by a family therapist
specializing in sexual assault victims and for the purpose of
diagnosis and treatment, we conclude that D.C.'s written statement
was not testimonial.

21 Id. (emphasis added). The Chavez Court further found that this statement – identifying both
22 the criminal act and the perpetrator – were pertinent to the victims ongoing care as a patient
23 and thus admissible under NRS 51.115. Id. Accordingly, the Court concluded that "Evarts'
24 testimony regarding D.C.'s answer that her father ripped open her vagina is *admissible*
25 *nontestimonial hearsay* pursuant to NRS 51.115," and "that the district court did not abuse its
26 discretion in allowing Evarts to testify as to D.C.'s statement on the medical form." Id.

27 Moreover, the United States Supreme Court has *repeatedly* found that statements made
28 to medical providers for purposes of diagnosis or treatment are nontestimonial and therefore

1 do not run afoul of the Confrontation Clause. See Michigan v. Bryant, 562 U.S. 344, 131 S.
2 Ct. 1143, 1157-58, n.9, 179 L. Ed. 2d 93 (2011) (statements made for purpose of medical
3 diagnosis are "by their nature, made for a purpose other than use in a prosecution"); Melendez-
4 Diaz, 557 U.S. at 312, n.2 ("medical reports created for treatment purposes . . . would not be
5 testimonial under our decision today"); Giles v. California, 554 U.S. 353, 376, 128 S. Ct. 2678,
6 171 L. Ed. 2d 488 (2008) ("[O]nly testimonial statements are excluded by the Confrontation
7 Clause. Statements to . . . physicians in the course of receiving treatment would be excluded, if
8 at all, only by hearsay rules").

9 Here, the Sunrise medical records fall squarely under NRS 51.115 because they contain
10 statements describing present symptoms, pain or sensations, made for the purposes of medical
11 diagnosis and treatment. Any statements Brittney made for the purposes of medical treatment
12 are nontestimonial and a complete copy of the medical records should be admitted pursuant to
13 NRS 51.115, 51.135, and 52.260.

14 II. BRITTNEY AND HER MINOR CHILD'S 911 CALL

15 The Confrontation Clause limits the state's ability to use hearsay as evidence in
16 criminal trials when the hearsay declarant does not testify, and requires that hearsay offered
17 against an accused be sufficiently reliable to substitute for in-court scrutiny through cross-
18 examination. Franco v. State, 109 Nev. 1229, 1239, 866 P.2d 247, 253-54 (1993). Hearsay
19 statements are sufficiently reliable when they fall within a "firmly rooted" hearsay exception.
20 Id. If they do not fall within such a firmly rooted exception, the statements then must be
21 supported by a showing of "particularized guarantees of trustworthiness." Id. The "firmly
22 rooted" inquiry looks to how long the exception has been followed, and is informed by the
23 number of federal and state courts that have adopted the exception in their rules of evidence.
24 Franco, 109 Nev. at 1239, 866 P.2d at 254.

25 In Franco, the Court stated that the general exception to the hearsay rule, and the
26 "statement against interest" exception to the hearsay rule are not "firmly rooted" exceptions,
27 and therefore, admissions of those statements would violate the Confrontation Clause unless
28 the statements also possessed particularized guarantees of trustworthiness. 109 Nev. at 1239-

1 40, 866 P.2d at 254. However, the excited utterance exception is a firmly rooted hearsay
2 exception. Franco, 109 Nev. at 1241, 866 P.2d at 255.

3 In Harkins v. State, 122 Nev. 974, 143 P.3d 706 (2006), the Court held that when the
4 primary purpose of questioning or interrogation is to assist in an ongoing emergency,
5 statements made in response are non-testimonial in nature and do not violate the Sixth
6 Amendment. There, the court set forth several factors that should be considered when
7 determining whether a statement is testimonial: (1) to whom the statement was made; (2)
8 whether the statement was spontaneous or made in response to a question; (3) whether the
9 purpose of the inquiry was for use at a later trial or for an emergency; (4) and, whether the
10 statement was made during an ongoing emergency or whether it was a recitation of past events.
11 Id.

12 For instance, in Davis v. Washington, 547 U.S. 813, 126 S. Ct. 2266 (2006), where the
13 911 caller was describing events of physical violence as they were occurring while she was
14 facing an ongoing domestic violence emergency, and her statements were necessary to resolve
15 the present emergency, the United States Supreme Court determined that the statements were
16 non-testimonial and did not violate of the Sixth Amendment. On the other hand, where
17 statements were made to a police officer in an affidavit *after* an emergency had ended, the
18 Court found such statements were testimonial in nature and violative of the defendant's right
19 to confrontation. Id. (citing Hammon v. Indiana, 829 N.E.2d 444, 446 (Ind. 2005)). In
20 Hammon, police responded to a domestic violence call and the victim informed them that
21 everything was fine. Id. It was not until police entered the residence, observed signs of a
22 struggle and confronted the victim a second time that she then acknowledged being the victim
23 of a battery earlier in the night. Id. In finding the statements in Hammon testimonial, the Court
24 distinguished them from the Davis case as follows:

25 When the officers first arrived, Amy [the victim] told them that things were fine,
26 and there was no immediate threat to her person. When the officer questioned
27 Amy for the second time, and elicited the challenged statements, he was not
28 seeking to determine (as in Davis) "what is happening," but rather "what
happened." Objectively viewed, the primary, if not indeed the sole, purpose of
the interrogation was to investigate a possible crime....

1 Davis, 547 U.S. at 829-30, 126 S. Ct. at 2278 (internal citations omitted).

2 Here, as in Davis, the statements made by James Blair and Brittney in their 911 call,
3 were clearly made during an ongoing emergency. Both individuals are hysterically crying for
4 help and trying their best to answer the 911 operator's questions in the operator's attempt to
5 resolve the ongoing emergency. These statements made on the 911 call fall under the firmly
6 rooted excited utterance hearsay exception, are non-testimonial, and admissible at trial.

7 **III. DEFENDANT'S OWN JAIL CALLS**

8 Defendant's own jail calls are admissible because they are statements of a party opponent
9 under NRS 51.035(3)(a). The State seeks admission of several calls between the Defendant
10 and Brittney because the calls provide necessary context to their relationship, and provide
11 evidence of both Defendant's and Brittney's state of mind regarding this criminal case.
12 Notably, during one call Brittney tells Defendant what she will testify to if she is called to
13 the witness stand in this case. Defendant has cited no law that would cause this Court to
14 exclude the jail calls, and merely states that because Defendant also made admissions to
15 police officers, then the State should be precluded from entering these relevant calls into
16 evidence.

17 "Within reasonable limits, the prosecution is entitled to present its case through the
18 evidence it deems most appropriate." U.S. v. Collins, 368 Fed. Appx. 517, 521 (5th Cir.
19 2010). Justice Souter, writing for the majority in Old Chief v. U.S., 519 U.S. 172, 117 S.Ct.
20 644 (1997), elaborated why the prosecution in a criminal case must be permitted to present a
21 narrative of the crime, a "story of guiltiness," rather than being confined to just a stipulated
22 skeletal abstraction of legal elements stripped of any of the narrative details of the crime, and
23 stated as follows:

24 When a juror's duty does seem hard, the evidentiary account of what a defendant
25 has thought and done can accomplish what no set of abstract statements ever
26 could, not just to prove a fact but to establish its human significance, and so to
27 implicate the law's moral underpinnings and a juror's obligation to sit in
28 judgment. Thus, the prosecution may fairly seek to place its evidence before the
jurors, as much to tell a story of guiltiness as to support an inference of guilt, to
convince the jurors that a guilty verdict would be morally reasonable as much
as to point to the discrete elements of a defendant's legal fault.

1 519 U.S. at 188, 117 S.Ct. at 654. As such, Defendant cannot artificially constrain the State's
2 choice of evidence and its right to present the jury with a complete "story of guiltiness," that
3 persuades the jury to convict the Defendant by proof beyond a reasonable doubt of the crimes
4 with which he has been charged, and the State should be permitted to introduce Defendant's
5 legally admissible recorded jail calls into evidence.

6 DATED this 27th day of October, 2016,

7 Respectfully submitted,

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

10
11 BY 

12 KRISTINA RHOADES
13 Deputy District Attorney
14 Nevada Bar #12480

15 CERTIFICATE OF SERVICE

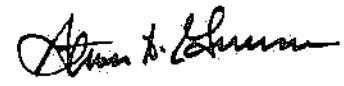
16 I hereby certify that service of the above and foregoing State's Reply to Defendant's
17 Opposition to State's Motion In Limine, was made this 27th day of October, 2016, to:

18 TALIA WALKENSHAW, Deputy Public Defender
19 Talia.Walkenshaw@clarkcountynv.gov

20 BY: 

21 Theresa Dodson
22 Secretary for the District Attorney's Office
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28 KR/td/dvu


CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TALIA L. WALKENSHAW, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12891
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Talia.Walkenshaw@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-16-312970-1
)	
v.	)	DEPT. NO. X
)	
JAMES COOPER,)	
)	
Defendant,	)	DATE: November 7, 2016
	)	TIME: 8:30 a.m.

**MOTION TO DISMISS COUNTS ONE AND TWO BASED
ON IMPROPER HEARSAY TESTIMONY**

COMES NOW, the Defendant, JAMES COOPER, by and through TALIA L. WALKENSHAW, Deputy Public Defender and hereby moves this Honorable Court to dismiss counts one and two in the Information based on the improper hearsay testimony that was presented at the preliminary hearing.

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

DATED this 27th day of October, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Talia L. Walkenshaw
TALIA L. WALKENSHAW, #12891
Deputy Public Defender

FACTS

On January 22, 2016, police were dispatched to 356 E. Desert Inn Road, Apartment 111 in reference to a possible domestic violence. Upon arriving, officers came into contact with the named victim, Brittney Jensen, and her two children, James Blair and Kaylee Jensen, who are also both named victims. At the time, James Blair was approximately eight (8) years old and Kaylee Jensen was approximately six (6) years old. Officers also made contact with Mr. Cooper who remained on-scene.

At the time, according to Officer Pickens, Brittney appeared to be injured. She was also, according to officers, very intoxicated and uncooperative. Throughout the duration of their time on-scene, Brittney refused to provide officers with any information regarding what had happened. Any information that officers received regarding what had occurred was from James Blair, Brittney's eight (8) year old son.

Officers also interviewed Mr. Cooper who was compliant with officers and remained on-scene. At the preliminary hearing, Officer Pickens testified that during his interview with Mr. Cooper, Mr. Cooper advised that Brittney was highly intoxicated and had finished an entire bottle of rum. In fact, Mr. Cooper was the first to call police and advised that Brittney was drunk, had jumped on him in bed, and began attacking him and pulling out his dreadlocks.

Based on what James Blair had told officers as well as Brittney's apparent injuries, Mr. Cooper was arrested and charged with one (1) count of Battery Constituting Domestic Violence (Category C Felony), one (1) count of Battery Constituting Domestic Violence- Strangulation (Category C Felony), and two (2) counts of Child Abuse, Neglect, or Endangerment (Category B Felony). The preliminary hearing was scheduled for February 25, 2016.

At the time set for the preliminary hearing, Brittney Jensen refused to appear and refused to bring James Blair or Kaylee Jensen to testify in court. The State proceeded with the preliminary hearing and only one witness testified- Officer Pickens. Over the defense's objection, the Court allowed Officer Pickens' hearsay testimony in under NRS 171.196. At the conclusion of the preliminary hearing, the Court bound Mr. Cooper up to District Court on all of the charges listed in

1 the Information. Mr. Cooper is currently set for trial on November 14, 2016, with a Calendar Call
2 on November 7, 2016.

3 LEGAL ARGUMENT

4 Hearsay evidence is defined as "a statement offered in evidence to prove the truth of the
5 matter asserted." NRS 51.035. The general rule regarding hearsay is that it is inadmissible: NRS
6 51.065. However, there are enumerated exceptions to the general rule that prohibits hearsay
7 testimony. Among those exceptions is an exception that provides "hearsay evidence consisting of a
8 statement made by the alleged victim or the offense is admissible at a preliminary examination
9 conducted pursuant to this section only if the defendant is charged with one or more of the
10 following offenses." NRS 171.196. Those offenses include, in relevant part, "abuse of a child
11 pursuant to NRS 200.508 if the offense is committed against a child who is under the age of 16
12 years and the offense is punishable as a felony" and "an act which constitutes domestic violence
13 pursuant to NRS 33.018, which is punishable as a felony and which resulted in substantial bodily
14 harm to the alleged victim," NRS 171.196(b),(c).

15 In this case, Officer Pickens' hearsay testimony regarding what James Blair allegedly told
16 the officer was allowed in under this exception. Mr. Cooper is charged with Child Abuse
17 (Category B Felony) in Count 3 and Count 4 of the Information. Therefore, pursuant to NRS
18 171.196(b), the Officer's hearsay testimony would be permissible as related to the charges of child
19 abuse.

20 However, the State has also used that hearsay testimony to support the Count 1 and Count
21 2, the Battery Domestic Violence and the Battery Domestic Violence-Strangulation. This is
22 impermissible and violates the basic rules regarding hearsay testimony. There is not an exception
23 under NRS 171.196 for either of these charges. Although NRS 171.196 does allow for hearsay
24 testimony regarding domestic violence, it is **only** in the case where there is also substantial bodily
25 harm. There has been no showing of substantial bodily harm in this case and therefore does not
26 qualify under the exception relied upon by the State.

27 By the State's logic, if Mr. Cooper was charged with Possession of a Controlled Substance
28 or Grand Larceny, the State could use impermissible hearsay testimony to establish probable cause

1 for the purposes of preliminary hearing so long as he was also charged with Child Abuse or any of
2 the other enumerated exceptions under NRS 171.196. The statute provides for three very specific
3 situations in which this hearsay testimony can be introduced. Those exceptions are sexual offenses
4 committed against children under the age of 16, child abuse against a child under the age of 16,
5 and domestic violence punishable as a felony and resulting in substantial bodily harm. It does not
6 allow for other charges not enumerated to then piggyback on this exception. That violates the basic
7 principles regarding the impermissibility of hearsay and should not have been introduced as
8 evidence at the preliminary hearing for purposes of binding Count 1 and Count 2 to District Court.

9 **CONCLUSION**

10 Based on the fact that impermissible hearsay testimony was improperly relied upon at the
11 preliminary hearing, Count 1 and Count 2 of the Information should be dismissed.

12
13 DATED this 27th day of October, 2016.

14 PHILIP J. KOHN
15 CLARK COUNTY PUBLIC DEFENDER

16
17 By: /s/ Talia L. Walkenshaw
18 TALIA L. WALKENSHAW, #12891
19 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 7th day of November, 2016, at 8:30 a.m.

DATED this 27th day of October, 2016.

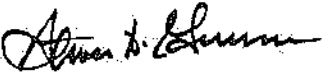
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Talia L. Walkenshaw
TALIA L. WALKENSHAW, #12891
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@clarkcountyvda.com on this 27th day of October, 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 KRISTINA RHOADES
6 Deputy District Attorney
7 Nevada Bar #012480
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 JAMES COOPER, aka,
13 James Marlin Cooper, #2634475,

14 Defendant.

CASE NO: C-16-312970-1

DEPT NO: X

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS ONE
16 AND TWO BASED ON IMPROPER HEARSAY TESTIMONY

17 DATE OF HEARING: NOVEMBER 7, 2016
18 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through KRISTINA RHOADES, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss
21 Counts One And Two Based On Improper Hearsay Testimony.

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.

25 ///

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On March 1, 2016, after the February 25, 2016 preliminary hearing in this matter, the
4 State of Nevada filed an Information charging Defendant James Cooper ("Defendant") with
5 one (1) count of Battery Constituting Domestic Violence (Category C Felony), one (1) count
6 of Battery Constituting Domestic Violence – Strangulation (Category C Felony), and two (2)
7 counts of Child Abuse, Neglect, or Endangerment (Category B Felony). The preliminary
8 hearing transcript was filed on March 18, 2016.

9 Defendant's trial is currently set for November 14, 2016, with a calendar call date of
10 November 7, 2016. On October 27, 2016, Defendant filed the instant motion to dismiss Counts
11 1 and 2 of the Information. The State responds as follows.

12 **STATEMENT OF FACTS**

13 LVMPD Officer Benjamin Pickens was the only witness that testified at the preliminary
14 hearing regarding what occurred on January 22, 2016. Brittney Jensen refused to comply with
15 the subpoena, and refused to bring minors J.B. or K.J. to court as instructed on the subpoena.
16 A material witness warrant was issued for Brittney's arrest, however, the State was unable to
17 procure her presence for the preliminary hearing.

18 Officer Pickens testified that he arrived at 356 East Desert Inn Road, Apartment 111,
19 on January 22, 2016 at approximately 6:50 p.m. in response to a domestic disturbance call.
20 Preliminary Hearing Transcript, 02/25/2016, p. 9-10, attached hereto as Exhibit 1. As he
21 approached apartment 111, he heard a lot of crying, specifically children crying, coming from
22 the open window of that apartment. Exhibit 1, p. 11. Officer Pickens entered the apartment
23 and in the main room, he saw an adult female sitting on the ground, balled up and crying
24 hysterically, with a bloody nose. Exhibit 1, p. 11-12. Officer Pickens saw two young children
25 standing next to the adult woman, both of which appeared to be scared and were also crying
26 hysterically. Exhibit 1, p. 12. Officer Pickens then attempted to locate the male half,
27 whereupon the young boy pointed outside to the courtyard where Officer Pickens then located
28 the Defendant. Id. Officer Pickens made contact with the Defendant who informed Officer

1 Pickens that he lived in apartment 111 with Brittney Jensen who was his fiancé, and the female
2 half inside the apartment. Exhibit 1, p. 14.

3 After speaking with the Defendant, Officer Pickens went back inside the apartment and
4 got a closer look at Brittney's injuries. Exhibit 1, p. 16. He observed that Brittney was very
5 badly injured, he could see significant swelling along her face and all over her head, and
6 observed what appeared to be a fresh ligature mark on Brittney's neck. Exhibit 1, p. 16-17. He
7 testified that the paramedics were very concerned about Brittney's condition and that they
8 needed to get her to a hospital immediately. Id.

9 After medical took Brittney away, Officer Pickens spoke with the two children in the
10 apartment and identified them as eight (8) year old J.B., and five (5) year old K.J. Exhibit 1,
11 p. 18-19. J.B. told Officer Pickens that he calls the Defendant "Tuda," and that Tuda and his
12 mother, Brittney Jensen, got into a verbal argument in their bedroom, and J.B. saw Tuda get
13 up out of bed, walk over to Brittney, and punch her in the stomach causing Brittney to fall to
14 the ground. Exhibit 1, p. 23. J.B. then told Officer Pickens that Tuda continued to yell at
15 Brittney while she was on the ground, and Brittney tried to get away from Tuda by running
16 into the kitchen and closing the door behind her, but Tuda pushed through the door and
17 knocked Brittney to the ground. Id. J.B. told Officer Pickens that his mother hit her head on
18 the corner of the kitchen counter when she fell to the ground. Id. Tuda then came over to
19 Brittney and yelled at her some more and started kicking her while she was on the ground and
20 stomping on her face. Exhibit 1, p. 24.

21 J.B. also told Officer Pickens that while his mom was on the ground, she was yelling
22 to J.B. to call 911, whereupon J.B. tried to grab the phone to make the call, and as he did, the
23 Defendant turned around to get the phone away from J.B. Exhibit 1, p. 25. J.B. tried to run
24 away from the Defendant so that J.B. could call 911 for help. Id. J.B. ran down the small
25 hallway inside the apartment toward J.B.'s bedroom in an attempt to get away from the
26 Defendant, but Defendant chased J.B. down the hallway, into the bedroom. Id. Defendant then
27 grabbed the phone away from J.B., threw J.B. down onto the bed and knocked over the
28 television that was in the room. Id. Brittney then came into the room and tried to prevent

1 Defendant from further hurting J.B., and Defendant then continued his physical beating of
2 Brittney. Exhibit 1, p. 26. J.B. observed his mom hit her head on the bed, and saw Defendant
3 punch and kick his mom a few more times while she was on the ground. Id. J.B. heard his
4 mom scream at Tuda to "just go away," and Defendant walked out of the apartment and
5 Brittney went into the bathroom, fell on the ground, and cried. Exhibit 1, p. 27. Five (5) year
6 old K.J. also confirmed with Officer Pickens that she was inside the small apartment during
7 this entire incident. Exhibit 1, p. 28.

8 Officer Pickens also observed that Brittney had blond dreadlocks and Defendant had
9 dark brown dreadlocks. Exhibit 1, p. 17-18. When Officer Pickens walked through the
10 apartment, he observed the apartment was in disarray consistent with J.B.'s account of what
11 had occurred, blond and brown dreadlocks in the kitchen and in the bedroom, and blood on a
12 piece of bedroom furniture and in the bathroom. Exhibit 1, p. 31.

13 Officer Pickens testified that he arrived on scene approximately 2-3 minutes after the
14 initial call came in, that Brittney and the children were hysterical when he came into contact
15 with them, that Defendant was eerily calm, and that J.B. told him what occurred in the
16 apartment moments prior to Officer Pickens arriving at the scene. Exhibit 1, p. 9-10, 24-25.

17 ARGUMENT

18 Without citing to the record, or any supporting authority whatsoever, Defendant
19 requests this Court dismiss Counts 1 and 2 of the Information. This is improper, premature
20 and there is no legal basis to dismiss these charges at this point.

21 **I. This Motion Should be Stricken Under NRS 34.700 Because the Court Lacks** 22 **Jurisdiction to Hear This Time-Barred Attack on the Justice Court's** 23 **Probable Cause Determination**

24 Defendant essentially argues that the justice court improperly bound over Counts 1 and
25 2 of the Information because the State presented insufficient evidence to conclude that
26 Defendant probably committed the crimes of Battery Constituting Domestic Violence and
27 Battery Constituting Domestic Violence – Strangulation on January 22, 2016. However
28 Defendant might try to style it, his "motion to dismiss" is an attack on the sufficiency of the

1 evidence in this case. Thus, these claims are only properly raised in a pretrial petition for writ
2 of habeas corpus. NRS 34.700 provides in relevant part:

3 1. Except as provided in subsection 3, a pretrial petition for a writ of habeas
4 corpus based on alleged lack of probable cause or otherwise challenging the
5 court's right or jurisdiction to proceed to the trial of a criminal charge may not
6 be considered unless:

7 (a) The petition and all supporting documents are filed within 21 days
8 after the first appearance of the accused in the district court; and

9 (b) The petition contains a statement that the accused:

10 (1) Waives the 60-day limitation for bringing an accused to trial;
11 or

12 (2) If the petition is not decided within 15 days before the date set
13 for trial, consents that the court may, without notice or hearing, continue
14 the trial indefinitely or to a date designated by the court.

15 ...
16 3. The court may extend, for good cause, the time to file a petition. Good cause
17 shall be deemed to exist if the transcript of the preliminary hearing or of the
18 proceedings before the grand jury is not available within 14 days after the
19 accused's initial appearance and the court shall grant an ex parte application to
20 extend the time for filing a petition. All other applications may be made only
21 after appropriate notice has been given to the prosecuting attorney.

22 The preliminary hearing transcript in this case was filed on March 18, 2016. Thus, Defendant
23 had until April 11, 2016 to file any petition challenging the justice court's probable cause
24 determination or this Court's jurisdiction to hear a trial on any of the four charges in the
25 information. Defendant has failed to do so. Under NRS 34.700, Defendant's claims are time
26 barred.

27 Defendant cannot evade NRS 34.700's time bar merely by restyling this time-barred
28 petition as a "motion to dismiss." In the closely-analogous context of time-barred or successive
post-conviction habeas petitions, the Nevada Supreme Court has admonished the district
courts that they are not to entertain time-barred habeas claims that a petitioner merely restyles
as a "motion." Our Supreme Court has recognized that these types of litigation tactics abuse
the legal system and should be summarily denied consideration:

We have observed that defendants are increasingly filing in district court
documents entitled "motion to correct illegal sentence" or "motion to modify
sentence" to challenge the validity of their convictions and sentences in violation

1 of the exclusive remedy provision detailed in NRS 34.724(2)(b), in an attempt
2 to circumvent the procedural bars governing post-conviction petitions for habeas
3 relief under NRS chapter 34. We have also observed that the district courts are
4 often addressing the merits of issues regarding the validity of convictions or
5 sentences when such issues are presented in motions to modify or correct
6 allegedly illegal sentences without regard for the procedural bars the legislature
7 has established. If a motion to correct an illegal sentence or to modify a sentence
8 raises issues outside of the very narrow scope of the inherent authority
9 recognized in this Opinion, the motion should be summarily denied...

10 In this case, appellant filed a motion entitled "motion for modification of an
11 illegal sentence." Appellant specifically pursued a motion to modify his sentence
12 instead of pursuing habeas relief because he believed he was procedurally barred
13 from bringing a successive habeas petition. Appellant now seeks to selectively
14 apply habeas procedures to take advantage of the protections of the habeas
15 appeal statute. We will not allow appellant to abuse the legal process in the
16 manner he proposes.

17 Edwards v. State, 112 Nev. 704, 708 n.2-709, 918 P.2d 321, 325 n.2 (1996).

18 The same analysis applies to pretrial habeas petitions that are time-barred but restyled as
19 "motions to dismiss" to evade the statutory bar. Defendant is no different than the proper
20 person post-conviction habeas petitioners who sit on their rights and file time-barred petitions
21 asserting claims long-since waived. Thus, Defendant's motion should be denied because the
22 Court has no jurisdiction to hear claims only properly asserted in a pretrial habeas petition.

23 **II. Defendant's Motion Should be Denied as Procedurally Improper**

24 Defendant argues that there is no evidence to support Counts 1 and 2 prior to any
25 evidence being presented to a jury in this case. This argument is premature as the State has not
26 had the opportunity to present any evidence at this point. The time to present evidence is at
27 trial before a jury. A Motion to Dismiss is not the proper vehicle to challenge the State's
28 evidence prior to trial – the proper vehicle would be a pre-trial petition for writ of habeas
corpus. If Defendant has the same concerns following presentation of the State's case in chief,
he should re-file his Motion to Dismiss at that time.

29 **III. The Justice Court Properly Bound Over All Four (4) Felony Charges**

30 Defendant states, without any citation to the record, that "over the defense's
31 objection, the Court allowed Officer Pickens' hearsay testimony in under NRS 171.196."
32 Motion, p. 2. It is true that the Defendant objected to the admission of J.B.'s statements during

1 the preliminary hearing, Exhibit 1, p. 5-6, 19-20, 37-40, however, when the Justice Court made
2 its probable cause determination, the court specifically stated:

3 THE COURT: Yeah, I think the hearsay issue, I mean, obviously with regard
4 to Counts 3 and 4, the hearsay comes in under the new statute. Additionally I
5 think the officer established that when he got there everybody was absolutely
6 hysterical including the kids. I know he also did say that prior to asking them
7 questions they had calmed down somewhat, but I think with regard to that
8 there's, you know, and I had already made the record that there were potentially
9 other hearsay exceptions that those statements would come in under.

10 You know, the issue with regard to the new statute I think is a valid and
11 interesting issue that I think at some point is going to have to be determined in
12 a situation like this where there may not be another exception to the hearsay rule
13 where the statements may or may not come in because I'm not quite sure, it's
14 not clear. It's a little vague with regard to that particular issue. But I do think
15 the statements come in under other hearsay exception so it's not necessarily
16 as much of an issue in this case.

17 Exhibit 1, p. 41-42. As is clear from the transcript, the Justice of the Peace not only relied on
18 NRS 171.196, but on other valid hearsay exceptions and on all of the other evidence presented
19 at preliminary hearing when holding Defendant to answer to all four (4) of the felonies listed
20 in the Information. Defendant has presented no law to support his motion to dismiss in light
21 of the record made in justice court.

22 Moreover, even had the Justice Court relied only on NRS 171.196, it is the State's
23 position that based on the plain language of the statute, the admissible hearsay statements
24 would be applicable to all charges contained in the criminal complaint if the Defendant is
25 charged with one (1) or more of the enumerated felonies in subsection 6. NRS 171.196(6)
26 reads as follows:

27 Hearsay evidence consisting of a statement made by the alleged victim of the
28 offense is admissible at a preliminary examination conducted pursuant to this
section only if the defendant is charged with one or more of the following
offenses:

(a) A sexual offense committed against a child who is under the age of 16
years if the offense is punishable as a felony...

(b) Abuse of a child pursuant to NRS 200.508 if the offense is committed
against a child who is under the age of 16 years and the offense is punishable as
a felony.

(c) An act which constitutes domestic violence pursuant to NRS 33.018,
which is punishable as a felony and which resulted in substantial bodily harm to
the alleged victim.

(Emphasis added). The plain language of the statute makes it clear that the Defendant must be
charged with one or more of the enumerated offenses, but it does not state that he must only

1 be charged with one or more of the enumerated offenses. By Defendant's logic, if a defendant
2 was charged with Battery Constituting Domestic Violence With Use of a Deadly Weapon
3 Resulting in Substantial Bodily Harm, and an alleged victim's hearsay statement was admitted
4 pursuant to NRS 171.196(6), the State would never be able to prove up the "deadly weapon"
5 element because it is not specifically enumerated in the statute even though it is part and parcel
6 to the case, as is here with Counts 1 and 2.

7 Lastly, the statute specifically applies to probable cause hearings, which is solely up to
8 a justice of the peace or a grand jury, and therefore the only method to attack this probable
9 cause determination would be a pre-trial petition for writ of habeas corpus discussed above.
10 As such, Defendant's motion to dismiss must be denied.

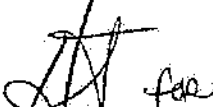
11 CONCLUSION

12 In light of the foregoing, the State requests that the Court deny Defendant's Motion to
13 Dismiss.

14 DATED this 2nd day of November, 2016.

15 Respectfully submitted,

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

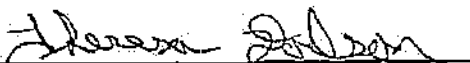
19 BY  for
20 KRISTINA RHOADES
21 Deputy District Attorney
22 Nevada Bar #012480
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CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing State's Opposition to Defendant's Motion To Dismiss Counts One And Two Based On Improper Hearsay Testimony, was made this 2nd day of November, 2016, to:

TALIA WALKENSHAW, Deputy Public Defender
Talja.Walkenshaw@clarkcountynv.gov

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

KR/td/dvu

EXHIBIT 1

TRAN

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
JAMES COOPER,
Defendant.

JC CASE NO. 16F01139X
DC CASE NO. C312979

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING
BEFORE THE HONORABLE MELANIE A. TOBIASSON
JUSTICE OF THE PEACE
THURSDAY, FEBRUARY 25, 2016

APPEARANCES:

For the State: KRISTINA BROADES
Deputy District Attorney

For the Defendant: JEB BOND
Attorney at Law

Reported by: Donna J. McCord, CCR #337

WITNESSES

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BENJAMIN PICKENS

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Alison L. Schuman
CLERK OF THE COURT

EXHIBITS

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EXHIBIT 1 JOE 37
EXHIBIT 2 - JOE 37

LAS VEGAS, NEVADA, FEBRUARY 25, 2016, 11:52 A.M.

THE COURT: 16F01139X, James Cooper. This is the time set for preliminary hearing. State, are you ready to proceed?

MS. RHOADES: The State is ready to proceed, your Honor.

THE COURT: Defense ready to proceed?

MR. BOND: Yes, your Honor.

THE COURT: All right. State, who's your first witness?

MS. RHOADES: Yes, your Honor, before I call the first witness I just wanted to make a record. It's Officer Benjamin Pickens. That's the State's only witness.

The State is going to seek to admit hearsay under NRS 171.196. I have a copy of the bill, it hasn't been published in the NRS, but it's the new hearsay statute. It allows for hearsay of an alleged victim if the defendant is charged with certain crimes including child abuse which the defendant is in this case. So with that the State's first witness is Officer Benjamin Pickens.

1 MR. BOND: Your Honor, I just want to
2 clarify that, and I don't know this for sure, but
3 that we're only going to hear hearsay statements
4 from a child under the age of 16 as it contains
5 those statements pertained to the felony committed
6 against that alleged victim, not against other
7 crimes committed against other victims.

8 MS. RHOADES: And that's not what the
9 statute says and I have the bill here. And it is
10 new and I have reviewed it. But it says hearsay
11 evidence consisting of a statement made by the
12 alleged victim of the offense is admissible at a
13 preliminary hearing examination conducted pursuant
14 to this section only if the defendant is charged
15 with one or more of the following offenses, and
16 abuse of a child is listed and that's all the
17 statute says. The statute doesn't limit that the
18 evidence be only used against the hearsay statement
19 of that victim. So if there is probable cause based
20 on the hearsay statements of the victim for other
21 charges, it appears that the statute does not
22 preclude the charges being bound up on those other
23 charges, if that makes any sense at all.

24 MR. BOND: Your Honor, I disagree just
25 from the reading of that. And obviously there's no

1 case law on it and I haven't looked into the history
2 of the statute on how they came up with the wording,
3 but it says of the offense is the first line in
4 there. So I think the offense is the crime that's
5 charged for that victim, that particular victim
6 who's getting the hearsay statements in.

7 THE COURT: Well --

8 MS. RHOADES: My reading of it is
9 different.

10 THE COURT: Oh, obviously it's open to
11 interpretation.

12 MS. RHOADES: And there's no age limit. I
13 know Mr. Bond said something about 16 years old but
14 there's no age limit.

15 THE COURT: Well, no, the child
16 abuse/neglect victims, the alleged child
17 abuse/neglect victims are apparently eight and five
18 so I think the argument was the hearsay, any
19 statement that those children made would be
20 admissible but not statements that the victim as
21 alleged in Count 1 made because --

22 MS. RHOADES: Well, that would be if there
23 were other exceptions to the hearsay rule that the
24 Benjamin Jackson statements would come in. And the
25 State is seeking James Blair's statements who is the

1 eight-year-old child that gave the officer some
2 statements. I guess my understanding of Mr. Bond's
3 argument was that none of the other charges could be
4 bound up --

5 MR. BOND: Based on James Blair's
6 statements. Just saying that James Blair is the
7 alleged victim of this felony crime, and I
8 understand since he is a minor and it is a felony
9 charge where he is the victim that his hearsay
10 statements can come in.

11 THE COURT: Under this --

12 MR. BOND: Can absolutely come in to bind
13 him up over charges resulting from crimes against
14 him. But if James Blair's statements are being used
15 to prove other felony offenses, I don't believe that
16 those statements can be used for that purpose, your
17 Honor.

18 THE COURT: I don't know that I agree with
19 you on that argument. Let's do this, let's call the
20 witness, get the testimony going. We'll make the
21 objections, the appropriate objections, I'll make
22 the appropriate or what I believe are the
23 appropriate rulings and then at some point the
24 Supreme Court can make a ruling to clarify --

25 MR. BOND: Thank you, your Honor.

1 THE COURT: -- the statute so --

2 MS. RHOADES: Officer Pickens.

3 THE CLERK: If you could remain standing
4 and raise your right hand, please. Thank you.

5
6 BENJAMIN PICKENS,
7 having been first duly sworn, was
8 examined and testified as follows:

9
10 THE CLERK: Please have a seat and please
11 state and spell your name for the record.

12 THE WITNESS: Benjamin Pickens,
13 B-E-N-J-A-M-I-N P-I-C-K-E-N-S.

14 THE COURT: Thank you.

15 MS. RHOADES: May I proceed, your Honor?

16 THE COURT: Yes.

17 MS. RHOADES: Thank you.

18
19 DIRECT EXAMINATION

20 BY MS. RHOADES:

21 Q Sir, how are you employed?

22 A I'm a police officer with the Las Vegas
23 Metropolitan Police Department.

24 Q How long have you been employed with
25 Metro?

1 A Approximately five and a half years.
 2 Q And you work as a patrol officer with
 3 Metro?
 4 A Yes.
 5 Q What shift do you work?
 6 A At the time of this call I was swing
 7 shift. That's from 3:00 p.m. until 1:00 a.m.
 8 Q All right. Going to January 22nd, 2016,
 9 did you have the occasion to respond to 356 East
 10 Desert Inn Road?
 11 A I did.
 12 Q Is that here in Las Vegas, Clark County,
 13 Nevada?
 14 A It is.
 15 Q And did you respond around 6:50 at night?
 16 A I did.
 17 Q What was the nature of the call and why
 18 did you respond?
 19 A The call came out as some kind of a
 20 domestic disturbance. A male called in and there
 21 was crying in the background from a female and a
 22 child as well that came over on our dispatch.
 23 Q About how long after that call came over
 24 on dispatch did you arrive at the scene?
 25 A Within minutes. I was probably about a

1 block away, two blocks away. I was really close.
 2 Two or three minutes probably.
 3 Q Were you with another officer?
 4 A I was a solo unit. There was another
 5 officer who arrived on scene as well.
 6 Q So did you arrive at the same time as the
 7 other officer?
 8 A I was the first one there.
 9 Q What did you do when you first got there?
 10 A The apartment complex has a locked front
 11 door, front entryway. You need some kind of a key
 12 code to get in. I checked both that door as well as
 13 there's two other gates, parking gates. I couldn't
 14 get any access to it. I waited out front, tried to
 15 announce my location to the next arriving unit, and
 16 as I was doing so there was a couple that had come
 17 to check their mail. There's mailboxes right in the
 18 front lobby right next to the door. I signaled
 19 their attention and they let me through that locked
 20 door.
 21 Q And was it your understanding that the
 22 call came out from apartment 111?
 23 A Yes.
 24 Q Did you then proceed to apartment 111?
 25 A I did.

1 Q Is that on the first floor?
 2 A It is on the first floor.
 3 Q When you approached that apartment what,
 4 if anything, did you hear coming from the apartment?
 5 A As I approached the apartment, lights were
 6 out in the area. There's an open courtyard through
 7 the perimeter of the apartments. I was trying to
 8 find where this apartment was and I could hear some
 9 crying coming out of one of the apartments. It was
 10 completely dark. As I approached it I noticed a
 11 window was open which as I passed by and I looked in
 12 it appeared to be a bedroom window. The front door
 13 was wide open and as I got closer I could hear a lot
 14 more crying. I remember hearing children's crying
 15 at first. I announced myself, looked in, saw some
 16 people right inside, walked into the residence. It
 17 opened up into a main room. I would say estimated
 18 20 feet deep by about 15 feet across.
 19 Q And you're talking just about that main
 20 room?
 21 A Just the main front room where I could see
 22 a female sitting on the ground kind of halled up. I
 23 could see she had a bloody nose but lights were off.
 24 It was dark. She was kind of halled up sitting on
 25 the ground with her hands towards her face and she

1 was crying hysterically. And there were two young
 2 children that were standing next to her and they
 3 both appeared very scared. They were both crying.
 4 They were pretty hysterical as well.
 5 Q Was anyone else inside that apartment?
 6 A I conducted a safety sweep to make sure
 7 that there was no one else in need of aid or any
 8 other problems. Inside the apartment, it was a
 9 little two-bedroom apartment, I'd say approximately
 10 650 square feet, no one else was inside the
 11 apartment at that time.
 12 Q At that time did you get the name of the
 13 female that was crying?
 14 A She was hysterical. The partner that I
 15 was with started to attend to her and give her more
 16 direct attention. My next concern is how quick I
 17 was able to get onto the scene and how everything
 18 just seemed that it just happened in the recent, I
 19 was concerned where the other party had gone to. So
 20 I then asked the boy, the older boy, where he was
 21 and he had pointed right out the door. He said he's
 22 just right outside. At that point the partner that
 23 I was with stayed with the female, started giving
 24 her more attention when I went outside the
 25 apartment.

1 Q And when you went outside the apartment
2 did you find someone in the courtyard?

3 A When I went outside the courtyard was very
4 dark. And it was surprising, about one or two doors
5 down, probably about, I don't know, 20, 30 feet away
6 from me, there was a large black man who was just
7 lighting up a cigarette and he was just standing
8 there looking at me. I couldn't tell if he was in
9 that same location when I first arrived, but as I
10 exited I could see a silhouette of a very large man
11 just being in a very dark area.

12 Q Was anyone else in the courtyard besides
13 that man?

14 A Nobody else. No motion, nothing else that
15 I saw or heard.

16 Q Do you see that same man in the courtroom
17 today?

18 A I do.

19 Q Can you point to him and tell me something
20 that he's wearing today?

21 A The man with the cap on his head.

22 THE COURT: Record will reflect
23 identification of the defendant.

24 MS. RHODES: Thank you, your Honor.

25 THE COURT: You're welcome.

1 BY MS. RHODES:

2 Q What was -- well, did you get a name from
3 the defendant?

4 A I approached him and due to the nature of
5 the call and the hysteria inside the apartment where
6 the male half wasn't staying around, I really didn't
7 expect to see, you know, the male half still around
8 and I was a little confused that he was lighting a
9 cigarette looking at me, so I approached him with a
10 little bit of confusion and I asked if he lived in
11 this apartment pointing back to apartment 111. And
12 I was trying to gain his relation, if he was linked,
13 if he was the person I was looking for. And at that
14 point he said, yes, he lives there, that's his
15 address and he verbally identified himself and he
16 identified who the female was to me.

17 Q And what name did he give you?

18 A He told me Brittney was the female.

19 Q And her last name?

20 A Jensen I believe.

21 Q And what name did he give you for himself?

22 A I believe it was James Cooper.

23 Q Did he tell you anything else?

24 A He told me that -- he told me that they
25 were engaged. He told me they had been living in

1 that place for about a year.

2 Q Okay. Let me stop you there. Did you ask
3 him what kind of relationship he had with Brittney
4 or how did these --

5 A I was asking him questions. I was trying
6 to figure out how he was tied into the apartment,
7 who she was, who she was to him, what his
8 relationship was to her, just if -- I was still
9 trying to figure out is this guy related to this at
10 all.

11 Q And he was not in custody at this time,
12 correct?

13 A He was not in custody. I hadn't even put
14 my hands on him. I hadn't ordered him anywhere, I
15 was asking him simple questions of, you know, how,
16 you know, who he was and what his status inside this
17 apartment was.

18 Q Okay. When you were done talking with him
19 where did he go or what did you do with him?

20 A At that point when I was asking him about
21 what his relationship was and who she was, he
22 started to freely utter to me the fact that or he
23 started to freely utter to me that she was making
24 everything up. And so I asked him follow-up
25 questions like what are you talking about. He

1 started telling me that she was drunk and he kept
2 making references to how she drank a big bottle of
3 rum, that she was really drunk and he got --

4 Q Well, I'm going to stop you there. I
5 mean, so when you were done talking to the
6 defendant, did you take him back to the apartment,
7 did he go next to a police car? Where did he go,
8 where did you go?

9 A At this point when I was done talking with
10 him, we had another officer arrive on the scene. So
11 Officer Sylvia was inside the house still with the
12 female and the two children. I asked the other
13 officer to stand by with Mr. Cooper. I hadn't put
14 him in handcuffs. I went into the apartment to talk
15 with Miss Jensen to find out what exactly was going
16 on inside.

17 Q Did Miss Jensen, was she cooperative?

18 A She was not in good condition. She was
19 very intoxicated. She was very badly injured. As I
20 got closer and we were able to then get some more
21 lights on I could see the extent of her injuries
22 where I thought on initial sight it was just maybe a
23 bloody nose. I could see significant swelling along
24 her face, just all over her head. And paramedics
25 had arrived and they were connected. They expressed

1 their concerns to me that they needed to get her to
2 the hospital immediately. They were concerned that
3 she might have a skull fracture, possibly a brain
4 bleed, something significant that can lead to more
5 significant injuries if not death.

6 Q Okay. So was she cooperative with you?

7 A She was hysterical. She was unable to
8 answer questions so no.

9 Q And did you observe any other injuries
10 besides the swelling that you described?

11 A I could see a mark on her neck as they
12 laid her down and it was a fresh mark to me. To me
13 it looked like some type of a ligature mark.

14 Q And did all of the injuries that you
15 observed on Miss Jensen appear to be fresh?

16 A That I observed, yes.

17 Q Did you observe anything with regard on
18 her head?

19 A At that point, no, I didn't specifically
20 see anything with her -- just pretty much her face,
21 her eyes, her mouth, her nose, her neck.

22 Q Do you recall what kind of hair she had?

23 A She had dreadlocks.

24 Q Do you remember what color they were?

25 A It was a dirty blond.

1 Q When you made contact with the defendant
2 that night do you recall what kind of hair he had?

3 A He had dreadlocks.

4 Q And what color were they?

5 A Dark brown. It was not up in a cap.

6 Q After medical took Miss Jensen away what
7 did you do?

8 A When medical took Miss Jensen away I then
9 talked to the children to find out what their
10 relation was with Mr. Cooper, to find out if they
11 had any other legal guardians or anyone in that
12 area. I was trying to find out their status. And
13 at that point the children were starting to calm
14 down a little bit more. I asked the -- I also asked
15 the kids what happened, what did they see.

16 Q Okay. Did you contact CPS as well?

17 A I did contact CPS when I determined that
18 neither of those two children had, you know, legal
19 parents or guardians living in Las Vegas.

20 Q And you said when you first came in you
21 initially made contact with the boy. Did you find
22 out what the boy's name was?

23 A I did.

24 Q What was that?

25 A I would have to refer back to the report.

1 Q Does James Blair sound familiar?

2 A That sounds familiar. He went by his
3 middle name. James I remember was his first name.

4 Q And how old was he?

5 A Eight years old.

6 Q The second child, was that a male or
7 female?

8 A Female.

9 Q And was her name Kaylee Jensen?

10 A Yes.

11 Q How old was Kaylee?

12 A She was five.

13 Q And did you talk to both James and Kaylee?

14 A I did.

15 Q What name did James go by?

16 A His middle name.

17 Q Okay. But you don't remember it?

18 A Yeah, I don't remember it.

19 Q When you talked to James what did he tell
20 you had happened?

21 A He told me that --

22 MR. BOND: I guess at this time, you know,
23 thinking about my objection a little bit further
24 that we raised pre-preliminary hearing, your Honor,
25 it's being -- I understand that the statements of

1 James Blair can come in as hearsay under that new
2 law and I know that they can come in as testimony
3 to -- my only objection is that they are not to come
4 in as to, for the purpose of proving a different
5 crime other than what he's victim to, your Honor.
6 And in this instance we have three charges, your
7 Honor, and only one which James Blair is a victim
8 to. So I guess my true objection here, more I guess
9 maybe couched in a motion to cover the counts is
10 there's no evidence, your Honor, other than his
11 statements, his hearsay statements which can only
12 come in for purposes of crimes that he's the victim
13 to. So at this time I'd move to sever the charges,
14 your Honor, and move to dismiss unless other
15 evidence is able to be brought forward, the charges
16 of battery domestic violence and battery
17 strangulation.

18 THE COURT: Well, I think the motion to
19 dismiss that charge is a little premature because
20 it's -- I'm assuming that at some point in this
21 testimony you're going to ask the questions with
22 regard to what Britney said or didn't say. I don't
23 think she said a whole lot.

24 MS. RHOADES: She didn't say a whole lot
25 but --

1 THE COURT: But I think there's a couple
2 of exceptions to the hearsay rule in addition to the
3 new statute, bill, whatever they are calling it,
4 that would allow these statements to come in. And I
5 think they would be allowed to come in not only
6 under the new bill that allows for hearsay in the
7 event of a child abuse or domestic violence with
8 substantial bodily harm charge but also with regard
9 to excited utterances, et cetera.

10 So at this point I'm going to
11 overrule the objection and allow the testimony
12 subject to renewing the objection, additional record
13 being made, whatever you want, you know, however you
14 want to go as the testimony goes forward.

15 But, State, I don't know if you want
16 to make a record as well.

17 MS. RHODES: No, I think that's better
18 for the hindover argument after he's testified
19 and —

20 THE COURT: Right.

21 MS. RHODES: But I don't think it
22 prevents him from testifying as to what James Blair
23 told him.

24 THE COURT: And I think it's admissible
25 under several theories. So at this point I'm going

1 to overrule the objection.

2 MR. BOND: Thank you, your Honor.

3 THE COURT: Go ahead.

4 BY MS. RHODES:

5 Q So what did James tell you happened?

6 A James told me that his mother was going
7 through, he referred to Mr. Cooper as Tuda —

8 Q Is that T-U-D-A or is that what it sounded
9 like?

10 A I spelled it phonetically as best as I
11 could.

12 Q And so that's what James referred to the
13 defendant as, as Tuda?

14 A As Tuda. He referred to him as Tuda. And
15 he had said that his mother was going through Tuda's
16 phone and then got angry believing that Tuda was
17 cheating on her in some way and he said they began
18 to have an argument and the argument was in their
19 bedroom. And he said his mother was moving some
20 stuff around. He particularly said like boxes with
21 candy. When I was there I looked on the floor. I
22 could see there was a broken box on the ground with
23 some, it looked like crackers and stuff that had
24 spilled out of it. But he said she was holding this
25 box, like moving some things around, and he

1 remembered her saying something like, no, don't do
2 that as they were arguing. And he said he then saw
3 Tuda, you know, get up out of bed, walk over to her
4 as they were yelling and he punched her in the
5 stomach. She fell down to the ground dropping the
6 box on the ground. He said he yelled at her some
7 more.

8 THE COURT: He being?

9 THE WITNESS: Tuda.

10 THE COURT: Okay.

11 THE WITNESS: That Tuda continued to yell
12 at his mom Brittany Jensen some more while she was
13 on the ground. And he said that she tried to get up
14 to get away from him, got up from the floor, went
15 through the hallway and went into the kitchen and
16 she tried to close the door behind her. And there's
17 just a single entry doorway that separates the
18 kitchen from the main room. He said as he saw his
19 mom try to close the door he saw Tuda come in after
20 her, push through the door knocking her to the
21 ground and at this point -- I'm sorry, I don't
22 remember the boy's name.

23 BY MS. RHODES:

24 Q The eight-year-old boy that you're talking
25 to.

1 A Yes. And so the eight-year-old boy was
2 walking me through step by step what happened and
3 showed me as she got pushed to the ground she hit
4 her head against the corner of the counter of the
5 kitchen and she fell on the ground. He said Tuda
6 came over and was yelling at her some more and
7 started kicking her while she was on the ground and
8 was stomping on her face while she was on the
9 ground.

10 Q And James, the eight-year-old boy, was
11 relaying this and telling you that he saw what was
12 happening and he was there when it was happening?

13 A Yes. He walked me through it step by
14 step, everything that happened, and that he
15 visually, that he saw everything. He first heard it
16 which brought his attention to look into his
17 mother's bedroom and that's when he saw Mr. Cooper,
18 Tuda, approach his mother and punch her in the
19 stomach and he saw everything after that.

20 Q And what was your impression of James when
21 he was talking to you and walking you through what
22 had happened?

23 A Due to the nature of the call with the
24 hysteria I heard in the background and how quickly I
25 responded and with me showing up on scene, seeing

1 Miss Jensen in a very poor physical shape, very
 2 hysterical, both children were hysterical, I
 3 believed him, what he expressed to me to be very
 4 detailed, very sincere and nothing rehearsed.
 5 Q Okay. Just going back to when you first
 6 made contact with the defendant in the courtyard,
 7 what was his demeanor?
 8 A Eerily calm.
 9 Q So coming back to when you're talking to
 10 James and they're in the kitchen and he told you
 11 that the defendant was kicking his mom while she was
 12 on the ground, what, if anything, did he tell you
 13 happened after that?
 14 A He was -- he told me that his mom was
 15 trying to yell to him to call the police, call 911,
 16 and he tried to grab the phone to make the call. As
 17 he did he said Tuda turned around to get the phone
 18 from him. He ran away, ran out --
 19 Q And when you say he, are you talking
 20 about --
 21 A The boy. The boy ran away from Tuda so he
 22 can call 911 and he went down the small hallway into
 23 his bedroom where Tuda chased him into his bedroom,
 24 grabbed the phone from him, threw him down onto the
 25 bed and knocked over a T.V. that was in the room as

1 well.
 2 Q And who knocked over the T.V., did he tell
 3 you?
 4 A Tuda knocked over the T.V..
 5 Q And did James tell you that Tuda was able
 6 to get the phone away from him?
 7 A Yes, he took the phone away from him. He
 8 said also at that point that's when his mother came
 9 from behind and was trying to keep Tuda from
 10 hurting -- the boy was trying to pull him off or
 11 stop him essentially.
 12 Q And did he tell you if he saw anything
 13 after that?
 14 A He said the fight between the two then
 15 carried over. They both spilled back into the
 16 bedroom onto the ground. At one point he showed me
 17 that his mom had hit her head up against a bed, that
 18 she fell and he said Tuda punched her and kicked her
 19 a few more times.
 20 Q Where was that at?
 21 A In the bedroom on the ground.
 22 Q And so when you say the fight continued,
 23 James is telling you that the fight between Tuda and
 24 his mom continued into their bedroom?
 25 A Into the bedroom. The two bedrooms are

1 linked with I'll say a ten foot very narrow hallway
 2 between the two. And so when the mother approached
 3 Tuda as Tuda was chasing after and throwing down her
 4 child, Tuda turned back onto her and it went back
 5 into the bedroom, spilled onto the floor, onto the
 6 ground and he hit her a couple more times. And the
 7 boy remembered the man saying something like just
 8 leave, get out of here, go away, something of that
 9 nature. Then Tuda got up, left, walked out of the
 10 apartment. And he said his mom then stumbled into
 11 the bathroom which is in that small hallway. She
 12 fell on the ground knocking a curtain rod over and
 13 then she sat on the toilet and cried.
 14 Q And at that point did James tell that you
 15 Tuda left the apartment?
 16 A Yes.
 17 Q Do you remember if James told you where
 18 Kaylee was during this incident?
 19 A Kaylee was -- he didn't specifically --
 20 his focus to me and my questioning to him was more
 21 along the lines of both parents. So as he explained
 22 where the fight was first in the bedroom then the
 23 kitchen and back, he didn't tell me where Kaylee was
 24 in proximity at each point. Kaylee had verbally
 25 told me that she did see the stuff as well. She was

1 five, she was very scared and she would just -- as
 2 the boy would tell me stuff she would just say
 3 uh-huh, uh-huh, just very simple, innocent and
 4 scared remarks. But she really didn't provide, you
 5 know, much detail to the story as well.
 6 Q But Kaylee was able to confirm to you she
 7 was present when all of this was going on?
 8 A Yes.
 9 Q And she's five years old?
 10 A I remember she was definitely present when
 11 the boy got thrown onto the bed. That was one thing
 12 that scared her.
 13 Q You said you walked through the apartment
 14 earlier. Did you inspect the apartment when you
 15 walked through or did you inspect it kind of after
 16 you had got what had happened from the kids?
 17 A I was able to inspect it afterwards once
 18 we determined everything was safe and determined
 19 where all the parties were and we had lights on.
 20 Q When you walked through the apartment what
 21 did you find?
 22 A I saw in the kitchen there was a torn
 23 bloodstain and it was bluish/brownish consistent
 24 with the hair color of Miss Jensen that was laying
 25 on the kitchen floor. There was a trash can that

1 was also knocked over on the kitchen floor. I saw
2 in the bedroom there was a closet door that had a
3 hole in the closet door but the closet door was also
4 off its track and bent. I asked the boy if that was
5 new damage and he pointed to the hole and said no,
6 that was there, but it being bent and off its track
7 he said was now.

8 I saw the box laying on the ground.
9 I saw a tool bag with the handle, like a little tool
10 bag with tools spilled all over the ground and the
11 handle was extended laying on the ground and that
12 was bent. I asked the boy if that's normally like
13 that and he said no, that's what Tuda takes to work
14 and it's not bent.

15 I saw a mixture of dreadlocks,
16 blondish/brownish and dark brown dreadlocks which
17 were consistent, the blondish/brownish consistent
18 with Mrs. Jensen, and the dark brownish
19 consistent with Mr. Cooper's that were also both
20 laying on the ground in the bedroom where all the
21 tools, the tool bag and the box and just laying in
22 that mix.

23 I saw blood that was on a piece of
24 furniture at the foot of the bed and it appeared to
25 be fresh blood. I saw blood drops on the bathroom

1 floor that was in the hallway between the two
2 bedrooms where the boy said his mom sat on the
3 toilet and cried. I saw a shower curtain that was
4 down that was laying in the tub. I also saw a T.V.
5 that was just sitting on the ground in the other
6 bedroom.

7 Q Would that be the kids' bedroom?

8 A In the kids' bedroom where they had bunk
9 beds.

10 Q Did Brittney Jensen ever answer any
11 questions that you asked her or I guess did you ask
12 Brittney Jensen questions?

13 A I specifically did not.

14 Q The mark on her neck, you said it looked
15 like a ligature?

16 A Yes.

17 Q So not like a hand mark on her neck?

18 A It was not consistent with hands, feet,
19 arms, body parts. It was a straight line red mark
20 across the neck with something like a rectangle at
21 the end of it.

22 Q And did that appear to be fresh?

23 A It appeared to be fresh.

24 Q Did Jensen tell you anything about that
25 injury?

1 A No.

2 Q Was Mr. Cooper placed into custody after
3 all of this?

4 A After I saw her condition and the boy had
5 started to walk us through and give explanations as
6 to what was going on, seeing the severity of the
7 excessive injuries that Mrs. Jensen received that
8 night I then came back outside the apartment where
9 Mr. Cooper was still standing with another officer,
10 standing with him. I then came out and placed him in
11 handcuffs.

12 Q Did you see any injuries on Mr. Cooper?

13 A I did. He appeared to have some
14 dreadlocks, some hair missing on the back right top
15 part of his head and he had a small cut and some
16 bleeding on one of his fingers.

17 Q Anything else?

18 A Nothing else I could see. Nothing else he
19 complained of either.

20 MS. RHOADES: The State will pass the
21 witness, your Honor.

22 THE COURT: Cross.

23 MR. BOND: Yes. Just real quick.

24 ///

25 ///

CROSS-EXAMINATION

1 BY MR. BOND:

2 Q Officer, you said the male initiated this
3 call. Do you know who that male was?

4 A Yes, sir.

5 Q And who was that?

6 A Mr. Cooper.

7 Q Okay. Were there any other calls for this
8 particular incident that you know of?

9 A I don't remember. I couldn't tell you
10 100 percent.

11 Q Isn't it true that when you first came in
12 contact with Mr. Cooper in the courtyard that he was
13 on the phone with dispatch?

14 A He was on the phone. I don't know who he
15 was on the phone with.

16 Q Okay. Isn't it true that Mr. Cooper
17 showed you injuries on his back that occurred from
18 previous incidents?

19 A Yes.

20 Q Okay. And what were these injuries?

21 MS. RHOADES: I would object as to
22 relevance of previous incidents to what happened
23 today and hearsay.

24 MR. BOND: Just they're his statements.

1 that I'm asking about and it just
 2 THE COURT: We always have that debate,
 3 about the defense asking about their client's
 4 statements. At that point it does become hearsay.
 5 MR. BOND: Okay.
 6 THE COURT: Inadmissible hearsay.
 7 MR. BOND: I'll move on.
 8 THE COURT: All right. Thank you.
 9 BY MR. BOND:
 10 Q When you talked to the young girl and you
 11 stated her name was Kaylee, is that correct?
 12 A Yes, sir.
 13 Q Okay. When you spoke to Kaylee was she
 14 telling you full sentences or was she giving nods or
 15 saying yes, no to your questions?
 16 A A little bit of everything, just depending
 17 on the questions.
 18 Q Do you remember specifically what she told
 19 you as to her whereabouts during this incident?
 20 A No.
 21 Q Okay.
 22 A I remember she was in the bedroom when the
 23 boy was thrown onto the bed, she told me that.
 24 Q Okay. She told you that, you didn't ask
 25 her whether she was in the bedroom and she said yes.

1 or do you remember how you obtained that
 2 information?
 3 A I can't remember the specific question or
 4 how that came about.
 5 Q Okay. And I'll retrack that last
 6 statement. When you talked to Jones was he upset?
 7 A Yes.
 8 Q As you proceeded to keep talking to him
 9 though did he ever calm down?
 10 A Yes.
 11 Q Okay. And what I would like to know is
 12 when he told you what he saw as far as you stated:
 13 here today, Mr. Cooper punching Brittney and
 14 stepping on her and kicking her, was he calm when he
 15 was telling you those portions or did he seem like
 16 he was still erratic like when you first came into
 17 contact with him?
 18 A He was not erratic like when I first came
 19 in contact with him.
 20 Q What all did he say to you when you first
 21 came in contact with him and he was still very
 22 erratic?
 23 A I asked something of the nature of where
 24 did he go or where is the dad or something of that
 25 nature, and he said he's outside pointing out or

1 he's out there. That was the extent.
 2 Q Okay. And then when you came back and
 3 talked to him a second time he was able to calm down
 4 a little bit?
 5 A There had been some time lapsed.
 6 Q Do you know how much time exactly?
 7 A I couldn't tell you exactly.
 8 Q Would you estimate, was it more than a
 9 half hour?
 10 A I would have to refer back to our CAD
 11 reports, otherwise it's just a guess.
 12 Q Okay. No problem.
 13 Court's indulgence.
 14 THE COURT: Of course.
 15 MR. BOND: No further questions, your
 16 Honor.
 17 THE COURT: Redirect?
 18 MS. RHODES: No, your Honor.
 19 THE COURT: All right. Officer, thank you
 20 very much for your testimony.
 21 He's free to go?
 22 MS. RHODES: Yes.
 23 THE COURT: You're free to go, just don't
 24 discuss your testimony with any other witnesses
 25 although there aren't any here.

1 THE WITNESS: Okay. Thank you.
 2 THE COURT: Thank you.
 3 All right. State.
 4 MS. RHODES: Yes, your Honor, before the
 5 State rests I do want to admit certified copies of
 6 the criminal complaint, court minutes and
 7 admonishment for the defendant's priors. The first
 8 is a certified copy of case number 15F10224X where
 9 he was convicted of battery domestic violence. The
 10 date of the offense is July 2nd, 2015.
 11 THE COURT: Okay.
 12 MS. RHODES: And then the second is for
 13 case number 14F12344X. The date of the offense is
 14 July 22nd, 2014. And he was convicted of battery
 15 domestic violence in that case as well.
 16 With those two, I just would move to
 17 amend line 20 on page 1 of the currently filed
 18 amended criminal complaint just to read, after it
 19 says ground, for it to read and/or kicking and/or
 20 stomping on Brittney Jensen. And with that the
 21 State would rest.
 22 THE COURT: Okay.
 23 MR. BOND: And, your Honor, I've advised
 24 my client of his right to testify.
 25 THE COURT: One thing, just with regard to

1 the admission of the exhibits, do you have any
2 objection to their admission?
3 MR. BOND: No objection.
4 THE COURT: Okay. So those will be
5 admitted.
6 MS. RHODES: Okay. Thank you.
7 (State's Exhibits 1 and 2 admitted.)
8 THE COURT: And now State rests.
9 Go ahead.
10 MR. BOND: Absolutely, your Honor. Thank
11 you. And I've advised my client of his right to
12 testify. He wishes to waive that right today and
13 the defense does not want to call any witnesses,
14 your Honor.
15 THE COURT: All right. And Mr. Cooper, I
16 will tell you that you do have a right to testify.
17 Your decision not to testify will not be used
18 against you, okay?
19 THE DEFENDANT: All right.
20 THE COURT: State, argument?
21 MS. RHODES: Reserve for rebuttal.
22 THE COURT: Argument?
23 MR. BOND: Yes, your Honor. He's charged
24 with four counts here, battery constituting domestic
25 violence third offense, battery constituting

1 domestic violence strangulation and then two counts
2 of the felony child abuse and neglect.
3 As I already stated, we heard
4 evidence here today, hearsay statements of two
5 children which are the victims alleged here under
6 the child abuse, neglect or endangerment. I would
7 only point out that the only evidence we heard here
8 today as to Kaylee, the second child in Count 4,
9 child abuse and neglect, that the State has alleged
10 in their information that Kaylee was present -- I'm
11 sorry, the exact allegations are that there was
12 physical injury to Kaylee of a non-accidental nature
13 and/or negligent treatment by hitting and/or
14 punching the mother of Kaylee while near Kaylee.
15 Obviously it says K.J. It's redacted for the
16 record. But the only testimony we heard Kaylee say
17 to the officer is that she said she was in the
18 bedroom when the other child was thrown onto the
19 bed. Your Honor, I don't believe we heard exact
20 testimony that Kaylee herself testified that she was
21 present or, sorry, told the officer who then
22 testified that she was present while her mother was
23 being hit and/or punched, your Honor.
24 And as to the other child, you know,
25 I believe those hearsay statements do give enough

1 evidence to bind this over, your Honor, on Count 3
2 so I'll admit that.
3 However, my contention from the
4 beginning is that those children's testimony should
5 only be used for crimes that they are the victim of,
6 that that testimony, that hearsay statement,
7 shouldn't come in then for the battery constituting
8 domestic violence third offense and the battery
9 constituting domestic violence strangulation. In
10 addition, the only evidence we had for strangulation
11 in this case was that she had a mark on her neck.
12 We have no testimony --
13 THE COURT: I'm sorry, I'm sorry, just
14 give me one -- I apologize. Go ahead.
15 MR. BOND: Yeah, just that my contention
16 from the beginning is that those two children are
17 victims themselves so the hearsay statement should
18 come in for those crimes. They should not come in
19 for the fact and to establish elements of the crime
20 which they are not a victim to, that's the battery
21 domestic violence and strangulation. In addition,
22 the strangulation, even with their statements I
23 don't think is proven with slight or marginal
24 evidence through probable cause. The only evidence
25 we have is there was a mark on the neck. The

1 officer didn't know how that mark got there. No one
2 testified or gave hearsay statements as to why that
3 mark was there. So I don't believe we have anything
4 to show that there's closed air passageways or
5 anything like that, your Honor. With that I'll
6 submit.
7 THE COURT: All right. Thank you, State.
8 MS. RHODES: Yes, your Honor. The
9 State's position is that the statute doesn't limit
10 the testimony to only bind up those counts where the
11 hearsay declarant is the named victim. There's
12 nothing in the language that appears to limit that
13 so I would argue that James' statements come in and
14 they do prove up with slight or marginal evidence
15 Counts 1, 3 and 4. Kaylee, I mean, she's five years
16 old in the apartment minutes after the call comes
17 in. She's Brittney Jensen's daughter, James'
18 sister. She's agreeing with what James is saying
19 while James is telling the officer and she's five
20 years old. She wasn't anywhere else besides that
21 apartment when this was going on.
22 We have James' observations with what
23 Mr. Cooper was doing to Brittney as far as the Count
24 1, battery constituting domestic violence. The
25 relationship was established with the defendant's

1 own statements. Again, the relationship was
2 established for Count 2 as well, the battery
3 domestic violence strangulation. And the officer's
4 testimony with what he observed on Brittney's neck
5 is slight or marginal evidence to prove up the
6 battery with strangulation in addition to James'
7 testimony as to what was going on. There was a
8 portion where James wasn't seeing what was going on
9 while they were in the bedroom. It could have
10 happened there but the officer testified that it was
11 a fresh red mark, that it was some type of ligature
12 that was on her neck. And we would argue that all
13 counts have been shown by slight or marginal
14 evidence.

15 THE COURT: Yeah, I think the hearsay
16 issue, I mean, obviously with regard to Counts 3 and
17 4, the hearsay comes in under the new statute.
18 Additionally I think the officer established that
19 when he got there everybody was absolutely
20 hysterical including the kids. I know he also did
21 say that prior to asking these questions they had
22 calmed down somewhat, but I think with regard to
23 that there's, you know, and I had already made the
24 record that there were potentially other hearsay
25 exceptions that those statements would come in

1 under.

2 You know, the issue with regard to
3 the new statute I think is a valid and interesting
4 issue that I think at some point is going to have to
5 be determined in a situation like this where there
6 may not be another exception to the hearsay rule
7 where the statements may or may not come in because
8 I'm not quite sure, it's not clear. It's a little
9 vague with regard to that particular issue. But I
10 do think the statements come in under other hearsay
11 exceptions so it's not necessarily as much of an
12 issue in this case.

13 So with regard to the testimony today
14 and the complaint on file, it does appear to me that
15 the crimes of battery domestic violence with priors,
16 battery domestic violence strangulation and two
17 counts of child abuse, neglect or endangerment have
18 been committed, and that the defendant James Cooper
19 did commit those offenses, I hereby order said
20 defendant be held to answer to said charges in the
21 Eighth Judicial District Court, County of Clark,
22 State of Nevada at the following date and time.

23 THE CLERK: March 3rd at 10:00 a.m.

24 THE COURT: All right.

25 MR. BOND: Thank you.

1 MS. RHOADES: Thank you, your Honor.

2 THE COURT: You're welcome.

3
4
5

6 Attest: Full, true, accurate transcript of
7 proceedings.

8 /s/ Donna J. McCord
9 DONNA J. MCCORD CCH 1337
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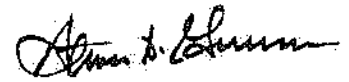
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there... [27] 12/1 12/7 13/6	trash [1] 28/25	walked [6] 11/16 24/13 27/9
13/8 14/14 15/2 16/4 22/21	treatment [1] 38/13	28/13 28/15 28/20
22/22 24/12 28/22 28/25 29/2	tried [4] 10/14 23/13 23/16	walking [2] 24/2 24/21
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there's [12] 5/25 6/12 6/14	try [1] 23/19	was [202]
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these [3] 15/4 21/4 39/16	tub [1] 30/4	we [17] 16/10 16/20 19/24
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tied [1] 15/6	VEGAS [5] 1/3 4/1 8/22 9/12	whether [1] 33/25
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12/12 15/11 19/22 20/13 35/3	verbally [2] 14/15 27/24	20/11 24/16 27/11 29/16 38/5
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told [16] 14/18 14/24 14/24	7/9 20/5 20/7 20/12 39/5	who's [2] 4/12 6/5
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tools [2] 29/10 29/21	39/21 40/24 41/3 42/15 42/16	window [2] 11/11 11/12
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 your [38] 4/9 4/11 4/12 4/14
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 31/21 33/15 35/15 35/18
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 38/23 39/1 40/5 40/8 43/1


CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0536
TALIA L. WALKENSHAW, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12891
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Talia.Walkenshaw@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-16-312970-1
)	
v.	)	DEPT. NO. X
)	
JAMES COOPER,)	
)	
Defendant,)	

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, JAMES COOPER, endorses all witnesses noticed by the State regardless of whether the State plans to call them, and intends to call the following witness in his case in chief:

James Aleman- Investigator, Clark County Public Defender's Office

DATED this 7th day of November, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Talia L. Walkenshaw
TALIA L. WALKENSHAW, #12891
Deputy Public Defender

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing NOTICE was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountynyda.com on this 7th day of November, 2016.

By: /s/ Patty Barber-Bair
An employee of the
Clark County Public Defender's Office

Case Name: James Cooper
Case No.: C-16-312970-1
Dept. No.: District Court, Department X

ORIGINAL

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

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 KRISTINA RHOADES
6 Deputy District Attorney
7 Nevada Bar #012480
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

NOV 14 2016
BY, *Cynthia L. Moleres*
CYNTHIA L. MOLERES, DEPUTY

C-16-312970-1
AINF
Amended Information
4598878



12 I.A. 03/03/16
13 10:00 AM
14 B. WHIPPLE

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16
17 Plaintiff,

CASE NO: C-16-312970-1

18 -vs-

DEPT NO: X

19 JAMES COOPER, aka,
20 James Marlin Cooper, #2634475,
21
22 Defendant.

AMENDED
INFORMATION

23 STATE OF NEVADA }
24 COUNTY OF CLARK } ss.

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

27 That JAMES COOPER, aka, James Marlin Cooper, the Defendant(s) above named,
28 having committed the crimes of **BATTERY CONSTITUTING DOMESTIC VIOLENCE**
(Category C Felony - NRS 200.481, 200.485.1C, 33.018 - NOC 50239); **BATTERY**
CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C Felony
- NRS 200.481; 200.485; 33.018 - NOC 54740) and **CHILD ABUSE, NEGLECT, OR**
ENDANGERMENT (Category B Felony - NRS 200.508(1) - NOC 55226), on or about the
22nd day of January, 2016, 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,

///

1 COUNT 1 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

2 did then and there willfully, unlawfully, and feloniously use force or violence upon the
3 person of BRITTNEY JENSEN, a person with whom the Defendant is in a dating relationship
4 and with whom he is co-habiting, by punching the said BRITTNEY JENSEN in the stomach
5 and/or throwing her to the ground and/or kicking and/or stomping on the said BRITTNEY
6 JENSEN.

7 COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

8 did willfully, unlawfully, and feloniously use force or violence upon the person of
9 BRITTNEY JENSEN, a person with whom the Defendant is in a dating relationship and with
10 whom he is co-habiting, by strangulation.

11 COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

12 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
13 wit: J.B., being approximately 8 year(s) of age, to suffer unjustifiable physical pain or mental
14 suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature
15 and/or negligent treatment or maltreatment, and/or cause J.B. to be placed in a situation where
16 he might have suffered unjustifiable physical pain or mental suffering as a result of abuse or
17 neglect, to wit: physical injury of a non accidental nature and/or negligent treatment or
18 maltreatment, by hitting and/or punching the mother of J.B. while near J.B. and/or by chasing
19 J.B. down the hallway to his room and preventing J.B. from calling the police.

20 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

21 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
22 wit: K.J., being approximately 5 year(s) of age, to suffer unjustifiable physical pain or mental
23 suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature
24 and/or negligent treatment or maltreatment, and/or cause K.J. to be placed in a situation where
25 he might have suffered unjustifiable physical pain or mental suffering as a result of abuse

26 ///

27 ///

28 ///

1 or neglect, to wit: physical injury of a non accidental nature and/or negligent treatment or
2 maltreatment, by hitting and/or punching the mother of K.J. while near K.J.

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

5
6 BY 

KRISTINA RHOADES
Deputy District Attorney
Nevada Bar #012480

7
8
9 **DO NOT READ TO THE JURY**

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

13 Date of Offense: July 2, 2015
14 Conviction: August 20, 2015, Case No. 15F10224X,
Las Vegas Justice Court, Clark County, State of Nevada

15 Date of Offense: July 22, 2014
16 Conviction: November 5, 2014, Case No. 14F12344X,
Las Vegas Justice Court, Clark County, State of Nevada.

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27 16F01139X/td/dvu
28 LVMPD EV#1601223254
(TK10)

ORIGINAL

NOV 14 2016

BY,

CYNTHIA L. MOLERES, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

The State of Nevada

Plaintiff(s),

-vs-

James Cooper,

Defendant(s).

CASE NO. C312970

DEPT. NO. 10

JURY

- | | |
|---------------------|--------------------------|
| 1. Kristen Fisher | 8. Kevin Futch |
| 2. Alyssa Ahina | 9. Tammy McKeever |
| 3. William Sanchez | 10. Nicole Nolan |
| 4. Christian Galvan | 11. Cassandra McDougall |
| 5. Marcus Aubry | 12. Jenny Leary |
| 6. Cary Moylan | 13. Marvin Lopez-Cardoza |
| 7. Gualberto Morco | |

ALTERNATES SECRET FROM ABOVE

C-19-312970-1

JURL

Jury List

4601818



1 JURL

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

2
3 DISTRICT COURT

NOV 18 2016

4 CLARK COUNTY, NEVADA

BY

Kory Schlitz

KORY SCHLITZ, DEPUTY

5 State of Nevada
6 vs
7 James Cooper

CASE NO.: C-16-312970-1

DEPARTMENT X

8
9 AMENDED JURY LIST

- | | |
|------------------------|-------------------------|
| 10 1. Kristen Fisher | 7. Gualberto Morco |
| 11 2. Alyssa Ahina | 8. Kevin Futch |
| 12 3. William Sanchez | 9. Tammy McKeever |
| 13 4. Christian Galvan | 10. Nicole Nolan |
| 14 5. Marcus Aubry | 11. Cassandra McDougall |
| 15 6. Cary Moylan | 12. Jenny Leary |

16
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18 ALTERNATES

- 19 1. Marvin Lopez- Cardoza

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C-16-312970-1
AJUR
Amended Jury List
4800447



ORIGINAL

1 INST

@ 4:22pm
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 18 2016

BY Kory Schlitz
KORY SCHLITZ, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 JAMES COOPER,

11 Defendant.

CASE NO: C-16-312970-1

DEPT NO: X

12
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

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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C-16-312970-1
INST
Instructions to the Jury
4800448



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 22nd day of January, 2016, the Defendant James Cooper, committed the offenses of Battery Constituting Domestic Violence; Battery Constituting Domestic Violence - Strangulation; and Child Abuse, Neglect, Or Endangerment; 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, as follows:

COUNT 1 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

did then and there willfully, unlawfully, and feloniously use force or violence upon the person of BRITTNEY JENSEN, a person with whom the Defendant is in ^{or was} a dating relationship and with whom he is ^{or was} co-habiting, by punching the said BRITTNEY JENSEN in the stomach and/or throwing her to the ground and/or kicking and/or stomping on the said BRITTNEY JENSEN.

COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

did willfully, unlawfully, and feloniously use force or violence upon the person of BRITTNEY JENSEN, a person with whom the Defendant is in ^{or was} a dating relationship and with whom he is ^{or was} co-habiting, by strangulation.

COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: J.B., being approximately 8 year(s) of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature and/or negligent treatment or maltreatment, and/or cause J.B. to be placed in a situation where he might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature and/or negligent treatment or maltreatment, by hitting and/or punching the mother of J.B. while near J.B. and/or by chasing J.B. down the hallway to his room and preventing J.B. from calling the police.

1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

2 did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-
3 wit: K.J., being approximately 5 year(s) of age, to suffer unjustifiable physical pain or mental
4 suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature
5 and/or negligent treatment or maltreatment, and/or cause K.J. to be placed in a situation where
6 he might have suffered unjustifiable physical pain or mental suffering as a result of abuse
7 or neglect, to wit: physical injury of a non accidental nature and/or negligent treatment or
8 maltreatment, by hitting and/or punching the mother of K.J. while near K.J.

9 It is the duty of the jury to apply the rules of law contained in these instructions to the
10 facts of the case and determine whether or not the Defendant is guilty of one or more of the
11 offenses charged.

12 Each charge and the evidence pertaining to it should be considered separately. The fact
13 that you may find a defendant guilty or not guilty as to one of the offenses charged should not
14 control your verdict as to any other offense charged.

INSTRUCTION NO. 4

Battery is defined as any willful and unlawful use of force or violence upon the person of another.

The force used by the defendant need not be violent or severe, and need not cause bodily pain or bodily harm. Any slight touching by the defendant upon the person of another suffices, as long as the touching was intentional and unwanted.

Battery Constituting Domestic Violence occurs when an individual commits a battery upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, or a person with whom he has a child in common.

Any person who commits a battery constituting domestic violence upon another by strangulation is guilty of Battery Constituting Domestic Violence - Strangulation.

"Strangulation" means intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person in a manner that creates a risk of death or substantial bodily harm.

"Substantial bodily harm" means:

- a. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
- b. Prolonged physical pain.

"Prolonged physical pain" necessarily encompasses some physical suffering or injury that lasted longer than the pain immediately resulting from the wrongful act.

A person who willfully causes a child who is less than 18 years of age:

- a. To suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, or
- b. To be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect,

is guilty of the offense of Child Abuse, Neglect, or Endangerment.

1
2 "Abuse or neglect" means physical or mental injury of a nonaccidental nature, or
3 negligent treatment or maltreatment of a child under the age of 18 years, under circumstances
4 which indicate that the child's health or welfare is harmed or threatened with harm.

5 "Physical injury" means permanent or temporary disfigurement or impairment of any
6 bodily function or organ of the body.

7 "Mental injury" means an injury to the intellectual or psychological capacity of the
8 emotional condition of a child as evidence by an observable and substantial impairment of the
9 ability of the child to function within a normal range of performance or behavior.

10 "Negligent treatment or maltreatment" occurs if a child has been subjected to harmful
11 behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned,
12 is without proper care, control or supervision or lacks the subsistence, education, shelter,
13 medical care or other care necessary for the well-being of the child because of the faults or
14 habits of the person responsible for the welfare of the child or the neglect or refusal of the
15 person to provide them when able to do so.

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General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime.

As used in these instructions, the term "willful" means an act done intentionally, deliberately, or designedly, as distinguished from an act done accidentally, inadvertently, or innocently. The word "willfully" does not require any intent to violate law, or to injure another, or to acquire any advantage.

INSTRUCTION NO. 11

You are instructed that battery constituting domestic violence is a general intent crime.

INSTRUCTION NO. 12

You are instructed that battery constituting domestic violence - strangulation is a general intent crime.

INSTRUCTION NO. 13

You are instructed that Child Abuse, Neglect, or Endangerment is a general intent crime.

When it is impossible to commit a particular crime without committing, at the same time and by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a "lesser included offense."

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

If you find beyond a reasonable doubt that the Defendant committed a battery, and that said battery constituted domestic violence, you are instructed that Battery Constituting Domestic Violence is the appropriate verdict.

If you find beyond a reasonable doubt that a battery occurred, but you do not find that the battery constituted domestic violence, you are instructed that Battery is the appropriate verdict.

You are instructed that you cannot return a verdict of Battery Constituting Domestic Violence and Battery.

1
2 If you find beyond a reasonable doubt that the Defendant committed a battery, that said
3 battery was committed by strangulation, and that said battery constituted domestic violence,
4 you are instructed that Battery Constituting Domestic Violence - Strangulation is the
5 appropriate verdict.

6 If you find beyond a reasonable doubt that a battery occurred and that the battery was
7 committed by strangulation, but you do not find that the battery constituted domestic violence,
8 you are instructed that Battery by Strangulation is the appropriate verdict.

9 If you find beyond a reasonable doubt that a battery occurred and that the battery
10 constituted domestic violence, but was not committed by strangulation you are instructed that
11 Battery Constituting Domestic Violence is the appropriate verdict.

12 If you find beyond a reasonable doubt that a battery occurred, but that the battery was
13 not committed by strangulation and the battery did not constitute domestic violence, you are
14 instructed that Battery is the appropriate verdict.

15 You are instructed that you cannot return a verdict of Battery Constituting Domestic
16 Violence - Strangulation, Battery by Strangulation, Battery Constituting Domestic Violence,
17 and Battery.

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2 When a trial witness fails, for whatever reason, to remember a previous statement
3 made by that witness, the failure of recollection may be construed as a denial of having made
4 the prior statement.

5 Evidence that, at some other time, a witness made a statement that is inconsistent with
6 his or her testimony in this trial, may be considered by you not only for the purpose of testing
7 the credibility of the witness, but also as evidence of the truth of the facts as stated by the
8 witness on that former occasion.
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Evidence that the defendant committed offenses other than that for which he is on trial, if believed, was not received and may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes. Such evidence was received and may be considered by you only for the limited purpose of proving the defendant's intent and/or motive to commit the crimes alleged, the context of the relationship, or the absence of mistake or accident. You must weigh this evidence in the same manner as you do all other evidence in the case.

Evidence of specific acts showing that the alleged victim committed a violent offense, if believed, was not received and may not be considered by you to prove that she is a person of bad character or to prove that she has a disposition to commit crimes. If you find that Defendant has proved that the alleged victim was a violent person on a prior occasion, and that he was aware of those violent acts, that evidence may be considered by you only for the limited purpose to establish self-defense, *i.e.*, whether the Defendant's belief in the need to use force in self-defense was reasonable.

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.

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

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

11 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict
12 of not guilty.
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INSTRUCTION NO. 21

If you find that the State has failed to prove beyond a reasonable doubt that James Cooper committed Battery Constituting Domestic Violence, then you must find the Defendant not guilty of Battery Constituting Domestic Violence.

INSTRUCTION NO. 22

You are here to determine whether the Defendant is guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to whether any other person may be guilty or not guilty. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

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. 24

Evidence that the defendant attempted to suppress evidence against himself or to procure false testimony or evidence on his behalf from another person is not in itself sufficient to warrant a finding of guilt. It may be considered, however, as evidence of his consciousness of guilt and a circumstance tending to demonstrate his guilt, should you first find that the defendant actually attempted to suppress evidence or procure false testimony or evidence on his behalf from another person. The significance to be accorded such a fact is solely for your consideration as jurors in your deliberations.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the defendant did not act in self-defense, you must find the defendant not guilty.

The right of self-defense exists only as long as the real or apparent threatened danger continues to exist. When such danger ceases to appear to exist, the right to use force in self-defense ends.

Actual danger is not necessary to justify an act in self-defense. A person has a right to defend himself or others from apparent danger to the same extent as he would from actual danger. The person is justified in acts of self-defense if:

1. He or she is confronted by the appearance of imminent danger which arouses in a person's mind an honest belief and fear that they or someone else is about to be killed or suffer great bodily injury; and

2. He or she acts solely upon these appearances and his fear and actual beliefs; and

3. A reasonable person in a similar situation would believe themselves or someone else to be in like danger.

The acts of self-defense are justified even if it develops afterward that the person was mistaken about the extent of the danger.

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2 The right of self-defense is not available to an original aggressor, that is a person who
3 has sought a quarrel with the design to force an issue and thus through his fraud, contrivance
4 or fault, to create a real or apparent necessity for making a felonious assault.

5 However, where a person without voluntarily seeking, provoking, inviting, or willingly
6 engaging in a difficulty of his own free will, is attacked by an assailant, he or she has the right
7 to stand his/her ground and need not retreat when faced with the threat of deadly force.

8 A person acting in self-defense is allowed to use force in a proportionately reasonable
9 amount to avoid actual or apparent danger.
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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.

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may give
4 his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons
8 given for it are unsound.
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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. 31

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether or not the State has proven the Defendant's guilt beyond a reasonable doubt.

1 It is your duty as jurors to consult with one another and to deliberate with a view toward
2 reaching an agreement, if you can do so without violence to your individual judgment. Each
3 of you must decide the case for yourself, but should do so only after a consideration of the
4 case with your fellow jurors, and you should not hesitate to change an opinion when convinced
5 that it is erroneous. However, you should not be influenced to vote in any way on any questions
6 submitted to you by the single fact that a majority of the jurors, or any of them, favor such a
7 decision. In other words, you should not surrender your honest convictions concerning the
8 effect or weight of evidence for the mere purpose of returning a verdict or solely because of
9 the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful
10 and impartial consideration of all the evidence in the case under the rules of law as given you
11 by the court.
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2 When you retire to consider your verdict, you must select one of your member to act as
3 foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

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

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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2 During your deliberation, you must not communicate with anyone other than each other
3 in any way regarding the case or its merits—either by phone, email, text, internet, or other
4 means; you must not read, watch, or listen to any news or media accounts or commentary
5 about the case; you must not do any research, such as consulting dictionaries, using the
6 internet, or using reference materials; and you must not make any investigation, test a theory
7 of the case, re-create any aspect of the case, conduct any experiments, or in any other way
8 investigate or learn about the case on your own.
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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 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 her notes. Remember, the court is not at
10 liberty to supplement the evidence.
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INSTRUCTION NO. 36

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:

Jessie Walsh
DISTRICT JUDGE

11/18/16

@ 4:22pm
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

NOV 18 2016

1 VER

2 THE STATE OF NEVADA,

3 Plaintiff,

4 -vs-

5 JAMES COOPER,

6 Defendant.

BY

Kory Schlitz
KORY SCHLITZ, DEPUTY

CASE NO: C-16-312970-1

DEPT NO: X

7
8 VERDICT

9 We, the jury in the above entitled case, find the Defendant JAMES COOPER as
10 follows:

11 COUNT 1 - Battery Constituting Domestic Violence

12 *(Please check the appropriate box, select only one)*

- 13 ☒ Guilty of Battery Constituting Domestic Violence
14 ☐ Guilty of Battery
15 ☐ Not Guilty

16 COUNT 2 - Battery Constituting Domestic Violence - Strangulation

17 *(Please check the appropriate box, select only one)*

- 18 ☐ Guilty of Battery Constituting Domestic Violence - Strangulation
19 ☐ Guilty of Battery by Strangulation
20 ☒ Guilty of Battery Constituting Domestic Violence
21 ☐ Guilty of Battery
22 ☐ Not Guilty

23 COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

24 *(Please check the appropriate box, select only one)*

- 25 ☒ Guilty of Child Abuse, Neglect, or Endangerment
26 ☐ Not Guilty

27 //

C-16-312970-1

VER
Verdict
4600448



1 COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT

2 *(Please check the appropriate box, select only one)*

3 ☒ Guilty of Child Abuse, Neglect, or Endangerment

4 ☐ Not Guilty

5
6 Dated this 18 day of November, 2016

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8 
9 FOREPERSON

District Court
CLARK County, NEVADA

Case no: C-16-312970-1

State of Nevada
Plaintiff

Electronically Filed
12/28/2016 02:13:30 PM

Dept no:

Docket no:

Allen L. Johnson

CLERK OF THE COURT

VS
James Martin Cooper
Petitioner

NOTICE OF APPEAL

DESIGNATION OF RECORDS TO FILE Opening Brief
N.R.S 177.015 / RULE 3A N.R.A.P

Comes now James Martin Cooper, the Petitioner /
Appellant operating PRO SE Without AN ATTORNEY
providing His notice OF Appeal Designation OF
Records to be prepared For the NEVADA Supreme
Court in ORDER that Appellants Opening Brief
can properly Present District errors in
the District Court proceedings AND
Judge Jessie Walsh Disregards OF
My Constitutional Rights.

RECEIVED

DEC 28 2016

CLERK OF THE COURT

#153

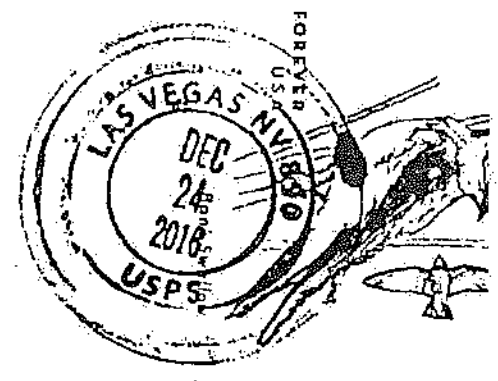
330 S. Casino Center
Las Vegas, NV 89101

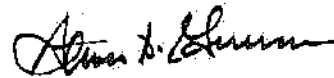
SENT FROM CEPE

District Court
Clark County Nevada
Regional Justice Center
200 Deane Ave 3rd Floor
Las Vegas, NV 89101

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THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT





CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES COOPER aka
James Marlin Cooper
#2634475

Defendant.

CASE NO. C312970-1

DEPT. NO. X

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – BATTERY CONSTITUTING DOMESTIC VIOLENCE (Category C Felony) in violation of NRS 200.481, 200.4851C, 33.018; COUNT 2 – BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C Felony) in violation of NRS 200.481, 200.485, 33.018; and COUNTS 3 and 4 – CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony) in violation of NRS 200.508(1); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1 and 2 – BATTERY CONSTITUTING DOMESTIC VIOLENCE (Category C Felony) in violation of NRS 200.481, 200.4851C, 33.018; and COUNTS 3

1 and 4 – CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony) in
2 violation of NRS 200.508(1); thereafter, on the 15th day of February, 2017, the
3 Defendant was present in court for sentencing with counsel TALIA WALKENSHAW,
4 Deputy Public Defender, and good cause appearing,
5

6 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
7 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
8 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
9 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
10
11 **COUNT 1** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of
12 TWENTY-FOUR (24) MONTHS; **COUNT 2** - a MAXIMUM of SIXTY (60) MONTHS with
13 a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; **COUNT 3** - a
14 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
15 FOUR (24) MONTHS; and **COUNT 4** - a MAXIMUM of SIXTY (60) MONTHS with a
16 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; COUNTS 1 and 3
17 CONSECUTIVE; COUNTS 1 AND 2 CONCURRENT; COUNTS 3 and 4
18 CONCURRENT; with TWO HUNDRED FORTY-FOUR (244) DAYS credit for time
19 served. The AGGREGATE TOTAL sentence is ONE HUNDRED TWENTY (120)
20 MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF FORTY-EIGHT (48)
21 MONTHS.
22

23
24 DATED this 28 day of February, 2017

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SENIOR DISTRICT JUDGE

DISTRICT COURT
CLARK COUNTY, NEVADA

Ann L. Quinn
CLERK OF THE COURT

STATE OF NEVADA
VS
JAMES COOPER

CASE NO.: C-16-312970-1

DEPARTMENT 10

NOTICE OF HEARING

Please be advised that the above-entitled matter has been scheduled for Status Check: Confirmation of Counsel, to be heard by the Department X, District Court Judge, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89155, on the 27th day of March, 2017, at the hour of 8:30 AM, in RJC Courtroom 14B, Department 10.

YOUR PRESENCE IS NECESSARY

Dated: March 13, 2017

Susan Hann
By: Susan Hann
Judicial Executive Assistant

CLERK OF THE COURT

RECEIVED
MAR 14 2017

JESSIE WALSH
DISTRICT JUDGE
DEPARTMENT 10
LAS VEGAS, NV 89101

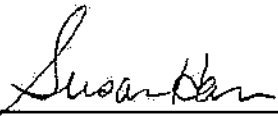
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CERTIFICATE OF SERVICE

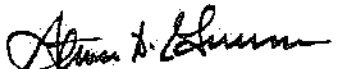
I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Public Defender
309 S. Third Street
PO Box 552610
Las Vegas, NV 89155

Steven B Wolfson
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155



Susan Hann,
Judicial Executive Assistant


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
9
10
11

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 v.

15 JAMES COOPER,

16 Defendant.

CASE NO. C-16-312970-1

DEPT. NO. X

NOTICE OF APPEAL

17 TO: THE STATE OF NEVADA

18 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
19 NEVADA and DEPARTMENT NO. X OF THE EIGHTH JUDICIAL
20 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK.

21 NOTICE is hereby given that Defendant, James Cooper,
22 presently incarcerated in the Nevada State Prison, appeals to the
23 Supreme Court of the State of Nevada from the judgment entered
24 against said Defendant on the 2nd day of March, 2017 whereby he
25 was convicted of Cts. 1 and 2 - Battery Constituting Domestic
26 Violence and Cts. 3 and 4 - Child Abuse, Neglect or Endangerment
27 and sentenced to \$25 Admin. Fee; \$150 DNA analysis fee; genetic
28 testing; \$3 DNA collection fee; Cts. 1 and 2 - 24-60 months; Cts.

1 3 and 4 - 24-60 months; Cts. 1 and 3 consecutive; Cts. 1 and 2
2 concurrent; Cts. 3 and 4 concurrent; 244 days CTS; the aggregate
3 total sentence is 48-120 months.

4 DATED this 22nd day of March, 2017.

5 PHILIP J. KOHN
6 CLARK COUNTY PUBLIC DEFENDER

7
8 By: /s/ Howard S. Brooks
9 HOWARD S. BROOKS, #3374
10 Deputy Public Defender
11 309 S. Third Street, Ste. 226
12 Las Vegas, Nevada 89155
13 (702) 455-4685
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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 22nd day of March, 2017, 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. James Cooper, Case No. C-16-312970-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to James Cooper, 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 22nd day of March, 2017.

/s/ Carrie M. Connoily
An employee of the Clark County
Public Defender's Office

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of the above and foregoing
3 was made this 22nd day of March, 2017, by Electronic Filing to:

4 District Attorneys Office
5 E-Mail Address:

6 PDMotions@clarkcountydacountyda.com

7 Jennifer.Garcia@clarkcountydacountyda.com

8 Eileen.Davis@clarkcountydacountyda.com

9
10 /s/ Carrie M. Connolly
11 Secretary for the
12 Public Defender's Office
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DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 03, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

March 03, 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: Bond, Jeb Attorney for the Defendant
 Cooper, James Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Vivian Luong appearing for the State.

DEFT. COOPER ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

BOND

4/25/16 8:30 AM CALENDAR CALL (DEPT. 10)

5/02/16 1:00 PM JURY TRIAL (DEPT. 10)

PRINT DATE: 03/09/2016

Page 1 of 1

Minutes Date: March 03, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 25, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

April 25, 2016 8:30 AM All Pending Motions

HEARD BY: Ames, Jack B.

COURTROOM: RJC Courtroom 14B

COURT CLERK: Jennifer Kimmel
Skye Endresen/se

RECORDER: Victoria Boyd

PARTIES

PRESENT:	Bond, Jeb Cooper, James Rhoades, Kristina A.	Attorney for Deft. Defendant Attorney for State
----------	--	---

JOURNAL ENTRIES

- CALENDAR CALL ... STATE'S MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER BAD ACTS PURSUANT TO NRS 48.045 AND EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO 48.061

Mr. Bond advised that although State said the Motion in Limine was previously faxed to his office, he did not receive it until this morning; therefore, requested to continue the motion until Wednesday. Mr. Bond further advised he is ready to proceed to trial, and is aware the matter will likely go to overflow. Ms. Rhoades noted there was a certificate of service attached to the motion, she has no issue with Mr. Bond filing a response today, and the State is ready to proceed to trial. COURT ORDERED, Motion in Limine CONTINUED, Petrocelli Hearing SET; a written response by Defense is required prior to the hearing. COURT FURTHER ORDERED, trial date VACATED, matter REFERRED to Overflow.

BOND

4/28/16 1:00 PM STATE'S MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER BAD ACTS

PRINT DATE: 04/27/2016

Page 1 of 2

Minutes Date: April 25, 2016

C-16-312970-1

PURSUANT TO NRS 48.045 AND EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO
48.061...PETROCELLI HEARING (DEPT. 10)

4/29/16 8:30 AM JURY TRIAL (OVERFLOW - DEPT. 18)

PRINT DATE: 04/27/2016

Page 2 of 2

Minutes Date: April 25, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 27, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

April 27, 2016 8:30 AM All Pending Motions

HEARD BY: Ames, Jack B.

COURTROOM: RJC Courtroom 14B

COURT CLERK: Keri Cromer

RECORDER: Victoria Boyd

PARTIES	Engler, Alissa	Attorney for Deft.
PRESENT:	Rhoades, Kristina A.	Attorney for State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL/PETROCELLI HEARING

Counsel present one-day early to request tomorrow's matters be rescheduled to 10:00 am. COURT SO ORDERED.

BOND

CONTINUED TO 4/28/2016 ~ 10:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 28, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

April 28, 2016 10:00 AM All Pending Motions STATE'S MOTION IN LIMINE TO
ADMIT EVIDENCE OF OTHER
BAD ACTS....PETROCELLI
HEARING

HEARD BY: Ames, Jack B.

COURTROOM: RJC Courtroom 14B

COURT CLERK: Louisa Garcia

RECORDER: Victoria Boyd

PARTIES

PRESENT:	Cooper, James	Defendant
	Engler, Alissa	Attorney
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET TRIAL DATE...STATE'S MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER BAD ACTS PURSUANT TO NRS 48.045 AND EVIDENCE OF DOMESTIC VIOLENCE PURSUANT TO 48.061...PETROCELLI HEARING

Court noted this was on calendar to determine whether or not there is a waiver of the 60 day rule. State advised it was a defense request and they have no objection to a continuance. Ms. Engler stated conflicts in her schedule, noting she is scheduled for trial in Ely, Nevada, for an in-custody defendant and cannot be available next week. Upon Court's inquiry, Defendant stated he does not wish to waive the 60 day rule. Colloquy regarding trial schedule. COURT ORDERED, trial date VACATED and RESET on the next available date; State's motion and Petrocelli hearing to begin at 1:00 p.m., and jury selection at 2:00 p.m. At the request of State, COURT ADMONISHED, Defendant to have no contact, whatsoever, with Brittney Jensen, directly by himself or by someone else.

PRINT DATE: 04/29/2016

Page 1 of 2

Minutes Date: April 28, 2016

C-16-312970-1

BOND

6/20/16 8:30 AM CALENDAR CALL

6/27/16 1:00 PM STATE'S MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER BAD ACTS....PETROCELLI HEARING

6/27/16 2:00 PM JURY TRIAL

PRINT DATE: 04/29/2016

Page 2 of 2

Minutes Date: April 28, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 16, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

May 16, 2016 8:30 AM Motion to Withdraw as
 Counsel

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Giles, Michael G, ESQ Attorney
 State of Nevada Plaintiff
 Whipple, Bret O. Attorney

JOURNAL ENTRIES

- Deft. not present. Mr. Whipple requested a continuance as his client's family contacted him and they are trying to work something out with him. There being no opposition, COURT ORDERED, matter CONTINUED to the date given.

BOND

05/18/16 8:30 A.M. Bret O. Whipple, Esq.'s Motion to Withdraw as Counsel

PRINT DATE: 05/16/2016

Page 1 of 1

Minutes Date: May 16, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 18, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

May 18, 2016 8:30 AM Motion to Withdraw as
 Counsel

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Engler, Alissa	Attorney
	Lexis, Chad N.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Ms. Engler requested to take the matter off calendar as counsel and the client have come to an agreement. COURT ORDERED, motion WITHDRAWN. FURTHER COURT ORDERED, FUTURE date STANDS.

BOND

PRINT DATE: 05/27/2016

Page 1 of 1

Minutes Date: May 18, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

June 20, 2016 8:30 AM Calendar Call

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Bond, Jeb	Attorney
	Cooper, James	Defendant
	Cooper, Jonathan	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Mr. Bond advised they were planning on going to trial, however, he's surprised deft. is not present. Ms. Rhoades stated her concerns since the last time this matter was on, counsel had a motion to withdraw and withdrew the motion, since deft. paid them. Mr. Bond advised he lost contact with deft. COURT ORDERED, BENCH WARRANT, NO BAIL. Ms. Rhoades stated her concerns regarding deft. being out and having contact with the victim and the victim's children. Court noted that if Mr. Jeb does hear from the deft., that counsel is to relay to deft. that he's to stay away from the victim in all manner or form. FURTHER COURT ORDERED, trial date VACATED.

B.W. BOND

PRINT DATE: 06/30/2016

Page 1 of 2

Minutes Date: June 20, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 06, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

July 06, 2016 8:30 AM Motion to Withdraw as
 Counsel

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Bond, Jeb	Attorney
	Cooper, James	Defendant
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. COOPER RETURNED ON THE WARRANT. Mr. Bond Esq., standing in for Mr. Whipple on behalf of deft., and requesting to withdraw as counsel. Ms. Rhoades advised the State takes no position on the matter. Upon Court's inquiry, deft. cannot afford to hire an attorney. COURT ORDERED, Bret O. Whipple, Esq.'s Motion to Withdraw as Counsel of Record, GRANTED Pursuant to EDCR 7.40. FURTHER COURT ORDERED, matter set for confirmation of Public Defender, on the date given.

CUSTODY

07/13/16 8:30 A.M. CONFIRMATION OF COUNSEL - PD

PRINT DATE: 07/07/2016

Page 1 of 1

Minutes Date: July 06, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 13, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

July 13, 2016 8:30 AM Confirmation of Counsel Confirmation of
Counsel - PD

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Kathy Klein/kk
Katrina Hernandez

RECORDER: Victoria Boyd

PARTIES

PRESENT:	Cooper, James	Defendant
	Rhoades, Kristina A.	Deputy District Attorney
	State of Nevada	Plaintiff
	Walkenshaw, Talia	Attorney for Deft.

JOURNAL ENTRIES

- Ms. Walkenshaw advised requested discovery from Mr. Whipple and had not received it yes. Ms. Walkenshaw further noted she did a conflict check and found no conflict and can confirm as Counsel for Deft. COURT ORDERED, Trial SET.

CUSTODY

11/07/16 8:30 AM CALENDAR CALL

11/14/16 1:00 PM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 04, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

August 04, 2016 9:00 AM Motion to Exonerate Bonds

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 10B

COURT CLERK: Shelley Boyle

RECORDER: Cheryl Carpenter

PARTIES Adams, Danae

Attorney for State

PRESENT:

JOURNAL ENTRIES

- Bond Clerk, Kaye Jenks, also present.

With the State making no objection, COURT ORDERED, Motion GRANTED, BOND EXONERATED;
the Show Cause Hearing set 01/05/17 VACATED.

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 07, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

September 07, 2016 8:30 AM Motion for Own
 Recognizance
 Release/Setting Reasonable
 Bail

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	State of Nevada	Plaintiff
	Thomson, Megan	Attorney
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, Defendant's Motion for OR/Bail Release, or in the Alternative, for Setting of Reasonable Bail, DENIED. FURTHER COURT ORDERED BAIL SET AT \$80,000.00 Cash or Surety.

CUSTODY

PRINT DATE: 10/13/2016

Page 1 of 1

Minutes Date: September 07, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

November 07, 2016 8:30 AM All Pending Motions

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- Defendant's Motion To Dismiss Counts One And Two Based On Improper Hearsay Testimony...State's Motion in Limine to Admit A Certified Copy of Sunrise Hospital Medical Records, Recorded 911 Call, And Recorded Jail Call

Following arguments by counsel, Court Stated its Findings and ORDERED, Defendant's Motion To Dismiss Counts One And Two Based On Improper Hearsay Testimony, DENIED IN ITS ENTIRETY; FURTHER COURT ORDERED, State's Motion in Limine to Admit A Certified Copy of Sunrise Hospital Medical Records, Recorded 911 Call, And Recorded Jail Call, GRANTED IN ITS ENTIRETY. Ms. Rhoades to prepare the order. Upon Court's inquiry, counsel is ready for trial. Ms. Rhoades requested bad acts motion be heard first. Colloquy regarding Court's schedule. FURTHER COURT ORDERED, Bad Acts Motion set on the date given.

11/14/16 10:30 A.M. HEARING: BAD ACTS MOTION

PRINT DATE: 12/22/2016

Page 1 of 2

Minutes Date: November 07, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 14, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

November 14, 2016 10:30 AM Hearing: State's Motion in Limine to Admit
Evidence of Other Bad Acts Pursuant to NRS
48.045 and Evidence of Domestic Violence
Pursuant to 48.061

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Cynthia Moleres

RECORDER: Victoria Boyd

PARTIES	Cooper, James	Defendant
PRESENT:	Eichacker, Kenton G.	Attorney for Deft.
	Rhoades, Kristina A.	Attorney for State
	Rowles, William C.	Attorney for State
	WALKENSHAW, TALIA	Attorney for Deft.

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT

Ms. Rhoades stated the last plea offer for the record. Upon Court's inquiry, Ms. Walkenshaw confirmed she had presented the offer to Deft. and Deft. had rejected it. Deft. concurred.

Ms. Rhoades advised the witness, Ms. Jensen, had requested an attorney be appointed; however, no criminal charges will be filed as a result of this case. Ms. Rhoades further advised the State has been prosecuting Deft. and believes Deft. is the aggressor under these facts. Upon Court's inquiry, Ms. Rhoades confirmed the State did not anticipate charging Ms. Jensen with any criminal charges regardless of her testimony regarding these two incidences. Ms. Jensen requested an attorney advising some of her statements could incriminate herself. COURT NOTED the State indicated Ms. Jensen would not be charged with anything related to these two incidences.

PRINT DATE: 11/18/2016

Page 1 of 2

Minutes Date: November 14, 2016

Testimony and Exhibits presented (see worksheets). Ms. Rhoades advised Ms. Jensen requested to be present during the testimony of James Cameron Blair, who is 9 years old. Ms. Walkenshaw stated she had no objection as long as there was no communication between the witnesses. Ms. Rhoades stated her concerns with Ms. Jensen being in the Courtroom. COURT NOTED if there was any type of non-verbal communication between the witness and his mother, the State could make a record of it and at that point she might be asked to leave the Courtroom, while the State continues to examine the child.

Arguments by counsel. COURT stated its FINDINGS and ORDERED, the Evidence could COME IN. COURT NOTED it would give the Jury a specific limiting instruction that Deft's bad acts can only be considered with respect to his motive, intent, absence of mistake to disprove any claim of self-defense and to provide context to Deft. and Brittney's relationship with each other. COURT FURTHER NOTED it is not to show that because Deft. committed similar acts in the past, Deft. is likely to have done it in this specific instance. State to prepare the order.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 14, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

November 14, 2016 1:00 PM Jury Trial

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Cynthia Moleres

RECORDER: Victoria Boyd

PARTIES	Cooper, James	Defendant
PRESENT:	Eichacker, Kenton G.	Attorney for Deft.
	Rhoades, Kristina A.	Attorney for State
	Rowles, William C.	Attorney for State
	WALKENSHAW, TALIA	Attorney for Deft.

JOURNAL ENTRIES

- IN THE PRESENCE OF THE PROSPECTIVE JURY.

Following brief introductions by the Court, voir dire oath given, voir dire commences.
CONFERENCES AT BENCH. Following voir dire, 12 Jurors and 1 Alternate selected. Court thanked and excused the remaining prospective panel. Selected Jurors Sworn. COURT admonished the Jury and ORDERED trial CONTINUED.

CONTINUED TO: 11-15-16 9:00 A.M.

PRINT DATE: 11/15/2016

Page 1 of 1

Minutes Date: November 14, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 15, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

November 15, 2016 9:00 AM Jury Trial

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	Eichacker, Kenton G.	Attorney
	Rhoades, Kristina A.	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Rhoades advised there were items admitted in the bad acts motion and are being used for this trial and marked as other numbers. Ms. Walkenshaw stated no opposition. Ms. Rhoades advised she has medical records and certification of those records. Further counsel has provided a copy to defense counsel. Ms. Walkenshaw advised the Court has already made a ruling on these records. Court so noted. Ms. Walkenshaw advised as to the expert witnesses' availability and schedule. Counsel will need to have these witnesses heard on Thursday at 10:00 a.m., and 11:30 a.m. Court noted it received defense counsel's proposed Jury Instructions. Ms. Walkenshaw request Ms. Jensen be allowed to remain in court during the minor children's testimony. Ms. Walkenshaw stated no opposition as long as there's no communication. Court so Agreed.

INSIDE THE PRESENCE OF THE JURY: Following brief instruction by the court, Opening statements given by Mr. Rowles and Mr. Eichacker. Testimony and exhibits presented. (See

PRINT DATE: 12/29/2016

Page 1 of 2

Minutes Date: November 15, 2016

worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Argument by Ms. Walkenshaw as to victim character evidence coming in. Argument by Ms. Rhoades in opposition. Following arguments Court Stated its Findings, and ORDERED the proper foundation needs to be laid before the specific act can come in. Further, a proper jury instruction needs to be fashioned so that the jury can be instructed there're not to consider this character evidence, that she has a propensity to violence buy that the evidence is coming in strictly because it relates to deft's state of mind.

Argument by Ms. Rhoades as to the marijuana issue. Further, counsel cut that out of the 911 calls. Argument by Ms. Walkenshaw in opposition. COURT ORDERED, counsel can get into that area when questioning the witness.

Argument by Ms. Rhoades as to prior bad acts by victim coming in. Argument by Ms. Walkenshaw in opposition. COURT ORDERED, victim's character is fair came.

INSIDE THE PRESENCE OF THE JURY: Continued Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Rowles as to prior inconsistent statements by witness coming in. Argument by Ms. Walkenshaw in opposition. COURT ORDERED, the officer can tell the Jury what Cameron told him. Upon Court's inquiry,

INSIDE THE PRESENCE OF THE JURY: Continued Testimony and exhibits presented. (See worksheets). Court admonished the jury and instructed them to return tomorrow as the time given.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 17, 2016

C-16-312970-1 State of Nevada
 vs
 James Cooper

November 17, 2016 9:00 AM Jury Trial

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	Eichacker, Kenton G.	Attorney
	Rhoades, Kristina A.	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Rhoades requested the material witness warrant be recalled/quashed, as to Brittney Jensen. COURT SO ORDERED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented. (See worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions Settled.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented. (See worksheets). State RESTED. Court admonished the Jury and instructed them to return tomorrow at the given time.

OUTSIDE THE PRESENCE OF THE JURY: Court canvassed deft. on his right to testify. Deft. stated he will testify. Colloquy regarding prior bad acts coming in. COURT ORDERED, only the July 2015

PRINT DATE: 12/29/2016

Page 1 of 2

Minutes Date: November 17, 2016

C-16-312970-1

incident comes in. COURT ADJOURNED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 18, 2016

C-16-312970-1 State of Nevada
vs
James Cooper

November 18, 2016 9:00 AM Jury Trial

HEARD BY: Walsh, Jessie

COURTROOM: RJC Courtroom 14B

COURT CLERK: Kory Schlitz

RECORDER: Victoria Boyd

PARTIES

PRESENT:	Cooper, James	Defendant
	Eichacker, Kenton G.	Attorney for Defendant
	Rhoades, Kristina A.	Attorney for State
	Rowles, William C.	Attorney for State
	State of Nevada	Plaintiff
	Walkenshaw, Talia	Attorney for Defendant

JOURNAL ENTRIES

- JURY PRESENT:

Testimony presented. (See worksheet.)

OUTSIDE THE PRESENCE OF THE JURY:

Colloquy regarding recently submitted jury instruction by the State. There being no opposition from either party, the instructions will be amended. Instructions settled.

JURY PRESENT:

Court instructed the jury.

Closing arguments by Mr. Rowles and Ms. Walkenshaw.

At the hour of 12:50 P.M., the jury retired to deliberate. Court thanked and excused the alternate.

PRINT DATE: 11/21/2016

Page 1 of 2

Minutes Date: November 18, 2016

At the hour of 4:22 P.M., the jury returned with a verdict of GUILTY of COUNT 1 - BATTERY CONSTITUTION DOMESTIC VIOLENCE (F), GUILTY of COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE (F), GUILTY of COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT (F), GUILTY OF COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT (F).

Jury polled. Court thank and excused the jury.

Ms. Rhodes requested the Defendant be remanded without bail, Ms. Walkenshaw requested Defendant's bail to remain at \$80,000.00. COURT ORDERED, Defendant REMANDED WITHOUT BAIL, matter SET for Sentencing.

CUSTODY

2/8/17 8:30 A.M. SENTENCING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 08, 2017

C-16-312970-1 State of Nevada
 vs
 James Cooper

February 08, 2017 8:30 AM Sentencing

HEARD BY: Barker, David COURTROOM: RJC Courtroom 14B
 Senior Judge

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	Rhoades, Kristina A.	Attorney
	State of Nevada	Plaintiff
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- Ms. Walkenshaw requested a continuance as she wasn't able to access the PSI, since it was sealed in Odyssey, even though she's counsel of record. Further, Ms. Rhoades provided a copy this morning. Colloquy regarding prior convictions listed in the PSI. Upon counsel's inquiry, Court noted a psychological evaluation is not necessary. Further, COURT ORDERED, matter CONTINUED to the date given.

CUSTODY

02/15/17 8:30 A.M. SENTENCING

PRINT DATE: 02/14/2017

Page 1 of 1

Minutes Date: February 08, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 15, 2017

C-16-312970-1 State of Nevada
 vs.
 James Cooper

February 15, 2017 8:30 AM Sentencing

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 14B

COURT CLERK: Teri Berkshire

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT:	Cooper, James	Defendant
	Rhoades, Kristina A.	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff
	WALKENSHAW, TALIA	Attorney

JOURNAL ENTRIES

- DEFT. COOPER ADJUDGED GUILTY of COUNT 1 - BATTERY CONSTITUTION DOMESTIC VIOLENCE (F), GUILTY of COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE (F), GUILTY of COUNT 3 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT (F), GUILTY OF COUNT 4 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT (F). Arguments by counsel. JOCs previously submitted as Court's Exhibit for trial, used at sentencing. Statements by deft. Victim witness Sworn statements given. Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, Deft. SENTENCED As to COUNT - 1 a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); As to COUNT - 2 a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); CONCURRENT with COUNT - 1; As to COUNT 3 to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); CONSECUTIVE to COUNT

PRINT DATE: 03/23/2017

Page 1 of 2

Minutes Date: February 15, 2017

1; As to COUNT 4 to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); CONCURRENT with COUNT 3; with 244 DAYS credit for time served. COURT FURTHER ORDERED, AGGREGATE total of a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY- (120) MONTHS in the Nevada Department of Corrections (NDC). CASE CLOSED.

BOND if any, EXONERATED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 27, 2017

C-16-312970-1 State of Nevada
 vs.
 James Cooper

March 27, 2017 8:30 AM Status Check:
 Confirmation of Counsel

HEARD BY: Barker, David COURTROOM: RJC Courtroom 14B

COURT CLERK: Aja Brown

RECORDER: Victoria Boyd

REPORTER:

PARTIES

PRESENT: Hoffman, Brigid Attorney
 Merback, William J. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted the absence of Defendant. Ms. Hoffman stated she had a note from her office indicating she was previously confirmed as counsel. COURT ORDERED, consistent with the order of Supreme Court, Public Defender's Office is and will remain counsel of record. Ms. Hoffman confirmed she will continue her efforts with respect to the appeal.

NDC

PRINT DATE: 03/30/2017

Page 1 of 1

Minutes Date: March 27, 2017

Steven D. Grierson

1 TRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES COOPER, aka,
12 James Marlin Cooper,

13 Defendant.
14

CASE NO. C-16-312970-1

DEPT. X

(ARRAIGNMENT HELD IN DEPT. LLA)

15 BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
16 THURSDAY, MARCH 03, 2016

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**
18 **INITIAL ARRAIGNMENT**

19 **APPEARANCES:**

20 For the State:

VIVIAN LUONG, ESQ.,
Deputized Law Clerk

21
22 For the Defendant:

JEB W. BOND, ESQ.,
Attorney at Law

23
24
25 RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, MARCH 03, 2016

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: State of Nevada versus James Cooper, C312970. He
6 is present out of custody. Mr. Bond is here on his behalf. Counsel?

7 MR. BOND: Yes, your Honor. This is going to be a not-guilty plea to
8 the Information that is filed.

9 THE COURT: Sir, you received a copy of the Information stating the
10 charges against you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You read through it and understood it?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: You want to waive a formal reading of the charges?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: How do you plead?

17 THE DEFENDANT: Not guilty.

18 THE COURT: You do have a right to a trial within 60 days. Do you
19 want to waive or invoke that right?

20 THE DEFENDANT: Invoke the right, please.

21 THE COURT: Is that true, Mr. Bond?

22 MR. BOND: That's correct, your Honor.

23 THE COURT: Okay. Speedy trial.

24 THE CLERK: Your calendar call is April 25th at 8:30. Your trial date
25 is May 2nd at one o'clock, Department 10.

1 THE COURT: Counsel, pursuant to statute you have 21 days from
2 today for the filing of any writs. If the transcript has not been filed as of today, you
3 have 21 days from the filing.


4 MR. BOND: Perfect. Thank you, your Honor.

5 THE COURT: Thank you.

6 (Whereupon, the proceedings concluded.)

7 * * * * *

8 ATTEST: I do hereby certify that I have truly and correctly transcribed the
9 audio/video proceedings in the above-entitled case to the best of my ability.

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11 Kiara Schmidt, Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

CASE NO. C312970-1

10 vs.

DEPT. X

11 JAMES COOPER,

12 Defendant.

13
14 *BEFORE THE HONORABLE JACK AMES, SENIOR DISTRICT COURT JUDGE*

15 **MONDAY, APRIL 25, 2016**
16 **RECORDER'S TRANSCRIPT RE:**
17 **CALENDAR CALL**

18 **APPEARANCES:**

19 For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

20 For the Defendant:

JEB BOND, Esq.

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25 **RECORDED BY: VICTORIA BOYD, COURT RECORDER**

CLERK OF THE COURT

JUL 21 2017

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1 Las Vegas, Nevada, Monday, April 25, 2016 at 9:39 a.m.

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4 THE CLERK: C312970. Appearances please.

5 MS. RHOADES: Good morning, Your Honor. Kristina Rhoades, Bar
6 Number 12480 on behalf of the State.

7 MR. BOND: Your Honor, Attorney Jeb Bond with Brett Whipple's office
8 on behalf of Mr. Cooper.

9 THE COURT: What was the last name, sir?

10 MR. BOND: Bond, B-o-n-d.

11 THE COURT: And this is a calendar call but also State's motion in limine
12 to admit evidence of other bad acts.

13 MR. BOND: Yes, Your Honor. And I've been handed a copy of the motion
14 in limine today. It shows that it was filed on April 11th and Ms. Rhoades
15 indicated that she faxed it to my office immediately after filing it. You know, I
16 never saw a copy of this. I apologize, Your Honor. Also, as well as a
17 notification that some witnesses were going to be presented in accordance with
18 NRS 51.385, that I believe would need responded to.

19 Your Honor, what we'd ask is if we could possibly pass this until
20 Wednesday, calendar call until Wednesday. I understand that you have a trial
21 already scheduled for next week so if we wanted to keep our trial we'd need to
22 go into overflow, so in order to keep that trial date I'd like the opportunity to try
23 and respond to this motion today file something so it could possibly be heard
24 Wednesday.

25 MS. RHOADES: And, Your Honor, there was a certificate of service
attached to the motion but if Mr. Bond didn't get it I have no opposition to him

1 filing a response today. The State does anticipate ready for May 2nd trial start
2 date.

3 THE COURT: There's been no waiver of the 60-day rule. That has been
4 invoked.

5 MS. RHOADES: That has been invoked.

6 THE COURT: So we need to go forward.

7 MS. RHOADES: Yes, by the defendant. And with regard to the 51.385
8 statements that's not any kind of a motion. Pursuant to statute we're required
9 to give the defense notice ten days prior to trial that we may seek to introduce
10 hearsay statements that fall under that statute so that doesn't need to be
11 litigated at this point. There is nothing really to litigate that was simply notice
12 that we may be seeking to admit hearsay statements under that statute, which
13 I think the overflow Judge can rule upon prior to trial. With regard to the other
14 bad acts motion I think that needs to be litigated prior to sending us to overflow
15 and I think we can do that on Wednesday.

16 THE COURT: Just wondering if we shouldn't set - -

17 MS. RHOADES: Petrocelli hearing?

18 THE COURT: Petrocelli hearing for the end of the week sometime.

19 MS. RHOADES: That is fine with the State. I know overflow starts at
20 8:30 on Friday. So we may have to do it on Thursday prior to the - -

21 THE COURT: Is that a possibility, Thursday Petrocelli? Okay. We'll go
22 ahead and set a Petrocelli hearing for Thursday and it will still require a written
23 response prior to the hearing, and then the Court will hear the evidence at that
24 time or the testimony and make a determination of the motion based upon
25 defense's response also.

1 MS. RHOADES: Thank you, Your Honor.
2 MR. BOND: Thank you, Your Honor.
3 THE COURT: What time Thursday?
4 THE CLERK: Morning or afternoon? Your option.
5 MS. RHOADES: Afternoon would work best for the State.
6 MR. BOND: That's fine, Your Honor.
7 THE CLERK: How about 1 o'clock on Thursday the 28th?
8 MS. RHOADES: Thank you.
9 THE COURT: That will be so ordered.
10 MR. BOND: Thank you, Your Honor.
11 MS. RHOADES: And then the calendar call continued to that 1 o'clock
12 Thursday date or do we want to come back on Wednesday?
13 THE COURT: Well, I think that as far as the calendar call we should go
14 ahead and set this for overflow.
15 MS. RHOADES: Okay.
16 THE CLERK: You wish to set it for overflow now?
17 THE COURT: I think we ought to go ahead and do that because I don't
18 think that the trial depends on my ruling on this motion in limine so we'll have
19 the Petrocelli hearing Thursday. You'll know you're going into overflow already
20 and we'll wrap it up Thursday hopefully.
21 THE CLERK: Those are in Judge Barker's department. That will be
22 Friday the 29th at 8:30 a.m.
23 MS. RHOADES: Thank you so much.
24 MR. BOND: Thank you, Your Honor.
25 THE COURT: Thank you.

(Proceedings concluded at 9:43 a.m.)

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Victoria W. Boyd
Victoria W. Boyd
Court Recorder/Transcriber

7-20-17
Date

Steven D. Grierson

1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

7

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STATE OF NEVADA,

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Plaintiff,

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vs.

CASE NO. C312970-1

DEPT. X

11

JAMES COOPER,

12

Defendant.

13

BEFORE THE HONORABLE JACK AMES, SENIOR DISTRICT COURT JUDGE

14

15

WEDNESDAY, APRIL 27, 2016
RECORDER'S TRANSCRIPT RE:
MOTION TO CONTINUE

16

17

APPEARANCES:

18

19

For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

20

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For the Defendant:

ALISSA ENGLER, Esq.

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CLERK OF THE COURT

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1 Petrocelli hearing so if the Court is willing to set it tomorrow at 10 a.m. that
2 would be our request.

3 THE COURT: Okay. Court is in agreement. It will be so ordered.

4 MS. RHOADES: Thank you, Your Honor.

5 MS. ENGLER: Thank you, Your Honor.

6 THE COURT: Thank you.
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9 (Proceedings concluded at 10:21 a.m.)
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14 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
15 proceedings in the above-entitled case to the best of my ability.
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18 *Victoria W. Boyd*

19 7-20-2017

20 Victoria W. Boyd
21 Court Recorder/Transcriber

22 Date
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Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

CASE NO. C312970-1

10 vs.

DEPT. X

11 JAMES COOPER,

12 Defendant.

13
14 **BEFORE THE HONORABLE JACK AMES, SENIOR DISTRICT COURT JUDGE**

15 **THURSDAY, APRIL 28, 2016**
16 **RECORDER'S TRANSCRIPT RE:**
17 **HEARING**

18 **APPEARANCES:**

19 For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

20 For the Defendant:

21 ALISSA ENGLER, Esq.

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25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

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JUL 31 2017

CLERK OF THE COURT

1 Las Vegas, Nevada, Thursday, April 28, 2016 at 9:58 a.m.

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4 THE COURT: Good morning.

5 MS. RHOADES: Good morning, Your Honor, again. Thank you for setting
6 this on today's calendar. Kristina Rhoades for the State.

7 MS. ENGLER: Good morning, Your Honor. Alissa Engler, Bar Number
8 11940, on behalf of Mr. Cooper. He is present out of custody.

9 THE COURT: I believe the purpose this morning is to determine whether
10 or not there is a waiver of the 60-day rule, and if there is to reset the trial.
11 There's been that, a request for continuance and then reset the Petrocelli
12 hearing.

13 MS. RHOADES: That's correct. It is the defense request for a
14 continuance. For the record the state would be ready to proceed to trial. We
15 have no objection to their request.

16 MS. ENGLER: And, Your Honor, I have spoken with Mr. Cooper about
17 waiving his right to a trial within 60 days. I believe he has no objection to that.

18 THE COURT: Is that correct, Mr. Cooper?

19 THE DEFENDANT: It should be done in 60 days?

20 THE COURT: You want the trial within 60 days?

21 MS. ENGLER: Here is the issue, Your Honor. We have a trial that's
22 scheduled for an in custody defendant in Ely, Nevada, and so that takes one of
23 our attorneys out of the jurisdiction. I am out of the jurisdiction for part of the
24 week next week where I wouldn't be able to do the trial, and we have conflicts
25 with our schedule in Reno, so unfortunately we just don't -- we have three

1 attorneys in our office but we don't have the ability to have two of them in
2 trial and manage our calendar. Seeing as Mr. Cooper does have that right to
3 trial within 60 days, however he is out of custody, we just don't have the
4 ability to do it and that's the truth.

5 THE COURT: All right. The record will reflect then that defense counsel
6 is not available for the trial next week.

7 Mr. Cooper, the Court is going to continue this matter to the first
8 available date on the Court's calendar since you have not waived your right to
9 have the trial within 60 days. We'll give it to you as soon as we possibly can.

10 MS. ENGLER: Thank you, Your Honor.

11 THE DEFENDANT: This is my problem, Your Honor.

12 THE COURT: Before you say something you better talk to your attorney.
13 (Off record discussion at defense table.)

14 MS. ENGLER: All right, Judge. He's ready to just set the trial at the next
15 available setting.

16 THE COURT: Very well. The record will reflect that the defense counsel
17 is not available for trial next week. Mr. Cooper does not waive his 60 day right
18 and that we will set this at the first available time and the record will further
19 reflect the State is ready to proceed...

20 THE CLERK: Would you be available on the 9th of June?

21 MS. RHOADES: No, we need at least 30 days and I'm not available in
22 May. The earliest the State would be available is early June.

23 THE CLERK: June 27th?

24 MS. RHOADES: That should be fine.

25 MS. ENGLER: We'll make it work, Your Honor.

1 THE COURT: June 27th for jury trial. And calendar call - -

2 THE CLERK: Is June 20th at 8:30.

3 MS. RHOADES: Thank you very much and, Your Honor, the State does
4 have one futher thing.

5 THE COURT: We need to set the Petrocelli hearing too.

6 MS. RHOADES: Okay. I mean the difficulty that we had with this one is
7 that we were sent to overflow. A lot of the time our Petrocelli hearings are set
8 right before trial, and with the difficulty that the State is having some of the
9 witnesses for the Petrocelli we would prefer that it be set right before trial but if
10 we get sent to overflow that's not going to be a possibility.

11 THE COURT: Okay. The trial was scheduled for what time?

12 THE CLERK: At 1 o'clock on June 27th.

13 THE COURT: And how long do you think the Petrocelli hearing is going
14 to take?

15 MS. RHOADES: Not long at all, Your Honor. Maybe an hour.

16 THE COURT: Okay. Let's go ahead and set the jury selection to begin at
17 2 o'clock and the Petrocelli hearing will be at 1 o'clock.

18 MS. RHOADES: Thank you.

19 THE COURT: And then you had something else.

20 MS. RHOADES: Yes, I do. The defendant was admonished in Justice
21 Court to have absolutely no contact with the victim. I would just ask that this
22 Court again admonish him now that we're up in District Court and part of him
23 remaining out on bond is a factor of that is him not having any contact
24 whatsoever with Britany Jenson.

25 THE COURT: You understand that, Mr. Cooper?

1 THE DEFENDANT: Yes, sir. No contact whatsoever directly by yourself
2 or through others on your behalf.

3 MS. RHOADES: Thank you.

4 MS. ENGLER: Thank you. Your Honor.

5 THE COURT: Thank you.
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10 (Proceedings concluded at 10:06 a.m.)
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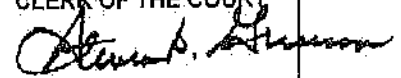
15 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
16 proceedings in the above-entitled case to the best of my ability.
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19 *Victoria W. Boyd*

20 7-21-2017

21 Victoria W. Boyd
22 Court Recorder/Transcriber
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Date



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6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES COOPER,

12 Defendant.

CASE NO. C312970-1

DEPT. X

13 **BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE**

14 **MONDAY, MAY 16, 2016**
15 **RECORDER'S TRANSCRIPT RE:**
16 **MOTION TO WITHDRAW**

17 **APPEARANCES:**

18 For the State:

MICHAEL GILES, Esq.
Deputy District Attorney

20 For the Defendant:

BRETT WHIPPLE, Esq.

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER
RECEIVED

JUL 31 2017

CLERK OF THE COURT

1 Las Vegas, Nevada, Monday, May 16, 2016 at 8:56 a.m.

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4 THE COURT: Appearances for the record please.

5 MR. GILES: Your Honor, Michael Giles. I would note this is Ms.
6 Luzaich's case.

7 MR. WHIPPLE: Brett Whipple on behalf of Mr. Cooper, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WHIPPLE: It's my motion to remove myself from the representation
10 or motion to withdraw. My client's family called me yesterday and asked me if
11 I would continue two days for us to gather and meet and see if they can fulfill
12 their obligations so if we could pass this for two days I'll have an answer
13 Wednesday.

14 THE COURT: Sure. Wednesday it is.

15 THE CLERK: May 18th at 8:30.

16 MR. WHIPPLE: Thank you. Your Honor.

17 THE COURT: You're welcome.
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20 (Proceedings concluded at 8:56 a.m.)
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1 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
2 proceedings in the above-entitled case to the best of my ability.

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6 *Victoria W. Boyd*

7-24-2017

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8 Victoria W. Boyd
9 Court Recorder/Transcriber

Date

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

CASE NO. C312970-1

DEPT. X

11 JAMES COOPER,

12 Defendant.

13
14 **BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE**

15 **WEDNESDAY, MAY 18, 2016**
16 **RECORDER'S TRANSCRIPT RE:**
17 **MOTION TO WITHDRAW**

18 **APPEARANCES:**

19 For the State:

CHAD LEXIS, Esq.
Deputy District Attorney

20
21 For the Defendant:

ALISSA ENGLER, Esq.

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25 RECORDED BY: VICTORIA BOYD, COURT RECORDER
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JUL 31 2017

CLERK OF THE COURT

-1-

1 Las Vegas, Nevada, Wednesday, May 18, 2016 at 9:53 a.m.

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5 MR. LEXIS: Chad Lexis for the State.

6 MS. ENGLER: Good morning, Your Honor. Alissa Engler, Bar Number
7 11940, on behalf of Mr. Cooper. This was on for a motion to withdraw. It
8 was passed from Monday. Thank you. The client and our office have come to
9 an agreement and so we'll withdraw our motion at this time.

10 THE COURT: Very well. That will be the order.

11 MR. LEXIS: All dates stand, correct, Your Honor?

12 THE COURT: Dates stand.

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14 (Proceedings concluded at 9:54 a.m.)
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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
19 proceedings in the above-entitled case to the best of my ability.
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23 *Victoria W. Boyd*

24 7-25-2017

25 Victoria W. Boyd
Court Recorder/Transcriber

Date

Steven D. Grierson

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAMES COOPER,

Defendant.

CASE NO. C312970-1

DEPT. X

BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE

MONDAY, JUNE 20, 2016
RECORDER'S TRANSCRIPT RE:
CALENDAR CALL

APPEARANCES:

For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

For the Defendant:

JEB BOND, Esq.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

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JUL 31 2017

CLERK OF THE COURT

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1 Las Vegas, Nevada, Monday, June 20, 2016 at 9:14 a.m.

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4 THE CLERK: Case No. C312970, State of Nevada v. James Cooper.

5 THE COURT: Appearances for the record please.

6 MS. RHOADES: Good morning, Your Honor. Kristina Rhoades on behalf
7 of the State.

8 MR. BOND: And, Your Honor, Jeff Bond with Brett Whipple's office on
9 behalf of Mr. Cooper who is not present out of custody.

10 THE COURT: What is the status on this case, Mr. Bond?

11 MR. BOND: Your Honor, we were planning on potentially going to trial
12 this being calendar call. Your Honor, he is not here. We haven't had contact
13 with him since last Court date. I'm surprised though because he's had nine
14 appearances in this case and been present every time. Your Honor, I'll submit
15 to your discretion.

16 THE COURT: So weren't you on this case and then off the case and
17 now you're back on the case again?

18 MS. RHOADES: Right. And that's the State's concern as well, Your
19 Honor. They put a motion to withdraw in and then they apparently came in and
20 said that they withdrew the motion because the defendant had paid them. So I
21 would just like to know when the last contact with the defendant, if it was the
22 last Court date or since then, I mean since May 18th?

23 MR. BOND: Yes, Your Honor, the last contact that I have in my notes is
24 from that Court date.

25 THE COURT: Calendar call he's supposed to be here. Bench warrant, no

1 bail. We can place the matter back on calendar if you hear from him, Mr. Bond.

2 MS. RHOADES: And just for the record if it does get placed back on
3 calendar and he's out of custody I mean we have grave concerns about him
4 being out and having contact with the victim and the victim's children. And
5 he's not here so - - before he doesn't have to be booked on the bench warrant
6 we would just like to be heard if he does show up out of custody.

7 THE COURT: So, Mr. Bond, if you hear from Mr. Cooper, if you hear
8 from him would you please relay to him that he's to stay away from the victim.

9 MR. BOND: Absolutely, Your Honor.

10 THE COURT: In all manner and form.

11 MR. BOND: Yes, Your Honor.

12 THE COURT: And not any contact with a party either.

13 MS. RHOADES: Thank you.

14 THE COURT: Trial date is vacated.

15
16 (Proceedings concluded at 9:15 a.m.)

17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio/video proceedings in the above-entitled case to the best of my ability.

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22 *Victoria W. Boyd*

23 7-25-2017

24 Victoria W. Boyd
25 Court Recorder/Transcriber

Date

Steven D. Grierson

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. C312970-1

10

vs.

DEPT. X

11

JAMES COOPER,

12

Defendant.

13

BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE

14

15

**WEDNESDAY, JULY 6, 2016
RECORDER'S TRANSCRIPT RE:
MOTION TO WITHDRAW**

16

17

APPEARANCES:

18

19

For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

20

21

For the Defendant:

JEB BOND, Esq.

22

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

RECEIVED

JUL 31 2017

#23
CLERK OF THE COURT

1 Las Vegas, Nevada, Wednesday, July 6, 2016 at 9:42 a.m.

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4 MS. RHOADES: Kristina Rhoades on behalf of the State.

5 THE COURT: Good morning.

6 MR. BOND: Good morning, Your Honor. Jeb Bond with Brett Whipple's
7 office on behalf of Mr. Cooper who is present in custody.

8 THE COURT: Good morning, Mr. Bond.

9 Good morning, Mr. Cooper.

10 This is Mr. Whipple's motion to withdraw as counsel of record.

11 MR. BOND: Yes, Your Honor. We had asked this Court to withdraw after
12 appearing on the last Court date which was calendar call. Mr. Cooper did not
13 show up. We had lost contact from him and also he failed to meet the
14 obligations as part of his retainer agreement. Your Honor, we'd still request
15 that we be allowed to withdraw. Mr. Cooper since that date was picked up on
16 the bench warrant and is on for bench warrant return here today.

17 THE COURT: Ms. Rhoades, does the State have a position?

18 MS. RHOADES: No, Your Honor, not as to that motion to withdraw.

19 THE COURT: The motion to withdraw is granted pursuant to EDCR
20 7.40. Mr. Cooper, you're going to need an attorney. Can you afford to hire
21 one?

22 THE DEFENDANT: No audible response.

23 THE COURT: PD is appointed subject to a conflict's check. One week
24 status check.

25 THE CLERK: July 13 at 8:30.

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MR. BOND: Thank you, Your Honor.

MS. RHOADES: Thank you.

THE COURT: You're welcome.

(Proceedings concluded at 9:43 a.m.)

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Victoria W. Boyd

7-25-2017

Victoria W. Boyd
Court Recorder/Transcriber

Date

Steven D. Grierson

1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. C312970-1

10

vs.

DEPT. X

11

JAMES COOPER,

12

Defendant.

13

BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE

14

15

WEDNESDAY, JULY 13, 2016
RECORDER'S TRANSCRIPT RE:
STATUS CHECK

16

17

APPEARANCES:

18

19

For the State:

KRISTINA RHOADES, Esq.
Chief Deputy District Attorney

20

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For the Defendant:

TALIA WALKENSHAW, Esq.
Deputy Public Defender

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

RECEIVED

JUL 31 2017

CLERK OF THE COURT

#23

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1 Las Vegas, Nevada, Wednesday, July 13, 2016 at 9:01

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4 THE CLERK: Case Number C312970, State of Nevada v. James Cooper.

5 THE COURT: Appearances for the record please, first by the State.

6 MS. RHOADES: Good morning, Your Honor. Kristina Rhoades on behalf
7 of the State.

8 MS. WALKENSHAW: Good morning, Your Honor. Talia Walkenshaw on
9 behalf of Mr. Cooper. I had requested discovery from Mr. Whipple's office. I
10 haven't received it yet, however I did pull off whatever information I could from
11 Oddyssey and I conducted a conflicts check based off of that. At this point it
12 appears that we can confirm.

13 THE COURT: Very well. What are you asking for then, a trial date?

14 MS. WALKENSHAW: Yes, Your Honor.

15 THE COURT: Madam Clerk, ordinary course please.

16 THE CLERK: November 7th for the calendar call and that is 8:30 with
17 November 14th as a jury trial, 1 o'clock.

18 THE COURT: Thank you, Madam Clerk.

19 MS. RHOADES: Thank you.

20 MS. WALKENSHAW: Thank you.
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23 (Proceedings concluded at 9:02 a.m.)
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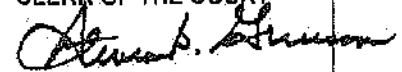
1 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
2 proceedings in the above-entitled case to the best of my ability.

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6 *Victoria W. Boyd*

7-26-2017

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8 Victoria W. Boyd
9 Court Recorder/Transcriber

Date



1 RTRAN

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 JAMES COOPER,

11 Defendant.
12
13

CASE NO. C-16-312970-1

DEPT. XVIII

TRANSCRIPT OF PROCEEDINGS

14 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE
15 THURSDAY, AUGUST 4, 2016

16 **MOTION TO EXONERATE BONDS**
17
18

19 APPEARANCES:

20 For the State:

DANAE ADAMS, ESQ.
Chief Deputy District Attorney

22 For the Defendant:

NO APPEARANCE

24 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
25

1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 4, 2016

2 [Proceedings commenced at 9:22 a.m.]

3 THE MARSHAL: Page 14.

4 THE COURT: C312970, State of Nevada versus James Cooper; Hangover
5 Bail Bonds and Seneca Insurance; the absence of counsel. I'm not sure whether
6 Mr. Gill represents the surety or Mr. Cooper individually.

7 Time set; motion to exonerate bonds. I show that this is a Department X
8 case. A bench warrant issued when Defendant failed to appear for calendar call on
9 June 20th, 2016. Notice of intent to forfeit filed on June 24th '16 with a forfeiture date
10 of December 22nd, '16. Also, per Odyssey, Defendant was in court on July 6th, 2016
11 on a bench warrant return. TCR in Odyssey reflects bond surrender.


12 MS. ADAMS: No opposition.

13 THE COURT: Granted. I'm going to grant the motion to exonerate bond. I'm
14 going to vacate the January 5th, 2017 order to show cause hearing.

15 [Proceedings concluded at 9:22 a.m.]

16 * * * * *

17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio/video recording in the above-entitled case to the best of my ability.

19 
20 CYNTHIA GEORGILAS
21 Court Recorder/Transcriber
22 Eighth Judicial District Court Dept. XVII
23
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25

Steven D. Grierson

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES COOPER,

12 Defendant.

)
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) CASE NO. C312970-1
)
)
)

DEPT. X

13
14 **BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE**

15 **WEDNESDAY, SEPTEMBER 7, 2016**
16 **RECORDER'S TRANSCRIPT RE:**
17 **OR RELEASE OR REASONABLE BAIL**

18 **APPEARANCES:**

19 For the State:

MEGAN THOMSON, Esq.
Chief Deputy District Attorney

20 For the Defendant:

21 TALIA WALKENSHAW, Esq.
22 Deputy Public Defender

23
24
25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

RECEIVED

JUL 31 2017

CLERK OF THE COURT

1 Las Vegas, Nevada, Wednesday, September 7, 2016 at 11:30

2
3
4 THE CLERK: Case Number C312970, State of Nevada v. James Cooper.

5 THE COURT: Appearances for the record please.

6 MS. THOMSON: Megan Thomson for the State.

7 MS. WALKENSHAW: Good morning, Your Honor. Talia Walkenshaw on
8 behalf of Mr. Cooper who is present in custody.

9 THE COURT: It's on calendar defense motion for an OR release or in the
10 alternative for reasonable bail. There was an opposition filed by the State. Did
11 you see their opposition?

12 MS. WALKENSHAW: I received it late yesterday afternoon. I did receive
13 it and I did review it.

14 THE COURT: Are you prepared to proceed with your motion?

15 MS. WALKENSHAW: I am, Your Honor.

16 THE COURT: Very well.

17 MS. WALKENSHAW: I think I outlined it in my motion and so for the
18 most part I will submit it on that. However, there were a few things that I
19 wanted to highlight that I think indicate that Mr. Cooper is a good candidate for
20 an OR. As I said in my motion he is a teamster and he has been for 27 years. I
21 think that that's remarkable. I don't often have a client that has that stable and
22 that lengthy of an employment history. He's been a local resident in Las Vegas
23 for an extensive period of time. I think that - - I noted that he has significant
24 family support here. He has children that attend Bishop Gorman High School.
25 He's the one that pays the tuition for them, and I think that the facts explaining

1 why he missed his Court date are very believable, and that is that he was in
2 constant contact with Mr. Bond from Mr. Whipple's office. And I went through
3 and checked Odyssey myself because this was a case that I was coming into
4 second hand. And there were often Court appearances where there was some
5 indication on whether they would remain as the attorney of record or whether
6 they wouldn't. And usually it came to a point where then Mr. Cooper made a
7 payment or some arrangement and they would stay on the case. At the last
8 meeting that Mr. Cooper had with Mr. Bond he went in and he made a payment
9 and he confirmed the date that he thought was his next date.

10 It wasn't actually even a wrong date. It was just his trial date not the
11 calendar call date, and so when he spoke with Mr. Bond and said I believe my
12 next Court date is June 27th he was confirmed that, yes, that is correct and
13 that actually, like I said, wasn't even the wrong date. That was a correct date.
14 It was his trial date. It just wasn't the calendar call date. And so then at the
15 calendar call Mr. Cooper wasn't present because he was thinking he only had to
16 be here on the 27th and at that point a bench warrant was issued. And I think
17 the minutes reflected that Mr. Bond was surprised that he wasn't present as
18 they were anticipating on announcing ready and going forward with trial.

19 And so I don't think that this is somebody who willfully misses his Court
20 dates. He was present at all Court dates that he needed to be at throughout
21 the entire pendency of the case and was obviously in contact with his attorney
22 as he was making payments. And so I think that he is somebody that is a good
23 candidate for an OR release. You know, I think obviously the biggest thing is
24 insuring that he's going to come to Court and somebody with this lengthy of an
25 employment record, this stable of a residence and this good of a track record of

1 showing up to Court and the one time he didn't there was a very plausible
2 reason and misunderstanding. And so I think that does make him a good
3 candidate for an OR.

4 THE COURT: Ms. Thomson.

5 MS. THOMSON: Your Honor, I would disagree that - - and I forget the
6 exact language - - but basically the only concern we have is his appearance.
7 Well, historically he has been relatively good about appearing in this case. I
8 think the overarching as defined within the opposition written by Ms. Rhoades
9 is the danger to the community that he poses. And when he has the
10 opportunity that he had in this case to be out of custody it seems that he would
11 be extra diligent to be present at any date that he needed to be here. At this
12 point I'm just going to submit on Ms. Rhoades' opposition.

13 THE COURT: Anything concluding argument?

14 MS. WALKENSHAW: The only concluding argument I had specifically to
15 Ms. Rhoades' opposition was in regards to the fact that the named victim in
16 this case has not been cooperating, and per the State's opposition is continuing
17 to not be cooperative. They were not able to secure her presence for the
18 preliminary hearing. There was an exception that was used in order to get the
19 officers testimony and based on that it was bound up to District Court. That
20 being said per Ms. Rhoades opposition they still have not been able to make
21 contact with her, are attempting to but have been unable to. The trial had been
22 previously set. Obviously no contact was made at that point. It doesn't appear
23 that there has been any contact at this point. And so you know this is a victim
24 that is uncooperative with the case and I wanted to emphasize again of course
25 as I did in my opposition that given the {inaudible} and I believe the plausible

1 misunderstanding, if Your Honor is not inclined to do an OR he is entitled to
2 bail.

3 THE COURT: what did you mean when you said exception at the time of
4 the preliminary hearing that allowed the officer's testimony? Are you referring
5 to an excited utterance exception?

6 MS. WALKENSHAW: No, Your Honor. There is a new exception and the
7 bill was presented to the Justice Court judge at that point. Essentially the
8 officer was permitted to testify regarding what the minor told the officer at the
9 scene, and that is because they have also charged Mr. Cooper with a child
10 abuse for the children that were present at the scene. And under the new bill
11 because he's charged with the child abuse the child's statement to the officer
12 were allowed in under that, and so based on the officer's testimony regarding -
13 - I think the child is eight - - what the eight year old told him at the scene he
14 was allowed to testify as to that and based on that the case was bound over to
15 District Court.

16 THE COURT: So wasn't there a four year old child at home also?

17 MS. WALKENSHAW: Yes. There were two children.

18 THE COURT: Okay. The motion for an OR release is denied. Bail is set
19 in the amount of \$80,000 cash surety.

20 MS. THOMSON: I believe there was no contact order previously. Will
21 that also stand?

22 THE COURT: No contact order stands, yes.

23 MS. THOMSON: Thank you, Your Honor.
24
25

(Proceedings concluded at 11:37 a.m.)

1 ATTEST: I do hereby certify that I have truly and correctly transcribed the
2 audio/video proceedings in the above-entitled case to the best of my ability.
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6 *Victoria W. Boyd*
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7-28-2017

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9 Victoria W. Boyd
10 Court Recorder/Transcriber
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Date

Steven D. Grierson

1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

10

vs.

CASE NO. C312970-1

DEPT. X

11

JAMES COOPER,

12

Defendant.

13

BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE

14

15

MONDAY, OCTOBER 31, 2016

RECORDER'S TRANSCRIPT RE:

16

STATE'S MOTION TO ADMIT HOSPITAL RECORDS

17

APPEARANCES:

18

19

For the State:

MS. RHOADES, Esq.
Chief Deputy District Attorney

20

21

For the Defendant:

TALIA WALKENSHAW, Esq.

22

23

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

CLERK OF THE COURT

RECEIVED
AUG 14 2017

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1 Las Vegas, Nevada, Monday, October 31, 2017

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4 THE COURT: Page 14, C312970, State of Nevada v. James Cooper.

5 Mr. Cooper is present. Counsel, could you state appearance please.

6 MS. RHOADES: Kristina Rhoades on behalf of the State.

7 THE COURT: No, I got you, Ms. Rhoades. I need the defense lawyer.

8 MS. WALKENSHAW: Talia Walkenshaw on behalf of Mr. Cooper.

9 THE COURT: I didn't recognize you. I'm sorry, Ms. Walkenshaw.

10 MS. WALKENSHAW: That's okay, Your Honor.

11 THE COURT: So Walkenshaw on behalf of Mr. Cooper, Rhoades on
12 behalf of the State. Time set State's motion in limine to admit certified copy of
13 Sunrise Hospital medical records recorded 911 call and recorded jail call.
14 Frankly, Lawyers, I think this is an issue that Judge - - whoever presides over
15 the effort needs to rule on because whatever the decision is they have to own
16 so I want to pass at least a week so Judge Walsh can review it because she's
17 going to have to preside over the action.

18 MS. RHOADES: That's fine. I mean we brought this motion out of an
19 abundance of caution. We could maybe set it for calendar call which I believe
20 is the 7th.

21 MS. WALKENSHAW: That's correct and I think there is another pending
22 motion that day as well so we could just continue and they could all be heard
23 then.

24 THE COURT: Perfect. Let's do it that way.

25 MS. RHOADES: I would ask the Court today - - Mr. Cooper has been

1 admonished several times to have no contact with the victim. He has been
2 having pretty much constant contact with the victim from his jail calls at the
3 detention center since he's been admonished by Judge Walsh to have no
4 contact with her, so I don't know if we need to revoke his phone privileges
5 except for with his attorney or what because he is disobeying the Court's order.

6 THE COURT: What do you have to support that? Do you have actual - -
7 because they record everything, Mr. Cooper, you need to understand that.

8 MS. RHOADES: My investigator has the calls that show that he's been
9 contacting her nonstop pretty much.

10 THE COURT: Okay. Well, what I'm going to do is note that Judge
11 Walsh has previously ordered a no contact. It could be subject to a contempt
12 finding by Judge Walsh under 22010 but I'm not going to make that
13 contemporaneous finding or restrict privilege unless I have more. This is just on
14 your oral request.

15 MS. RHOADES: Okay. I will bring then the calls - -

16 THE COURT: And if you need to bring it on an OST in front of Judge
17 Walsh with the documentation that you have so Ms. Walkenshaw can look at it
18 and talk to Mr. Cooper about it.

19 I will again admonish you, Mr. Cooper, should you be reaching in
20 violation of the Court order that Judge Walsh has a lot of tools in her toolbox to
21 try to preclude that, all right? Do you have any questions?

22 THE DEFENDANT: No, thank you.

23 THE COURT: All right. So I'm going to continue these motions to
24 November 7th calendar call. Ms. Rhoades, you do whatever you think is
25 necessary to protect your identified punitive victim, all right.

1 MS. RHOADES: Thank you, Your Honor.

2 THE CLERK: November 7th at 8:30.

3 MS. WALKENSHAW: If I could just state for the record if the State is
4 going to address those at the next Court date I would just ask that I receive a
5 copy of them because this is the first time I've heard of that.

6 THE COURT: Absolutely. If you need an OST signed so you can get Ms.
7 Walkenshaw served if time is of the essence then you can bring that to the
8 Court.

9 MS. RHOADES: I will. Thank you.

10 THE COURT: Good. Next case.

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(Proceedings concluded at 9:56 a.m.)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
proceedings in the above-entitled case to the best of my ability.

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Victoria W. Boyd

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7-28-2017

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Victoria W. Boyd
Court Recorder/Transcriber

Date

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Steven D. Grierson

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

CASE NO. C312970-1

10

vs.

DEPT. X

11

JAMES COOPER,

12

Defendant.

13

BEFORE THE HONORABLE JUDGE JESSIE WALSH, DISTRICT COURT JUDGE

14

15

MONDAY, NOVEMBER 7, 2016

16

RECORDER'S TRANSCRIPT RE:

DEFENSE MOTION TO DISMISS COUNTS 1 AND 2

17

APPEARANCES:

18

19

For the State:

MS. RHOADES, Esq.
Chief Deputy District Attorney

20

21

For the Defendant:

TALIA WALKENSHAW, Esq.

22

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RECORDED BY: VICTORIA BOYD, COURT RECORDER

RECEIVED

AUG 14 2017

CLERK OF THE COURT

1 Las Vegas, Nevada, Monday, November 7, 2016 at 11:07 a.m.

2
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4 THE CLERK: Case No. C312970, State of Nevada v. James Cooper.

5 THE COURT: Appearances for the record please.

6 MS. RHOADES: Good morning, Your Honor. Kristina Rhoades on behalf
7 of the State.

8 MS. WALKENSHAW: Good morning, Your Honor. Talia Walkenshaw on
9 behalf of Mr. Cooper. He is present in custody.

10 THE COURT: Right. Good morning. So there are a couple of motions on
11 calendar, calendar call, where would you like to start?

12 MS. WALKENSHAW: At Your Honor's pleasure.

13 THE COURT: Okay. Defense motion to dismiss Count 1 and 2 based on
14 improper hearsay testimony.

15 MS. WALKENSHAW: I will submit that primarily on my pleading.
16 However, I would like to respond just orally briefly to the State's opposition.

17 THE COURT: Sure.

18 Ms. Rhoades?

19 MS. RHOADES: I guess I'll respond when she responds to the opposition.
20 We filed the opposition. We don't feel that there is a basis to dismiss the
21 counts at this time. It's more of a writ argument, and the Justice Court also
22 stated on the record that there were other hearsay exceptions that she took
23 into account when she bounds these cases up as well as the other evidence,
24 the observations of the officer and things of that nature to bind these charges
25 up so this is improper at this time. If defendant wants to renew his motion

1 after we presented evidence to a jury then we can do it at that time but this is
2 not the proper vehicle to do it. It was a writ and that time has passed.

3 THE COURT: Ms. Walkenshaw.

4 MS. WALKENSHAW: And that was just what I wanted to respond to.
5 This was a case that I inherited and I was not Mr. Cooper's attorney at the time
6 that the writ should have been filed. I know that his previous attorney was
7 aware of the issue. As I indicated they objected at the preliminary hearing.
8 That's reflected in the preliminary hearing transcript. For whatever reason it
9 wasn't filed within the time period but that being said I wasn't his attorney
10 then, and so I filed it on his behalf given that I do feel that it is an issue that
11 should have been addressed and I'll submit it on that.

12 THE COURT: So the Court is inclined to agree with the State that this is
13 an improper matter before the Court. It should have been filed as a writ and
14 not as a motion to dismiss, and the time has passed for it to have been filed as
15 a writ, procedurally barred, the motion is denied in its entirety. I'll ask the State
16 to prepare an order for the Court's signature.

17 MS. RHOADES: Yes, Your Honor.

18 THE COURT: Okay. That brings us to State's motion in limine to admit
19 a certified copy of Sunrise Hospital medical records, the recorded 911 call and a
20 recorded jail call. Are there any Sunrise Hospital medical records?

21 MS. RHOADES: There are, Your Honor. I believe they were attached to
22 the motion. We should also have a doctor that will come in and testify about
23 those records as well, but under the statute the State would submit that they
24 are admissible. We just brought this out of an abundance of caution to litigate
25 this prior to the start of trial.

1 THE COURT: And what about the 911 call?

2 MS. RHOADES: We responded to the testimonial argument in our reply
3 and we would also submit that based on statute, based on the fact that it's
4 non-testimonial. I mean it's a state of emergency. You can hear it on the 911
5 call. I have a copy if the Court wants a copy, and pursuant to the statute that
6 allows copies that have been certified by custodian of record that affidavit I
7 believe was attached to the motion as well so under all that that would be
8 admissible, as well as the jail calls. I mean they are his own jail calls that he's
9 making. They would be offered to prove his statements and then the other
10 people on the calls would be to prove the context of what he's saying, his state
11 of mind about the case.

12 THE COURT: Ms. Walkenshaw.

13 MS. WALKENSHAW: Thank you, Your Honor. I'll submit it on my
14 written opposition.

15 THE COURT: So it's the Court's view that the copy of the Sunrise
16 Medical records are admissible because they go to statements made for
17 purposes of medical diagnosis and treatment. The 911 calls come in because
18 they are essentially excited utterances, and these records are made in the
19 course of regularly conducted activity and the jail calls come in because they
20 are non hearsay statements. They are the defendant's own statements
21 pursuant to NRS 51.035, subsection 3a.

22 The motion is granted in its entirety. I'll ask State to prepare an order for
23 the Court's signature.

24 That brings us to the issue of calendar call. Are you ready to go to trial,
25 Ms. Walkenshaw?

1 MS. WALKENSHAW: Yes, Your Honor.

2 THE COURT: Ms. Rhoades?

3 MS. RHOADES: Yes, the State is ready as well. We also have the bad
4 acts motion that was previously set for the first day of trial but I would just ask
5 hopefully we can schedule that on Monday. We do have Britany Jensen under
6 order of the Kingman, Arizona court to come here, and so we would need her to
7 put on that bad acts motion, that hearing for the bad acts motion.

8 THE COURT: Is that actually scheduled? It doesn't show on my
9 calendar.

10 MS. RHOADES: It has not been rescheduled. It was previously
11 scheduled when Mr. Cooper bench warranted at that calendar call. We had it
12 set for that first day of trial and then we haven't rescheduled it, no, but it has
13 briefed.

14 THE COURT: Fully briefed?

15 MS. RHOADES: I believe so, yes.

16 MS. WALKENSHAW: That I believe was briefed by Mr. Cooper's previous
17 attorney. I was able to pull an opposition off of Odyssey. I don't know that
18 the State had filed another reply.

19 MS. RHOADES: We haven't, no.

20 THE COURT: So do you want to argue the bad acts motion on Monday
21 at 8:30 a.m.?

22 MS. RHOADES: Does the Court want to have a hearing to prove up by
23 clear and convincing evidence we would need Ms. Jensen here for that and I
24 don't know that she will be here at 8:30.

25 THE COURT: How about 10 o'clock?

1 MS. RHOADES: That should be good.

2 MS. WALKENSHAW: That's fine, Your Honor.

3 THE COURT: What does Monday look like? 10 o'clock for the hearing
4 and then the trial will start at 1 o'clock in the afternoon?

5 MS. RHOADES: And I know that it takes I believe two hours my
6 investigator said to drive here from Kingman and she's supposed to be picked
7 up at 8:30 so that should give us 10 o'clock, might be a little early.

8 THE COURT: 10:30.

9 MS. RHOADES: That would be better.

10 THE COURT: 10:30 for the hearing.

11 MS. RHOADES: Thank you, very much.

12 MS. WALKENSHAW: Thank you, Your Honor.

13

14 (Proceedings concluded at 12:12 p.m.)

15

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
19 proceedings in the above-entitled case to the best of my ability.

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Victoria W. Boyd

8-10-2017

Victoria W. Boyd
Court Recorder/Transcriber

Date

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 JAMES COOPER,

) No. 72091
)
)

4 Appellant,

5 vi.
6)
7 THE STATE OF NEVADA,
8 Respondent.
9)

10 **APPELLANT'S APPENDIX VOLUME II PAGES 243-424**

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

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

13 Attorney for Appellant

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

14
15
16 Counsel for Respondent

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that this document was filed electronically with the Nevada
19 Supreme Court on the 22 day of June, 2017. Electronic Service of the
foregoing document shall be made in accordance with the Master Service List as follows:

20 ADAM LAXALT
21 STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

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

24 JAMES COOPER, 1174054
c/o THREE LAKES VALLEY CONSERVATION CAMP
25 P.O. BOX 208
INDIAN SPRINGS, NV 89070

26
27 BY

28 Employee, Clark County Public Defender's Office