

1 Murphy had received the information about the first and second house they planned to rob
2 from Joey Larsen's girlfriend. GJT, V-2, p. 60, lines 8-13. Murphy also mentioned to
3 Figueroa that the girl he was sleeping with was still in a relationship with Joey Larsen, the
4 homeowner of the second house they planned to rob. GJT, V-2, p. 60, lines 19-24. Murphy
5 told Figueroa that a crying Joey Larsen would call the girl he was sleeping with and that the
6 girl was sharing details of her relationship with Joey Larsen with Murphy. GJT, V-2, p. 61.
7 Lastly, Murphy told Figueroa that the girl he was sleeping with had tried to "setting up" her
8 boyfriend (the homeowner of the home they planned to rob that night) on a prior occasion.
9 GJT, V-2, p. 62, lines 1-3.

10 At approximately 7:00 p.m. that same day, Mendoza picked up Figueroa from his house
11 and the two men drove to Laguna's home where they picked up Laguna and Murphy. GJT,
12 V-2, p. 44. Mendoza moved to the back with Figueroa, allowing Murphy to drive. GJT, V-2,
13 p. 45, lines 3-10. While in the car, Murphy gave Figueroa, Laguna and Mendoza a "run down
14 of the house" and who and what Murphy believed would be located in the home they were
15 about rob. GJT, V-2, p. 45, lines 5-10. Murphy told the men that there should be marijuana,
16 money and guns at the home. GJT, V-2, p. 45, lines 11-13. Murphy also told them that the
17 victim / home owner might be in the home, along with another male, perhaps the homeowner's
18 brother. GJT, V-2, p. 45, lines 14-25.

19 At approximately 8:00 p.m., Mendoza, Laguna, Murphy and Figueroa made their way
20 to the home they planned to rob. GJT, V-2, p. 46, lines 1-17. The home was in Summerlin,
21 located near the area of Charleston and Hualapai. GJT, V-2, p. 46, lines 5-9. Murphy drove
22 past the house once to point out the home to the other men before he circled back and dropped
23 Laguna, Mendoza and Figueroa off in front of the home's driveway. GJT, V-2, p. 46, lines
24 20-24; p. 47, lines 10-14. Murphy then parked up the street on a corner located on the next
25 block up to wait for the other men. GJT, V-2, p. 46, lines 20-24; p. 47, lines 1-9.

26 As Figueroa, Laguna and Mendoza are walking up to the front door of 1661 Broadmere
27 Street, the men decided that Figueroa would be tasked with opening the door. GJT, V-2, p.
28 47, lines 22-24; p. 48, lines 15-17. Once at the front door, Figueroa hit the door with his

1 shoulder twice. GJT, V-2, p. 48, lines 21-23. The door "busted open" and Figueroa walked
2 in first, armed with a .40 caliber Ruger handgun. GJT, V-2, p. 48, lines 24-25; p. 49, lines 1-
3 2; p. 49, lines 22-25; p. 50, lines 1-5. Figueroa does not remember who was walking behind
4 but believes that both Mendoza and Laguna also made their way into the home. GJT, V-2, p.
5 49, lines 2-7. Laguna was armed with a .28 snub nose and Mendoza had a 9 millimeter short
6 barrel rifle. GJT, V-2, p. 50, lines 6-18.

7 Figueroa was shot in the face, below his lip almost immediately after he got through
8 the front door. GJT, V-2, p. 49, lines 8-13. Figueroa went into shock, as the shot to the face
9 took him off his feet. GJT, V-2, p. 49, lines 17-21. As he got up from off the ground to turn
10 and run out the front door, Figueroa was shot again, this time on his lower left side, right above
11 his hip between his rib area. GJT, V-2, p. 50, lines 24-25; p. 51, lines 1-4. The second shot
12 dropped Figueroa again but he continued to make his way out the front door. GJT, V-2, p. 51,
13 lines 17-19. Figueroa believes Mendoza and Laguna were in the entryway on the inside of the
14 home when he was frantically trying to escape. GJT, V-2, p. 51, lines 20-25. Once Figueroa
15 is outside, he ran down a street but not the street towards Murphy's awaiting vehicle. GJT, V-
16 2, p. 52, lines 2-9. Figueroa continued to hear gunshots as he ran away from the home they
17 had just tried to rob. GJT, V-2, p. 52, lines 19-21. Once he was halfway down the street,
18 Figueroa looked back at the house. GJT, V-2, p. 52, lines 22-25. It was then that he saw
19 Murphy pick Laguna up from the driveway of the home. GJT, V-2, p. 53, lines 1-4. Laguna
20 and Murphy then fled the scene. GJT, V-2, p. 53, lines 1-4. It did not appear to Figueroa that
21 Laguna was hurt as he observed Laguna get into the vehicle Murphy was driving. GJT, V-2,
22 p. 53, lines 8-12. Figueroa did not see what happened with Mendoza. GJT, V-2, p. 53, lines
23 13-14.

24 Figueroa, bleeding and hurt badly, continued to run until he found a place to hide in a
25 backyard located in the same neighborhood. GJT, V-2, p. 53, lines 18-25; p. 55, lines 1-7.
26 Once he was at his hiding spot, Figueroa called Laguna to let him know that he was hurt and
27 needed someone to come and get him. GJT, V-2, p. 53, lines 22-25; p. 54, line 1. Figueroa
28 then received a text message from Murphy. GJT, V-2, p. 54, lines 4-9. Mendoza, Laguna and

1 Murphy never showed back up at the scene to retrieve Figueroa. GJT, V-2, p. 54, lines 4-25.
2 So, Figueroa remained at his hiding spot for the next 8-9 hours. GJT, V-2, p. 55, lines 8-10.

3 Eventually, Figueroa was able to reach someone to pick him up from his hiding spot
4 near the crime scene. GJT, V-2, p. 57, lines 1-2. Figueroa was then driven to a hospital in
5 California and treated for gunshot wounds to his face and abdomen. GJT, V-2, p. 57, lines 7-
6 18. After he was arrested, Figueroa learned that the home they had tried to rob the night of
7 September 21, 2014 belonged to Joey Larsen. GJT, V-2, p. 57, lines 24-25; p. 58, line 1.

8 Steve Larsen initially rented the 1661 Broadmere home for his son, Joey and his ex-
9 wife, Summer Larsen, but as of September 2014, Summer was no longer living in the home,
10 as Joey and Summer had separated eight (8) months prior and had been living in separate
11 places. GJT, V-1, p. 34, lines 19-22; p. 35, lines 6-10. Monty moved into the home with Joey
12 approximately four to five (4-5) months before the incident, just after Joey's home had been
13 burglarized on two separate occasions. GJT, V-1, p. 36, lines 7-16.

14 Ashley Hall has known Joey Larsen for approximately twenty (20) or more years. GJT,
15 V-1, p. 11, lines 6-10. Ashley also knows Summer Larsen and Tracy Rowe, as they all grew
16 up in the same neighborhood and all went to school together. GJT, V-1, p. 11, lines 11-23. In
17 fact, Ashley has known Summer since Ashley was six (6) years old. GJT, V-1, p. 14, lines 9-
18 10. Ashley also knew that Summer and Joey had been in a relationship for at least ten (10)
19 years and that as of September 2014, their relationship was "going downhill." GJT, V1, p. 12,
20 lines 1-9. On the days leading up to September 21, 2014, Summer was living with various
21 friends. GJT, V-1, p. 13, lines 1-11. Summer would sometimes stay with Ashley for a few
22 days and then move on to stay with another one of her friends. GJT, V-1, p. 13, lines 1-11.

23 Sometime before the September 21, 2014 incident involving Joey Larsen and Monty
24 Gibson, Summer asked Ashley for a ride and help to locate Summer's missing vehicle. GJT,
25 V-1, p. 15, lines 6-11. Ashley picked Summer up at approximately 5:00 p.m. at a Rebel gas
26 station near the area of Torrey Pines and Lake Mead. GJT, p. 16, lines 12-22. There were two
27 (2) other males Summer. GJT, V-1, p. 17, lines 9-21. Ashley did not know either of the males
28 with Summer but all three, got into Ashley's car. GJT, V-1, p. 17, lines 14-16. One of the

1 males was tall, black and in his mid-thirties; the other was shorter, white, also in his mid-
2 thirties, with "lots of tattoos." GJT, V-1, p. 17, line 22-25; p. 18, line 1-19. During the drive
3 to the trailer park on Alexander and Rainbow, Ashley overheard the two men in the back of
4 her car discussing a "lick" that they were going to do on Sunday." GJT, V-1, p. 19, lines 16-
5 20. They were "going to come on a bunch of money" from the "lick," which is slang for
6 "going to rob somebody," GJT, V-1, p. 19, lines 16-20. Ashley overheard Summer interrupt
7 the conversation between the men. GJT, V-1, p. 20, lines 3-8. Specifically, she overheard
8 Summer tell them a time frame to commit the "lick." GJT, V-1, p. 20, lines 5-13. When the
9 white male asked what time they should commit the "lick," Summer responded by saying,
10 "8:30." GJT, V-1, p. 20, lines 9-13. After they arrived at the trailer park, Summer and the
11 two men exited Ashley's vehicle. GJT, V-1, p. 21, lines 4-5. Ashley saw the three of them
12 go inside a home where Summer appeared to be staying. GJT, V-1, p. 21, lines 2-9.

13 A few hours later that evening, Summer called Ashley to see if she could again give
14 Summer a ride to look for Summer's car. GJT, V-1, p. 21, lines 16-21. At that time, Summer
15 told Ashley that she owed someone money and that the person she owed money to was in the
16 neighborhood looking for her. GJT, V-1, p. 21, lines 16-22. Summer asked Ashley to please
17 come and pick her up. GJT, V-1, p. 21, lines 16-22. Ashley went back to the trailer park and
18 picked up Summer. GJT, V-1, P. 22, lines 1-11. During the car ride, Summer was panicked
19 because she owed someone money and the person was looking for her. GJT, V-1, p. 23, lines
20 1-8. Summer asked Ashley if she could borrow money from Ashley. GJT, V-1, p. 23, lines
21 1-8. Ashley replied that she did not have money to loan Summer. GJT, V-1, p. 23, lines 1-8.
22 Ashley overheard Summer call a few other people on the phone to ask to borrow money before
23 Summer stated that she was going to call the gentleman that she owed money and tell him not
24 to worry, that she will have the money to him tomorrow, because she was "going to rob Joey
25 again." GJT, V-1, p. 23, lines 1-8; p. 25, lines 15-17. Upon hearing this, Ashley told Summer,
26 "[A]bsolutely not Summer. He does not deserve that. You're not going to do that to him."
27 GJT, V-1, p. 25, lines 21-23. Summer responded by making comments that Joey had left her
28 high and dry and that Joey did not care so why should she. GJT, V-1, p. 26, lines 5-8. Ashley

1 then told Summer that what she was saying was not true and reminded Summer that Joey was
2 still supporting her and that Summer could call him up at any point and he would give her
3 money. GJT, V-1, p. 26, lines 11-16. The drive ended approximately two and a half hours
4 later at which point Summer asked Ashley if she could spend the night at her house. GJT, V-
5 1, p. 26, lines 19-25. Ashley told Summer "absolutely not" because Summer was doing things
6 that Ashley did not want around her children at home. GJT, V-1, p. 26, lines 19-25; p. 27, line
7 1. Ashley dropped Summer off at the same home in the same trailer park as she did earlier in
8 the day. GJT, V-1, p. 27, lines 7-8.

9 Ashley recalled that that was the last time she saw Summer and that it was a Saturday.
10 GJT, V-1, p. 27, lines 14-18. The following day, Ashley repeatedly tried to call Joey. GJT,
11 V-1, p. 27, lines 20-23. She tried calling Joey until approximately 2:00 p.m. that Sunday.
12 GJT, V-1, p. 27, lines 14-25. Ashley then spoke with a woman named Tracy Rowe, who lived
13 three doors down from Joey's father, Steve Larsen. GJT, V-1, p. 27, lines 20-25. Ashley told
14 Tracy about what she had heard the two men and Summer talk about and what she had heard
15 Summer say and asked Tracy to inform Steve Larsen that something was going to be done to
16 Joey. GJT, V-1, p. 28, lines 7-11; p. 29, lines 1-8. Later that night, at approximately 2:30
17 a.m., Tracy Rowe contacted Ashley in a panic. GJT, V-1, p. 29, lines 20-25. Tracy told
18 Ashley that the police had contacted her and that the police also wanted to speak with her.
19 GJT, V-1, p. 29, lines 20-25. Tracy's nephew picked Ashley up and brought her to Tracy's
20 home, where Ashley told the police what she knew about the events leading up to the home
21 invasion, attempt robbery and murder that occurred at Joey's home. GJT, V-1, p. 29, lines 20-
22 25; p. 30, lines 1-4. The police showed Ashley some photographs of individuals. GJT, V-1,
23 p. 30-31. She stated that Robert Figueroa seemed familiar to her but she could not pin point
24 where she had seen him before. GJT, V-1, p. 30, lines 20-22. She also acknowledged knowing
25 David Murphy, as he was part of the same group of kids who grew up in her neighborhood.
26 GJT, V-1, p. 31, lines 1-6.

27 At approximately 6:00 p.m. the night Monty was killed, Steve Larsen spoke with a
28 woman named Tracy Rowe. GJT, V-1, p. 38, lines 1-9. About an hour later, Steve spoke with

1 Joey. GJT, V-1, p. 38, lines 13-25. Steve told Joey that he was going to pick Joey up and that
2 Joey needed to get out of his house. GJT, V-1, p. 38, lines 13-25. Before Steve could pick
3 Joey up, he received a phone call from Joey who was crying and upset. GJT, V-1, p. 39, lines
4 20-25. Joey told Steve that someone had kicked in his front door and that "they" "with guns"
5 "started shooting" and that they "killed" his friend." GJT, V-1, p. 39, lines 20-25; p. 40, lines
6 1-2. Joey also told his father that he believes he shot one of the intruders. GJT, V-1, p. 41,
7 lines 9-11. When Steve arrived at Joey's home, he saw Monty laying half in and half out of
8 the front doorway. GJT, V-1, p. 41, lines 15-24. Monty appeared to have been shot in the
9 head and chest. GJT, V-1, p. 43, lines 19-21. Steve located his son approximately ten (10)
10 feet into the living room area, crying and shaking with a cell phone in one hand and a gun in
11 the other. GJT, V-1, p. 44, lines 2-10. Steve got on the phone with 911 and advised them that
12 he would be placing the gun in the trunk of his car for safe-keeping until police arrived. GJT,
13 V-1, p. 43, lines 1-8. When Steve finally got a chance to look at the interior of Joey's home,
14 he noticed about 10-12 bullet holes in the ceiling and all the walls. GJT, V-1, p. 46, lines 2-4.

15 Joey Larsen acknowledged that he had previously sold marijuana out of his home
16 located at 1661 Broadmere Street. GJT, V-2, p. 90, lines 5-10. On September 21, 2014, Joey
17 had a small amount of marijuana in his home. GJT, V-2, p. 90, lines 12-15. Joey believed
18 that Summer knew he was selling marijuana from the home and indicated that there were
19 probably times that Summer was in home when Joey sold marijuana. GJT, V-2, p. 90, lines
20 19-25. Joey re-upped² his marijuana supply every once in a while. GJT, V-2, p. 91, lines 13-
21 21. Joey also acknowledged that Summer could have heard from people on the streets who
22 Joey's marijuana supplier was and that Joey was selling marijuana from the home, even after
23 Summer moved out of the house approximately six (6) months before the deadly home
24 invasion. GJT, V-1, p. 91, lines 4-9; p. 92, lines 1-10.

25 After Summer was arrested and housed at the Clark County Detention Center, she made
26 several calls to David Murphy. GJT, V-2, p. 107-113. Specifically, Summer made two calls
27 to Murphy on December 3, 2014. Id. During the first call made at 22:27 hours, Summer, who
28

² Re-up means to get more marijuana from a supplier.

1 was crying and upset, told Murphy that she was done with Joey Larsen and that she was going
2 to divorce him. GJT, V-2, p. 109, lines 21-23; p. 111, lines 5-13. During the second call made
3 at 23:41 hours, Murphy gave Summer his home address, 6637 Delphinium. GJT, V-2, p. 113,
4 lines 1-7.

5 LVMPD Homicide Detective Barry Jensen obtained the cellular phone numbers and
6 determined the cellular phone service providers for Mendoza, Laguna, Murphy and Figueroa
7 during the course of his investigation.

8 During an interview by Det. Tod Williams, Mendoza listed his phone number as 702-
9 666-4948 with T-Mobile as the service provider. GJT, V-3, p. 11, lines 20-25; p. 22, lines 14-
10 23; p. 23, lines 1-2.

11 Robert Figueroa provided the address of 3253 Casey Drive #101 and the phone number
12 of 702-241-1051 with AT&T as the service provider. GJT, V-3, p. 17, lines 23-25; p. 18, lines
13 1-4.

14 Joseph Laguna provided a cellular phone number of 702-762-1584 with Cricket as the
15 service provider, which returned with an address of 3668 Lucky Horseshoe Court. GJT, V-3,
16 p. 18, lines 9-13; p. 21, lines 13-24.

17 By looking at a LVMPD database Leeds Online, which are generated from pawn
18 tickets, for a transaction completed by David Murphy on September 11, 2014, Detective
19 Jensen obtained a phone number of 702-542-1558 and an address of 6637 Delphinium. GJT,
20 V-3, p. 18-21.

21 After Detective Jensen obtained the cellular phone numbers for Laguna, Murphy,
22 Mendoza and Figueroa, he sought a court order or subpoena for detailed call records, cell site
23 information and subscriber information. GJT, V-3, p. 18, lines 20-25; p. 19, line 1. Detective
24 Jensen received certified copies from the Cricket/Nexstar phone company with a declaration
25 from the custodian of records. GJT, V-3, p. 21, lines 7-12 (Grand Jury Exhibit 15). Unlike
26 the Laguna records, T-Mobile did not provide a declaration of the custodian of records for the
27 Jorge Mendoza records. GJT, V-3, p. 22, lines 18-25; Despite a lack of an affidavit, Detective
28 Jensen testified he utilized the same procedure to recover the T-Mobile records that he had

1 utilized with Cricket/Nexstar. Detective Jensen testified that in his career he has sent a number
2 of court orders to a variety of phone companies. In his lengthy experience, the information he
3 receives back pursuant to the court order have always been accurate information and business
4 records of the company. Moreover, Detective Jensen testified that he had no reason to believe
5 that the evidence would be any different had he also received an affidavit of the custodian of
6 records. GJT, V-3, p. 23, lines 3-21. Like T-Mobile, Figueroa's AT&T records were not
7 returned with an affidavit of the custodian of records. GJT, V-3, p. 24, lines 17-20. However,
8 he confirmed that his answers as it relate to authentication of the AT&T records were the same
9 as T-Mobile as well as the hundreds of cases in the past.

10 Analysis of the records corroborate Figueroa's testimony concerning the events of
11 September 21, 2014 and certainly show that the four men involved in the home invasion,
12 attempt robbery and murder that occurred at 1661 Broadmere Street were in contact with one
13 another and located in the areas of town, including the crime scene during the relevant times,
14 just like Figueroa mentioned during his testimony in front of the Grand Jury.

15 Analysis of the Mendoza's cellular phone records showed that a voice call was placed
16 from Murphy's phone to Mendoza's phone at 8:24 p.m., approximately 14 minutes after the
17 first 911 call was made to report the deadly incident at 1661 Broadmere Street. GJT, V-3, p.
18 29, lines 10-12. In addition, records showed that a text message was sent from Murphy's
19 phone to Mendoza's phone at 8:40 p.m. GJT, V-3, p. 29, lines 6-9. Then, at 9:42 p.m., a call
20 was placed from Murphy's phone to Figueroa's phone. GJT, V-3, p. 29, lines 13-15.

21 Analysis of Laguna's cellular phone records, specifically Grand Jury Exhibit #19, a
22 demonstrative exhibit based upon the certified copies of the phone records in Grand Jury
23 Exhibit #15, showed various contacts, beginning at 6:30 a.m. on September 21, 2014, between
24 Laguna's phone and the phone numbers associated with Murphy, Figueroa and Mendoza.
25 GJT, V-3, p. 29, lines 16-21. In addition, the records showed that from 8:10 p.m., which is
26 the same time as the first 911 call, to 8:29 p.m. Figueroa called Laguna eight (8) times. GJT,
27 V-3, p. 30, lines 19-23. Then, at 8:29 p.m. a call is logged from Laguna to Figueroa. GJT, V-
28 3, p. 30, lines 19-23.

1 Cell site location records of Laguna's phone showed that Laguna's phone was hitting
2 of Tower 369 (which was near his residence) between the hours of 6:30 a.m. – 7:24 a.m., when
3 Laguna had contact with Figueroa, Mendoza and Murphy. GJT, V-3, p. 32, lines 2-21; Grand
4 Jury Exhibit # 29. The same records also indicate that the phone call Laguna made to Figueroa
5 at 7:44 a.m. and the phone call Laguna made to Murphy at 7:46 a.m. were made while Laguna
6 was in the area of Figueroa's residence. GJT, p. 33, lines 1-17. Additionally, the records show
7 that Laguna's phone was hitting off Cricket cell tower #456, which is in the immediate area
8 of the crime scene, when he received the first two phone calls from Figueroa at 8:10 p.m. GJT,
9 V-3, p. 34, lines 1-9. By 8:43 p.m., Laguna's phone is hitting off Cricket cell tower #369,
10 which is in the area near his own residence. GJT, V-3, p. 34, lines 10-14.

11 Analysis of Figueroa's phone records from September 21, 2014 show his cell phone to
12 be hitting off AT&T tower #30403, which is tower near the crime scene, from 8:10 p.m. to
13 6:09 a.m. the following morning. GJT, V-3, p. 35, lines 7-22.

14 There is no connection between Jorge Mendoza in relationship Robert Figueroa and
15 Joseph Laguna. Figueroa and Laguna are longtime friends. GJT, V-2, p.116. More
16 importantly, there is no connection between Mendoza, Figueroa and Laguna with either
17 Joseph Larsen or Summer Larsen. The common thread between all of these individuals is
18 David "Doughboy" Murphy. Laguna has connections to Murphy. Mendoza is married to
19 Murphy's cousin. Finally, Summer Larsen has some sort of relationship with Murphy as she
20 is confiding in him about her relationship with Joseph Larsen.

21 POINTS AND AUTHORITIES

22 Defendant seeks to sever his case from all other co-defendants, however, his only
23 argument is severance from Defendant Mendoza. The Court should not sever Defendant
24 Murphy from any co-defendants, however, if the Court disagrees, the Court should sever
25 Defendant Mendoza from all other co-defendants as his "alleged" defense would be equally
26 antagonistic to all other defendant. The State will address why Defendant Mendoza should
27 not be severed.

28 //

1 **I. JOINT TRIALS ARE OVERWHELMINGLY FAVORED**

2 NRS 173.135 allows for two or more defendants to be charged under the same
3 indictment or information if they participated in the same criminal conduct. Persons who have
4 been jointly indicted should be tried jointly, absent compelling reasons to the contrary. Jones
5 v. State, 111 Nev. 848, 853, 899 P.2d 544 (1995). NRS 174.165, however, provides that “[i]f
6 it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or of
7 defendants in an indictment or information . . . the court may . . . grant a severance of
8 defendants or provide what other relief justice requires.” In order to obtain a severance, a
9 defendant **must demonstrate** that substantial prejudice would result from a joint trial. The
10 decision to sever is left to the discretion of the trial court and such decision will not be reversed
11 absent an abuse of discretion. Amen v. State, 106 Nev. 749, 801 P.2d 1354 (1990). Broad
12 allegations of prejudice are not enough to require a trial court to grant severance. United States
13 v. Baker, 10 F.3d 1374, 1389 (9th Cir. 1993), cert. denied, 513 U.S. 934, 115 S. Ct. 330 (1994),
14 overruled on other grounds by United States v. Nordby, 225 F.3d 1053 (9th Cir. 2000).
15 Finally, even if prejudice is shown, the trial court is not required to sever; rather, it must grant
16 relief tailored to alleviate the prejudice. See, e.g., Zafiro v. United States, 506 U.S. 534, 540-
17 41, 113 S. Ct. 933 (1993).

18 Within the federal system, and specifically the Ninth Circuit, the presumption is heavily
19 in favor of joint trials. “[C]o-defendants jointly charged, are, prima facie, to be jointly tried.”
20 United States v. Gay, 567 F.2d 916, 919 (9th Cir.), cert. denied, 435 U.S. 999, 98 S. Ct. 1655
21 (1978); United States v. Silla, 555 F.2d 703, 707 (9th Cir. 1977) (“compelling circumstances”
22 are generally necessary to show need for separate trials). The trial court has the broad
23 discretion to join or sever trials and severance is not required unless a joint trial would be
24 manifestly prejudicial. See Gay, 567 F.2d at 919. Federal appellate courts review a denial of
25 a motion to sever for abuse of discretion and “[t]o satisfy this heavy burden, an appellant must
26 show that the joint trial was so prejudicial as to require the exercise of the district judge’s
27 discretion in only one way: by ordering a separate trial.” United States v. Ford, 632 F.2d 1354,
28 1373 (9th Cir. 1980), cert. denied, 450 U.S. 934, 101 S. Ct. 1399 (1981), cert. denied, 450 U.S.

1 934, 101 S. Ct. (1981), overruled on other grounds by United States v. DeBright, 730 F.2d
2 1263 (9th Cir. 1984).

3 In both the state and federal system, the general rule favoring joinder has evolved for a
4 specific reason—there is a substantial public interest in joint trials of persons charged together
5 because of judicial economy. Jones, 111 Nev. at 854, 899 P.2d at 547. Joint trials of persons
6 charged with committing the same offense expedites the administration of justice, relieves trial
7 docket congestion, conserves judicial time, lessens the burden on citizens called to sacrifice
8 time and money while serving as jurors, and avoids the necessity of calling witnesses more
9 than one time. Id. at 853-54, 899 P.2d at 547, see also United States v. Brady, 579 F.2d 1121
10 (9th Cir. 1978), cert. denied, 439 U.S. 1074, 99 S. Ct. 849 (1979). Therefore, the legal
11 presumption is in favor of a joint trial among co-defendants.

12 **II. DEFENDANT MURPHY MAKES NO SHOWING OF A DEFENSE**
13 **ANTAGONISTIC TO HIM WHICH WILL BE PRESENTED**

14 Defendant Murphy makes a broad claim of antagonistic defenses being a basis for
15 severance. Defendant Murphey makes no statement as to how any defense is antagonistic to
16 his defense from any other co-defendant with the exception of Defendant Mendoza. As it
17 relates to Defendant Mendoza, Defendant Murphy makes a bare, unsupported allegation that
18 Defendant Mendoza intends to assert a defense of duress. Notably lacking is any support for
19 this allegation, but more importantly, who Defendant Mendoza claims asserted the duress
20 upon him. Thus, Defendant Murphy fails to shoulder his burden for severance.

21 Significantly, severance is not warranted or justified simply because each defendant
22 seeks to blame the other for the crime. Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002).
23 In Marshall, co-defendants Marshall and Currington were tried and convicted together of first
24 degree murder, robbery, and conspiracy to commit robbery. At trial, Marshall's strategy was
25 to exclusively blame Currington; Currington's strategy was to blame Marshall. Id. at 644-45,
26 56 P.3d at 377-78.

27 On appeal, Marshall claimed that the district court erred in not severing his trial from
28 Currington's. Id. at 645, 56 P.3d at 378. He maintained that he and Currington had

1 “antagonistic defenses” in that each argued that the other was responsible for the murder. Id.,
2 56 P.3d at 378. Marshall relied on the standard the Nevada Supreme Court articulated in
3 Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002). In Rowland, the Nevada Supreme Court
4 stated that “defenses must be antagonistic to the point that they are ‘mutually exclusive’ before
5 they are to be considered prejudicial,” and necessitate severance. Id. at 45, 39 P.3d at 122.
6 The court further noted in Rowland that defenses are mutually exclusive when the core of the
7 co-defendant’s defense is so irreconcilable with the core of the defendant’s own defense that
8 the acceptance of the co-defendant’s theory by the jury precludes acquittal of the defendant.
9 Id. at 45, 39 P.3d at 123.

10 In Marshall, the Nevada Supreme Court expressed concern that the Rowland decision
11 implied severance was justified in too broad of circumstances. The court explained the
12 Rowland holding and limited the circumstances in which severance is appropriate. It stated:

13 To the extent that this language suggests that prejudice requiring severance is
14 presumed whenever acceptance of one defendant’s defense theory logically
15 compels rejection of another defendant’s theory, it is too broadly stated. As we
16 have explained elsewhere, where there are situations in which inconsistent
17 defenses may support a motion for severance, the doctrine is a very limited one.
18 A defendant seeking severance must show that the codefendants have
19 conflicting and irreconcilable defenses and that there is a danger that the jury
20 will unjustifiably infer that this conflict alone demonstrates that both are guilty.
21 We take this opportunity to further clarify this issue.

22 Id. at 646, 56 P.3d at 378. The Court then explained the standard for severance.

23 The decisive factor in any severance analysis remains prejudice to the defendant.
24 NRS 174.165(1) provides in relevant part: “If it appears that a defendant . . . is
25 prejudiced by a joinder . . . of defendants . . . for trial together, the court may
26 order an election or separate trials of counts, grant a severance of defendants or
27 provide whatever other relief justice requires.” Nevertheless, prejudice to the
28 defendant is not the only relevant factor: a court must consider not only the
possible prejudice to the defendant but also the possible prejudice to the State
resulting from expensive, duplicative trials. Joinder promotes judicial economy
and efficiency as well as consistent verdicts and is preferred as long as it does
not compromise a defendant’s right to a fair trial. Despite the concern for
efficiency and consistency, the district court has a continuing duty at all stages
of the trial to grant a severance if prejudice does appear. Joinder of defendants
is within the discretion of the district court, and its decision will not be reversed
absent an abuse of discretion. To establish that joinder was prejudicial requires
more than simply showing that severance made acquittal more likely; misjoinder
requires reversal only if it has a substantial and injurious effect on the verdict.

Marshall, 118 Nev. at 646-47, 56 P.3d at 378-79 (citations omitted).

1 Significantly, the Nevada Supreme Court specifically held that antagonistic defenses
2 are a factor, but not, in themselves, sufficient grounds upon which to grant severance of
3 defendants. Indeed, in Marshall, even though the defenses offered by Marshall and co-
4 defendant Currington were antagonistic, the Nevada Supreme Court held that the joinder of
5 the defendants at trial was proper. Id. at 648, 56 P.3d at 378. Finding Marshall's assertion
6 that his and Currington's defenses were prejudicial by virtue of their antagonistic nature
7 unpersuasive, the court explained that to prevail on the ground that severance was warranted,
8 Marshall had to show that the "joint trial compromised a specific trial right or prevented the
9 jury from making a reliable judgment about guilt or innocence." Id. at 648, 56 P.3d at 380.
10 The court also noted that the State's case was not dependent on either defendant's statement
11 and did not use joinder to unfairly bolster a marginal case. Id., 56 P.3d at 380. Moreover, the
12 State argued both defendants were guilty and presented evidence to establish their separate
13 guilt. Id., 56 P.3d at 380. The court affirmed Marshall's conviction.

14 The United States Supreme Court conducted a similar analysis in Zafiro v. United
15 States, 506 U.S. 534, 113 S. Ct. 933 (1993). In that case, defendants contended that it was
16 prejudicial whenever two defendants each claim innocence and accuse the other of the crime.
17 506 U.S. at 538, 113 S. Ct. at 938. The United States Supreme Court rejected this contention,
18 holding that "mutually antagonistic defenses are not prejudicial per se." Id., 113 S. Ct. at 938.
19 The Court explained that severance should only be granted if there is a serious risk that a joint
20 trial would compromise a specific trial right of one of the defendants or prevent the jury from
21 making a reliable judgment about guilt or innocence. Id. at 539, 113 S. Ct. at 938. It is not
22 prejudicial for a co-defendant to introduce relevant, competent evidence that would be
23 admissible against defendant at a severed trial. Id. at 540, 113 S. Ct. at 938. The Court also
24 noted that the trial court can cure any potential of prejudice by properly instructing the jury
25 that it must consider the case against each defendant separately. See id. at 540-41, 113 S. Ct.
26 at 939.³

27
28 ³ Defendant Murphy relies heavily upon Chartier v. State, 124 Nev. 760, 765, 191 P.3d 1182, 1185 (2008). However,
Chartier does not create any new law or change any existing rule. In Chartier a specific piece of evidence offered by
Chartier was excluded based upon his joinder with his co-defendant. It was the violation of that specific trial right

1 As it relates to Defendant Mendoza, Defendant Murphy does not explain what trial
2 right would be violated by the inclusion of Defendant Mendoza. Defendant Murphy points to
3 no admissible evidence that Defendant Mendoza could present to establish the “alleged”
4 duress defense. That leaves the singular possibility that Defendant Mendoza would choose to
5 testify. However, if that happens, Defendant Mendoza would become a witness, subject to
6 cross-examination. Thus, any trial right of Defendant Murphy would be protected in that
7 situation.

8 **III. THERE WILL BE NO SUBSTANTIAL SPILLOVER THAT WILL AFFECT** 9 **DEFENDANT MURPHY’S TRIAL RIGHTS**

10 Defendant Murphy asserts in the most broad sense that the “spillover” or “rub-off”
11 effect may prejudice his rights. The gist of the Defendant’s argument is that the evidence
12 against Defendant Mendoza is so much greater that he will be found guilty merely by being
13 tried with him. Such a statement is an overbroad characterization, however, such a claim is
14 not sufficient for severance. Severance is unwarranted “if based on ‘guilt by association’
15 alone.” Lyles v. State, 113 Nev. 679, 689 (1997), *limited on other grounds by* Middleton v.
16 State, 114 Nev. 1089, 1117 n.9 (1998), *cert denied*, 528 U.S. 927 (1999) (*citing* United States
17 v. Boffa, 513 F. Supp. 444, 487 (D. Del. 1980)). A defendant is not entitled to severance
18 merely because one has a better chance at acquittal being tried alone or because certain
19 evidence may be more damaging against the other. *Id.* (*citing* United States v. Baker, 10 F.3d
20 1374, 1388 (9th Cir. 1993)).

21 In order for Defendant to claim that “spillover” or “rub-off” effect to even be an issue,
22 Defendant would have to identify a particular piece of evidence that would be admitted in a
23 joint trial that will not be admitted in a severed trial. *See* Chartier v. State, 124 Nev. 760, 765,
24 191 P.3d 1182, 1185 (2008). The only piece of evidence that could theoretically be admitted
25 at a joint trial is the statement of Defendant Mendoza. However, Defendant Mendoza’s
26 statement does not in any way implicate any of the other co-defendants. In fact, the statement
27

28

which led the court to hold that severance was required. Defendant Mason has identified no evidence he seeks to
admit which would be precluded based upon his joinder with Defendant Burns.

1 exculpates Defendant Mendoza without reference to the co-defendants. This suggests that his
2 defense will not be "duress," but one of non-involvement in the crime. Certainly, Defendant
3 Mendoza's statement does not prejudice Defendant Murphy. Other than that statement, the
4 evidence at severed trials would be exactly the same as a joint trial.⁴ There is no difference
5 in the evidence as it relates to the other co-conspirators. Thus, his request for severance cannot
6 be granted based upon this area of law.⁵

7 **CONCLUSION**

8 Based upon the foregoing, Defendant Murphy's motion to sever should be denied.

9
10 DATED this 7th day of April, 2016.

11 Respectfully submitted,

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

14
15 BY 

MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

16
17
18 //

19 //

20 //

21 //

22 //

23 //

24 //

25
26 ⁴ Due to the exculpatory nature of the statement, it is unlikely that the statement will be admitted at trial as the only
27 party who can introduce that statement is the State. NRS 51.035. The State is not in the routine habit of admitting
exculpatory statements of defendants.

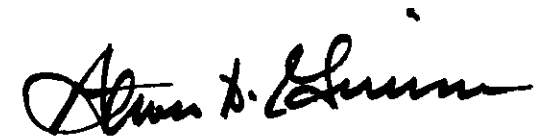
28 ⁵ Normally, this claim can be raised when the co-defendant has made a facially inculpatory statement implicating the
Defendant seeking severance. In the instant case, no defendant has made such a statement, so it cannot be a basis for
severance.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

CASEY LANDIS, ESQ.
E-mail: clandis@lvjusticeadvocates.com


Secretary for the District Attorney's Office

MD/tgd/MVU



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

DAVID MURPHY, et al.

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, APRIL 18, 2016

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

DEFENDANT'S MOTION TO SEVER

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,
Chief Deputy District Attorney

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.,

For the Defendant, Larsen:

GREGORY E. COYER, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

For the Defendant, Laguna:

MONIQUE A. McNEILL, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, APRIL 18, 2016**

2 [Proceeding commenced at 9:26 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus David
5 Murphy.

6 MR. DiGIACOMO: Morning, Your Honor. Marc DiGiacomo for the State.

7 THE COURT: Good morning.

8 MR. LANDIS: Casey Landis for Mr. Murphy.

9 MS. McNEILL: And, Your Honor, Monique McNeill on behalf of Mr.
10 Laguna the Co-defendant. I did file a joinder on Friday, but it looked like he
11 didn't make onto the calendar.

12 THE COURT: All right. Well it wasn't timely filed. Moreover, you can't,
13 you know, file a motion just well -- just a notice of joinder and not address the
14 facts and how your client should be severed. So -- so that's denied because
15 there's nothing there for me to look at. I mean, it's got to be specific to the
16 Defendant. So, Mr. Landis, you want to go ahead?

17 MR. LANDIS: To maybe simplify that issue. I am ready to argue if the
18 Court would like me to. After I filed this motion to sever, Mr. Murphy filed a
19 motion to dismiss me. And based on that it seems to me maybe the Court
20 should rule on that first, but of course it's your call and I'm happy to argue it.

21 THE COURT: All right. I haven't -- I'm not aware of that. I haven't seen
22 that. When's that set?

23 MR. LANDIS: It's set in 5/4 I believe.

24 THE COURT: May 7th -- 2nd. May 2nd. So give me the gist of it. What --
25 what's the reason you want to dismiss your counsel?

1 DEFENDANT, MURPHY: Excuse me, Your Honor.

2 COURT RECORDER: Can you scoot over to that microphone please?

3 DEFENDANT, MURPHY: Yeah. My main issue is that, you know, he
4 hasn't followed through with anything. I've asked him to file this motion
5 almost a year ago. And every time, oh, give me 'til next month, give me 'til
6 next month, you know. Then finally when I come to the point where I'm ready
7 to dismiss something, he wants to file it.

8 Also, I asked him to hire a private investigator a year ago. It took
9 him six months to hire private investigator. She didn't do her job. It took him
10 six months to get her off where she didn't do nothing for my case. Then I
11 asked him to hire Richard Frankie which he did and, you know, within a couple
12 of weeks Richard Frankie got everything that for this whole year he couldn't
13 get, you know. Stuff from the grand jury exhibits and stuff I've been asking
14 him for over a year to get, he didn't. Richard Frankie got it in two weeks.

15 My other issue is there's a conflict of interest that Mr. Landis and
16 Mr. Coyer are associated in a firm. So there's a conflict in Mr. Coyer's lawyer
17 for Co-defendant.

18 THE COURT: All right. Did you retain Mr. Landis or was he appointed?

19 DEFENDANT, MURPHY: He was appointed.

20 THE COURT: Are you partners?

21 MR. LANDIS: We once were, but we are no longer. It's been over two
22 years roughly.

23 DEFENDANT, MURPHY: I submitted with my motion copies of
24 letterheads that he give me -- gave me from 2015 with Coyer and Landis as the
25 letterhead.

1 Also, Mr. Frankie, the private investigator that we just hired in
2 January I asked him for Landis' address and so I could write him, and the
3 address he gave to me was 600 Tonopah which on another paper I submitted
4 has Mr. Coyer's law office as 600 Tonopah, same suite, everything. And that's
5 this year too. So I mean, there's obviously a conflict there, you know. For me
6 that's not comfortable enough. You know, I feel like that loyalty is, you know,
7 been breached.

8 THE COURT: All right. Do you want him to go forward and argue this
9 motion this morning or not?

10 DEFENDANT, MURPHY: Not really. I have no trust in him. I would
11 rather have it ruled on, you know, dismiss him.

12 THE COURT: Well, your motion to dismiss counsel isn't on before the
13 Court yet, so when it comes on I'll -- I'll consider it and rule on it. But if you
14 don't want to go forward and Mr. Landis -- and have him argue this motion this
15 morning, we'll continue this motion to the same day.

16 DEFENDANT, MURPHY: That's fine.

17 THE COURT: And we've got -- let's see here -- when's our trial date?

18 MR. DiGIACOMO: Not 'til September, so --

19 THE COURT: September.

20 MR. DiGIACOMO: -- we can --

21 THE COURT: We got --

22 MR. DiGIACOMO: -- we can --

23 THE COURT: -- plenty of time.

24 MR. DiGIACOMO: -- set them both on -- on May 2nd. And then if any of
25 the Co-defendants want to file a substantive motion as it relates to the

1 severance because as of my response was its sort of detailed as to the four
2 Defendants --

3 THE COURT: Correct.

4 MR. DiGIACOMO: -- which way you want to rule.

5 THE COURT: Correct. So, obviously if there -- if you do, Ms. McNeill,
6 want to file a motion, try and get it on the 2nd. So we'll continue this until the
7 2nd and we'll hear any additional motions. Trying -- everybody get that set for
8 the 2nd so we don't have to keep coming back for the same case.

9 THE CLERK: May 2nd at 9.

10 MR. DiGIACOMO: Thank you, Your Honor.

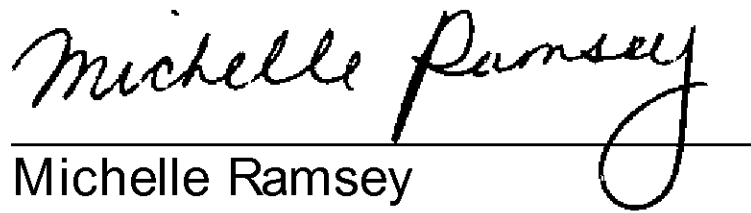
11 MR. LANDIS: Thank you, Your Honor.

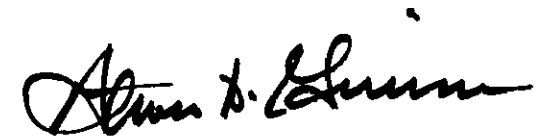
12 THE COURT: Thank you.

13 [Proceeding concluded at 9:31 a.m.]

14
15
16
17
18 ATTEST: I hereby certify that I have truly and correctly transcribed the
audio/video proceedings in the above-entitled case to the best of my ability.

19 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
20 acknowledge that this is a rough draft transcript, expeditiously prepared, not
21 proofread, corrected or certified to be an accurate transcript.

22
23 
24 Michelle Ramsey
25 Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID MURPHY,

Defendant.

CASE NO. C-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MAY 2, 2016

RECORDER'S TRANSCRIPT OF HEARING RE

***DEFENDANT'S MOTION TO DISMISS COUNSEL AND APPOINTMENT OF
ALTERNATE COUNSEL / DEFENDANT'S MOTION TO SEVER***

APPEARANCES:

For the Plaintiff:

MARC DIGIACOMO, ESQ.
AGNES LEXIS, ESQ.
Deputy District Attorneys

For David Murphy:

CASEY LANDIS, ESQ.

For Joseph Laguna:

MONIQUE MCNEILL, ESQ.

[Additional Appearances on Following Page]

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 ADDITIONAL PARTIES:

2 JORGE MENDOZA

WILLIAM WOLFBRANDT, ESQ.

3 SUMMER LARSEN

GREGORY COYER, ESQ.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MONDAY, MAY 2, 2015 AT 09:56:09 A.M.

2
3 THE COURT: All right. Page 6, case number C303991, State of Nevada
4 versus David Murphy and we've got Laguna – do we – is everybody here or –

5 MR. DIGIACOMO: Judge, only Murphy is one but there was a joinder filed by
6 Laguna and I don't know why Laguna is not on calendar.

7 THE COURT: I don't either. It should be.

8 MR. DIGIACOMO: Yeah. I believe Mr. Laguna needs to be present, but we
9 also have Mr. Murphy's motion to discharge Mr. Landis that you need to address.

10 THE COURT: Right. Okay. If the door is closed then it will quiet it down.
11 Okay. All right. So they didn't transport Laguna, that's –

12 MS. MCNEILL: They did not.

13 THE COURT: -- too bad. All right. So – so, Mr. Landis, did you read – you
14 read the pro per motion?

15 MR. LANDIS: Yes, ma'am.

16 THE COURT: Okay. So, I had a couple of questions. Can you tell me what –
17 something about this – this phone account issue that – I've never heard of that, that
18 you have to have some kind of account set up. I don't know what that is so can –

19 MR. LANDIS: Generally to – what a defense attorney does with CCDC is you
20 set up a pre-paid account where it's a private company that runs it but you preload
21 this account so if anybody calls you from CDDC and whatever number you have
22 preloaded the calls obviously are charged on your amount you've deposited and
23 that's that. It's kind of just the inverse of the inmate having an inmate account
24 where they have their phones [indecipherable] when they make a call to whoever.

25 THE COURT: So, do you have such an account? Do you typically –

1 MR. LANDIS: I haven't –

2 THE COURT: -- do that?

3 MR. LANDIS: -- had – I'll be honest with you, he's right that I have not had
4 that phone set up.

5 THE COURT: Okay.

6 MR. LANDIS: And I can tell you why but he's right about that.

7 THE COURT: Okay.

8 MR. LANDIS: And –

9 THE COURT: Go ahead. And why? I mean, if – I don't know that there's
10 anything that requires that, I'm just –

11 MR. LANDIS: The reason why I started doing civil rights cases about two plus
12 years ago – and when you get a jail call you don't know who's calling from the jail,
13 you just know it's the jail. And I was getting honestly twenty calls a week of potential
14 civil rights clients and they're all very talkative to the point where they want to tell
15 you their story, they want you to jump on their case and it was overwhelming, I
16 mean, to the point where I couldn't get anything done.

17 With Mr. Murphy I will point out we have had consistent communication,
18 if he wants to reach me it just wasn't directly through that phone.

19 THE COURT: Let's see. Oh, and the second question I had was there is
20 allegations that he wanted you to hire a phone expert. Was there – I'm not exactly
21 sure what the phone expert was supposed to do but did you discuss that with him?

22 MR. LANDIS: By that –

23 THE COURT: Without telling me what the discussions were of course.

24 MR. LANDIS: Of course not. By that he means a cell phone location expert
25 because that is a good portion of the State's case.

1 THE COURT: Right.

2 MR. LANDIS: And we did talk about hiring one and one has been hired I'll
3 even say that. Once we brought on the new investigator which is something he
4 brings up in this motion that investigator was familiar with one of these individuals
5 and an expert approval has been signed. It's all happened recent and I'll say it's
6 also all happened since he filed that motion, but it is something that has been done.
7 It is something we've talked about, yes.

8 THE COURT: Okay. All right. And I noticed that in your motion, Mr. Murphy –
9 I mean, you attached a bunch of documents so that indicates to me that you're
10 being provided with documents by your counsel. I mean, I don't know how else
11 you'd be getting all these documents. Do we have a microphone?

12 THE DEFENDANT: Yes, Your Honor. Certain things he has provided to me.
13 As far as those documents those – I mean, the one was just a document to the jail
14 because – for my glasses because you ordered the jail to do it and the jail it took
15 them months for them to do it. So, I had him follow up with the jail saying, look,
16 there's the order, you need to get me glasses. So, that's where the one thing came
17 from. But the main thing is that the documents that I want are the ones that are
18 important to my case are the ones I'm not getting.

19 Also, can I – to speak on what you said about the direct contact to my
20 attorney. Yeah, there's contact but I have to go through one of my family members
21 to contact him to relay a third party message that I need to speak to him. I have no
22 direct communication with my lawyer.

23 THE COURT: Well, if you had a – if you paid for the call you could contact
24 your lawyer directly.

25 THE DEFENDANT: Yeah, but the – if I don't have funds then I can't speak to

1 my lawyer and that's part of my constitutional rights to have direct contact with my
2 lawyer.

3 THE COURT: Well, yeah, but you – it doesn't – there's nothing that's in the
4 constitution that says you get to talk to him every day.

5 THE DEFENDANT: Not every – any day.

6 THE COURT: All right. Are you saying –

7 THE DEFENDANT: If I have no family there's no way I could speak with him.
8 If have no family member to relay the message to my lawyer

9 THE COURT: Mr. Landis, have you had contact with your client?

10 MR. LANDIS: Yes. I understand what he's saying. Well, let me just say even
11 if we did have phone contact we wouldn't talk substance on the phone, I never do.
12 The substance of those conversations would be come visit me and I would. And,
13 yes, I visited him – I don't have an exact number but over twenty times.

14 THE COURT: Visited him twenty times?

15 MR. LANDIS: Yes.

16 THE COURT: Is that –

17 THE DEFENDANT: I mean, yeah, yeah, he comes when I tell him my family –
18 but he don't bring what I'm – he's doing – I mean, it's been – he says the cell phone
19 expert that he – I have asked him to hire, sixteen months. And finally the new
20 private investigator got a cell phone expert, yes. But it took him six months to get
21 me a private investigator who didn't do nothing for another six months which he
22 didn't make or do nothing and just keeps [indecipherable] to not come see me, not
23 to do anything to investigate my case. Finally I approached him and said, "look, I
24 can't go on, it's been a year, you know, I got trial coming up in eight months and I
25 have nothing on my case." You know, here's a private investigator from another

1 inmate who has a private investigator come see him that I know is doing their job, I
2 said, "here I want you to fire her and hire him." So, now that this private investigator
3 has stepped up and does things yeah, he can't act like he's the hero or he did that
4 job because that private investigator did something.

5 THE COURT: The issue is are you getting – is your lawyer –

6 THE DEFENDANT: My lawyer is not.

7 THE COURT: -- seeing you? Is he pursuing your case, your defense? And it
8 sounds to me like he is. The fact that you didn't like the first investigator and now
9 you like the second one, okay, well -- but that's water under the bridge. You've got
10 an investigator, Mr. Landis is happy with this investigator, the Court's agreed to pay
11 for it so I don't really – and he's visited you twenty times, I mean, I don't think I've
12 ever – that's --

13 THE DEFENDANT: Well, when –

14 THE COURT: -- a lot.

15 THE DEFENDANT: -- he comes he don't – he just comes to tell me, yeah, I'm
16 doing it but not to here's what I – here's what you asked me for, here's what I'm
17 doing, it's just a quit telling your people to call me pretty much, you know. And may I
18 – the right to effective counsel is the right to effective assistance of counsel, that's
19 no just you got this guy to speak for you, you know, he comes to see you. He is not
20 pursuing my case to defend me properly. You know –

21 THE COURT: Well, I don't see –

22 THE DEFENDANT: -- where are my –

23 THE COURT: -- I don't –

24 THE DEFENDANT: -- rights under –

25 THE COURT: -- I don't –

1 THE DEFENDANT: -- the Sixth Amendment?

2 THE COURT: -- see any evidence of that. And you can't afford your own
3 counsel so counsel was appointed to you -- for you. If you -- if you retain counsel
4 you have the right to say who exactly you get and fire such a person if you want to if
5 it's your dime. If it's --

6 THE DEFENDANT: And that's comes under --

7 THE COURT: -- the tax --

8 THE DEFENDANT: -- the case of --

9 THE COURT: -- payer's dime --

10 THE DEFENDANT: -- rich man, poor man.

11 THE COURT: -- then -- then we, the Court, go ahead and appoint and we
12 appoint counsel who are competent counsel to represent you. And Mr. Landis is
13 competent counsel and I haven't seen anything to show otherwise at this point so --
14 it sounds like he's visiting you many times --

15 THE DEFENDANT: But it's --

16 THE COURT: -- and so I don't find any -- the fact that you can't call him --

17 THE DEFENDANT: -- it's the content or the quality of those visits. I mean, to
18 say someone -- to come --

19 THE COURT: Your motion is denied.

20 THE DEFENDANT: What about the conflict of interest?

21 THE COURT: There's no conflict of interest.

22 THE DEFENDANT: I've showed you documents right there that --

23 THE COURT: You showed me --

24 THE DEFENDANT: -- shows that --

25 THE COURT: -- you showed me --

1 THE DEFENDANT: On his own letterhead saying –

2 THE COURT: Don't – don't interrupt. Don't interrupt. This is not a
3 conversation, this is a document that – the one that you showed me is from 2013
4 and --

5 THE DEFENDANT: Okay.

6 THE COURT: -- they had – the last time we were in court Mr. Landis and Mr.
7 Coyer were present at that point in time as well and they explained that, yes, they
8 used to be associated with each other in a firm and that they are no longer
9 associated with each other in a firm. And so the fact that they may share space in
10 the same office area doesn't mean that there's a conflict.

11 THE DEFENDANT: They're sharing my case with the co-defendant. I mean,
12 if they're sitting right next to each other he's going over my case and he's sitting
13 there, oh, this is what we're planning with my co-defendant and, you know, that's –
14 that's really uncomfortable for me –

15 THE COURT: Is that happening, Mr. Landis?

16 MR. LANDIS: No. Just for the office space issue, we don't share office space.
17 We're working on a civil case together where I'm at his office from time to time. One
18 time the investigator needed me to sign something; he asked me where I was. It
19 happened to be Greg's place. He came there so I could sign the document. But
20 I've never used Greg's business address as a business address of my own and it's
21 not.

22 THE DEFENDANT: That's the business address that he provided to the
23 private investigator.

24 THE COURT: Well –

25 THE DEFENDANT: Also, the other documents you have, ma'am, there's two

1 letterheads that he gave to me from 2015 representing him as Coyer and Landis.

2 THE COURT: Are you talking about copies of faxes?

3 THE DEFENDANT: Yeah. So, he's still representing himself as Coyer and
4 Landis.

5 THE COURT: No, this is just something that you just gotta change the fax
6 machine --

7 MR. LANDIS: Yeah, I agree a hundred percent.

8 THE COURT: -- so it doesn't say that. I mean, it's just when you program a
9 fax machine you can program usually a number and whatnot that prints out on every
10 fax. And this is pretty fancy, I've never seen that where you actually get a logo and
11 whatnot, but you just need to re-program your fax machine --

12 MR. LANDIS: That --

13 THE COURT: -- that's all that is.

14 MR. LANDIS: And that's been done long ago.

15 THE COURT: Okay. All right. So -- so, your motion is denied. And so --

16 THE DEFENDANT: I don't want to go -- I don't want to have him file no
17 motions for me, nothing, I want to file pro per now.

18 THE COURT: You want to represent yourself?

19 THE DEFENDANT: Yeah.

20 THE COURT: All right. Well --

21 THE DEFENDANT: I'd feel more comfortable representing myself than
22 anything he's done for me which is nothing.

23 THE COURT: That would be a really big mistake, but if you want to do that
24 we'll bring you back and have a full Faretta canvass on that.

25 THE DEFENDANT: All right.

1 THE COURT: We'll do that Wednesday, I guess.

2 All right. So, that leaves us with the Motions to Sever. We had already
3 -- did -- I think we moved everything today in hopes that --

4 MR. DIGIACOMO: That's correct. May I suggest that we --

5 THE COURT: Yes.

6 MR. DIGIACOMO: -- do the Faretta canvass on Wednesday and then maybe
7 set both motions and have Mr. Laguna transported for next Monday?

8 THE COURT: Next Monday? Sure.

9 MR. DIGIACOMO: Or on Wednesday, either one.

10 MS. MCNEILL: Either one works.

11 THE COURT: We could do the Faretta canvass I suppose first because if he
12 in fact -- and I have no reason to doubt that -- that he's able unless he's insane of
13 course the law requires me to let him represent himself. I just have to advise him --

14 MR. DIGIACOMO: Mr. Murphy is intelligent enough that I believe he will pass
15 the Faretta canvass if he actually wants to do that.

16 THE COURT: Right.

17 MR. DIGIACOMO: I thought in maybe 48 hours maybe Mr. Landis could go
18 speak to him how this is not in his best interest --

19 THE COURT: Right.

20 MR. DIGIACOMO: -- and then if he still wants to do the canvass we could do
21 the canvass on Wednesday and then he can argue his motion to sever or file his
22 own.

23 THE COURT: Correct. That's what I was gonna say is that he may not wish
24 to have this motion if in fact he wants to represent himself. So, let's do the Faretta
25 canvass on Wednesday and then we'll set the motions to sever if Mr. Murphy is

1 representing himself by then and still wants to argue the motion then he could do
2 that and then Mr. Laguna will be here, we'll transport him and we'll have – be able to
3 do that on Monday. So, Faretta canvass Wednesday –

4 THE COURT CLERK: May 4th at 9:00 a.m. and the motions will be heard May
5 9th at 9:00 a.m.

6 MS. MCNEILL: Thank you.

7 MR. DIGIACOMO: And I'm assuming we're gonna trail that Faretta canvass
8 so maybe like 10:00 or 11:00 --

9 THE COURT: Yes. Yeah, don't --

10 MR. DIGIACOMO: -- because it'll take some time.

11 THE COURT: -- don't come before I'd say 10:00.

12 MR. DIGIACOMO: Okay.

13 THE COURT: Don't even bother. We'll trail it to the end.

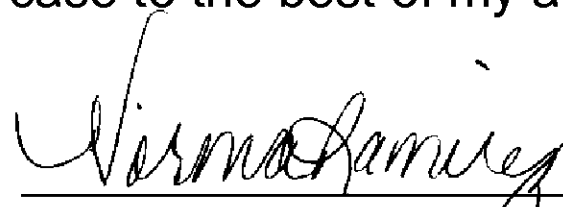
14 MR. DIGIACOMO: Thank you, Judge.

15 THE COURT: You're welcome.

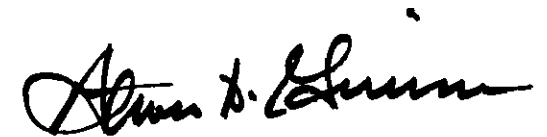
16 [Proceedings concluded at 10:09:43 a.m.]

17 * * * * *

18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case to the best of my ability.

23 

24 NORMA RAMIREZ
25 Court Recorder
District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID MURPHY,

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

WEDNESDAY, MAY 4, 2016

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

FARETTA CANVASS

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; WEDNESDAY, MAY 4, 2016**

2 [Proceeding commenced at 12:12 p.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus David
5 Murphy. We're going to do Faretta Canvass.

6 All right. And Mr. Murphy, the record will reflect he's present in
7 custody. And we put this on for Faretta Canvass because you indicated to me
8 last time we were in Court that you wanted to represent yourself rather than
9 have your current appointed counsel, Mr. Landis, remain as your counsel 'cause
10 I denied your motion to remove him as counsel. You still wish to represent
11 yourself?

12 DEFENDANT: No. I spoke with Mr. Landis yesterday. He came and seen
13 me. And the information he gave me just, you know, that I won't have the
14 proper ability to law library or none of that, you know, to represent myself. So,
15 I guess the wisest choice is to, you know, stay with counsel, right?

16 THE COURT: Yes. I absolutely agree. I was -- I would do everything in
17 power to discourage you from representing yourself because of all --

18 DEFENDANT: I do, but I mean --

19 THE COURT: -- the reasons --

20 DEFENDANT: -- you know, I'm in max. So I mean I only get one hour a
21 day out of cell. I really have no access to the law library.

22 THE COURT: Okay.

23 DEFENDANT: I guess it's not --

24 THE COURT: Well, Mr. Landis has appeared before me in many occasions
25 and I always found him to be very diligent, thoughtful lawyer. So --

1 DEFENDANT: I mean like when I spoke with him, you know, I
2 understand, you know, he's not incompetent. You know what I'm saying? I
3 feel he is a good lawyer. I just felt like his -- his heart wasn't in it, you know.
4 And we spoke --

5 THE COURT: He has -- he has a temperate personality, you know. So --

6 DEFENDANT: I know.

7 THE COURT: -- you want that in a lawyer. You don't want somebody
8 that's jumping up and down and getting overly emotional because you want
9 somebody to be able to -- to advise you with a clear head and tell you maybe
10 things you don't want to hear, things that you want to hear, but also the things
11 you don't want to hear. You've got -- you've got to have a lawyer you can
12 trust to give you advise and tell you the truth. And I think Mr. Landis will do
13 that.

14 DEFENDANT: So from -- for now -- right now I'd rather keep my counsel
15 on and go forward from here.

16 THE COURT: Very well.

17 MR. LANDIS: When we proceed to trial, I assure everybody -- I'll get
18 overly emotional sooner or later.

19 THE COURT: I'm sure. All right. I look forward to that. Okay. Then
20 there is nothing before the Court then, at this point in time what do we have --
21 do we have any dates pending for any -- let's see --

22 MS. LEXIS: The motion to sever.

23 THE COURT: -- we still got the motion to sever on the 9th then.

24 MS. LEXIS: Yes.

25 THE COURT: All right. We'll proceed on the 9th. I'll see you then.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEFENDANT: What’s the 9th, Monday?

THE COURT: The 9th is indeed Monday.

DEFENDANT: Monday, yes. Thank you.


MS. LEXIS: Thank you.

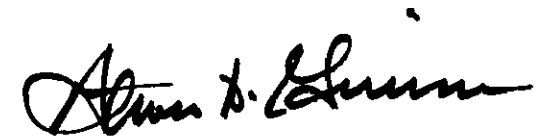
MR. LANDIS: Thank you, Judge.

[Proceeding concluded at 12:16 a.m.]

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

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.


Michelle Ramsey
Transcriber



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSEPH LAGUNA,

Defendant.

CASE NO. C-15-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, MAY 9, 2016

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

STATUS CHECK: JOINDER TO MOTION TO SEVER

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,
Chief Deputy District Attorney

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.,

For the Defendant, Larsen:

GREGORY E. COYER, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

For the Defendant, Laguna:

MONIQUE A. McNEILL, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, MAY 9, 2016**

2 [Proceeding commenced at 9:46 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus Jorge
5 Mendoza, Summer Larsen, David Murphy and Joseph Laguna. Good morning.
6 So what's happening on this? I mean, I never got a opposition by the State to
7 Laguna's motion to sever.

8 MR. DiGIACOMO: It was just a joinder in which he based -- she adopted
9 the --

10 THE COURT: There was a -- she filed a second.

11 MR. DiGIACOMO: The second one she filed was still a joinder.

12 THE COURT: Yeah, but -- and if it says joinder and --

13 MR. DiGIACOMO: Oh. I only --

14 THE COURT: -- motion to sever. It says she has her own motion to
15 sever. You didn't read it.

16 MR. DiGIACOMO: I didn't read it 'cause I -- in discussions with Ms.
17 McNeill I'm aware that essentially it's the same argument as it relates to Mr.
18 Mendoza's defense which my response being there's absolutely no evidence of
19 that defense in the record. And even if it was the defense, it wouldn't make a
20 difference as it relates to Mr. Laguna or Mr. Murphy. And I responded that way
21 in Mr. Murphy's as I responded as to both Defendants and Mr. Murphy's
22 motion.

23 THE COURT: Okay. All right. Do you want to -- Mr. Landis, did you
24 want to anything on as far as your motion?

25 MR. LANDIS: If I could briefly. The State relies heavily on Marshal and --

1 THE COURT: I'm sorry. The State --

2 MR. LANDIS: The State relies heavily on Marshal, the Marshal case
3 which I don't blame them has very good language for the State on issues of
4 severance dealing with mutually exclusive defenses.

5 That said, I also think some of the language in Marshal if it's
6 extracted is dangerous. And I think it's dangerous if you look at it to stand for
7 the proposition that mutually exclusive defense -- defenses in and of themselves
8 cannot be a ground for severance absent some other showing of a
9 constitutional violation. I think that's a very dangerous way to read Marshal
10 and I don't think it stands for that.

11 Roland which is the case that predates Marshal states that mutually
12 exclusive defenses that are antagonistic at their core such that two Defendants
13 can't walk into a jury trial and both walk out acquitted, that by itself is a ground
14 for severance. And I think that's a more correct way to look at the law. The
15 idea that defenses can be such that two Defendants can walk into a trial and
16 one of them is going to get convicted just a matter of fact based on their
17 defenses. I do think is fundamentally unfair.

18 The language in Marshal seems to indicate that that might be okay
19 in certain search -- situations. And I think the proper way to read Marshal
20 based on that is Marshal applies a harmless error analysis to the facts of that
21 case and I really think that's what the Court's trying to do even though it
22 doesn't directly say it.

23 In Marshal, the evidence was overwhelming. Both Defendants who
24 were seen at the scene of the crime by independent witnesses. Both of them
25 were found together the next day with a truck that had the victim's blood in it.

1 One of them admitted to splitting the robbery proceeds with the other. At trial,
2 jailhouse informants testified that both of them independently confessed to the
3 crimes.

4 That's a case where I think the evidence was such that they said
5 hey, just 'cause you guys are getting a trial and pointing the finger at each
6 other doesn't give grounds for severance because it's harmless error because
7 the evidence is overwhelming. And I think that's very different than this case
8 especially with my client. There's not overwhelming evidence that puts him at
9 the scene of this crime.

10 What we're dealing with are cellphone records and that's it. And
11 for another Defendant to come into trial and say he was there and he made me
12 do it which is what I'd sincerely believe Mendoza is going to do.

13 THE COURT: Are you not discounting Mr. Figueroa's testimony when
14 you say that? I mean, I realize that, you know, he's an accomplice, so you've
15 got to connect him. But the cellphone records do that. We've already talked
16 about that in prior motion practice. But --

17 MR. LANDIS: Obviously, Figueroa's testimony will be admissible
18 evidence. Obviously, it's also one that has credibility issues built into it just
19 because he's pacing his testimony on a deal.

20 I would say to you that the fact that his credibility determination is
21 going to be so important in this case that's all the more reason to sever because
22 my prejudice would be greater to also have a Defendant sitting at the defense
23 table pointing the finger at my guy. That would be my argument.

24 THE COURT: We don't know that that's going to happen. You're --
25 there's a speculation that he's going to argue that he was forced.

1 MR. LANDIS: Coming from me it will always be somewhat speculation.
2 It will. There's nothing I can do to prove what their defense is going to be. But
3 the reason why I think the motion is appropriate and nevertheless is looking at
4 the evidence I don't they have many avenues to pursue in terms of credible
5 defenses. And, of course, talking about Mendoza.

6 The story he told to the police which was I was just there on that
7 street and I happened to get carjacked around the time of the home invasion. I
8 don't think that's a defense they're going to present at trial. I don't think they
9 have many options. And I think it's fair to say there's at least a high likelihood
10 they're going to present a duress defense.

11 The difficulty with it is this though; I can't compel Mendoza to tell
12 me or tell you or tell anybody what their defense is. The Court in theory could
13 say hey, I need to know more about what their defenses are, I'm going to
14 conduct the ex parte or in camera review of what their defenses are. But if you
15 were to do that, what you ruled after having that conversation would reveal to
16 everybody what his defense was. So I think that's what puts it in a difficult
17 spot because I don't think the Court is in a position to hear his defense and rule
18 on this motion without revealing it.

19 And I think just the substantial likelihood that he is going to present
20 that defense compels this Court to sever because I don't know what other
21 solution there is to learn his defense, yet not prejudice his ability to not tell
22 everybody what his defense is going to be at this time.

23 And the last thing I'll say is the State -- the State does spend some
24 time saying this is Mendoza's argument and not mine or he should be severed,
25 and I would just say I don't have standing to a severance on behalf of Mendoza

1 or on behalf of any other Defendant. And with that, I'll submit it.

2 THE COURT: Mr. DiGiacomo, what about this -- you know, what
3 happens if, in fact, Mendoza goes up at trial and brings that -- asserts that kind
4 of defense?

5 MR. DiGIACOMO: Let's start with -- there's something that Mr. Landis
6 said that I think is probably some of the confusion in his argument. A mutually
7 exclusive defense is not one where two Defendants go to trial and both can't
8 get -- receive a not guilty. It's when two Defendants go to trial and neither can
9 receive a not guilty.

10 And in this case, if Mr. Mendoza says I was under duress, what
11 weight could he establish that? There is a single way for him to establish it
12 'cause I will represent to the Court his statement is not coming into evidence
13 which means he will have to take the stand, he will be cross examined and thus
14 the evidence would be admissible. It's simply just evidence at that point. You
15 don't have to worry about severance 'cause there's no trial right associated
16 with Mr. Murphy that's going to be a problem here.

17 So even if the defense that is presented is one of duress which I'm
18 not sure is even a lawful defense in this case, that hasn't even been litigated
19 yet before the Court whether or not in the State of Nevada duress can be a
20 defense to a felony murder. It theoretically could be if you weren't the shooter.
21 But we could all agree from the evidence in this case Mr. Mendoza is the
22 shooter and thus he cannot assert duress for shooting someone with a high
23 powered rifle.

24 So it's not a defense available to Mr. Mendoza even if he were to
25 try it. My guess is that Mr. Mendoza is going to attempt to present the same

1 defense that he presented in his statement and the only way he's going to be
2 able to do that is to get on the stand and say some guys that I don't know
3 carjacked me and shot me. Well, the problem for that, and it wouldn't hurt Mr.
4 Landis if he did that, is that Mr. Murphy happens to be his cousin. So he would
5 know him if he carjacked him.

6 And so there is no issue for severance in this case 'cause all the
7 evidence if it's presented will be presented to a method that's admissible
8 against all the Defendants and they are not mutually exclusive defenses
9 because one of them could get a not guilty either Mr. Mendoza or Mr. Murphy.
10 And I will submit it to the Court.

11 THE COURT: All right. And I think as I mentioned obviously Mr.
12 Figueroa's testimony is important in this case. I just -- I think authentication of
13 those phone records at trial is going to be a very important issue. I assume the
14 State's going to have a proper authentication at trial. Okay.

15 All right. So, I have to agree with the State. The reasons are
16 articulated. I don't think there's grounds to sever. And frankly, you know, I
17 want to hear obviously from you as to why it, you know, why you think Mr.
18 Laguna has any other better reason for severance from Mr. Murphy.

19 MS. McNEILL: Your Honor, it's very similar to Mr. Murphy. I mean, the
20 cases are very similar. It's cellphone records. Although I would disagree with
21 Mr. Landis in his assertion that he thinks Mr. Figueroa's testimony will be
22 admissible. I believe that Mr. Laguna and I strongly disagree with what the
23 State contends the cellphone records will show. We have a cellphone expert
24 that I believe will shed different light on what those cellphone records show.
25 And Mr. Laguna's defense that he was not involved in any way in this and that

1 those cellphone records do not, in fact, put him at the scene of the crime, then
2 makes it very difficult to go with that case when one of the Defendants may
3 say oh no, not only was he involved, but he coerced me and I was acting under
4 duress.

5 But the argument is very similar to Mr. Landis. His argument that,
6 you know, obviously I think those are mutually exclusive defenses.

7 THE COURT: Did you want to be heard on Mr. Laguna's?

8 MR. DIGIACOMO: No, because the issue of the authentic --
9 authenticification [sic] of the cellphone records is going to ultimately be an issue
10 for the jury. Certainly, we're going to present as we did at the grand jury
11 sufficient evidence for it to be admissible, they can call their own expert in
12 defense and there can be an argument and the jury will be instructed on
13 accomplice corroboration, but that won't affect the decision on severance.

14 THE COURT: Well, there was some issue I recall with the authentication
15 of the phone records that the proper affidavits weren't present for all of the
16 cellphone companies. You'll need to have that --

17 MR. DIGIACOMO: That was the issue on writ, but certainly we'll be
18 calling the COR's. In fact, we all noticed -- I think we may have already noticed
19 experts from the cellphone companies.

20 THE COURT: Right. So authentication isn't really what she's arguing.
21 Now she's saying that she's got an expert that's going to come in and say.
22 And so I assume you've -- you'll hand-filed a notice of expert to get --

23 MS. McNEILL: I haven't yet, but I will.

24 THE COURT: Yeah. Because you -- and stating what that expert will
25 testify to 'cause I -- I mean, I criticize both sides in this as that I always see

1 notices that go out that are not proper. They say oh, this is the area of the
2 testimony, but they don't say the brief synopsis of what the testimony will be
3 and that's a key component, so both sides always need to do that with experts.

4 But what she seems to be saying is that they're going to have an
5 expert that will say oh no, the cellphone records don't show that or at least
6 maybe poke holes in --

7 MR. DiGIACOMO: It's not unusual in cellphone cases for them --

8 THE COURT: Right.

9 MR. DiGIACOMO: -- to have an expert to say the same thing.

10 THE COURT: Okay. So, yeah, I don't think that there is grounds to
11 sever. So I'm going to deny the motion for Mr. Laguna as well. And State will
12 prepare the order with findings.

13 MR. DiGIACOMO: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. DiGIACOMO: Thank you, Judge.

16 MS. McNEILL: Thank you, Your Honor.

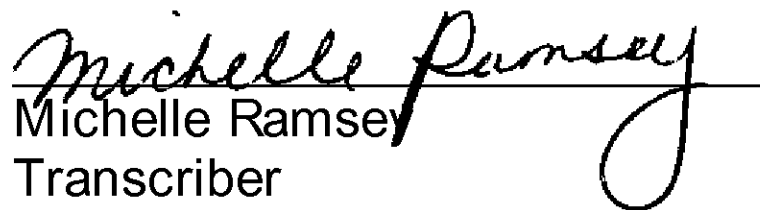
17 MR. LANDIS: Thank you.

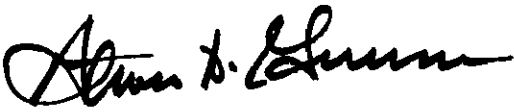
18 THE COURT: Thank you.

19 [Proceeding concluded at 9:59 a.m.]

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

22 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
23 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected or certified to be an accurate transcript.

24 
Michelle Ramsey
25 Transcriber


CLERK OF THE COURT

MOT
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
LANDIS LAW GROUP
200 Hoover Ave.
Las Vegas, Nevada 89101
Telephone: 702.487.3650
Facsimile: 702.664.2632
E-mail: clandis@lvjusticeadvocates.com
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID MURPHY,

Defendant.

CASE NO.: C-15-303991-4

DEPT. NO.: V

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW, CASEY A. LANDIS, ESQ., appointed attorney of record for Defendant, DAVID MURPHY, and moves this Honorable Court for an Order granting Counsel's Motion to Withdraw as Attorney of Record.

This Motion is based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, the attached Memorandum of Points and Authorities, and any information provided to the Court at the time set for hearing this motion.

...

...

...

...

...

...

...

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Relevant Facts**

3 Casey A. Landis, Esq., hereby submits this request to withdraw as attorney of record for
4 David Murphy because Landis is moving out of state and ceasing the practice of law in Las
5 Vegas, Nevada. See Declaration of Casey A. Landis, Esq. (attached hereto).

6 Through the Clark County Office of Appointed Counsel, Landis was appointed to
7 represent Murphy on December 19, 2014, when the instant case was before Department 12 of the
8 Las Vegas Justice Court. Thereafter, an Indictment was filed based on the same charges and the
9 instant case was assigned to this Court for purposes of jury trial. At present, trial is scheduled for
10 the week of September 12, 2016.

11 Counsel for Murphy contacted Drew Christensen, Appointed Counsel Director for the
12 Office of Appointed Counsel, and informed him of the instant motion. Mr. Christensen approved
13 of this motion and stated that he will endeavor to have new appointed counsel present on the date
14 set for the hearing of this motion.

15 **2. Legal Argument**

16 Nevada Rules of Professional Conduct 1.16(a), as adopted by the Nevada Supreme Court,
17 states in pertinent part:

18 [A] lawyer shall not represent a client or, where representation has commenced,
19 shall withdraw from the representation of a client if:

20 (1) The representation will result in violation of the Rules of Professional Conduct
21 or other law;

22 (2) The lawyer's physical or mental condition materially impairs the lawyer's
23 ability to represent the client; or

24 (3) The lawyer is discharged.

25 Thereafter, Nevada Rules of Professional Conduct 1.16(b), provides that a lawyer may
26 withdraw from representing a client if "good cause for withdraw exists." Counsel for Murphy
27 submits that moving and relocating one's law practice constitutes good cause to permit counsel's
28 withdrawal in this case.

...

...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The last known address and contact information for David Murphy is:

DAVID MURPHY
ID# 0859628
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101
Tel: 702.671.3900

Based on the foregoing, counsel respectfully requests to withdraw as attorney of record
for Defendant.

DATED this 11th day of July, 2016.

LANDIS LAW GROUP

/s/ Casey A. Landis
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
200 Hoover Ave.
Las Vegas, Nevada 89101

DECLARATION

CASEY A. LANDIS makes the following declaration:

1. That the declarant is an attorney duly licensed to practice law in the State of Nevada; the attorney of record representing David Murphy in the instant matter, and familiar with the facts and circumstances of this case.

2. That the undersigned makes this declaration in support of the instant motion to withdraw as counsel for the defendant in this case.

3. That the declarant is moving out of state and dissolving his Las Vegas law practice effective August 1, 2016.

4. That the undersigned believes these circumstances constitute good cause for withdrawal pursuant to Nevada RPC 1.16.

5. Defendant's physical address, last known to declarant, is:

DAVID MURPHY
ID# 0859628
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101
Tel: 702.671.3900

6. That a copy of this motion was sent to the Defendant at the above address upon its filing.

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

EXECUTED this 11th day of July, 2016.

/s/ Casey A. Landis
CASEY A. LANDIS, ESQ.

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the above captioned MOTION TO
WITHDRAW AS ATTORNEY OF RECORD will be heard on the 25 day of July, 2016,
at 9:00 a.m. in Department V of the Eight Judicial District Court, County of Clark, State of
Nevada.

DATED this 11th day of July, 2016.

LANDIS LAW GROUP

/s/ Casey A. Landis
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
200 Hoover Ave.
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

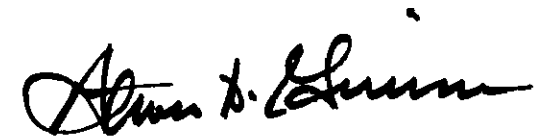
I hereby certify that service of the above and forgoing was made this 11th
day of July, 2016, by: (1) email to:

CLARK COUNTY DISTRICT ATTORNEY
Email: PDmotions@clarkcountyda.com

(2) mail to:

DAVID MURPHY
ID# 0859628
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

By /s/ Casey A. Landis



CLERK OF THE COURT

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 DAVID MURPHY,

11 Defendant.
12

)
) CASE NO. C-15-303991-4
)
)
)
)
)
)

DEPT. V

13 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

14 MONDAY, JULY 25, 2016

15 ***ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:***
16 ***MOTION TO WITHDRAW AS ATTORNEY OF RECORD***
17

18 APPEARANCES:

19 For the State:

AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorney

21 For the Defendant:

CASEY A. LANDIS, ESQ.,
ALISSA C. ENGLER, ESQ.,
22
23
24

25 RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, JULY 25, 2016**

2 [Proceeding commenced at 9:56 a.m.]

3
4 THE COURT: All right. Case number C303991, State of Nevada versus
5 David Murphy. Record will reflect the presence of the Defendant and this is on
6 for Mr. Landis' motion to withdraw as attorney of record. So, if -- if that is
7 allowed, then are you the person that was --

8 MS. ENGLER: Yes. Good morning, Your Honor, Elissa Engler, bar number
9 11940. I'm appearing today for Bret Whipple who's bar number is 6168. We
10 were contacted by Drew Christensen to accept the appointment if the Court
11 allows the withdraw of [indiscernible] --

12 THE COURT: And so Mr. Whipple will be prepared to go to trial on the
13 firm trial setting of September 12th; is that right?

14 MS. ENGLER: Well, we don't have any of the information, but we will
15 certainly do our best to be ready to go on the 12th.

16 THE COURT: No. Unless I have a commitment that he will be ready
17 absolutely, withdrawal will not be allowed pursuant to the rule. So, I mean I
18 would be very surprised that Mr. Whipple could be ready for trial. He's not
19 generally ready when he's had the case for many months.

20 MS. ENGLER: Well, then I would probably anticipate passing it 'til
21 Wednesday 'cause I don't -- we don't have any of the discovery. We were just
22 contacted on Friday.

23 THE COURT: I just -- yeah -- I mean, Mr. Landis, you just -- just -- I
24 mean, you've had this case two years, right?

25 MR. LANDIS: Yes, ma'am.

1 THE COURT: Okay. And was this decision to leave the jurisdiction like
2 made in the last week or two?

3 MR. LANDIS: It was made about three weeks ago.

4 THE COURT: Well, you may have to come back to try this case because
5 I'm not going to -- this -- these Defendants are in custody and the case is two
6 years old. We set this on a firm trial setting. To try and reset this trial with all
7 these lawyers that are involved was difficult to set it in the first place, so. At
8 this time the motion is denied.

9 If you would like to continue it 'til Wednesday to have Mr. Whipple
10 come in, but I don't see the point if you can't say without a doubt, any doubt,
11 that he can step in.

12 MS. ENGLER: I guess the issue is, Your Honor, without seeing -- I mean,
13 we haven't been provided any discovery. So I don't know if it's something that
14 is feasibly possible to be prepared for. I mean it is a month and a half away, so
15 it's not possible. So that's why I'm passing it 'til Wednesday. I don't -- if
16 counsel needs to leave the jurisdiction for whatever his reasons are and we are
17 able to do it, then it works for all parties.

18 THE COURT: Right. But I won't allow it unless Mr. Whipple says he is
19 going to accept this trial date and there will be no --

20 MS. ENGLER: Certainly.

21 THE COURT: -- last minute attempts at continuance. Otherwise, Mr.
22 Landis has been on this case for two years, so.

23 MS. ENGLER: Okay.

24 THE COURT: All right. So I'll continue it 'til Wednesday.

25 THE CLERK: July 27th at 9.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

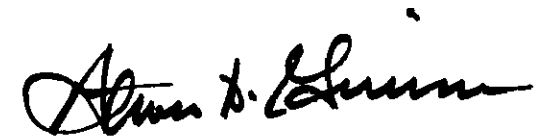
MS. LEXIS: Thank you.

[Proceeding concluded at 9:59 a.m.]

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

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.


Michelle Ramsey
Transcriber



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID MURPHY,

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

WEDNESDAY, JULY 27, 2016

***ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:
MOTION TO WITHDRAW AS ATTORNEY OF RECORD***

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CASEY A. LANDIS, ESQ.,
ALISSA C. ENGLER, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; WEDNESDAY, JULY 27, 2016**

2 [Proceeding commenced at 9:29 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus David
5 Murphy.

6 MS. LEXIS: Thank you very much. Agnes Lexis for the State.

7 MR. LANDIS: Casey Landis for Mr. Murphy.

8 MS. ENGLER: Good morning, Your Honor, Elissa Engler for Mr. Whipple's
9 office. Thank you for passing this from Wednesday. It looks like we won't be
10 able to take the case 'cause this trial will last more than a week. If it had been
11 a week, we would have been able to take it. So I think Mr. Landis is prepared
12 to remain on the case.

13 THE COURT: Okay. Well, we appreciate that very much. Thank you.
14 And so the trial date stands.

15 MS. LEXIS: Thank you.

16 MS. ENGLER: Thank you, Your Honor.

17 MR. LANDIS: Thank you, Judge.

18 DEFENDANT: Excuse me, Your Honor.

19 THE COURT: Yes, sir.

20 DEFENDANT: May I speak? Can I file a motion in open court?

21 THE COURT: No.

22 DEFENDANT: No.

23 THE COURT: You can't file a motion. You're represented by counsel.

24 DEFENDANT: No. It's a motion to dismiss my attorney.

25 THE COURT: Well then you need to file it in the ordinary course and have

1 it set for hearing, but we don't -- I'm not going to file it in open court. No.

2 DEFENDANT: Yes, Your Honor. I haven't seen my attorney, you know. I
3 filed that motion to dismiss back in May.

4 THE COURT: Motion to dismiss your attorney?

5 DEFENDANT: Yeah.

6 THE COURT: Okay. And it was --

7 DEFENDANT: Remember, you denied that.

8 THE COURT: -- denied.

9 DEFENDANT: I seen him one time after that. He said he was going out
10 of state for two weeks. He said he'd be back in the beginning of June so that
11 we could prepare for trial 'cause nothing has been done. I haven't seen him
12 since. I haven't heard from him. I've been trying to leave messages. He won't
13 contact. He won't see me. He won't respond to messages.

14 THE COURT: Well, I'm sure he's going to -- your trial is not until
15 September and so he's going to be preparing --

16 DEFENDANT: We have all kinds of motions, there's discovery issues that
17 haven't been addressed.

18 THE COURT: Sir -- Mr. Murphy, okay. Your lawyer is going to meet with
19 you and prepare for trial. If you want to file a motion to dismiss him, you need
20 to file it, but I'm not going to accept it in open court today.

21 DEFENDANT: Okay.

22 THE COURT: All right.

23 MS. ENGLER: Thank you, Your Honor.

24 MS. LEXIS: Thank you.

25 [Proceeding concluded at 9:31 a.m.]

1 ATTEST: I 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.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
4 acknowledge that this is a rough draft transcript, expeditiously prepared, not
5 proofread, corrected or certified to be an accurate transcript.

6 
7 _____
8 Michelle Ramsey
9 Transcriber
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Ann B. Quinn

CLERK OF THE COURT

PP

DA

MC

AOR:

Casey

Landis

DISTRICT COURT
CLARK COUNTY NEVADA

STATE OF NEVADA

Case No.: C-15-303991-4

Plaintiff,

Dept. No.: V

V.

Docket No.:

DAVID MURPHY,

Date: 08/24/16

Defendant,

Time: 9:00 AM

MOTION TO DISMISS

COUNSEL AND

APPOINTMENT OF ALTERNATE COUNSEL

COMES NOW, the Defendant, DAVID MURPHY,
moves this honorable court to DISMISS COUNSEL,
CASEY A. LANDIS, and appoint other counsel to
represent this defendant.

This motion is based upon all papers,
pleadings and documents on file. Factual Statements
set forth in the POINTS AND AUTHORITIES
contained therein.

Dated this first day of August, 2016
DAVID MURPHY
DEFENDANT.

RECEIVED

AUG 03 2016

CLERK OF THE COURT

RECEIVED

AUG 03 2016

CLERK OF THE COURT

POINTS AND AUTHORITIES

It is respectfully requested of this court to grant this motion to dismiss Counsel for the reasons listed below:

I. PROCEDURAL BACKGROUND

Since CASEY A. LANDIS was appointed Counsel on December 19, 2014, defendant, DAVID MURPHY, has been prejudiced and suffered manifest injustice based on Counsel's refusal or failure to:

1) Keep an open line of communication with Client; as per ADKT 411, Standard 4-3: Must maintain a system for receiving collect calls from incarcerated clients.

2) Keep his word; follow through with deadlines he sets, or visit with defendant at CLARK COUNTY DETENTION CENTER on dates he says he will.

3) Adequately prepare in general.

4) Investigate discovery information, obtain all discovery materials, or file motions.

5) Thoroughly take investigative measures in this case; Subsequently not using all available resources.

6) Fulfill his role of defense counsel; has

continually neglected defendant's rights to effective assistance of counsel.

...

...

...

...

IT. ARGUMENT

DEFENDANT, DAVID MURPHY, asserts he is being denied his right to effective representation due to wholly inadequate actions of his court appointed counsel. Further, Counsel's innate action comport to nothing more than a violation of defendant's due process rights.

Counsel has no phone account set up with the CLARK COUNTY DETENTION CENTER, so defendant has no direct line of contact with counsel. Because of this, defendant must rely on Family to send text messages to counsel. In most instances counsel does not respond to messages sent to him. On the rare instance that counsel does respond, Counsel will give a day that he will come visit with defendant at the CLARK COUNTY DETENTION CENTER, but rarely does counsel keep his word and follow through.

When Counsel does visit with defendant, counsel only has excuses as to why he has yet to file motions, obtain documents, or done any of the things defendant has asked him to do to help with defense or prepare for trial.

Counsel has repeatedly told defendant: "Don't worry", "Be patient", "We have plenty of time to be ready for trial".

The last time the defendant spoke with counsel was in May. At this time defendant expressed concerns that in the 18 months that counsel had represented defendant, very little had been done.

1 Defendant explained to counsel his fears that
2 they would not be prepared for trial because
3 counsel had yet to do many of the things he
4 had been promising defendant for 18 months. Among
5 the long list of these things were, discovery
6 issues that had yet to be filed or addressed.
7 Defendant had yet to meet with expert witness,
8 nor had counsel obtained documents necessary for
9 expert witness to examine and give his opinion. Motions
10 had not been filed, nor had witnesses been located
11 or interviewed. The list of things that counsel
12 has failed to assist in addressing and or accomplish
13 is significant. Defendant was very adamant
14 that time was running out and was very concerned
15 that counsel would not be fully prepared for trial.

16 Once again Counsel told defendant not to
17 worry, that there was plenty of time to accomplish
18 all of these things and be prepared for trial.

19 Counsel informed defendant that counsel had
20 to go out of town for two weeks, but when he
21 returns, in the beginning of June, all of counsel's
22 time would be dedicated to this defendant's case.

23 Defendant has not spoken to counsel
24 since that meeting in May. Beginning in mid June
25 and into July, defendant had messages relayed to
26 counsel via text messages. Counsel never responded
27 to any of these messages.

28 On July 15, defendant received a letter along
29 with an attached motion to withdraw as attorney.
30 In the letter counsel stated he was relocating

1 out of state and would no longer be representing
2 defendant.

3 Since receiving this letter, defendant has had
4 no other contact with counsel. Nor has counsel responded
5 to multiple messages to contact defendant, after this
6 letter and copy of Motion was received.

7 Defendant has an unqualified right to legal
8 assistance that expresses loyalty to said defendant.
9 "The right to counsel is the right (also) to effective
10 assistance of counsel." Cuyler v. Sullivan 100 S. Ct. 1708
11 (1980); and Frazier v. U.S. 18 F. 3d 778 (9th Cir. 1994).
12 Thus, the adversarial process protected by the Sixth
13 amendment requires that the accused have "counsel
14 acting in the role of an advocate." Anders v. California,
15 386 U.S. 163 (1967).

16 A party whose counsel is unable to provide
17 effective or adequate assistance is no better than one
18 who has no counsel at all; and any appeal(s) would
19 be futile in its gesture. Evitts v. Lucey 105 S. Ct.
20 830 (1985); Douglas v. California, 382 U.S. 133 (1966).

21 Appointed counsel for this defendant has done
22 less than the bare minimum to fairly/properly
23 represent him. Counsel has continually and blatantly
24 neglected this defendant and counsel's obligation in
25 role of an advocate. CASEY A. LANDIS has failed
26 or refused to participate, investigate or use all
27 available resources to assist in defense and prepare
28 for trial, this alone is a viable claim to ineffective
29 counsel. Crandel v. Bunnell No. 92-5530 D.C. No.
30 CV-90-6419-WJR (5); filed May 25, 1994 (9th Cir.)

1 Therefore, defendant contends that although
2 counsel has been appointed in this case, the actions
3 of counsel, or lack thereof, have created unfair
4 prejudice and obstacles which do not comport the
5 fair procedures owed to the defendant.

6 The plurality opinion in Evitts and
7 Douglas, *infra*, made it very clear that:

8 "There is lacking that equality demanded
9 by the fourteenth amendment, where the "rich man"
10 enjoys the benefit of the law being righteously
11 practiced; in that counsel's examination "step-by-step"
12 (into the record of the case), and research of the law,
13 and marshaling of the facts/arguments in his behalf
14 is done as should befit an advocate of defense;
15 while the indigent, so burdened by a preliminary
16 determination that his case is without merit, is
17 forced to shift for himself." 105 S. Ct. At 842;
18 83 S. Ct. At 816-17.

19 Notwithstanding the strong policy
20 favoring autonomy, "ethical, professional and
21 constitutional principals" establish counsel's standards
22 owed to his/her client. See: American Bar Association
23 (ABA), and Professional Responsibility Code (CPR).

24 Defendant is in the process of filing
25 a complaint against counsel, with the STATE BAR
26 OF NEVADA:

27 So, clearly, a conflict of interest now
28 exists between counsel/client, DAVID MURPHY, as
29 all faith and trust has been diminished as a result
30 of counsel's actions, or lack thereof, and a "showing"

1 of conflict of interest requires no showing of
2 prejudice. Cuyler v. Sullivan, 100 S. Ct at 1717.
3 The law addresses itself to actualities.
4 Adjudication is not a mere mechanical process,
5 nor does it compel any either (or determination)
6 Griffin v. Illinois, 76 S. Ct. 585 592-594 (1956).

7 Therefore, fundamental fairness requires
8 the abolition of prejudice which the defendant
9 is presently suffering. This is an actuality
10 that the law must address. Anything short of
11 abdication would further a manifest of injustice.
12 The "EFFECTIVENESS (in assistance) OF COUNSEL"
13 is an individual's most fundamental right, for without
14 it, every other right defendant has to assert becomes affected.

15 Dated this first day of August, 2016

16 **DAVID MURPHY**
17 (defendant)

18
19 **DECLARATION**

20 Dated this first day of August, 2016.

21 I, DAVID MURPHY, do solemnly swear, under
22 penalty of perjury, that the above (aforementioned)
23 text of MOTION TO DISMISS COUNSEL... is
24 accurate, and is correct to the best of my knowledge.

25 (NRS 171.102 and NRS 208.165)

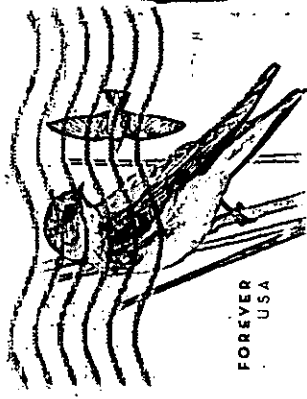
26 Respectfully Submitted

27 *David Murphy*
28 **DAVID MURPHY**
29 (defendant)
30

DAVID MURPHY #859628
CCDC
330 S. CASINO CENTER BLVD
LAS VEGAS, NV
89101

LAS VEGAS NV 8900

01 AUG 2015 PM 2 1



FOREVER
USA

Bank Swallow

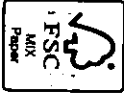
CLERK OF THE COURT
200 LEWIS AVE 3RD FLOOR
LAS VEGAS, NEVADA

9510133300 0075

LEGAL MAIL

© USPS 2012

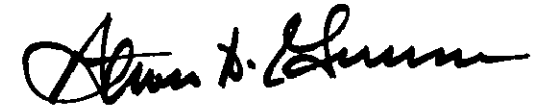
THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT



LEGAL MAIL

SENT FROM CCDC

0207



CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
AGNES M. LEXIS
Chief Deputy District Attorney
Nevada Bar #011064
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JORGE MENDOZA,
#2586625
SUMMER LARSEN, aka, Summer Rice,
#1854665
DAVID MURPHY,
aka, David Mark Murphy, #0859628
JOSEPH LAGUNA, aka, Joey Laguna,
#1203205
Defendants.

CASE NO: C-15-303991-1
C-15-303991-3
C-15-303991-4
C-15-303991-5

DEPT NO: V

SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: JORGE MENDOZA, Defendant; and

TO: WILLIAM WOLFBRANDT, Counsel of Record:

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

- INDICATES AN ADDITIONAL EXPERT

CHARLTON, NOREEN P#13572, Senior Crime Scene Analyst or Designee - Las Vegas Metropolitan Police Department. She is an expert in the area of the identification, documentation, collection and preservation of evidence and will give opinions related thereto. She is expected to testify regarding the identification, documentation, collection and preservation of evidence in this case.

1 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR AT & T;** will testify as
2 experts regarding how cellular phones work, how phones interact with towers, and the
3 interpretation of that information.

4 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR CRICKET**
5 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
6 with towers, and the interpretation of that information.

7 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR METRO PCS;** will
8 testify as experts regarding how cellular phones work, how phones interact with towers, and
9 the interpretation of that information.

10 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR NEUSTAR;** will testify
11 as experts regarding how cellular phones work, how phones interact with towers, and the
12 interpretation of that information.

13 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR T-MOBILE;** will testify
14 as experts regarding how cellular phones work, how phones interact with towers, and the
15 interpretation of that information.

16 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR VERIZON**
17 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
18 with towers, and the interpretation of that information.

19 **DUTRA, DR. TIMOTHY,** A medical doctor employed by the Clark County Coroner
20 Medical Examiner. He is an expert in the area of forensic pathology and will give scientific
21 opinions related thereto. He is expected to testify regarding the cause and manner of death of
22 MONTY GIBSON.

23 **FELABOM, ADAM P#8427,** Senior Crime Scene Analyst or Designee - Las Vegas
24 Metropolitan Police Department. He is an expert in the area of the identification,
25 documentation, collection and preservation of evidence and will give opinions related thereto.
26 He is expected to testify regarding the identification, documentation, collection and
27 preservation of evidence in this case.

28 ///

1 **HOLSTEIN, DANIEL P#3861**, Senior Crime Scene Analyst or Designee - Las Vegas
2 Metropolitan Police Department. He is an expert in the area of the identification,
3 documentation, collection and preservation of evidence and will give opinions related thereto.
4 He is expected to testify regarding the identification, documentation, collection and
5 preservation of evidence in this case.

6 **KRYLO, JAMES, P#5945**, or Designee, Las Vegas Metropolitan Police, Department,
7 will testify as an expert in the area of firearm/toolmark analysis and will give opinions related
8 thereto. He is expected to testify regarding the firearms and bullet trajectory comparison of
9 certain evidence collected from the various crime scenes.

10 • **LESTER, ANYA – LVMPD P#13771** (or designee): FIREARMS/TOOLMARK
11 EXAMINER with the Las Vegas Metropolitan Police Department. She is an expert in the field
12 of firearm and toolmark comparisons and is expected to testify thereto.

13 **MECKLER, KRISTEN P#14402**, Crime Scene Analyst II or Designee - Las Vegas
14 Metropolitan Police Department. She is an expert in the area of the identification,
15 documentation, collection and preservation of evidence and will give opinions related thereto.
16 She is expected to testify regarding the identification, documentation, collection and
17 preservation of evidence in this case.

18 **NEMCIK, AMY P#8504**, Crime Scene Analyst Supervisor or Designee - Las Vegas
19 Metropolitan Police Department. She is an expert in the area of the identification,
20 documentation, collection and preservation of evidence and will give opinions related thereto.
21 She is expected to testify regarding the identification, documentation, collection and
22 preservation of evidence in this case.

23 **SHRUM, SHELLY P#7917**, Senior Crime Scene Analyst or Designee - Las Vegas
24 Metropolitan Police Department. She is an expert in the area of the identification,
25 documentation, collection and preservation of evidence and will give opinions related thereto.
26 She is expected to testify regarding the identification, documentation, collection and
27 preservation of evidence in this case.

28 ///

1 **SZUKIEWICZ, JOSEPH P#5411**, Senior Crime Scene Analyst or Designee - Las
2 Vegas Metropolitan Police Department. He is an expert in the area of the identification,
3 documentation, collection and preservation of evidence and will give opinions related thereto.
4 He is expected to testify regarding the identification, documentation, collection and
5 preservation of evidence in this case.

6 **THOMAS, JENNIFER, P #10074**, is a Forensic Laboratory Scientist II or Designee,
7 with the Las Vegas Metropolitan Police Department. She will testify as an expert as to the
8 procedures, techniques and science employed in DNA analysis, all procedures employed in
9 this case and reports provided.


10 **THOMAS, KRISTINA P#13574**, Senior Crime Scene Analyst or Designee - Las
11 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
12 documentation, collection and preservation of evidence and will give opinions related thereto.
13 She is expected to testify regarding the identification, documentation, collection and
14 preservation of evidence in this case.

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

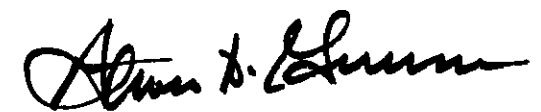
18 The substance of each expert witness' testimony and a copy of all reports made by or
19 at the direction of the expert witness has been provided in discovery.

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

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

24 BY 
25 AGNES M. LEXIS
26 Chief Deputy District Attorney
27 Nevada Bar #011064
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28



CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
AGNES M. LEXIS
Chief Deputy District Attorney
Nevada Bar #011064
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JORGE MENDOZA,
#2586625
SUMMER LARSEN, aka, Summer Rice,
#1854665
DAVID MURPHY,
aka, David Mark Murphy, #0859628
JOSEPH LAGUNA, aka, Joey Laguna,
#1203205
Defendants.

CASE NO: C-15-303991-1
C-15-303991-3
C-15-303991-4
C-15-303991-5

DEPT NO: V

THIRD SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

TO: JORGE MENDOZA, Defendant; and
TO: WILLIAM WOLFBRANDT, Counsel of Record; and
TO: SUMMER LARSEN, Defendant; and
TO: GREGORY COYER, ESQ., Counsel of Record; and
TO: DAVID MURPHY, Defendant; and
TO: CASEY LANDIS, ESQ., Counsel of Record; and
TO: JOSEPH LAGUNA, Defendant; and
TO: MONIQUE MCNEILLE, ESQ., Counsel of Record.

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

- 1 • INDICATES AN ADDITIONAL EXPERT

- 2 • **BASILOTTA, E. "GINO" P#8447**, Las Vegas Metropolitan Police Department.

3 He will testify as an expert regarding how cellular phones work, how phones interact with
4 towers, and the interpretation of that information.

5 **CHARLTON, NOREEN P#13572**, Senior Crime Scene Analyst or Designee - Las
6 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
7 documentation, collection and preservation of evidence and will give opinions related thereto.
8 She is expected to testify regarding the identification, documentation, collection and
9 preservation of evidence in this case.

10 **CUSTODIAN OF RECORDS AND/OR DESIGNEE - AT & T**; will testify as
11 experts regarding how cellular phones work, how phones interact with towers, and the
12 interpretation of that information.

13 **CUSTODIAN OF RECORDS AND/OR DESIGNEE - CRICKET WIRELESS**;
14 will testify as experts regarding how cellular phones work, how phones interact with towers,
15 and the interpretation of that information.

16 **CUSTODIAN OF RECORDS AND/OR DESIGNEE - METRO PCS**; will testify
17 as experts regarding how cellular phones work, how phones interact with towers, and the
18 interpretation of that information.

19 **CUSTODIAN OF RECORDS AND/OR DESIGNEE - NEUSTAR**; will testify as
20 experts regarding how cellular phones work, how phones interact with towers, and the
21 interpretation of that information.

22 **CUSTODIAN OF RECORDS AND/OR DESIGNEE- T-MOBILE**; will testify as
23 experts regarding how cellular phones work, how phones interact with towers, and the
24 interpretation of that information.

25 **CUSTODIAN OF RECORDS AND/OR DESIGNEE - VERIZON WIRELESS**;
26 will testify as experts regarding how cellular phones work, how phones interact with towers,
27 and the interpretation of that information.

28 **DUTRA, DR. TIMOTHY**, A medical doctor employed by the Clark County Coroner

1 Medical Examiner. He is an expert in the area of forensic pathology and will give scientific
2 opinions related thereto. He is expected to testify regarding the cause and manner of death of
3 MONTY GIBSON.

4 **FELABOM, ADAM P#8427**, Senior Crime Scene Analyst or Designee - Las Vegas
5 Metropolitan Police Department. He is an expert in the area of the identification,
6 documentation, collection and preservation of evidence and will give opinions related thereto.
7 He is expected to testify regarding the identification, documentation, collection and
8 preservation of evidence in this case.

9 • **GANDY, CHRIS P#5117**, Las Vegas Metropolitan Police Department. He will
10 testify as an expert regarding how cellular phones work, how phones interact with towers, and
11 the interpretation of that information.

12 **HOLSTEIN, DANIEL P#3861**, Senior Crime Scene Analyst or Designee - Las Vegas
13 Metropolitan Police Department. He is an expert in the area of the identification,
14 documentation, collection and preservation of evidence and will give opinions related thereto.
15 He is expected to testify regarding the identification, documentation, collection and
16 preservation of evidence in this case.

17 **KRYLO, JAMES, P#5945**, or Designee, Las Vegas Metropolitan Police, Department,
18 will testify as an expert in the area of firearm/toolmark analysis and will give opinions related
19 thereto. He is expected to testify regarding the firearms and bullet trajectory comparison of
20 certain evidence collected from the various crime scenes.

21 **LESTER, ANYA – LVMPD P#13771** (or designee): FIREARMS/TOOLMARK
22 EXAMINER with the Las Vegas Metropolitan Police Department. She is an expert in the field
23 of firearm and toolmark comparisons and is expected to testify thereto.

24 **MECKLER, KRISTEN P#14402**, Crime Scene Analyst II or Designee - Las Vegas
25 Metropolitan Police Department. She is an expert in the area of the identification,
26 documentation, collection and preservation of evidence and will give opinions related thereto.
27 She is expected to testify regarding the identification, documentation, collection and
28 preservation of evidence in this case.

1 **NEMCIK, AMY P#8504**, Crime Scene Analyst Supervisor or Designee - Las Vegas
2 Metropolitan Police Department. She is an expert in the area of the identification,
3 documentation, collection and preservation of evidence and will give opinions related thereto.
4 She is expected to testify regarding the identification, documentation, collection and
5 preservation of evidence in this case.

6 **SHRUM, SHELLY P#7917**, Senior Crime Scene Analyst or Designee - Las Vegas
7 Metropolitan Police Department. She is an expert in the area of the identification,
8 documentation, collection and preservation of evidence and will give opinions related thereto.
9 She is expected to testify regarding the identification, documentation, collection and
10 preservation of evidence in this case.

11 **SZUKIEWICZ, JOSEPH P#5411**, Senior Crime Scene Analyst or Designee - Las
12 Vegas Metropolitan Police Department. He is an expert in the area of the identification,
13 documentation, collection and preservation of evidence and will give opinions related thereto.
14 He is expected to testify regarding the identification, documentation, collection and
15 preservation of evidence in this case.

16 **THOMAS, JENNIFER, P #10074**, is a Forensic Laboratory Scientist II or Designee,
17 with the Las Vegas Metropolitan Police Department. She will testify as an expert as to the
18 procedures, techniques and science employed in DNA analysis, all procedures employed in
19 this case and reports provided.

20 **THOMAS, KRISTINA P#13574**, Senior Crime Scene Analyst or Designee - Las
21 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
22 documentation, collection and preservation of evidence and will give opinions related thereto.
23 She is expected to testify regarding the identification, documentation, collection and
24 preservation of evidence in this case.

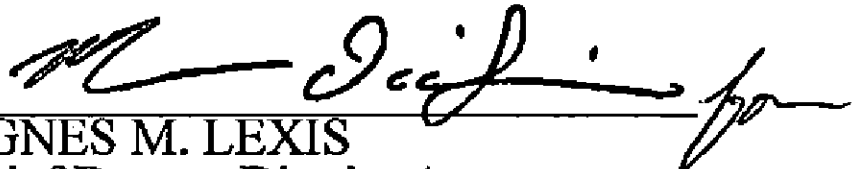
25 These witnesses are in addition to those witnesses endorsed on the Information or
26 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert
27 Witnesses has been filed.

28 //

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

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

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

7 BY 
8 AGNES M. LEXIS
9 Chief Deputy District Attorney
10 Nevada Bar #011064

11
12 CERTIFICATE OF ELECTRONIC FILING

13 I hereby certify that service of the above and foregoing, was made this 22nd day of August,
14 2016, by Electronic Filing to:

15 WILLIAM WOLFBRANDT, ESQ.
16 lewwolfbrandt@embarqmail.com

17 GREGORY COYER, ESQ.
18 gcoyer@coyerlaw.com

19 CASEY LANDIS, ESQ.
20 clandis@call-law.com

21 MONIQUE MCNEILL, ESQ.
22 mam@moniquemcneill-law.com

23
24 
25 Secretary for the District Attorney's Office

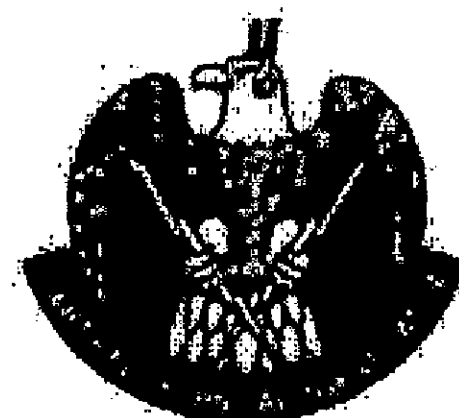
26
27
28 14F14997ACDE/tgd/MVU

The Curriculum Vitae Of:

E. “Gino” Basilotta

**Currently Employed By:
Las Vegas Metropolitan Police Department**

Updated: September 2013



Curriculum Vitae of E. “Gino” Basilotta

INTRODUCTION and SUMMARY:

Detective Eugenio "Gino" Basilotta is employed by the Las Vegas Metropolitan Police Department (LVMPD) and is currently assigned to the Organized Crime Bureau's Technical and Surveillance Section (TASS). The Organized Crime Bureau is a part of the Homeland Security Division of Metro Police.

Gino also has experience as an Accident Investigator for almost 3 ½ years working for LVMPD's Traffic Division. Prior to that, he worked for Bolden Area Command and for the Sheriff's Mobile Crime Saturation Team focusing on the highest crime areas in Las Vegas. Gino began his career with LVMPD in August 2004 and has been employed by the Las Vegas Metropolitan Police Department for 9 years as of this writing.

Prior to joining The Las Vegas Metropolitan Police Department, Gino spent 20 years in the private sector working with various computer technologies including specific expertise with Hospitality and Gaming Systems from 1993 until 2004. He worked in the corporate Information Technology departments with Hilton Gaming and Venetian. While employed, he opened 3 casinos – 2 with Hilton gaming (one in South America) and the Venetian Casino in Las Vegas, Nevada. Gino was also a Sales Director for a large Hospitality Technology Company managing West Coast Major Casino Accounts. Gino started his 'computer' career as an installer/technician in the 1980's during the personal computer genesis involved with IBM and Apple computer products. Gino has an Undergraduate degree in Management Information Systems (Business Administration) from The University of Arizona, in Tucson.

Currently Gino is a member in good standing with the National Technical Investigators Association and holds a Certified Technical Investigator Status.

**Detective, Technical and Surveillance Section (T.A.S.S.)
Las Vegas Metropolitan Police, Organized Crime Division
November 2010 to Present**

Gino has worked in this unit Since November of 2010. The Technical and Surveillance Section is responsible for providing technical and surveillance support to the department's commitment to the investigation of all crimes and the suppression and prevention of terrorist acts. This is accomplished through the provisioning of a myriad of electronic surveillance & technical solutions. The technical and surveillance functions support is provided to all department sections and task forces conducting criminal investigations.

TASS Unit Goals:

- Provide electronic surveillance support
- Provide physical surveillance support
- Provide technical support for barricade and/or hostage situations
- Conduct audio/video enhancements
- Provide anti-terrorism and counter-terrorism support
- Facilitate Pen Register implementation
- Facilitate Precision Location
- Facilitate Title III implementation

Gino is currently a Member of NATIA, (National Technical Investigators Association). Membership in NATIA is restricted to full time employees of Law Enforcement agencies who are actively engaged in technical surveillance, communications, and specialized support of law enforcement or intelligence activities. These individuals must represent Municipal, County, State, Federal and Military involved in the application of electronic surveillance technologies.

Gino currently holds a "Certified Technical Investigator" (CTI) certification from NATIA. CTI certification is awarded to NATIA members who have undergone extensive specialized training and have passed a rigorous examination in technical electronic surveillance techniques, procedures, equipment, and related issues. Continued advanced education is required.



During Gino's time in TASS, he has worked with many different technologies, including GPS Tracking, Cell Phone technologies, Wire Taps (Title IIIs), Pen Registers, Audio and Video Surveillance, and more proprietary technologies used within the unit, requiring a commitment to non-disclosure and OPSEC / Privacy policies.

One of Gino's main responsibilities is the maintenance and operation of the Pen Registers installed department wide by detectives and investigators. This involves handling and the provisioning of lawful Pen Register orders filed to the court by investigators.

Gino also serves on the SWAT callout resource team within TASS. TASS is deployed to active crime scenes involving Hostage and/or Barricaded suspects. TASS deploys technology to aid SWAT and Negotiators in their critical decision making processes.

Gino developed a POST certified Pen Register class which he currently teaches for LVMPD Police Detectives and other agencies. This class educates detectives on the latest technologies used by criminals to avoid law enforcement and the procedures to obtain Pen Registers and Title III's. Gino also teaches this Pen Class in the "New Detective School" and the "Advanced Investigators School" which are offered yearly to LVMPD qualified officers and detectives.

Gino testified on record to Nevada Senator's, supporting the passage of Nevada Senate Bill 268, in April 2013. The bill was nicknamed the "Kelsey Smith Act". This involved giving real world examples on how law enforcement has used cellular phone techniques in the location of missing or endangered persons. The Bill received support and has since passed and will come into effect October 2013. Gino testified on record to Nevada Senator's with regards to Assembly Bill 313. This was involving the proposal of language modification for NRS 179.530. This involved citing real world examples involving Law Enforcement and the use of Pen Registers.

**Traffic Investigator / Motor Officer, Traffic Bureau
Las Vegas Metropolitan Police, Patrol Division
May 2007 to November 2010**

Gino was assigned to the Traffic Section from May 2007 until November 2011 with his duties including DUI enforcement, accident/fatal investigation and handling calls for the valley wide Las Vegas area. Gino's goal, while in traffic, was to reduce traffic deaths and injuries by improving driving environments through education and enforcement of traffic laws. In addition, Gino's approach was to work high crime areas; to contribute to reduction in crime. Gino immediately obtained his Drug Recognition Expert certification to aid in identifying drug impaired drivers.

His work experience included setting up DUI checkpoints, Accident Investigation, Fatal Investigation, Hit and Run, and various other Traffic Enforcement Duties. His Certifications included:

- Drug Recognition Expert

Curriculum Vitae of E. "Gino" Basilotta

- RADAR,
- HGN (Horizontal Gaze Nystagmus),
- PBT (Portable Breath Testing Device),
- Intoxilyzer 5000 Breath Machine (used during booking)

While in traffic, Gino investigated over 500 accidents over a 3 ½ year period including close to 100 DUI arrests. Basilotta has also testified many times in court and has much experience regarding testifying for DUI's.

Basilotta attended classes for Accident Investigation, DUI Detection, Standardized Field Sobriety Testing, Mobile Field Force/Tactics, Incident Command Systems, National Incident Management Systems, and Excited Delirium. Basilotta attended Metro's 160 hour Motorcycle Safety course which is known to be one of the most challenging in the United States and is based on Northwestern University's techniques.

Gino obtained a D.R.E. (Drug Recognition Expert) status on July 2007 by the National Highway Traffic Safety Administration. This certification allows D.R.E.'s to evaluate individuals and accurately categorize them as users of a particular type of drug. Less than 1% of Las Vegas Metropolitan Police officers held this certification at the time.



DEGREES, EXPERIENCE AND CERTIFICATIONS

DEGREES

High School Diploma, 1984

Valley High School, Las Vegas, Nevada

BSBA, Business Administration, Management Information Systems, 1991

University of Arizona, Tucson, Arizona

LAW ENFORCEMENT TIMELINE:

November 2010 to Present

Detective, Organized Crime Bureau,
Technical and Surveillance Section

April 2007 to November 2010

Investigator, Traffic Division

January 2005 to March 2007

Patrol, Bolden Area Command
Mobile Saturation Crime Team
Problem Solving Unit
Community Oriented Policing

CERTIFICATIONS OBTAINED:



Drug Recognition Expert, May 2007



Certified Technical Investigator, March 2011,
Expiration, February 17th, 2014
Certification Number 2-021711



Certified Instructor, Advanced Training
Las Vegas Metropolitan Police Department

LAW ENFORCEMENT RELATED TRAINING

January 21st, 2011



Orion GPS Tracking Devices
COBHAM

February 2011



CESP 102
Covert Electronic Surveillance Program
Federal Law Enforcement Training Center,
Glynco, Georgia

August 2011



FBI DA/IS Conference
Surveillance, Intercepts and related
Technologies

August 29th – 30th, 2012



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

June 2012



Cellular Phone Training

August 27th – 28th, 2013



Pen-Link CIA
Pen Registers / Title IIIs
Lincoln, Nebraska

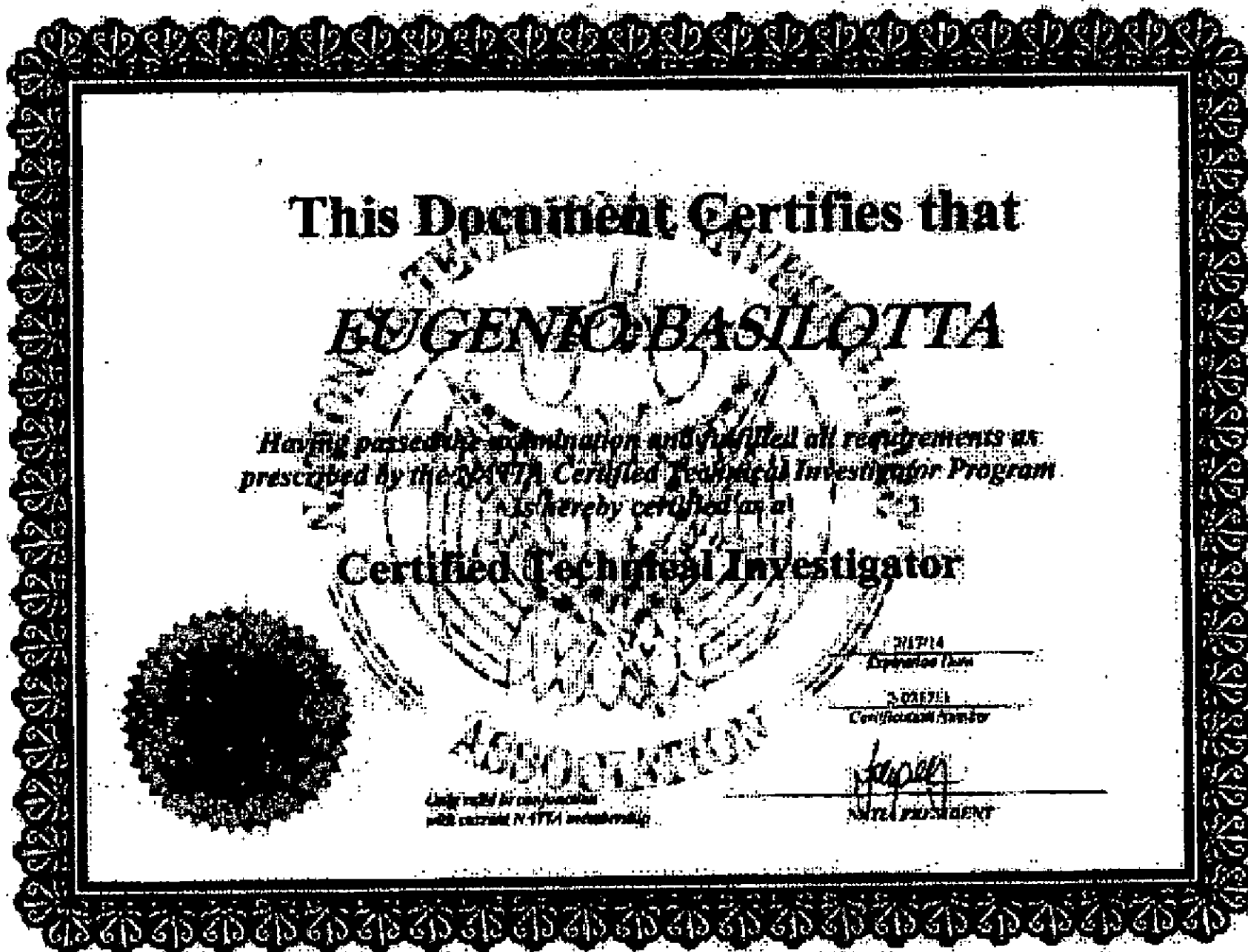
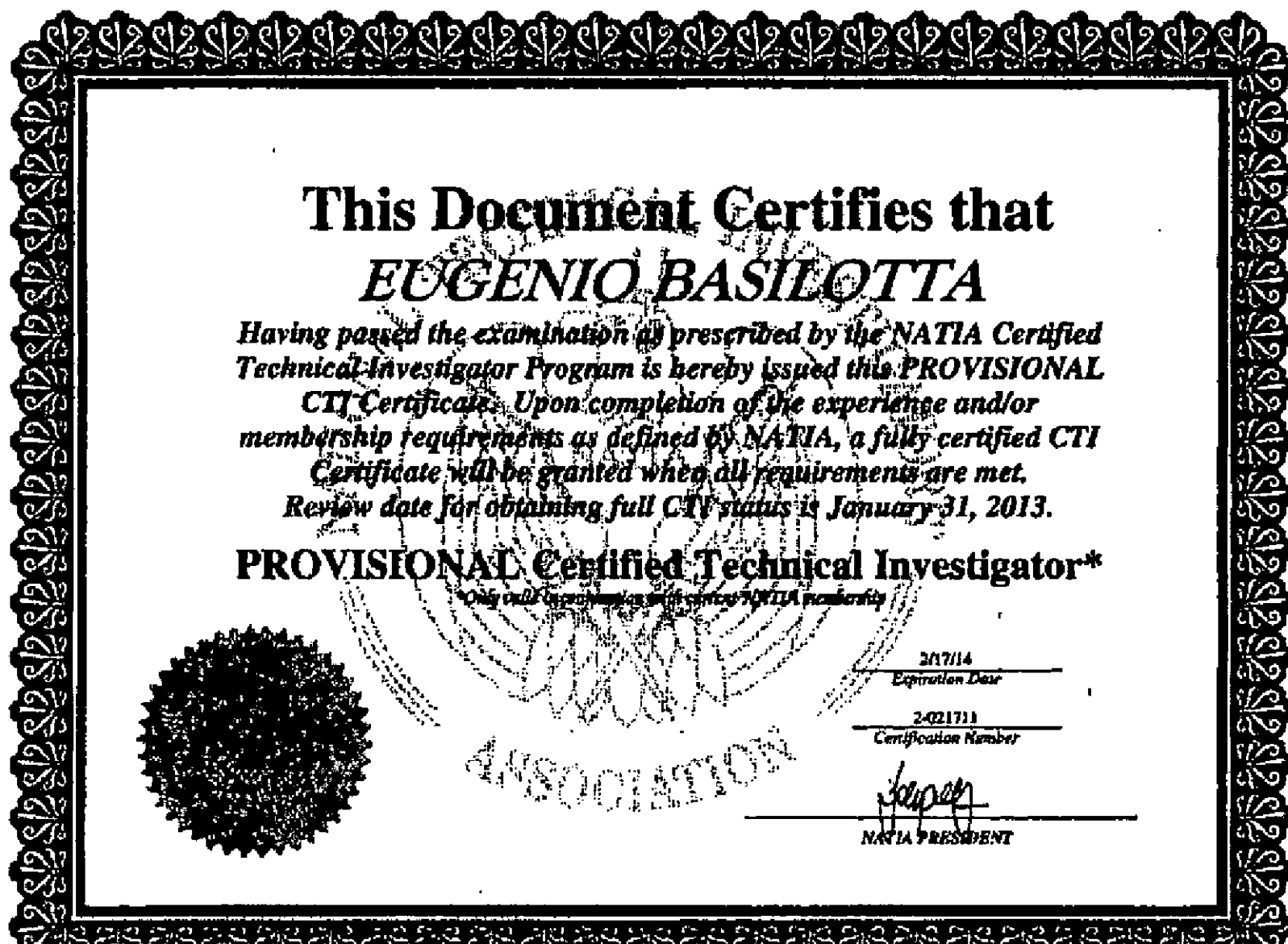
September 9th – 10th 2013



NDCAC – US DOJ/FBI
(National Domestic Communications
Assistance Center)
FBI CAST – PPP (Project Pin Point)
Project Pin Point (PPP) is a geo-spatial intelligence tool
developed in 2004 by a Special Agent on the FBI's Violent
Crimes Task Force in Philadelphia. The tool was initially
intended for fugitive apprehension, but evolved to include
historical cell site analysis, informant development, and targeting
capabilities for intelligence related functions. It is now used by
most FBI field offices.

MISCELLANEOUS SUPPORTING DOCUMENTATION

Curriculum Vitae of E. "Gino" Basilotta



COBHAM

Orion Training Course

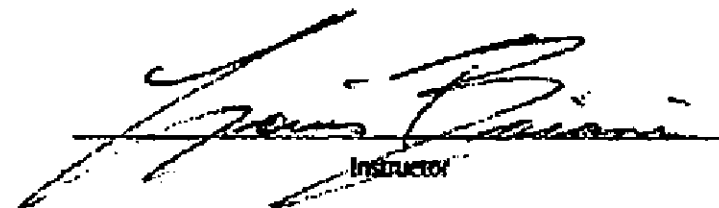
The most important thing we build is trust

Congratulations to

Gino Basilotta
Las Vegas Metropolitan Police Dept.

for successfully completing an Orion training course on

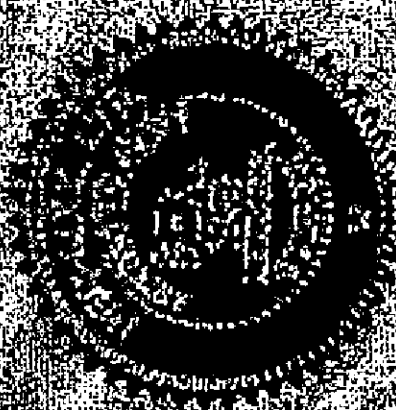
Orion GPS Tracking Devices


Instructor

Jan 21, 2011
Las Vegas, NV

CV

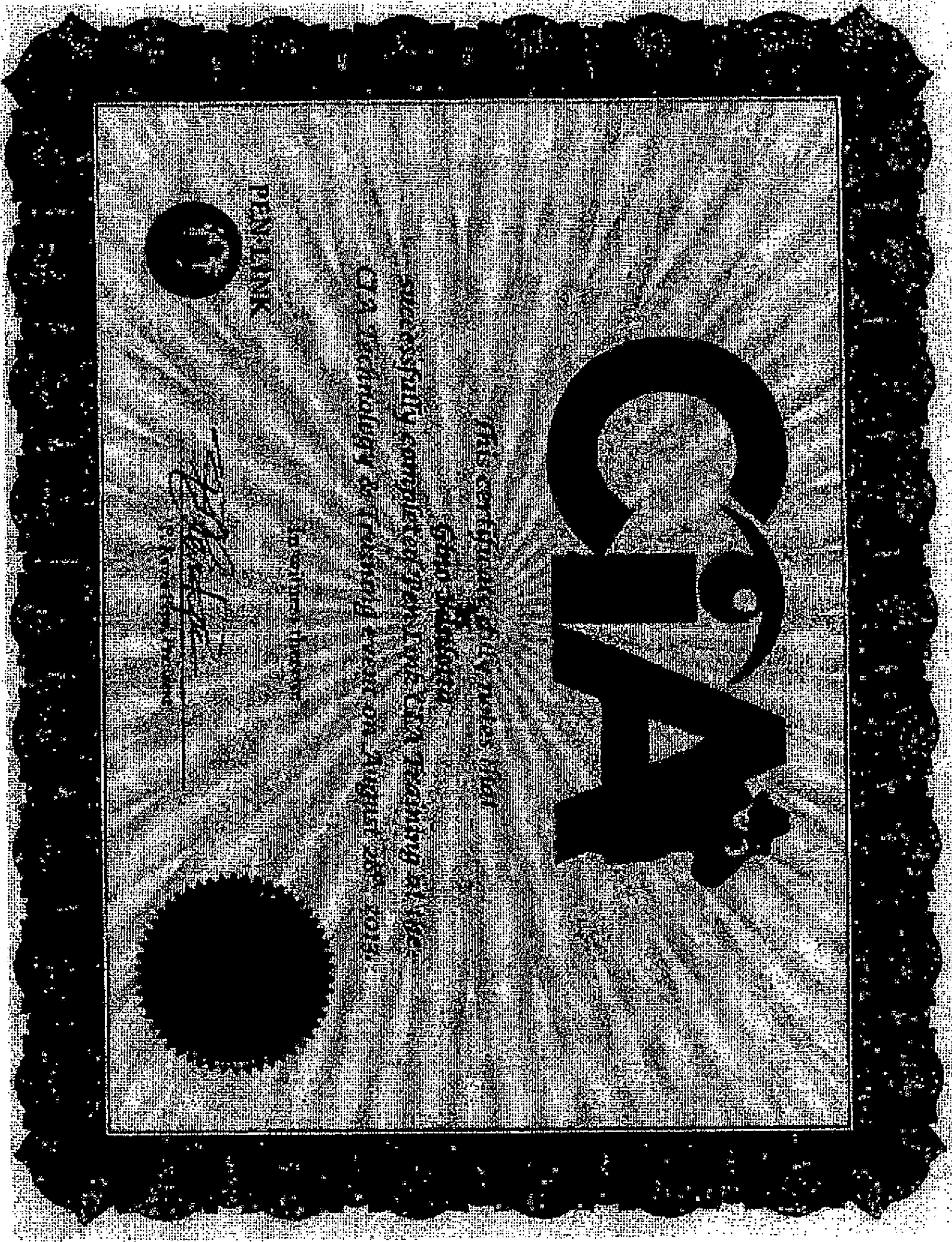
This curriculum vitae is official
and is the property of the
Government of the United States of America
and is not to be distributed outside the
Government of the United States of America
without the express written permission of the
Government of the United States of America



IN WITNESS WHEREOF



PER LINK



HARRIS

Curriculum Vitae of E. "Gino" Basilotta

1913 - 1914

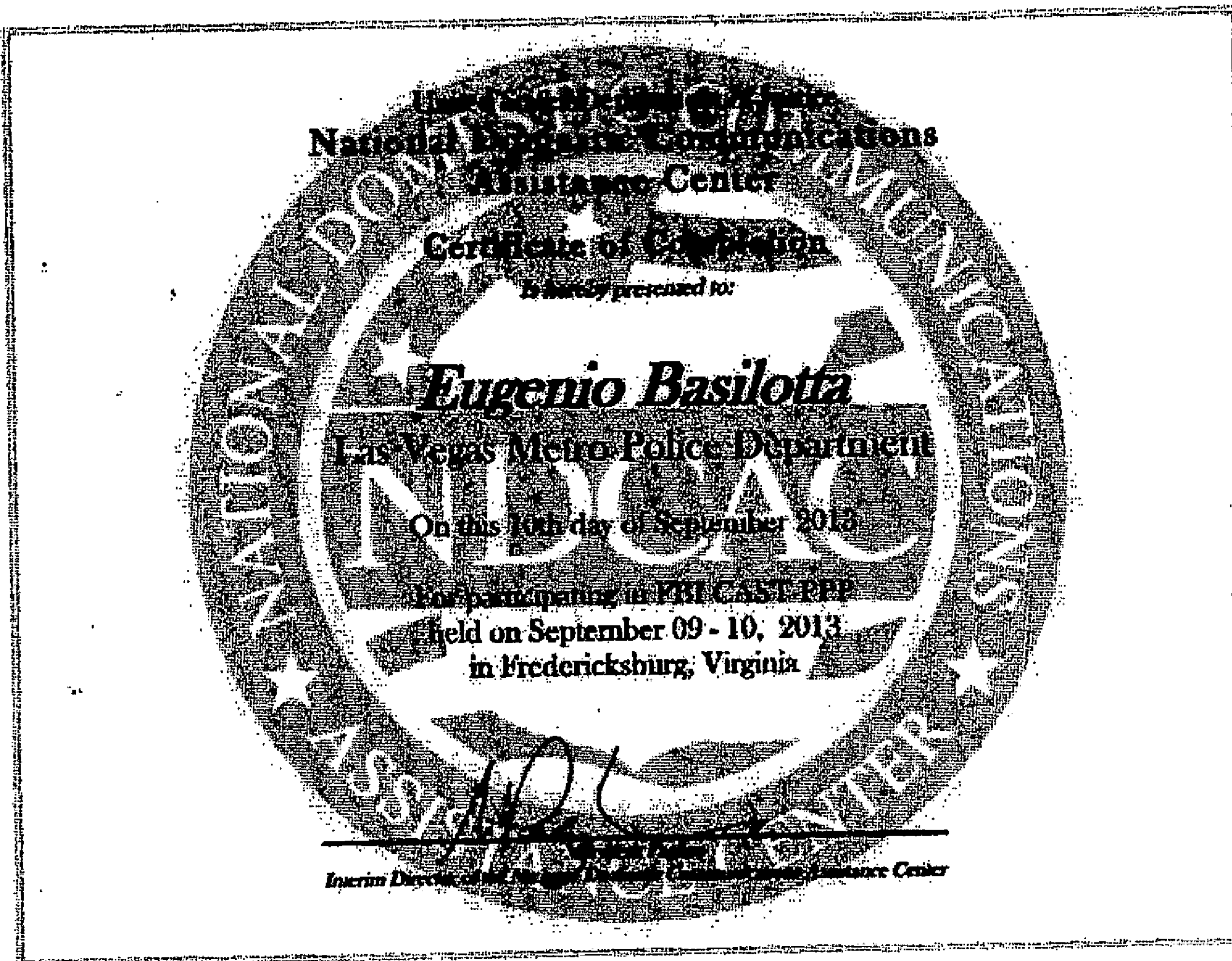
1915 - 1916

has satisfied to his completed training on

1917 - 1918

1919 - 1920

1921 - 1922



Curriculum Vitae of E. "Gino" Basilotta

Detective Christopher Gandy

Las Vegas Metropolitan Police Department (702)828-4535 C5117G@lvmpd.com

Objective

Job experience related to using cell phone records to determine a general location of a cell phone.

Experience

Police Officer

03/1996 – 11/2001 Las Vegas Metropolitan Police Department

- Patrol Officer

Police Detective

11/2001 - Present LVMPD Technical Detail

- Primary job responsibility – Phone Intercepts
- Built and Manage the LVMPD Phone Intercept Equipment
- Daily duties include locating cell phones via cell phone records with cell tower information
- Daily interaction with cell phone carriers on location information and techniques.
- Maintains the Cell Site Database Records for LVMPD
- Numerous cases where direct contact with cell phone company engineers helped in gaining education about the cell phone networks and the phones interaction with the towers.
- Conducted over 1000 phone intercepts
- Since 2003 Designed and built the city wide wireless system for transporting video for the LVMPD. Systems include the wireless transmission for the Downtown Crime Cameras, and systems to relay video from the Las Vegas Blvd Strip corridor to LVMPD command.
- Speaker – 2009 Milestone Integration Platform Symposium on LVMPD Wireless integration of video systems.
- Speaker – 2009 and 2010 Security Info Watch Live Webcast presentation on Municipal Surveillance – presentation included wireless integration principles used in my designs.
- Speaker – 2011 IWCE (International Wireless Communications Expo) Sessions: Wireless Surveillance Ecosystem and City-Wide Wireless Surveillance Networks.
- Speaker – 2011 ISC West (International Security Conference) Session: Muni-Surveillance Panel II: Public Safety / Law Enforcement.
- Expert Testimony – Grand Jury testimony on Clark County District court case C275556 relating to cell site information and wire taps.
- Expert Testimony – State of Nevada v. Bob Gilbert, prosecuted by the Nevada Attorney General's Office. Testimony was related to the location of cell phones resulting from analysis of Call Detail Records.

Education

1992 - 1996 University of Nevada Las Vegas, Las Vegas, NV

- 4 Years Course work in the Electrical Engineering Program
- 3 Semesters of Calculus Based Physics included radio wave properties

FBI Communication Act for Law Enforcement Assistance (CALEA) Law Enforcement Technical Forum (LETF) Member

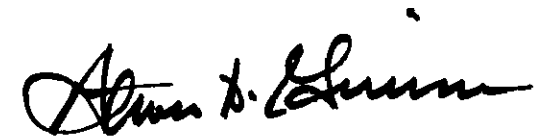
- Nevada State representative Since 2002
- Forum meets 2 to 4 times a year for training and meetings

Firetide Certified Mesh Engineer Course

- 01/2009, 27 Hour Course, Completed Course on building wireless networks and radio wave properties

Your Name

Address, phone, fax, email



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID MURPHY,

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE JAMES BIXLER, DISTRICT COURT SENIOR JUDGE

WEDNESDAY, AUGUST 24, 2016

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

***DEFENDANT'S MOTION TO DISMISS COUNSEL AND APPOINTMENT OF
ALTERNATE COUNSEL***

APPEARANCES:

For the State:

WILLIAM W. FLINN, JR., ESQ.,
Deputy District Attorney

For the Defendant:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 24, 2016**

2 [Proceeding commenced at 10:23 a.m.]

3
4 THE COURT: State of Nevada versus -- page 2 -- David Murphy -- David
5 Mark Murphy and the Defendant is present in custody. And motion to dismiss
6 or appoint alternate counsel. I've read through -- who -- who actually wrote
7 this for you, Mr. Murphy?

8 DEFENDANT: I wrote it.

9 THE COURT: You wrote this whole thing?

10 DEFENDANT: Yes.

11 MR. FLINN: And I believe, Your Honor, if I'm not mistaken, on behalf of
12 Mr. DiGiacomo, I think he explained that the Court previously denied Mr. Landis'
13 request to -- motion to withdraw. So he was kind of anticipating now that
14 we're at, you know, the same -- the same place, but that it -- he -- his
15 recommendation was that despite that it should be summarily denied that
16 essentially the Court really does need to do an ex parte hearing without us
17 around to just -- and then notify the parties of the decision. So that was his
18 request.

19 THE COURT: Really.

20 MR. LANDIS: Uniquely both he and I had filed a previous motion to get
21 rid of each other and they were both denied.

22 THE COURT: Judge Ellsworth is not big on losing a trial date. But I think
23 in all honesty she's going to have to address this. Not both of you. You want
24 to withdraw and he wants to fire you. We got a trial date coming up on the
25 12th of September.

1 MR. LANDIS: Right. That makes sense. My motion was already denied.
2 It's done and over with.

3 [Colloquy between the Court and the Clerk]

4 THE COURT: Okay. Let's do this, let's pass this 'til Wednesday. I have
5 a feeling I know what she's going to do, but I think that you probably ought to
6 address this in front of Judge Ellsworth. Good luck.

7 DEFENDANT: [indiscernible]

8 THE COURT: So we'll pass it 'til Wednesday the 30th. No.

9 THE CLERK: Thirty-first.

10 THE COURT: Thirty-first. Wednesday the 31st.


11 MR. LANDIS: Good seeing you.

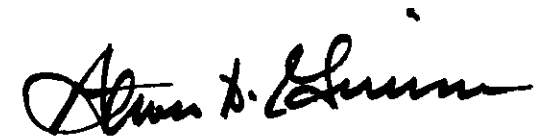
12 THE COURT: Nice seeing you.

13 [Proceeding concluded at 10:26 a.m.]

14
15
16
17 ATTEST: I 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.

19 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
20 acknowledge that this is a rough draft transcript, expeditiously prepared, not
21 proofread, corrected or certified to be an accurate transcript.

22 
23 Michelle Ramsey
24 Transcriber
25



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

DAVID MURPHY,

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 31, 2016

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

***DEFENDANT'S MOTION TO DISMISS COUNSEL AND APPOINTMENT OF
ALTERNATE COUNSEL***

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; WEDNESDAY, AUGUST 31, 2016**

2 [Proceeding commenced at 10:10 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus David
5 Murphy. And Mr. Murphy is present in custody with his counsel, Mr. Landis.
6 This obviously is set for trial coming up very shortly September 12th. And I
7 have a pro per motion filed by the Defendant to have Mr. Landis removed as
8 counsel.

9 Have you been working on the case, Mr. Landis?

10 MR. LANDIS: I have.

11 THE COURT: And he's indicating in this motion that your -- you haven't
12 been communicating with him. Is that --

13 MR. LANDIS: There was a stretch I think before he filed the motion
14 where I probably wasn't over to see him as often as I had been before, but
15 since that's been filed I've been over weekly.

16 THE COURT: All right. And so you've had communication with Mr.
17 Landis then?

18 DEFENDANT: Yes. After I filed this, yes, he has been a few times to the
19 jail.

20 THE COURT: Okay. And so are you still asking the Court to have him
21 removed or not?

22 DEFENDANT: Yes, Your Honor. Like I said, you know, we already had a
23 motion before that I put in to dismiss counsel. After you denied that motion
24 which was in May, I seen him one time and that was just so he tell me he was
25 going out of town he said. And I had concerns that we wouldn't be prepared

1 for trial 'cause a lot of things haven't been addressed.

2 He said he was going out of town for a couple of weeks. When he
3 got back, the rest, you know, two and a half, three months would be
4 completely devoted to my case in preparing for trial. When he came back from
5 town, I never heard from him. I hadn't -- you know, only way to communicate
6 with him is third party. I had my family text him. He didn't respond to no text,
7 nothing. No messages left with him.

8 On June 15th I received a letter from him saying he was asking get
9 off my case, you know. So --

10 THE COURT: And that was denied as you're --

11 DEFENDANT: Yeah.

12 THE COURT: -- well [indiscernible] --

13 DEFENDANT: Yeah. Yeah. You denied -- denied that motion. After that
14 I still didn't hear from him until, you know, probably the first week of August.
15 You know, I filed this in -- on the 1st.

16 THE COURT: Right. Actually, the 3rd. It was electronically --

17 DEFENDANT: Yeah.

18 THE COURT: -- filed on the 3rd.

19 DEFENDANT: I --

20 THE COURT: Okay. So it's been a full month now and your lawyers
21 been working diligently on your case, visiting you weekly in jail and this is a
22 multiple Defendant case. It's very difficult to schedule this which is why I
23 didn't permit Mr. Landis to withdraw --

24 DEFENDANT: Yes.

25 THE COURT: -- because it would result in continuance of the trial. So

1 your motion's denied. I think that he's diligently moving forward.

2 DEFENDANT: Can I say something else?

3 THE COURT: Sure.

4 DEFENDANT: I mean, I understand that you're saying that yes, he has
5 been coming the last couple of weeks, but then months that he did not come,
6 we have not been able to prepare for trial. I haven't heard, you know, been in
7 communication with no expert witnesses that we needed. A lot of -- they just
8 did a file review last week or two weeks ago. I mean, all these things we go to
9 trial in less than two weeks.

10 And there's -- in my view, there's no way we could be prepared for
11 that because, you know, these things weren't accomplished in the last 18, 19
12 months which has been my issue from the beginning that's why I filed all these
13 motions.

14 THE COURT: Mr. Landis, do you feel you're going to be prepared for
15 trial?

16 MR. LANDIS: I don't know if I've ever been fully prepared. I feel I've
17 been prepared enough to try the case, yes. But I --

18 THE COURT: Well I know that every lawyer always wishes the day they
19 walk into Court that they had, you know, a few more days because they're
20 always working and --

21 MR. LANDIS: Right.

22 THE COURT: -- throughout trial to prepare for each witness, etcetera.
23 But is there anything that -- I mean, were you planning on retaining expert
24 witnesses?

25 MR. LANDIS: We noticed one last week, so we have retained one, yes.

1 THE COURT: Oh okay.

2 DEFENDANT: I still haven't met with that expert witness nor have I ever
3 received the information we need to review with the expert witness.

4 THE COURT: Well, you don't -- you know, you have a lawyer, so you
5 don't need to do every single thing yourself. Your lawyer is working on your
6 behalf. And if the expert witness doesn't need to meet with you, then there's
7 no need for him or her to meet with you. I don't -- I don't know who the expert
8 is or what the subject of the testimony would be. But that -- just because your
9 -- don't have a personal meeting with an expert witness doesn't mean that
10 there's not been something done that should be done.

11 DEFENDANT: But we still haven't got the -- the information we need to
12 review with the expert witness. That's what I'm saying.

13 MR. LANDIS: It's a cellphone data -- cellphone location data expert. We
14 were -- we've been -- trying to obtain an independent copy of the cellphone
15 records they're attributing to Mr. Murphy for him to review. And yes, he's
16 right, that Metro PCS has been dragging their feet on the subpoena for nine
17 months. But we're comfortable that we'll get around it. I mean, if there's
18 something that compels a motion to continue, so be it, not that you'll grant it,
19 but --

20 THE COURT: Well I might. It would --

21 MR. LANDIS: Right.

22 THE COURT: -- depend on what the, you know --

23 MR. LANDIS: Right.

24 MR. DiGIACOMO: And so the records clear, I don't want to make it
25 sound like -- we have turned over records that we received from the phone

1 companies I think for four phones plus a pinger phone, so I think there's five
2 phones. They have those records.

3 And as is relates to the file review, that's actually the second time
4 they've looked at the homicide books. And I think there was one additional
5 piece of paper that had to be turned over from that file review.

6 So they've had the phone records and their expert is someone
7 who's been noticed previously as an expert. I don't know what he would have
8 to meet with the Defendant for him. I have no position in this particular motion,
9 but so the record is absolutely clear, there isn't any other additional discovery
10 to be provided to Mr. Landis.

11 THE COURT: Okay. All right. At this point in time, I see no reason to
12 dismiss counsel and so your motion is denied. If Mr. Landis feels there's some
13 need for a continuance -- motions for continuance could be made on an
14 emergent basis if there's true reason to do so. And so, that's why you have
15 counsel to make those decisions -- legal decisions. So Mr. Landis is a very
16 competent lawyer.

17 All right. State will prepare the order.

18 MR. DiGIACOMO: I will, Judge.

19 [Proceeding concluded at 10:18 a.m.]
20
21
22
23
24
25

1 ATTEST: I 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.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
4 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected or certified to be an accurate transcript.

5
6 
7 Michelle Ramsey
8 Transcriber
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \end{array}$$

Electronically Filed
Aug 02 2017 09:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

V

$$\begin{pmatrix} \cdot \\ \cdot \\ \cdot \\ \cdot \end{pmatrix}$$

VOLUME I – PAGES 0001-0243

ATTORNEY FOR RESPONDENT

STEVEN WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
Telephone: 702.617.2700
Facsimile: 702.868.2415

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: 702.684.1100
Facsimile: 702.684.1108

APPENDIX – INDEX (CHRONOLOGICAL ORDER)

Page No.

VOLUME I - PAGES 0001-0243

Indictment, filed on 01/30/2015.....	0001-0007
Transcript of Grand Jury Return, held on 01/30/2015.....	0008-0010
Transcript of Initial Arraignment, held on 02/09/2015.....	0011-0016
Transcript of Arraignment Contd., held on 02/23/2015.....	0017-0022
Superseding Indictment, filed on 02/27/2015.....	0023-0029
Transcript of Grand Jury Return, held on 02/27/2015.....	0030-0033
Transcript of Proceedings Re: Superseding Indictment, held on 03/09/2015.....	0034-0043
Notice of Expert Witnesses, filed on 03/26/2015.....	0044-0048
Supplemental Notice of Expert Witnesses, filed on 04/03/2015.....	0049-0053
Transcript of Proceedings Re: Eyewear for Defendant, held on 04/06/2015.....	0054-0056
Transcript of Hearing Re: Calendar Call, held on 04/20/2015.....	0057-0062
Transcript of Hearing Re: Defendant's Petition for Writ of Habeas Corpus, held on 05/20/2015.....	0063-0066
Second Superseding Indictment, filed on 05/29/2015.....	0067-0073
Transcript of Grand Jury Return, filed on 05/29/2015.....	0074-0076
Transcript of Hearing Re: Defendant's Petition for Writ of Habeas Corpus, held on 06/01/2015.....	0077-0098
Transcript of Hearing Re: Status Check/Withdraw Plea/Trial Setting, held on 08/31/2015.....	0099-0104
Transcript of Hearing Re: Status Check Firm Trial Setting, held on 09/21/2015.....	0105-0108
Motion to Sever, filed on 04/03/2016.....	0109-0122
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 04/06/2016.....	0123-0135
State's Opposition to Defendant's Motion to Sever, filed on 04/07/2016.....	0136-0156

1	Transcript of Proceedings Re: Defendant's Motion to Sever, held on 04/18/2016.....	0157-0161
2	Transcript of Hearing Re: Defendant's Motion to Dismiss Counsel/	
3	Defendant's Motion to Sever, held on 05/02/2016.....	0162-0173
4	Transcript of Proceedings Re: Faretta Canvass, held on 05/04/2016...	0174-0177
5	Transcript of Proceedings Re: Joinder to Motion to Sever, held on 05/09/2016.....	0178-0186
6	Motion to Withdraw as Attorney of Record, filed on 07/11/2016.....	0187-0191
7	Transcript of Proceedings Re: Motion to Withdraw as Attorney of	
8	Record, held on 07/25/2016.....	0192-0195
9	Transcript of Proceedings Re: Motion to Withdraw as Attorney of	
10	Record, held on 07/27/2016.....	0196-0199
11	Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 08/03/2016.....	0200-0207
12	Second Supplemental Notice of Expert Witnesses, filed on 08/15/2016.....	0208-0212
13	Third Supplemental Notice of Expert Witnesses, filed on 08/22/2016.....	0213-0233
14	Transcript of Proceedings Re: Defendant's Motion to Dismiss Counsel, held on 08/24/2016.....	0234-0236
15	Transcript of Proceedings Re: Defendant's Motion to Dismiss Counsel, held on 08/31/2016.....	0237-0243
16		
17	<u>VOLUME II – PAGES 0244-0449</u>	
18	Transcript of Proceedings Re: Defendant's Motion in Limine to Conceal Defendant's Tattoos, held on 09/07/2016.....	0244-0262
19	Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0263-0275
20	State's Opposition to Defendant's Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282
21	Transcript of Proceedings Re: Defendant's Motion to Exclude Summer Larsen, held on 09/09/2016.....	0283-0306
22	Transcript of Proceedings Jury Trial – Day 1, held on 09/12/2016.....	0307-0449
23	<u>VOLUME III – PAGES 0450-0699</u>	
24	Transcript of Proceedings Jury Trial – Day 2, held on 09/13/2016.....	0450-0624
25	Transcript of Proceedings Jury Trial – Day 3 (partial), held on 09/14/2016.....	0625-0699
26		
27		
28		

1	<u>VOLUME IV – PAGES 0700-0949</u>	
2	Transcript of Proceedings Jury Trial – Day 3 (contd.), held on	
3	09/14/2016.....	0700-0852
4	Transcript of Proceedings Jury Trial – Day 4 (partial), held on	
5	09/15/2016.....	0853-0949
6	<u>VOLUME V – PAGES 0950-1199</u>	
7	Transcript of Proceedings Jury Trial – Day 4 (contd.), held on	
8	09/15/2016.....	0950-1049
9	Transcript of Proceedings Jury Trial – Day 5 (partial), held on	
10	09/16/2016.....	1050-1199
11	<u>VOLUME VI – PAGES 1200-1449</u>	
12	Transcript of Proceedings Jury Trial – Day 5 (contd.), held on	
13	09/16/2016.....	1200-1264
14	Transcript of Proceedings Jury Trial – Day 6, held on 09/19/2016.....	1265-1385
15	Transcript of Proceedings Jury Trial – Day 7 (partial), held on	
16	09/20/2016.....	1386-1449
17	<u>VOLUME VII – PAGES 1450-1694</u>	
18	Transcript of Proceedings Jury Trial – Day 7 (contd.), held on	
19	09/20/2016.....	1449-1561
20	Transcript of Proceedings Jury Trial – Day 8, held on 09/21/2016.....	1562-1694
21	<u>VOLUME VIII – PAGES 1695-1944</u>	
22	Transcript of Proceedings Jury Trial – Day 9, held on 09/22/2016.....	1695-1844
23	Transcript of Proceedings Jury Trial – Day 10 (partial), held on	
24	09/23/2016.....	1845-1944
25	<u>VOLUME IX – PAGES 1945-2194</u>	
26	Transcript of Proceedings Jury Trial – Day 10 (contd.), held on	
27	09/23/2016.....	1945-2095
28	Transcript of Proceedings Jury Trial – Day 11 (partial), held on	
	09/27/2016.....	2096-2194
	<u>VOLUME X – PAGES 2195-2390</u>	
	Transcript of Proceedings Jury Trial – Day 11 (contd.), held on	
	09/27/2016.....	2195-2240
	Transcript of Proceedings Jury Trial – Day 12, held on 09/28/2016...	2241-2390

VOLUME XI – PAGES 2391-2640

Transcript of Proceedings Jury Trial – Day 13, held on 09/29/2016.....	2391-2555
Transcript of Proceedings Jury Trial – Day 14 (partial), held on 09/30/2016.....	2556-2640

VOLUME XII – PAGES 2641-2890

Transcript of Proceedings Jury Trial – Day 14 (contd.), held on 09/30/2016.....	2641-2813
Defendant Murphy’s Supplemental Motion to Sever, filed on 10/03/2016.....	2814-2819
State’s Opposition to Defendant’s Motion for Mistrial, filed on 10/03/2016.....	2820-2830
Transcript of Proceedings Jury Trial – Day 15 (partial), held on 10/03/2016.....	2831-2890

VOLUME XIII – PAGES 2891-3140

Transcript of Proceedings Jury Trial – Day 15 (contd.), held on 10/03/2016.....	2891-2898
Transcript of Proceedings Jury Trial – Day 16, held on 10/04/2016.....	2899-3038
Transcript of Proceedings Jury Trial – Day 17, held on 10/05/2016.....	3039-3070
Transcript of Proceedings Jury Trial – Day 18 (partial), held on 10/06/2016.....	3071-3140

VOLUME XIV – PAGES 3141-3390

Transcript of Proceedings Jury Trial – Day 18 (contd.), held on 10/06/2016.....	3141-3197
Transcript of Proceedings Jury Trial – Day 19, held on 10/07/2016...	3198-3276
Instruction to the Jury, filed on 10/07/2016.....	3277-3340
Defendant’s Proposed Jury Instructions, filed on 10/05/2016.....	3341-3348
Defendant’s Proposed Jury Instructions Not Used at Trial, filed on 10/06/2016.....	3349-3356
Verdict (Defendant David Murphy), filed on 10/07/2016.....	3357-3359
Transcript of Proceedings Re: Sentencing, held on 11/28/2016.....	3360-3387
Judgement of Conviction (Defendant David Murphy), filed on 12/02/2016.....	3388-3390

VOLUME XV – PAGES 3391-3401

Judgement of Conviction (Defendant Summer Larsen), filed on 04/21/2017.....	3391-3394
Judgement of Conviction (Defendant Robert Figueroa), filed on 12/14/2016.....	3395-3396
Amended Judgment of Conviction (nunc pro tunc) (Defendant David Murphy), filed on 03/27/2017.....	3397-3399
Notice of Appeal, filed on 12/30/2016.....	3400-3401

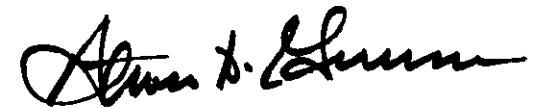
APPENDIX – INDEX (ALPHABETICAL ORDER)

	Page No.
Amended Judgment of Conviction (nunc pro tunc) (Defendant David Murphy), filed on 03/27/2017.....	3397-3399
Defendant Murphy’s Supplemental Motion to Sever, filed on 10/03/2016.....	2814-2819
Defendant’s Proposed Jury Instructions, filed on 10/05/2016.....	3341-3348
Defendant’s Proposed Jury Instructions Not Used at Trial, filed on 10/06/2016.....	3349-3356
Indictment, filed on 01/30/2015.....	0001-0007
Instruction to the Jury, filed on 10/07/2016.....	3277-3340
Judgement of Conviction (Defendant David Murphy), filed on 12/02/2016.....	3388-3390
Judgement of Conviction (Defendant Robert Figueroa), filed on 12/14/2016.....	3395-3396
Judgement of Conviction (Defendant Summer Larsen), filed on 04/21/2017.....	3391-3394
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 04/06/2016.....	0123-0135
Motion to Dismiss Counsel and Appointment of Alternative Counsel, filed on 08/03/2016.....	0200-0207
Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0263-0275
Motion to Sever, filed on 04/03/2016.....	0109-0122
Motion to Withdraw as Attorney of Record, filed on 07/11/2016.....	0187-0191
Notice of Appeal, filed on 12/30/2016.....	3400-3401
Notice of Expert Witnesses, filed on 03/26/2015.....	0044-0048
Second Superseding Indictment, filed on 05/29/2015.....	0067-0073
Second Supplemental Notice of Expert Witnesses, filed on 08/15/2016.....	0208-0212
State’s Opposition to Defendant’s Motion for Mistrial, filed on 10/03/2016.....	2820-2830
State’s Opposition to Defendant’s Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282

1	State's Opposition to Defendant's Motion to Sever, filed on 04/07/2016.....	0136-0156
2	Superseding Indictment, filed on 02/27/2015.....	0023-0029
3	Supplemental Notice of Expert Witnesses, filed on 04/03/2015.....	0049-0053
4	Third Supplemental Notice of Expert Witnesses, filed on 08/22/2016.....	0213-0233
5	Transcript of Arraignment Contd., held on 02/23/2015.....	0017-0022
6	Transcript of Grand Jury Return, held on 01/30/2015.....	0008-0010
7	Transcript of Grand Jury Return, held on 02/27/2015.....	0030-0033
8	Transcript of Grand Jury Return, filed on 05/29/2015.....	0074-0076
9	Transcript of Hearing Re: Calendar Call, held on 04/20/2015.....	0057-0062
10	Transcript of Hearing Re: Defendant's Motion to Dismiss Counsel/	
11	Defendant's Motion to Sever, held on 05/02/2016.....	0162-0173
12	Transcript of Hearing Re: Defendant's Petition for Writ of Habeas	
13	Corpus, held on 05/20/2015.....	0063-0066
14	Transcript of Hearing Re: Defendant's Petition for Writ of Habeas	
15	Corpus, held on 06/01/2015.....	0077-0098
16	Transcript of Hearing Re: Status Check Firm Trial Setting, held on	
17	09/21/2015.....	0105-0108
18	Transcript of Hearing Re: Status Check/Withdraw Plea/Trial Setting,	
19	held on 08/31/2015.....	0099-0104
20	Transcript of Initial Arraignment, held on 02/09/2015.....	0011-0016
21	Transcript of Proceedings Jury Trial – Day 1, held on 09/12/2016.....	0307-0449
22	Transcript of Proceedings Jury Trial – Day 2, held on 09/13/2016.....	0450-0624
23	Transcript of Proceedings Jury Trial – Day 3 (partial), held on	
24	09/14/2016.....	0625-0699
25	Transcript of Proceedings Jury Trial – Day 3 (contd.), held on	
26	09/14/2016.....	0700-0852
27	Transcript of Proceedings Jury Trial – Day 4, held on 09/15/2016.....	0853-1049
28	Transcript of Proceedings Jury Trial – Day 5, held on 09/16/2016.....	1050-1264
	Transcript of Proceedings Jury Trial – Day 6, held on 09/19/2016.....	1265-1385
	Transcript of Proceedings Jury Trial – Day 7, held on 09/20/2016.....	1386-1561
	Transcript of Proceedings Jury Trial – Day 8, held on 09/21/2016.....	1562-1694

1	Transcript of Proceedings Jury Trial – Day 9, held on 09/22/2016.....	1695-1844
2	Transcript of Proceedings Jury Trial – Day 10, held on 09/23/2016.....	1845-2095
3	Transcript of Proceedings Jury Trial – Day 11, held on 09/27/2016.....	2096-2240
4	Transcript of Proceedings Jury Trial – Day 12, held on 09/28/2016.....	2241-2390
5	Transcript of Proceedings Jury Trial – Day 13, held on 09/29/2016.....	2391-2555
6	Transcript of Proceedings Jury Trial – Day 14 (partial), held on 09/30/2016.....	2556-2641
7	Transcript of Proceedings Jury Trial – Day 14 (contd.), held on 09/30/2016.....	2642-2813
9	Transcript of Proceedings Jury Trial – Day 15, held on 10/03/2016.....	2831-2898
10	Transcript of Proceedings Jury Trial – Day 16, held on 10/04/2016.....	2899-3038
11	Transcript of Proceedings Jury Trial – Day 17, held on 10/05/2016.....	3039-3070
12	Transcript of Proceedings Jury Trial– Day 18, held on 10/06/2016.....	3071-3197
13	Transcript of Proceedings Jury Trial – Day 19, held on 10/07/2016.....	3198-3276
14	Transcript of Proceedings Re: Defendant’s Motion in Limine to Conceal Defendant’s Tattoos, held on 09/07/2016.....	0244-0262
15	Transcript of Hearing Re: Defendant’s Motion to Dismiss Counsel/ Defendant’s Motion to Sever, held on 05/02/2016.....	0162-0173
16	Transcript of Proceedings Re: Defendant’s Motion to Dismiss Counsel, held on 08/24/2016.....	0234-0236
17	Transcript of Proceedings Re: Defendant’s Motion to Dismiss Counsel, held on 08/31/2016.....	0237-0243
18	State’s Opposition to Defendant’s Motion to Exclude Summer Larsen, filed on 09/08/2016.....	0276-0282
19	Transcript of Proceedings Re: Defendant’s Motion to Sever, held on 04/18/2016.....	0157-0161
20	Transcript of Proceedings Re: Eyewear for Defendant, held on 04/06/2015.....	0054-0056
21	Transcript of Proceedings Re: Faretta Canvass, held on 05/04/2016...	0174-0177
22	Transcript of Proceedings Re: Joinder to Motion to Sever, held on 05/09/2016.....	0178-0186
23	Transcript of Proceedings Re: Motion to Withdraw as Attorney of Record, held on 07/25/2016.....	0192-0195
24		
25		
26		
27		
28		

1	Transcript of Proceedings Re: Motion to Withdraw as Attorney of	
2	Record, held on 07/27/2016.....	0196-0199
3	Transcript of Proceedings Re: Sentencing, held on	
4	11/28/2016.....	3360-3387
5	Transcript of Proceedings Re: Superseding Indictment, held on	
6	03/09/2015.....	0034-0043
7	Verdict (Defendant David Murphy), filed on 10/07/2016.....	3357-3359
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



CLERK OF THE COURT

~~IND~~
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-15-303991-4

-vs-

DEPT NO: V

JORGE MENDOZA, #2586625
~~ROBERT FIGUEROA~~, #1995563,
SUMMER LARSEN, aka,
Summer Rice, #1854665
DAVID MURPHY, aka,
David Mark Murphy #0859628,

INDICTMENT

Defendant(s).

STATE OF NEVADA)
COUNTY OF CLARK) ss.

The Defendant(s) above named, JORGE MENDOZA, ROBERT FIGUEROA, SUMMER LARSEN, aka, Summer Rice and DAVID MURPHY, aka, David Mark Murphy, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 193.330, 200.380, 193.165 - NOC 50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A DEADLY

1 WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031),
2 committed at and within the County of Clark, State of Nevada, on or about the 21st day of
3 September, 2014, as follows:

4 COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

5 did wilfully, unlawfully, and feloniously conspire with each other and/or an unknown
6 individual to commit a robbery.

7 COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

8 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit
9 larceny and/or robbery and/or murder, that certain residence occupied by JOSEPH LARSEN
10 and/or MONTY GIBSON, located at 1661 Broadmere Street, Las Vegas, Clark County,
11 Nevada, said Defendants did possess and/or gain possession of a deadly weapon, to wit: a 9mm
12 rifle and/or a hand gun and/or pellet gun, during the commission of the crime and/or before
13 leaving the structure; the Defendant being responsible under one or more theories of criminal
14 liability, to wit: 1) by directly or indirectly committing the acts constituting the offense and/or
15 2) by aiding and abetting in the commission of the crime by Defendant DAVID MURPHY,
16 aka, David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or
17 by acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s
18 home as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to
19 plan the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA
20 and/or ROBERT FIGUEROA and/or an unidentified co-conspirator going to the residence
21 with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, thereafter, JOSEPH
22 LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or an
23 unidentified co-conspirator to prevent the taking of the property, JORGE MENDOZA and/or
24 other conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators
25 acting in concert throughout and/or 3) a conspiracy to commit this crime.

26 COUNT 3 – HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON

27 did then and there wilfully, unlawfully and feloniously forcibly enter an inhabited
28 dwelling, to-wit: 1661 Broadmere Street, Las Vegas, Clark County Nevada, without

1 permission of the owner, resident, or lawful occupant, to-wit: JOSEPH LARSEN and/or
2 MONTY GIBSON, the said Defendant did possess and/or gain possession of a deadly weapon
3 consisting of a 9mm Firearm and/or a hand gun and/or pellet gun, during the commission of
4 the crime and/or before leaving the structure; the Defendants being responsible under one or
5 more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
6 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
7 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
8 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
9 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
10 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
11 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or an unidentified co-
12 conspirator going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY
13 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,
14 JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or an
15 unidentified co-conspirator to prevent the taking of the property, JORGE MENDOZA and/or
16 other conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators
17 acting in concert throughout and/or 3) a conspiracy to commit this crime.

18 COUNT 4 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

19 did then and there wilfully, unlawfully, and feloniously attempt to take personal
20 property, to-wit: lawful money of the United States and/or marijuana, from the person of
21 JOSEPH LARSEN, or in his presence, by means of force or violence, or fear of injury to, and
22 without the consent and against the will of JOSEPH LARSEN, by entering his home with a
23 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
24 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
25 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more
26 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
27 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
28 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene

1 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
2 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
3 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
4 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or an unidentified co-
5 conspirator going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY
6 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,
7 JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or an
8 unidentified co-conspirator to prevent the taking of the property, JORGE MENDOZA and/or
9 other conspirators returning fire at JOSEPH LARSEN, the co-conspirators acting in concert
10 throughout and/or 3) a conspiracy to commit this crime.

11 COUNT 5 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

12 did then and there wilfully, unlawfully, and feloniously attempt to take personal
13 property, to-wit: lawful money of the United States and/or marijuana, from the person of
14 MONTY GIBSON, or in his presence, by means of force or violence, or fear of injury to, and
15 without the consent and against the will of MONTY GIBSON, by entering his home with a
16 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
17 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
18 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more
19 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
20 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
21 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
22 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
23 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
24 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
25 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or an unidentified co-
26 conspirator going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY
27 GIBSON, one of the conspirators breaking open the front door to the residence, thereafter,
28 JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or an

1 unidentified co-conspirator to prevent the taking of the property, JORGE MENDOZA and/or
2 other conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators
3 acting in concert throughout and/or 3) a conspiracy to commit this crime.

4 COUNT 6 – MURDER WITH USE OF A DEADLY WEAPON

5 did then and there wilfully, unlawfully, feloniously, with premeditation and
6 deliberation, and with malice aforethought, kill MONTY GIBSON, a human being, by
7 shooting at and into the body of the said MONTY GIBSON, with a deadly weapon, to-wit: a
8 firearm, the defendants being responsible under one or more theories of criminal liability,
9 to-wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by
10 aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka,
11 David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by
12 acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s home
13 as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan
14 the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or
15 ROBERT FIGUEROA and/or an unidentified co-conspirator going to the residence with
16 weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking
17 open the front door to the residence, thereafter, JOSEPH LARSEN shooting at the JORGE
18 MENDOZA and ROBERT FIGUEROA and/or an unidentified co-conspirator to prevent the
19 taking of the property, JORGE MENDOZA and/or other conspirators returning fire, striking
20 and killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a
21 conspiracy to commit this crime; the defendants being responsible under one or more of the
22 following principles of criminal liability, to-wit: 1) by having premeditation and deliberation
23 and/or 2) during the perpetration or attempted perpetration of a robbery and/or burglary and/or
24 Home Invasion.

25 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

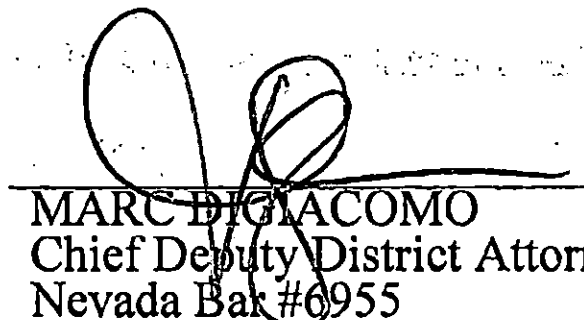
26 did then and there wilfully, unlawfully, feloniously and with malice aforethought
27 attempt to kill JOSEPH LARSEN, a human being, by shooting at JOSEPH LARSEN, with use
28 of a deadly weapon, to-wit: a 9mm Firearm and/or a hand gun and/or pellet gun, the defendants

1 being responsible under one or more theories of criminal liability, to-wit: 1) by directly or
2 indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the
3 commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving
4 co-conspirators to scene and/or acting as a lookout and/or by acting as the "get away" driver,
5 SUMMER LARSEN identifying JOSEPH LARSEN's home as a target and/or meeting with
6 the co-defendants and/or unidentified co-conspirators to plan the robbery of JOSEPH
7 LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA
8 and/or an unidentified co-conspirator going to the residence with weapons to rob JOSEPH
9 LARSEN and/or MONTY GIBSON, one of the conspirators breaking open the front door to
10 the residence, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and
11 ROBERT FIGUEROA and/or an unidentified co-conspirator to prevent the taking of the
12 property, JORGE MENDOZA and/or other conspirators returning fire at JOSEPH LARSEN,
13 the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

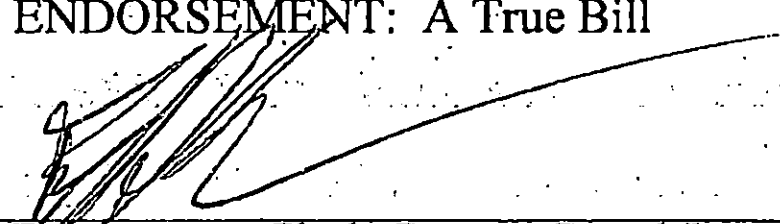
14 DATED this 29th day of January, 2015.

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

17
18 BY


19 MARC DIGIACOMO
20 Chief Deputy District Attorney
Nevada Bar #6955

21
22 ENDORSEMENT: A True Bill


23
24 Foreperson, Clark County Grand Jury
25
26
27
28

Names of witnesses testifying before the Grand Jury:

HALL, ASHLEY, 6401 BAMBOO PL., LVN

LARSEN, JOSEPH, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

DAY, ROGER, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

DUTRA, DR. TIMOTHY, CCME, 1704 PINTO LN., LVN

FIGUEROA, ROBERT, UNKNOWN ADDRESS

JENSEN, BARRY, LVMPD P#3662

LARSEN, STEVEN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

Additional witnesses known to the District Attorney at time of filing the Indictment:

SALGADO, RENEE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

WALKER, GENE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

MENDOZA, AMANDA, 1219 WESTLUND DR., LVN

ESTAVILLO, MICHELLE, 1219 WESTLUND DR., LVN

ROWE, TRACY, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

GIBSON, LATONYA, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

14BGJ019ABCD/14F14997ABCD/dd-GJ

LVMPD:EV# 140921-3020

(TK12)

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

)
)
) CASE NO. C-15-303991-4
)
)
) DEPT. XVIII
)
)
) **TRANSCRIPT OF PROCEEDINGS**
)
)
)
)
)

GRAND JURY RETURN

0008

1 **LAS VEGAS, NEVADA; JANUARY 30, 2015**

2 [Proceeding commenced at 11:23 a.m.]

3
4 MS. TALIM: Grand Jury Case Number 14BGJ019 A, B, C, and D,
5 and by a vote of 12 or more returned a true bill against the
6 following individuals: Jorge Mendoza, Robert Figueroa, Summer
7 Larsen, and David Murphy, on the following charges: each Defendant
8 is charged with one count, conspiracy to commit robbery; one count,
9 burglary while in possession of a deadly weapon; one count, home
10 invasion while in possession of a deadly weapon; two counts,
11 attempt robbery with use of a deadly weapon; one count, murder with
12 use of a deadly weapon; one count, attempt murder with use of a
13 deadly weapon.

14 THE COURT: Mr. James, did 12 or more members of the Grand
15 Jury concur on a finding of true bill as to each count as to these
16 Defendants?

17 MR. JAMES: Yes, Your Honor.

18 THE COURT: Very well. It'll be assigned Case Number C303991.
19 Calendar per Court Clerk is reflecting tracking to Department 5.
20 Let's discuss a bail set.

21 MS. JONES: Your Honor, Tierra Jones, on behalf of the State
22 of Nevada, all of these Defendants are currently being held without
23 bail and the State believes that based on the Grand Jury
24 presentation that the proof is evident and the presumption is
25 great. We would ask that that bail status remain. There are no

1 additional charges in this indictment that were not originally
2 charged.

3 THE COURT: All right. So for purposes of constancy, the
4 previous decision of the limited jurisdiction judge will remain.
5 We'll assign it -- again in Department 5, and give you one week
6 return date.

7 THE CLERK: February 9th at 9:00 a.m. in District Court 5.

8 THE COURT: Ms. Talim -- or Ms. Jones, are there any exhibits
9 to be lodged with the Clerk of the Court?

10 MS. TALIM: One through thirteen, Your Honor.

11 THE COURT: Are there any additional matters to be returned?

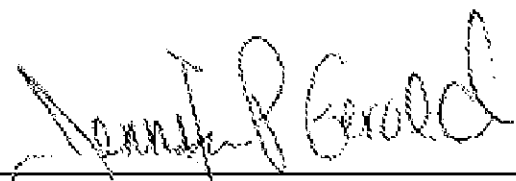
12 MS. TALIM: Your Honor, we're just asking on that same series
13 of cases, that 14F14997 A, B, C, and D, which is currently set for
14 prelim on the 5th of February be dismissed.

15 THE COURT: Thank you. It will be dismissed.

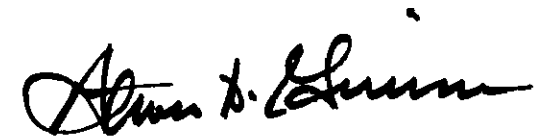
16 MS. TALIM: Thank you.

17 [Proceeding concluded at 11:25 a.m.]

18
19
20
21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/video proceedings in the above-entitled case to the best of my ability.

24
25


Jennifer P. Gerold
Court Recorder/Transcriber
Court Recorder/Transcriber



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

DAVID MURPHY, et al.

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 9, 2015

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

INITIAL ARRAIGNMENT

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorney

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, JR., ESQ.,

For the Defendant, Figueroa:

DAVID T. BROWN, ESQ.,

For the Defendant, Larsen:

GREGORY E. COYER, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, FEBRUARY 9, 2015**

2 [Proceeding commenced at 9:46 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus Jorge
5 Mendoza, Robert Figueroa and Summer Larsen -- oh, and David Murphy.
6 Morning.

7 MS. LEXIS: Good morning.

8 THE COURT: And this is on for arraignment, correct?

9 MS. LEXIS: Yes, Your Honor.

10 THE COURT: Okay. And I don't -- I don't have a copy -- oh, yes I do. It
11 got stuck to the other paper. All right. So shall we go just in order of how they
12 appear? If you'll state your appearances for the record that'd probably be
13 helpful.

14 MR. WOLFBRANDT: Good morning, Lou [phonetic] Wolfbrandt, bar
15 number 460 here for Jose [sic] Mendoza who's present in custody.

16 THE COURT: Thank you.

17 MR. COYER: Good morning, Your Honor, Gregory Coyer, 10013 present
18 on behalf of Summer Larsen.

19 MR. LANDIS: Casey Landis, 9424 on behalf of Mr. Murphy.

20 MR. BROWN: And David Brown, 6914 on behalf of Mr. Figueroa who's
21 also in custody.

22 MS. LEXIS: Agnes Lexis for the State.

23 THE COURT: Thank you.

24 MS. LEXIS: Thank you, Your Honor.

25 THE COURT: All right. So let's start with Mr. Mendoza.

1 MR. WOLFBRANDT: Judge, I have a copy of the indictment. I would
2 waive the -- the reading of it. I believe most of us were going to be asking for
3 you to pass this, not arraign the Defendants today until we get a copy of the
4 Grand Jury transcript.

5 THE COURT: Okay. Well, we can arraign them today and still make your
6 -- the time for your writ run -- run when you get the transcript. Has it even
7 been filed, you know?

8 MR. COYER: Not as of last night, Judge.

9 MR. LANDIS: No.

10 THE COURT: Okay.

11 MR. COYER: And I was -- I was going to make that request specifically
12 pursuant to statute, Judge; it's NRS 172.225 subsection 4. We -- there is a
13 provision that we can pass the arraignment.

14 I can tell you at least in the case of Mr. -- of Ms. Larsen it's going
15 to affect our decision of whether or not to invoke our speedy trial rights or not.

16 THE COURT: All right.

17 MR. WOLFBRANDT: And that would be the same for me.

18 THE COURT: And you're joining in that, Mr. Landis?

19 MR. LANDIS: I am.

20 THE COURT: And Mr. Brown?

21 MR. BROWN: Your Honor, I'm in a different situation. I was just asking
22 if we can set my client for a status check for any date next week and we're
23 hopeful to have it resolved.

24 THE COURT: All right. So we'll arraign him?

25 MR. BROWN: Yes.

1 THE COURT: Okay. And let's see here. Mr. Figueroa --
2 DEFENDANT, FIGUEROA: Yes, ma'am.
3 THE COURT: -- do you waive the formal reading of the indictment in this
4 case?
5 DEFENDANT, FIGUEROA: Yes.
6 THE COURT: And how do you plead to the charges contained within that
7 indictment?
8 DEFENDANT, FIGUEROA: Not guilty.
9 THE COURT: And we'll go ahead and -- did you want to just set it for
10 status check?
11 MR. BROWN: Yeah. If we could set it whatever day it works best for the
12 State. I guess Monday is a holiday, so probably next Wednesday.
13 MS. LEXIS: If it works with the Court, Your Honor.
14 THE COURT: You're -- you're invoking, right, today?
15 MR. BROWN: I'm -- for the --
16 THE COURT: Yeah.
17 MR. BROWN: -- purpose of today, he'll invoke.
18 THE CLERK: February 18th at 9 for status check set trial.
19 THE COURT: Right.
20 THE CLERK: And then the other Defendants are -- what are we doing
21 with them?
22 THE COURT: We're going to pass this -- when was the prelim? It was a
23 while ago wasn't it?
24 MR. LANDIS: There was no prelim. It was set for a prelim --
25 THE COURT: I'm sorry. It's an indictment. The grand jury, when was

1 that?

2 MS. LEXIS: Last week Thursday with the return last week Friday.

3 THE COURT: Oh, okay. So it hasn't been very long. All right.

4 MS. LEXIS: Actually --

5 THE COURT: How much time --

6 MS. LEXIS: -- actually -- I'm sorry, Your Honor. It was the week before.

7 THE COURT: The week before.

8 MS. LEXIS: So it's about a week and three days now.

9 THE COURT: Was it -- was it lengthy?

10 MS. LEXIS: I had a three-hour block.

11 THE COURT: This should be -- maybe if we set it a week status check on
12 whether we got the transcript.

13 MR. LANDIS: That's great.

14 MS. LEXIS: Maybe not next week, but the following week.

15 THE CLERK: February 23rd.

16 THE COURT: Mr. Brown, do you want to have -- be back on the 23rd?

17 MR. BROWN: If we could stick with the 18th, I think that would be
18 better.

19 THE COURT: The 18th is better.

20 MR. BROWN: Thank you.

21 THE COURT: Okay. All right. Thank you.

22 MR. LANDIS: Thank you.

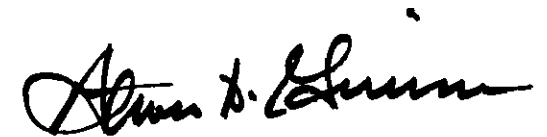
23 MS. LEXIS: Thank you very much.

24 [Proceeding concluded at 9:51 a.m.]

1 ATTEST: I 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.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
4 acknowledge that this is a rough draft transcript, expeditiously prepared, not
5 proofread, corrected or certified to be an accurate transcript.

6 
7 _____
8 Michelle Ramsey
9 Transcriber
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

DAVID MURPHY, et al.

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 23, 2015

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

ARRAIGNMENT CONTINUED

APPEARANCES:

For the State:

AGNES M. LEXIS, ESQ.,
Chief Deputy District Attorney

For the Defendant, Mendoza:

WILLIAM L. WOLFBRANDT, JR., ESQ.,

For the Defendant, Larsen:

GREGORY E. COYER, ESQ.,

For the Defendant, Murphy:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, FEBRUARY 23, 2015**

2 [Proceeding commenced at 9:59 a.m.]

3
4 THE COURT: Case number C303991, State of Nevada versus Jorge
5 Mendoza, Summer Larsen and David Murphy. Line transport -- refuse transport.

6 CORRECTION'S OFFICER: Your Honor, Mr. Murphy declined.

7 THE COURT: Okay.

8 MR. WOLFBRANDT: I was just told Mr. Coyer may have gone
9 downstairs. We had us all here for quite a while.

10 THE COURT: All right. So, do we -- what's going to be happening today,
11 so at least I know?

12 MR. LANDIS: We're setting a trial date, so.

13 MS. LEXIS: Yeah. The grand jury transcripts --

14 MR. WOLFBRANDT: It's the arraign -- continued arraignment.

15 THE COURT: Okay. I just wanted to make sure that that's --

16 MR. WOLFBRANDT: No. We all --

17 THE COURT: -- that was my expectation, but I didn't know.

18 MR. WOLFBRANDT: Right. We all got the grand jury transcripts last
19 week.

20 THE COURT: Okay. Oh good. So -- and Mr. Murphy, who's his -- okay.
21 He refused transport and you knew that.

22 MR. LANDIS: I assume so.

23 THE COURT: Okay. The officer just told me that was the case.

24 So, do you want me to continue it to Wednesday? When?

25 MR. LANDIS: Court's pleasure. I think we can enter a plea in his

1 absence. But if you're uncomfortable doing that, I'm happy to pass 'til to
2 Wednesday.

3 THE COURT: So it's -- it's a not guilty plea, right?

4 MR. LANDIS: Yes.

5 THE COURT: And you can make that for him?

6 MR. LANDIS: Yes.

7 THE COURT: All right. So let's do that. Since you're here, I don't want
8 -- we can go ahead and enter the plea of not guilty for Mr. Murphy. And who
9 else we have here as --

10 MR. WOLFBRANDT: Judge, I'm here. Lou [phonetic] Wolfbrandt for
11 Jorge Mendoza who's present in custody.

12 THE COURT: For Mr. Mendoza, okay.

13 MR. WOLFBRANDT: It's going to be a not guilty as well, but you got to
14 go through the whole arraignment process.

15 THE COURT: Right. Okay. And so, Mr. Mendoza, to -- to the
16 indictment, that charges you with multiple counts, conspiracy to commit
17 robbery, burglary while in possession of a deadly weapon, home invasion while
18 in possession of a deadly weapon -- weapon, attempt robbery with use of a
19 deadly weapon, murder with use of a deadly weapon, attempt murder with use
20 of a deadly weapon; how do you plead?

21 DEFENDANT, MENDOZA: Not guilty.

22 THE COURT: And do you waive the formal reading of the indictment as
23 well as the list of witnesses?

24 DEFENDANT, MENDOZA: Yes.

25 THE COURT: All right. And we're miss -- missing Mr. Coyer for Ms.

1 Larsen. He'll be back. Have you talked about a trial date at all?

2 MS. LEXIS: State's ready whenever the Court sets it.

3 MR. WOLFBRANDT: For Mr. Mendoza we're prepared to waive the 60-
4 day rule. I'll let Mr. Coyer confirm it, but he and I talked. I think he's prepared
5 to do the same thing. I think they've been contemplating possibly filing some
6 writs which would by statute require waiving the speedy trial anyway.

7 THE COURT: Right.

8 MR. LANDIS: I can represent that Mr. Murphy intended to invoke today.
9 I do anticipate filing a writ, but I he didn't want to invoke his speedy trial rights.

10 THE COURT: All right. Well let's go ahead and set it as if everybody's
11 invoked and then we'll deal with it if -- if writs are filed obviously then that'll
12 waive and we can reset.

13 THE CLERK: Okay. Your calendar call is April 20th at 9 a.m. and your
14 jury trial is April 27th at 1:30.

15 THE COURT: And when Ms. Larsen's lawyer gets here, we'll arraign her.

16 MS. LEXIS: Thank you.

17 MR. WOLFBRANDT: Thank you.

18 [Matter trailed]

19 [Matter recalled at 10:37 a.m.]

20 THE COURT: Case number -- recalling case number C303991, State of
21 Nevada versus Jorge Mendoza -- well actually it's just now on for Summer
22 Larsen.

23 MR. COYER: Good morning, Your Honor.

24 THE COURT: Morning.

25 MR. COYER: Sorry I stepped out there earlier.

1 THE COURT: No problem.

2 MR. COYER: Gregory Coyer, 10013, on behalf of Ms. Larsen who's
3 present in custody.

4 THE COURT: Ms. Larsen, to the indictment charging you with -- is she
5 charged in all of the -- everything?

6 MR. COYER: Yes, Judge.

7 THE COURT: Charging you with conspiracy to commit robbery, burglary
8 while in possession of a deadly weapon, home invasion while in possession of a
9 deadly weapon, attempt robbery with use of a deadly weapon, murder with use
10 of a deadly weapon and attempt murder with use of a deadly weapon; how do
11 you plead?

12 DEFENDANT, LARSEN: Not guilty.

13 THE COURT: All right. And we set a trial date on invoked date, so we'll
14 get that to you now.

15 THE CLERK: Its calendar call is April 20th, 9 a.m. Jury trial April 27th at
16 1:30.

17 THE COURT: And we'll show her as invoking as well?

18 MR. COYER: No problem.

19 THE COURT: All right.

20 MR. COYER: For the record, I do have another trial set on that date, but
21 it's an out of custody trial. So it shouldn't be a problem.

22 THE COURT: Okay. And I forgot, are you waiving the formal reading of
23 indictment and the list of witnesses?

24 MR. COYER: We will waive the reading. I did provide Ms. Larsen with a
25 copy and I would ask to reserve 21 days from today to file a writ.

1 THE COURT: That's fine. Twenty-one days from today for the filing --
2 [Colloquy between the Court and the Clerk]

3 MR. COYER: Thank you.

4 THE COURT: Thank you.

5 MS. LEXIS: Thank you.

6 [Proceeding concluded at 10:40 a.m.]

7

8

9

10

11

12

13

14

15

16

17

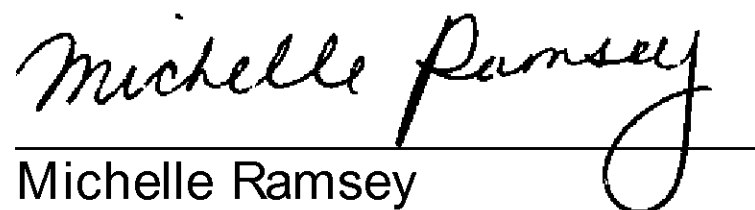
18 ATTEST: I hereby certify that I have truly and correctly transcribed the
19 audio/video proceedings in the above-entitled case to the best of my ability.

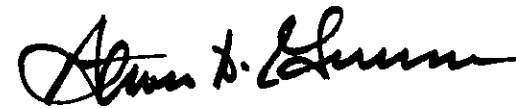
20 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
21 acknowledge that this is a rough draft transcript, expeditiously prepared, not
22 proofread, corrected or certified to be an accurate transcript.

23

24

25


Michelle Ramsey
Transcriber



CLERK OF THE COURT

1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #6955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-15-303991-4

DEPT NO: V

12 JORGE MENDOZA, #2586625
13 SUMMER LARSEN, aka,
14 Summer Rice, #1854665
15 **DAVID MURPHY, aka,**
16 **David Mark Murphy #0859628**
17 JOSEPH LAGUNA, aka,
18 Joey Laguna #1203205,

19 Defendant(s).

SUPERSEDING
INDICTMENT

18 STATE OF NEVADA)
19 COUNTY OF CLARK) ss.

20 The Defendant(s) above named, JORGE MENDOZA, SUMMER LARSEN, aka,
21 Summer Rice, DAVID MURPHY, aka, David Mark Murphy, JOSEPH LAGUNA, aka, Joey
22 Laguna accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO
23 COMMIT ROBBERY (Category B Felony - NRS 199.480, 200.380 - NOC 50147);
24 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony -
25 NRS 205.060 - NOC 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY
26 WEAPON (Category B Felony - NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH
27 USE OF A DEADLY WEAPON (Category B Felony - NRS 193.330, 200.380, 193.165 - NOC
28 50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031), committed at and within the County of Clark, State of Nevada, on or about the 21st day of September, 2014, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did wilfully, unlawfully, and feloniously conspire with each other and/or ROBERT FIGUEROA to commit a robbery.

COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or robbery and/or murder, that certain residence occupied by JOSEPH LARSEN and/or MONTY GIBSON, located at 1661 Broadmere Street, Las Vegas, Clark County, Nevada, said Defendants did possess and/or gain possession of a deadly weapon, to wit: a 9mm rifle and/or a hand gun and/or pellet gun, during the commission of the crime and/or before leaving the structure; the Defendant being responsible under one or more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s home as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

//

//

1 COUNT 3 – HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully and feloniously forcibly enter an inhabited
3 dwelling, to-wit: 1661 Broadmere Street, Las Vegas, Clark County Nevada, without
4 permission of the owner, resident, or lawful occupant, to-wit: JOSEPH LARSEN and/or
5 MONTY GIBSON, the said Defendant did possess and/or gain possession of a deadly weapon
6 consisting of a 9mm Firearm and/or a hand gun and/or pellet gun, during the commission of
7 the crime and/or before leaving the structure; the Defendants being responsible under one or
8 more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
9 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
10 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
11 and/or acting as a lookout and/or by acting as the “get away” driver, SUMMER LARSEN
12 identifying JOSEPH LARSEN’s home as a target and/or meeting with the co-defendants to
13 plan the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA
14 and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons
15 to rob JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking open
16 the front door to the residence, thereafter, JOSEPH LARSEN shooting at the JORGE
17 MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of
18 the property, JORGE MENDOZA and/or JOSEPH LAGUNA returning fire, striking and
19 killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a
20 conspiracy to commit this crime.

21 COUNT 4 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously attempt to take personal
23 property, to-wit: lawful money of the United States and/or marijuana, from the person of
24 JOSEPH LARSEN, or in his presence, by means of force or violence, or fear of injury to, and
25 without the consent and against the will of JOSEPH LARSEN, by entering his home with a
26 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
27 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
28 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more

1 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
2 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
3 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
4 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
5 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
6 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
7 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA
8 going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one
9 of the conspirators breaking open the front door to the residence, thereafter, JOSEPH LARSEN
10 shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA
11 to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning
12 fire at JOSEPH LARSEN, the co-conspirators acting in concert throughout and/or 3) a
13 conspiracy to commit this crime.

14 COUNT 5 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

15 did then and there wilfully, unlawfully, and feloniously attempt to take personal
16 property, to-wit: lawful money of the United States and/or marijuana, from the person of
17 MONTY GIBSON, or in his presence, by means of force or violence, or fear of injury to, and
18 without the consent and against the will of MONTY GIBSON, by entering his home with a
19 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
20 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
21 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more
22 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
23 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
24 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
25 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
26 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
27 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
28 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA

1 going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one
2 of the conspirators breaking open the front door to the residence, thereafter, JOSEPH LARSEN
3 shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA
4 to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning
5 fire, striking and killing MONTY GIBSON, the co-conspirators acting in concert throughout
6 and/or 3) a conspiracy to commit this crime.

7 COUNT 6 – MURDER WITH USE OF A DEADLY WEAPON

8 did then and there wilfully, unlawfully, feloniously, with premeditation and
9 deliberation, and with malice aforethought, kill MONTY GIBSON, a human being, by
10 shooting at and into the body of the said MONTY GIBSON, with a deadly weapon, to-wit: a
11 firearm, the defendants being responsible under one or more theories of criminal liability,
12 to-wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by
13 aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka,
14 David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by
15 acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s home
16 as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan
17 the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or
18 ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons to rob
19 JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking open the front
20 door to the residence, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and
21 ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property,
22 JORGE MENDOZA and/or other conspirators returning fire, striking and killing MONTY
23 GIBSON, the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit
24 this crime; the defendants being responsible under one or more of the following principles of
25 criminal liability, to-wit: 1) by having premeditation and deliberation and/or 2) during the
26 perpetration or attempted perpetration of a robbery and/or burglary and/or Home Invasion.

27 //

28 //


1 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and with malice aforethought
3 attempt to kill JOSEPH LARSEN, a human being, by shooting at JOSEPH LARSEN, with use
4 of a deadly weapon, to-wit: a 9mm Firearm and/or a hand gun and/or pellet gun, the defendants
5 being responsible under one or more theories of criminal liability, to-wit: 1) by directly or
6 indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the
7 commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving
8 co-conspirators to scene and/or acting as a lookout and/or by acting as the "get away" driver,
9 SUMMER LARSEN identifying JOSEPH LARSEN's home as a target and/or meeting with
10 the co-defendants and/or unidentified co-conspirators to plan the robbery of JOSEPH
11 LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA
12 and/or JOSEPH LAGUNA going to the residence with weapons to rob JOSEPH LARSEN
13 and/or MONTY GIBSON, one of the conspirators breaking open the front door to the
14 residence, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT
15 FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property, JORGE
16 MENDOZA and/or other conspirators returning fire at JOSEPH LARSEN, the co-conspirators
17 acting in concert throughout and/or (3) a conspiracy to commit this crime.

18 DATED this 21st day of February, 2015.

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

22 BY

23 
24 MARC DIGIACOMO
25 Chief Deputy District Attorney
26 Nevada Bar #6955

25 ENDORSEMENT: A True Bill

26 
27 Foreperson, Clark County Grand Jury
28

Names of witnesses testifying before the Grand Jury:

DAY, ROGER, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

DUTRA, DR. TIMOTHY, CCME, 1704 PINTO LN., LVN

FIGUEROA, ROBERT, UNKNOWN ADDRESS

HALL, ASHLEY, 6401 BAMBOO PL., LVN

JENSEN, BARRY, LVMPD P#3662

LARSEN, JOSEPH, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

LARSEN, STEVEN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

WILLIAMS, TOD, LVMPD

Additional witnesses known to the District Attorney at time of filing the Indictment:

ESTAVILLO, MICHELLE, 1219 WESTLUND DR., LVN

GIBSON, LATONYA, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

MENDOZA, AMANDA, 1219 WESTLUND DR., LVN

ROWE, TRACY, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

SALGADO, RENEE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

WALKER, GENE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

14BGJ019ACDE/14F14997ACDE/dd-GJ

LVMPD EV# 140921-3020

(TK12)

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

)
)
) CASE NO. C-15-303991-4
)
)
) DEPT. XVIII
)
)
) **TRANSCRIPT OF PROCEEDINGS**
)
)
)
)

GRAND JURY RETURN

1 **LAS VEGAS, NEVADA; FEBRUARY 27, 2015**

2 [Proceeding commenced at 11:36 a.m.]

3
4 MS. TALIM: Grand Jury met on Grand Jury Case Number 14BGJ019
5 A, C, D, and E, and by a vote of 12 or more returned a true bill
6 against Jorge Mendoza on one count, conspiracy to commit robbery;
7 one count, burglary while in possession of a deadly weapon; one
8 count, home invasion while in possession of a deadly weapon; two
9 counts, attempt robbery with use of a deadly weapon; one count,
10 murder with use of a deadly weapon; one count, attempt murder with
11 use of a deadly weapon. I'm sorry and that was in addition to Mr.
12 Mendoza, the same counts against Summer Larsen, David Murphy, and
13 Joseph Laguna.

14 THE COURT: Mr. James, did 12 or more members of -- on behalf
15 of the Clark County Grand Jury, did 12 or more members of the Grand
16 Jury concur a finding a true bill as to each Defendant as outlined
17 by the District Attorney?

18 MR. JAMES: Yes, Your Honor.

19 THE COURT: Assign it -- very well, we'll assign it then Case
20 Number 303991. Has this been previously tracked?

21 MS. TALIM: It has, Your Honor.

22 THE COURT: What's -- what's the State's request regarding
23 warrant or summons?

24 MS. LEXIS: Your Honor, Agnes Lexis, for the State.

25 THE COURT: Yes.

1 MS. LEXIS: Your Honor, we're asking for no bail as to each of
2 the Defendants. Mr. Mendoza, Ms. Larsen, and Mr. Murphy were
3 previously on a no bail. This is a superseding indictment and we
4 would ask for the same concerning Mr. Laguna.

5 THE COURT: All right. So it's -- it's a no bail coming out
6 of Justice Court on the superseding?

7 MS. LEXIS: Yes -- or it was a no bail setting --

8 THE COURT: It's a no bail --

9 MS. LEXIS: -- at the last return.

10 THE COURT: All right. So you're -- you're -- and I
11 appreciate you for the purpose of constancy. You understand that's
12 how important that is to me?

13 MS. LEXIS: Yes, Your Honor.

14 THE COURT: So we have a -- the constancy in return. I'll do
15 a no bail on Mr. Laguna. It looks like it's tracked already to
16 Department Number 5. Let's give you a one week return on that no-
17 bail hold.

18 THE CLERK: March 9th at 9:00 a.m., Department 5.

19 THE COURT: March 9th. And Exhibits 1 through 23 are all
20 lodged with the Clerk of the Court?

21 MS. TALIM: Yes, Your Honor.

22 THE COURT: All right. Very good.

23 MS. LEXIS: Thank you.

24 THE COURT: Thank you. Are there other matters to be
25 returned?

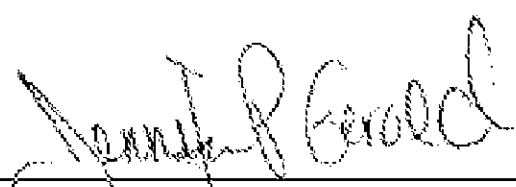
1 MS. TALIM: Your Honor, on -- on that case there's a Las Vegas
2 Justice Court case we're asking to be dismissed; that's 15F02342X.

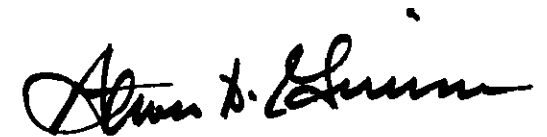
3 THE COURT: That's dismissed consistent with the superseding.
4 All right.

5 MS. TALIM: Thank you, Your Honor.

6 [Proceeding concluded at 11:38 a.m.]
7
8
9
10
11
12
13
14
15
16
17
18
19
20

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

23 
24 _____
25 Jennifer P. Gerold
Court Recorder/Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA; SUMMER
LARSEN; DAVID MURPHY; JOSEPH
LAGUNA,

Defendant.

CASE NO. C-303991-1
C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
MARCH 9, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE
FURTHER PROCEEDINGS: SUPERSEDING INDICTMENT – DEFTS 1, 3, 4;
SUPERSEDING INDICTMENT WARRANT RETURN – DEFTS 1, 3, 4;
INDICTMENT WARRANT RETURN- DEFT 5; INITIAL ARRAIGNMENT – DEFT 5**

APPEARANCES:

For the Plaintiff:

MARC DIGIACOMO, ESQ.
Deputy District Attorney

For Joseph Laguna:

MONIQUE MCNEILL, ESQ.

[Additional appearances on following page]

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ADDITIONAL PARTIES:

SUMMER LARSEN
DAVID MURPHY
JORGE MENDOZA

GREGORY COYER, ESQ.
CASEY A. LANDIS, ESQ.
WILLIAM WOLFBRANDT, ESQ.

1 MONDAY, MARCH 9, 2015 AT 10:15:00 A.M.

2
3 THE COURT: Case number C303991, State of Nevada versus Jorge
4 Mendoza; Summer Larsen, David Murphy and Joseph Laguna who are all present,
5 in custody. Good morning.

6 MR. COYER: Good morning, Your Honor.

7 MS. MCNEIL: Good morning, Your Honor, Monique McNeil on behalf of Mr.
8 Laguna.

9 MR. COYER: Good morning, Your Honor. Gregory Coyer representing
10 Summer Larsen. I'm also, with the Court's permission, gonna stand in today for Mr.
11 Landis on behalf of Mr. Murphy and stand in for Mr. Wolfbrandt on behalf of Mr.
12 Mendoza as well.

13 THE COURT: Okay. So, everybody is covered. That's what I wanted to
14 make sure.

15 MR. DIGIACOMO: I'm not sure if Mr. Laguna – no, Mr. Laguna. Yes. Mr.
16 Murphy or Mr. Mendoza has a superseding. I brought copies, but since the lawyers
17 are not here -- have you guys got the superseding indictments?

18 MR. MURPHY: I have.

19 MR. DIGIAGOMO: You have?

20 MR. MURPHY: I have it.

21 MR. DIGIACOMO: Murphy – Mr. Murphy, you didn't?

22 MR. MURPHY: Oh, I didn't get that. I got –

23 MR. DIGIACOMO: The superseding. Here's the original. They now all have
24 copies of the superseding, Judge.

25 THE COURT: Okay. Now, I don't have it but maybe I can look at it.

1 THE COURT CLERK: Are they already filed?

2 MR. DIGIACOMO: Yes, it was filed on February 27th. Would you like a copy?

3 The only thing it doesn't have is Mr. Laguna's other charges. All the other charges
4 are the same.

5 THE COURT: All right. And so has – have all – all of the Defendants have
6 received the superseding indictment. So, Ms. McNeil, as to your client, Mr. Laguna,
7 are you waiving the formal reading of the superseding indictment?

8 MS. MCNEIL: Yes, Your Honor. We are. He's going to plead not guilty and
9 he's I believe going to invoke his right to a speedy trial.

10 THE COURT: Yes. Okay. And is that correct, Mr. Laguna?

11 MR. LAGUNA: Yes.

12 THE COURT: Okay.

13 MR. LAGUNA: I am gonna have a speedy trial, right?

14 THE COURT: Right.

15 MR. LAGUNA: Yeah. Yeah.

16 THE COURT: Okay. And so you're invoking and you're waiving the reading
17 and you're entering a plea of not guilty, is that correct to all –

18 MR. LAGUNA: Yes.

19 THE COURT: -- of the charges?

20 MR. LAGUNA: Yes.

21 THE COURT: Okay. Thank you. And let's see, let's take Jorge Mendoza.
22 Mr. Mendoza.

23 MR. MENDOZA: Yes.

24 THE COURT: All right. So, is Mr. Mendoza also waiving the formal reading of
25 the superseding indictment?

1 MR. COYER: I'm sorry, Your Honor?

2 THE COURT: Is he waiving the – the formal reading of the –

3 MR. COYER: Yes.

4 THE COURT: -- superseding indictment?

5 MR. COYER: Yes, Your Honor. I apologize.

6 THE COURT: Okay. And Mr. Mendoza, is that correct? You don't want me to
7 read it to you aloud with the list of witnesses?

8 MR. MENDOZA: Yes. That's correct.

9 THE COURT: Okay. Thank you. And How do you plead to the superseding
10 indictment?

11 MR. MENDOZA: Not guilty.

12 THE COURT: All right. And then we'll also – we're gonna set the same
13 speedy trial they – for all of them.

14 So, next is Ms. Larsen. Ms. Larsen, do you have the superseding
15 indictment now?

16 MS. LARSEN: Yes.

17 THE COURT: All right. And is she waiving the formal reading?

18 MS. COYER: We'll waive the formal reading. I believe she was already in an
19 invoked status as well, and I would ask to reserve 21 days from today's date to file
20 any writs. I know in Ms. Larsen's case specifically that we do need to file one,
21 Judge.

22 THE COURT: Okay. And you're waiving the formal reading and how do you
23 plead?

24 MS. LARSEN: Not guilty.

25 THE COURT: Okay. All right. And, yeah, 21 days would be from the date of

1 today which is the formal arraignment date. [indecipherable]

2 MR. DIGIACOMO: Just for the record. As it relates to anything involving the
3 superseding. --

4 THE COURT: Correct.

5 MR. DIGIACOMO: -- her time ran --

6 THE COURT: As --

7 MR. DIGIACOMO: -- from the --

8 THE COURT: -- to this --

9 MR. DIGIACOMO: -- original --

10 THE COURT: Right. As to --

11 MR. DIGIACOMO: -- one from --

12 THE COURT: -- the --

13 MR. DIGIACOMO: -- when it --

14 THE COURT: -- superseding --

15 MR. DIGIACOMO: -- was filed.

16 THE COURT: -- indictment. So, I don't know what was presented to the
17 Grand Jury but it would only relate to the superseding indictment. As far as the --

18 MR. COYER: I'm a little confused.

19 THE COURT: Okay. So, everything that happened in front of the Grand Jury
20 that's fair play because now the -- the prior was -- was it by way of complaint before
21 in Justice Court or was it --

22 MR. DIGIACOMO: No.

23 THE COURT: -- originally --

24 MR. DIGIACOMO: Ms. --

25 THE COURT: -- in --

1 MR. DIGIACOMO: -- Larsen was already indicted for these charges. This
2 superseding only adds Mr. Laguna.

3 THE COURT: Oh.

4 MR. DIGIACOMO: So, to the extent that she wants to attack – anything in
5 this superseding would relate to this superseding not to her original charges. She
6 had 21 days from her first appearances. I don't know if that's run yet or not. I
7 believe it has run. So, her time for a writ should have run already. This is a
8 superseding as to Mr. Laguna.

9 MR. COYER: Her 21 days runs on Monday a week from today.

10 MR. DIGIACOMO: Okay.

11 THE COURT: Okay.

12 MR. DIGIACOMO: If – well, within 21 days then he could ask for additional
13 time now from the Court. I'd have no objection from that. I just wanted to make
14 sure it's clear what he's asking for.

15 MR. COYER: Yeah. It's on my calendar to be due Monday, but if I – if I can
16 get 21 days from today then – I just want to make sure I don't have to file two
17 separate writs on two separate time lines because I haven't looked at the new
18 testimony from this most recent addition of the Defendant. I don't know what's in
19 there.

20 THE COURT: Okay. All right. I'll grant that. You know, I –

21 MR. DIGIACOMO: I have –

22 THE COURT: -- think everybody –

23 MR. DIGIACOMO: -- no objection –

24 THE COURT: -- would be –

25 MR. DIGIACOMO: -- to an additional 21 days to the original time period that

1 was running for Ms. – Ms. Larsen.

2 THE COURT: All right. So, an additional 21 days from today or –

3 MR. DIGIACOMO: It doesn't matter to me. If he wants --

4 THE COURT: Yeah.

5 MR. DIGIACOMO: -- 30 days from today. I'm gonna be out of the office for
6 the next 6 weeks so if he wants 30 days I'm gonna requesting from him additional
7 time to be able to respond to that because I won't be back until I think early April.

8 THE COURT: You just want to ask for 3 days now?

9 MR. COYER: That'd be fine. But I would just – just so everyone's clear and I
10 can pass this on to everyone. I would make that request for all the Defendants.

11 MS. MCNEIL: And I would join that as well and it probably makes it easier to
12 have a date that we all have to file a writ.

13 MS. COYER: Yeah.

14 THE COURT: Okay. That's fine.

15 MS. COYER: We can just say every Defendant can file a writ on the entirety
16 of the Grand Jury testimony 30 days from today.

17 THE COURT: Correct.

18 MS. COYER: Is that right?

19 MR. DIGIACOMO: Correct.

20 MR. COYER: Okay.

21 THE COURT: And what will that date be just so – so we'll have it?

22 THE COURT CLERK: That will be April 9th.

23 THE COURT: Okay. All right. Did we get her plea of not guilty?

24 MR. COYER: Yes.

25 THE COURT: We did. Okay. And then as to Mr. Murphy, are we waiving Mr.

1 Murphy's formal reading?

2 MR. COYER: Yes, Your Honor.

3 THE COURT: Okay. And Mr. Murphy, how do you plea to the superseding
4 indictment?

5 MR. MURPHY: Not guilty.

6 THE COURT: Okay. And so everybody gets the same trial date within 60
7 days?

8 THE COURT CLERK: Yeah. They already have one set.

9 THE COURT: Is that right?

10 MR. COYER: That's correct.

11 THE COURT: Do you want to keep that date?

12 MR. DIGIACOMO: Is it April the 26th?

13 THE COURT CLERK: The 27th.

14 MR. DIGIACOMO: April 27th. We can keep the April 27th date. Likely it will
15 not go forward if they all file writs, but if they don't then –

16 THE COURT: Okay. All right. That sounds good because the – yeah, the –

17 MR. DIGIACOMO: And I –

18 THE COURT: -- third case –

19 MR. DIGIACOMO: -- apologize –

20 THE COURT: -- is gonna run before –

21 MR. DIGIACOMO: -- did Mr. Laguna actually say not guilty? He was the only
22 one I didn't hear say not guilty.

23 MR. LAGUNA: Yeah, I said not guilty.

24 MR. DIGIACOMO: Okay. That's fine. Thank you, Judge.

25 THE COURT: All right. Just to make sure everybody is not guilty. All right.

1 The trial date that we have stands and we'll see if the writs are filed. Thank you.

2 MR. COYER: Thank you, Your Honor.

3 MS. MCNEIL: Thank you, Your Honor.

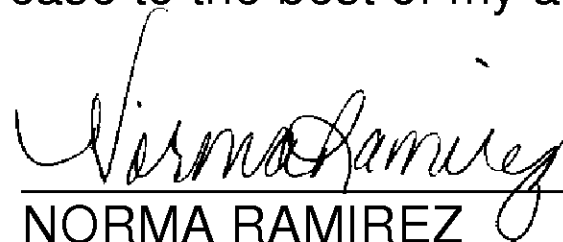
4 THE COURT: Oh. Do you want this back? It's your extra copy.

5 MR. DIGIACOMO: That's fine.

6 [Proceedings concluded at 10:21:57 a.m.]

7 * * * * *

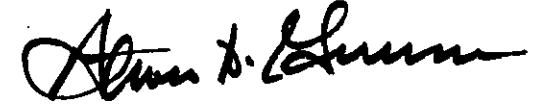
11
12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video recording in the above-entitled case to the best of my ability.

14 

15 NORMA RAMIREZ
16 Court Recorder
17 District Court Dept. XXII
702 671-0572

1 NWEW
STEVEN B. WOLFSON
2 Clark County District Attorney
Nevada Bar #001565
3 AGNES M. LEXIS
Chief Deputy District Attorney
4 Nevada Bar #011064
200 Lewis Avenue
5 Las Vegas, Nevada 89155-2212
(702) 671-2500
6 Attorney for Plaintiff

Electronically Filed
03/26/2015 08:57:45 AM



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JORGE MENDOZA,
#2586625
13 SUMMER LARSEN, aka, Summer Rice,
#1854665
14 DAVID MURPHY,
aka, David Mark Murphy, #0859628
15 JOSEPH LAGUNA, aka, Joey Laguna,
#1203205
16 Defendants.

CASE NO: C-15-303991-4

DEPT NO: V

17 NOTICE OF EXPERT WITNESSES
18 [NRS 174.234(2)]

19 TO: DAVID MURPHY, aka, David Mark Murphy Defendant; and

20 TO: CASEY LANDIS, Counsel of Record:

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

23 CHARLTON, NOREEN P#13572, Senior Crime Scene Analyst or Designee - Las
24 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
25 documentation, collection and preservation of evidence and will give opinions related thereto.
26 She is expected to testify regarding the identification, documentation, collection and
27 preservation of evidence in this case.

28 ///

1 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR AT & T;** will testify as
2 experts regarding how cellular phones work, how phones interact with towers, and the
3 interpretation of that information.

4 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR CRICKET**
5 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
6 with towers, and the interpretation of that information.

7 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR METRO PCS;** will
8 testify as experts regarding how cellular phones work, how phones interact with towers, and
9 the interpretation of that information.

10 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR NEUSTAR;** will testify
11 as experts regarding how cellular phones work, how phones interact with towers, and the
12 interpretation of that information.

13 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR T-MOBILE;** will testify
14 as experts regarding how cellular phones work, how phones interact with towers, and the
15 interpretation of that information.

16 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR VERIZON**
17 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
18 with towers, and the interpretation of that information.

19 **DUTRA, DR. TIMOTHY,** A medical doctor employed by the Clark County Coroner
20 Medical Examiner. He is an expert in the area of forensic pathology and will give scientific
21 opinions related thereto. He is expected to testify regarding the cause and manner of death of
22 MONTY GIBSON.

23 **FELABOM, ADAM P#8427,** Senior Crime Scene Analyst or Designee - Las Vegas
24 Metropolitan Police Department. He is an expert in the area of the identification,
25 documentation, collection and preservation of evidence and will give opinions related thereto.
26 He is expected to testify regarding the identification, documentation, collection and
27 preservation of evidence in this case.

28 ///

1 **HOLSTEIN, DANIEL P#3861**, Senior Crime Scene Analyst or Designee - Las Vegas
2 Metropolitan Police Department. He is an expert in the area of the identification,
3 documentation, collection and preservation of evidence and will give opinions related thereto.
4 He is expected to testify regarding the identification, documentation, collection and
5 preservation of evidence in this case.

6 **MECKLER, KRISTEN P#14402**, Crime Scene Analyst II or Designee - Las Vegas
7 Metropolitan Police Department. She is an expert in the area of the identification,
8 documentation, collection and preservation of evidence and will give opinions related thereto.
9 She is expected to testify regarding the identification, documentation, collection and
10 preservation of evidence in this case.

11 **NEMCIK, AMY P#8504**, Crime Scene Analyst Supervisor or Designee - Las Vegas
12 Metropolitan Police Department. She is an expert in the area of the identification,
13 documentation, collection and preservation of evidence and will give opinions related thereto.
14 She is expected to testify regarding the identification, documentation, collection and
15 preservation of evidence in this case.

16 **SHRUM, SHELLY P#7917**, Senior Crime Scene Analyst or Designee - Las Vegas
17 Metropolitan Police Department. She is an expert in the area of the identification,
18 documentation, collection and preservation of evidence and will give opinions related thereto.
19 She is expected to testify regarding the identification, documentation, collection and
20 preservation of evidence in this case.

21 **SZUKIEWICZ, JOSEPH P#5411**, Senior Crime Scene Analyst or Designee - Las
22 Vegas Metropolitan Police Department. He is an expert in the area of the identification,
23 documentation, collection and preservation of evidence and will give opinions related thereto.
24 He is expected to testify regarding the identification, documentation, collection and
25 preservation of evidence in this case.

26 ///

27 ///

28 ///

1 **THOMAS, JENNIFER, P #10074**, is a Forensic Laboratory Scientist II or Designee,
2 with the Las Vegas Metropolitan Police Department. She will testify as an expert as to the
3 procedures, techniques and science employed in DNA analysis, all procedures employed in
4 this case and reports provided.

5 **THOMAS, KRISTINA P#13574**, Senior Crime Scene Analyst or Designee - Las
6 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
7 documentation, collection and preservation of evidence and will give opinions related thereto.
8 She is expected to testify regarding the identification, documentation, collection and
9 preservation of evidence in this case.

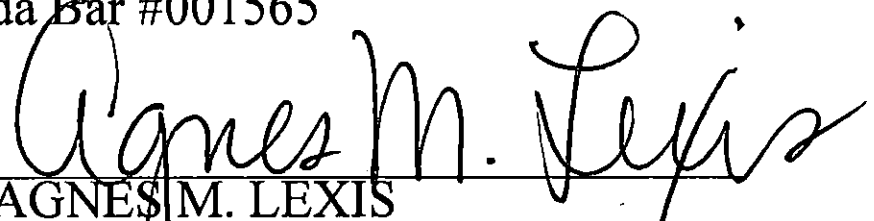
10 These witnesses are in addition to those witnesses endorsed on the Information or
11 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert
12 Witnesses has been filed

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

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

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

19 BY


20 AGNES M. LEXIS
21 Chief Deputy District Attorney
22 Nevada Bar #011064

23
24
25
26
27
28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2015, by Electronic Filing to:

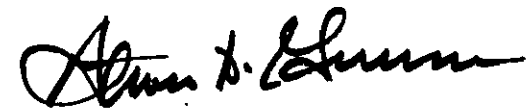
GREGORY COYER, ESQ.
gcoyer@coyerlaw.com

CASEY LANDIS, ESQ.
clandis@call-law.com

MONIQUE MCNEILL, ESQ.
mam@moniquemcneill-law.com

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

14F14997ACDE/saj/L-1



CLERK OF THE COURT

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 AGNES M. LEXIS
6 Chief Deputy District Attorney
7 Nevada Bar #011064
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 JORGE MENDOZA,
13 #2586625
14 SUMMER LARSEN, aka, Summer Rice,
15 #1854665
16 DAVID MURPHY,
17 aka, David Mark Murphy, #0859628
18 JOSEPH LAGUNA, aka, Joey Laguna,
19 #1203205
20 Defendants.

CASE NO: C-15-303991-4

DEPT NO: V

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES
[NRS 174.234(2)]

19 TO: DAVID MURPHY, aka, David Mark Murphy, Defendant; and

20 TO: CASEY LANDIS, Counsel of Record:

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

- 23 • INDICATES AN ADDITIONAL EXPERT

24 CHARLTON, NOREEN P#13572, Senior Crime Scene Analyst or Designee - Las
25 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
26 documentation, collection and preservation of evidence and will give opinions related thereto.
27 She is expected to testify regarding the identification, documentation, collection and
28 preservation of evidence in this case.

1 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR AT & T;** will testify as
2 experts regarding how cellular phones work, how phones interact with towers, and the
3 interpretation of that information.

4 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR CRICKET**
5 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
6 with towers, and the interpretation of that information.

7 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR METRO PCS;** will
8 testify as experts regarding how cellular phones work, how phones interact with towers, and
9 the interpretation of that information.

10 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR NEUSTAR;** will testify
11 as experts regarding how cellular phones work, how phones interact with towers, and the
12 interpretation of that information.

13 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR T-MOBILE;** will testify
14 as experts regarding how cellular phones work, how phones interact with towers, and the
15 interpretation of that information.

16 **CUSTODIAN OF RECORDS AND/OR DESIGNEE FOR VERIZON**
17 **WIRELESS;** will testify as experts regarding how cellular phones work, how phones interact
18 with towers, and the interpretation of that information.

19 **DUTRA, DR. TIMOTHY,** A medical doctor employed by the Clark County Coroner
20 Medical Examiner. He is an expert in the area of forensic pathology and will give scientific
21 opinions related thereto. He is expected to testify regarding the cause and manner of death of
22 MONTY GIBSON.

23 **FELABOM, ADAM P#8427,** Senior Crime Scene Analyst or Designee - Las Vegas
24 Metropolitan Police Department. He is an expert in the area of the identification,
25 documentation, collection and preservation of evidence and will give opinions related thereto.
26 He is expected to testify regarding the identification, documentation, collection and
27 preservation of evidence in this case.

28 ///

1 **HOLSTEIN, DANIEL P#3861**, Senior Crime Scene Analyst or Designee - Las Vegas
2 Metropolitan Police Department. He is an expert in the area of the identification,
3 documentation, collection and preservation of evidence and will give opinions related thereto.
4 He is expected to testify regarding the identification, documentation, collection and
5 preservation of evidence in this case.

6 • **KRYLO, JAMES, P#5945**, or Designee, Las Vegas Metropolitan Police, Department,
7 will testify as an expert in the area of firearm/toolmark analysis and will give opinions related
8 thereto. He is expected to testify regarding the firearms and bullet trajectory comparison of
9 certain evidence collected from the various crime scenes.

10 **MECKLER, KRISTEN P#14402**, Crime Scene Analyst II or Designee - Las Vegas
11 Metropolitan Police Department. She is an expert in the area of the identification,
12 documentation, collection and preservation of evidence and will give opinions related thereto.
13 She is expected to testify regarding the identification, documentation, collection and
14 preservation of evidence in this case.

15 **NEMCIK, AMY P#8504**, Crime Scene Analyst Supervisor or Designee - Las Vegas
16 Metropolitan Police Department. She is an expert in the area of the identification,
17 documentation, collection and preservation of evidence and will give opinions related thereto.
18 She is expected to testify regarding the identification, documentation, collection and
19 preservation of evidence in this case.

20 **SHRUM, SHELLY P#7917**, Senior Crime Scene Analyst or Designee - Las Vegas
21 Metropolitan Police Department. She is an expert in the area of the identification,
22 documentation, collection and preservation of evidence and will give opinions related thereto.
23 She is expected to testify regarding the identification, documentation, collection and
24 preservation of evidence in this case.

25 **SZUKIEWICZ, JOSEPH P#5411**, Senior Crime Scene Analyst or Designee - Las
26 Vegas Metropolitan Police Department. He is an expert in the area of the identification,
27 documentation, collection and preservation of evidence and will give opinions related thereto.

28 ///

1 He is expected to testify regarding the identification, documentation, collection and
2 preservation of evidence in this case.

3 **THOMAS, JENNIFER, P #10074**, is a Forensic Laboratory Scientist II or Designee,
4 with the Las Vegas Metropolitan Police Department. She will testify as an expert as to the
5 procedures, techniques and science employed in DNA analysis, all procedures employed in
6 this case and reports provided.

7 **THOMAS, KRISTINA P#13574**, Senior Crime Scene Analyst or Designee - Las
8 Vegas Metropolitan Police Department. She is an expert in the area of the identification,
9 documentation, collection and preservation of evidence and will give opinions related thereto.
10 She is expected to testify regarding the identification, documentation, collection and
11 preservation of evidence in this case.

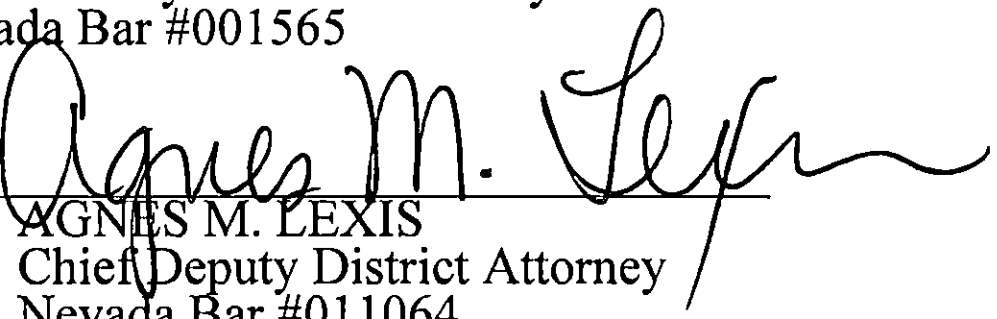
12 These witnesses are in addition to those witnesses endorsed on the Information or
13 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert
14 Witnesses has been filed

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

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

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

20
21 BY


22 AGNES M. LEXIS
Chief Deputy District Attorney
Nevada Bar #011064

1 CERTIFICATE OF ELECTRONIC FILING

2 I hereby certify that service of Supplemental Notice of Expert Witnesses, was made this (3rd)
3 day of March, 2015, by Electronic Filing to:

4 WILLIAM WOLFBRANDT, ESQ
5 lewwolfbrandt@embarqmai.com

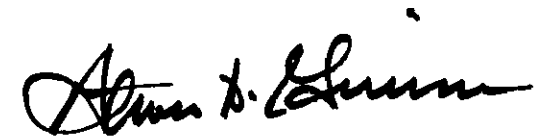
6 GREGORY COYER, ESQ.
7 gcoyer@coyerlaw.com

8 CASEY LANDIS, ESQ.
9 clandis@call-law.com

10 MONIQUE MCNEILL, ESQ.
11 mam@moniquemcneill-law.com

12
13
14
15 /s/ Stephanie Johnson
16 Secretary for the District Attorney's Office

17
18
19
20
21
22
23
24
25
26
27
28 14F14997ACDE/saj/L-1



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID MURPHY,

Defendant.

CASE NO. C-15-303991-4

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MONDAY, APRIL 6, 2015

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

***DEFENDANT'S MOTION TO AUTHORIZE CLARK COUNTY DETENTION CENTER
TO PROCURE PRESCRIPTION EYEWEAR FOR DEFENDANT***

APPEARANCES:

For the State:

BRIAN J. KOICHEVAR, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CASEY A. LANDIS, ESQ.,

RECORDED BY: LARA CORCORAN, COURT RECORDER

1 **LAS VEGAS, NEVADA; MONDAY, APRIL 6, 2015**

2 [Proceeding commenced at 9:50 a.m.]

3
4 THE COURT: All right. Case number -- page 8 -- case number C303991,
5 State of Nevada versus David Murphy. This is Defendant's motion to authorize
6 Clark County Detention Center to get prescription eyewear for the Defendant. I
7 assume the State's not opposing that. Mr. Landis isn't --

8 MR. KOCHEVAR: I take no position.

9 THE COURT: -- present. All right. I'm not sure why Mr. Landis isn't
10 present, but I don't think we need him for me to grant the motion.

11 DEFENDANT: If it's okay, put it on record, Your Honor, that this is two
12 times in a row he hasn't showed up to my court date.

13 THE COURT: Well --

14 DEFENDANT: And I haven't filed this motion. He came Friday and seen
15 me and said we'd be here. And then the last court date before this which was
16 for the motion --

17 THE COURT: Still early, sir. He may be here, but I'm going to grant your
18 motion.

19 DEFENDANT: I'm saying if this continues, so I have it on record, if I need
20 to file to dismiss counsel.

21 THE COURT: Well, he did what he was supposed to do and you -- and
22 the motion's granted.

23 DEFENDANT: Okay.

24 THE COURT: So, I don't think you have too much to squawk about
25 there. But he'll, you know, he probably will get here. He's got other matters in

1 other departments.

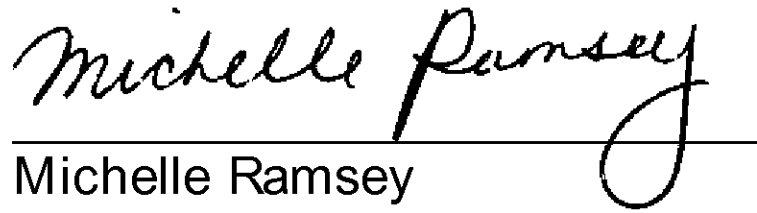
2 DEFENDANT: Thank you for granting it.

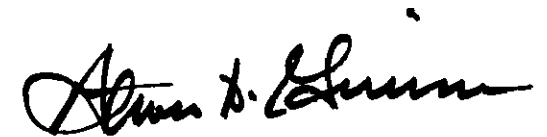
3 THE COURT: Okay.

4 [Proceeding concluded at 9:51 a.m.]

5
6
7
8
9
10
11
12
13
14
15
16
17 ATTEST: I 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.

19 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
20 acknowledge that this is a rough draft transcript, expeditiously prepared, not
21 proofread, corrected or certified to be an accurate transcript.

22 
23 Michelle Ramsey
24 Transcriber
25



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA; SUMMER
LARSEN; DAVID MURPHY; JOSEPH
LAGUNA,

Defendant.

CASE NO. C-303991-1
C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

APRIL 20, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE
CALENDAR CALL**

DEFENDANT'S MOTION TO CONTINUE TRIAL DATE – LAGUNA DEFT-5

APPEARANCES:

For the Plaintiff:

MARC DIGIACOMO, ESQ.
Deputy District Attorney

For Jorge Mendoza:

WILLIAM WOLFBRANDT, ESQ.

For Summer Larsen:

GREGORY COYER, ESQ.

[Additional appearances on following page]

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ADDITIONAL PARTIES:

DAVID MURPHY
JOSEPH LAGUNA

CASEY LANDIS, ESQ.
MONIQUE MCNEILL, ESQ.

1 MONDAY, APRIL 20, 2015 AT 9:16:24 A.M.

2
3 THE COURT: Case number C303991, State of Nevada versus Jorge
4 Mendoza; Summer Larsen; David Murphy and Joseph Laguna. Would you all state
5 your appearances for the record so we have --

6 MR. DIGIACOMO: Marc --

7 THE COURT: -- who's here.

8 MR. DIGIACOMO: -- Digiacomio for the State.

9 MS. MCNIEL: Monique McNeil on behalf of Mr. Laguna.

10 MR. LANDIS: Casey Landis on behalf of David Murphy.

11 MR. COYER: Gregory Coyer on behalf of Ms. Larsen.

12 MR. WOLFBRANDT: William Wolfbrant for Jorge Mendoza.

13 THE COURT: All right. Thank you. And this is the time for calendar call but
14 we have one Defendant who had moved to continue the trial and I don't know how
15 the others feel about that or -- what's the status?

16 MS. COYER: On behalf of Ms. Larsen we don't object or oppose the
17 continuance motion, Your Honor.

18 MR. LANDIS: As for Mr. Murphy, even if the motion wasn't filed we're still
19 struggling to get some discovery from the State so I think the case would need to be
20 continued even if the motion wasn't filed.

21 THE COURT: Okay.

22 MR. WOLFBRANDT: And for Ms. Mendoza we would join in that as well. I
23 know a couple of the Defendants have filed writs that have not yet resolved.

24 MR. DIGIACOMO: Correct. Yeah, there's three pending writs that are set for
25 Monday as well.

1 THE COURT: Right. I saw that as well. Okay. So, nobody opposing it, All
2 parties joining in the motion. There's good cause recited in the motion, so we'll
3 vacate this trial date and we'll reset it. When do you want to try and reset the trial?

4 MR. LANDIS: My trial schedule is probably the least busy so I'll defer to co-
5 counsel.

6 MR. COYER: I just need to avoid June. Anything besides June is okay.

7 MS. MCNEIL: June and July are going to be difficult for me, but other than
8 that I should be good.

9 THE COURT CLERK: Can I ask a question? Is this a firm?

10 THE COURT: Was it firm before – I mean, we try when –

11 MR. DIGIACOMO: It wasn't. There were –

12 THE COURT: -- there's –

13 MR. DIGIACOMO: -- there were –

14 THE COURT: -- this many lawyers.

15 MR. DIGIACOMO: -- all of the Defendants except for Mr. Mendoza I believe
16 are invoked but when they filed the writ then obviously that waived. I mean, I think
17 Mr. Laguna got set in less than thirty days. I think we all understood that one didn't
18 go forward –

19 THE COURT: Right.

20 MR. DIGIACOMO: -- at this trial setting.

21 THE COURT CLERK: But is it firm?

22 MR. DIGIACOMO: It was a speedy trial. It was a speedy trial so now that
23 that's been waived that can set it in ordinary course

24 THE COURT CLERK: That's fine, but if it's a firm I have a different
25 [indecipherable] availability.

1 THE COURT: Right. And we –

2 MR. DIGIACOMO: I get to try a case within a year of it being coming up to
3 District Court so I wouldn't necessarily think that you would want to have your
4 calendar set in such a way that this is the only case set on it, but obviously –

5 THE COURT CLERK: No, no.

6 THE COURT: No, we don't.

7 THE COURT CLERK: It's not.

8 THE COURT: We just don't put another firm on the same stack.

9 THE COURT CLERK: I was looking at September 21st or 28th.

10 THE COURT: When there's this many lawyers –

11 MR. DIGIACOMO: September 28th would work for me as I have
12 [indecipherable] this department so one or the other can go.

13 MR. COYER: Yep, it's okay.

14 MR. WOLFBRANDT: That's wide open for me.

15 THE COURT: Okay.

16 THE COURT CLERK: Okay. September 28th at 1:30 for jury trial, September
17 21st at 9:00 a.m. for calendar call. And I'm not sure if that's a firm stack. And how
18 many days will this be? Will it go into a second week?

19 MR. DIGIACOMO: It depends if all four Defendants are still sitting at the
20 table. I expect there would be some pretrial motions which – and/or possible
21 negotiations. So, as of right now it's at least two weeks –

22 THE COURT CLERK: Okay.

23 MR. DIGIACOMO: -- it could potentially be three. There's one issue as it
24 relates to the writ. I believe because I gave the Defense extra time they're willing to
25 give me an extra two weeks to respond. Our responses aren't even due until this

1 Thursday. So, if we could give me -- two weeks from today would fine and then set
2 the writ hearing down that [indecipherable] the three Defendants.

3 THE COURT CLERK: Two weeks from today to have your response --

4 THE COURT: Response.

5 THE COURT CLERK: -- that -- which would be May 4th and then the writs
6 heard -- do you guys need to file anything else?

7 THE COURT: Do you want another reply? Okay.

8 THE COURT CLERK: Okay. How about May 13th?

9 THE COURT: All right. Thank you.

10 MS. MCNEIL: Thank you, Your Honor.

11 MR. LANDIS: Thank you.

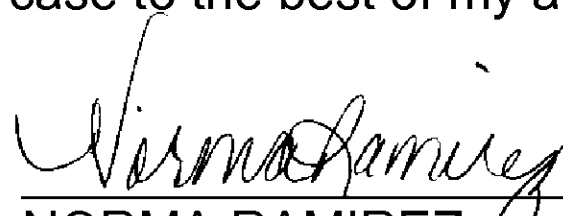
12 MR. COYER: Thank you, Your Honor.

13 MR. DIGIACOMO: Thank you, Your Honor.

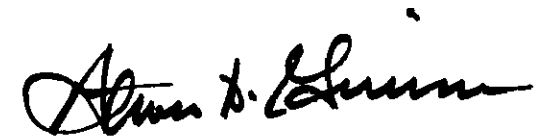
14 [Proceedings concluded at 9:20:57 a.m.]

15 * * * * *

16
17
18
19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video recording in the above-entitled case to the best of my ability.

22 

23 NORMA RAMIREZ
24 Court Recorder
25 District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

SUMMER LARSEN; DAVID MURPHY;
JOSEPH LAGUNA,

Defendant.

CASE NO. C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

MAY 20, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE
DEFENDANTS' PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the Plaintiff:

MARC DIGIACOMO, ESQ.
Deputy District Attorney

For Summer Larsen:

GREGORY COYER, ESQ.

For David Murphy:

CASEY LANDIS, ESQ.

[Additional appearances on following page]

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 ADDITIONAL PARTIES

2 JOSEPH LAGUNA

MONIQUE MCNEILL, ESQ.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 WEDNESDAY, MAY 20, 2015 AT A.M.

2
3 THE COURT: Case number C-303991. Good morning. Do we – do we have
4 all the lawyers here?

5 MR. DIGIACOMO: We do. Mr. –

6 THE COURT: We got Mr. Coyer –

7 MR. DIGIACOMO: -- Landis and Mr. Coyer.

8 THE COURT: -- Mr. Landis. Okay. Great. All right. Thank you.

9 So, ladies and gentlemen, I've been in a trial. It seems to be the
10 longest trial I've ever done. But – so, I cannot – I didn't – I'm part way through these
11 writs but I'm not there yet so need to continue it. And I was gonna ask you if June
12 1st would be a good date for you or we can make it another date that's convenient
13 for your calendars. But I looked and I should be out of this trial and had time to – I
14 think I may need to read the transcript as well.

15 MS. MCNEILL: That works for me.

16 MR. COYER: That works okay.

17 THE COURT CLERK: Are the Defendants here?

18 MR. DIGIACOMO: Yes. All three Defendants are here.

19 MR. LANDIS: That also works for me.

20 THE COURT: June 1st works for you?

21 MR. DIGIACOMO: That'd be fine, Judge.

22 THE COURT: All right. June 1st.

23 THE COURT CLERK: June 1st –

24 THE COURT: Thank you.

25 THE COURT CLERK: -- at 9:00.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


MR. DIGIACOMO: Thank you, Your Honor.

MS. MCNEILL: Thank you, Your Honor.

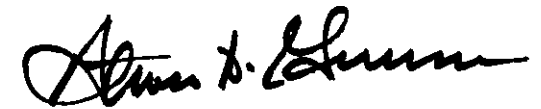
[Proceedings concluded at 9:40:50 a.m.]

* * * * *

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



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

1 **IND**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #6955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-15-303991-4

-vs-

DEPT NO: V

JORGE MENDOZA, #2586625
SUMMER LARSEN, aka,
Summer Rice, #1854665
DAVID MURPHY, aka,
David Mark Murphy #0859628
JOSEPH LAGUNA, aka,
Joey Laguna #1203205,

**SECOND SUPERSEDING
INDICTMENT**

Defendant(s).

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant(s) above named, JORGE MENDOZA, SUMMER LARSEN, aka, Summer Rice, DAVID MURPHY, aka, David Mark Murphy, JOSEPH LAGUNA, aka, Joey Laguna accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 199.480, 200.380 - NOC 50147); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426); HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.067 - NOC 50437); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 193.330, 200.380, 193.165 - NOC 50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

200.010, 200.030, 193.165 - NOC 50001) and ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031), committed at and within the County of Clark, State of Nevada, on or about the 21st day of September, 2014, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did wilfully, unlawfully, and feloniously conspire with each other and/or ROBERT FIGUEROA to commit a robbery.

COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny and/or robbery and/or murder, that certain residence occupied by JOSEPH LARSEN and/or MONTY GIBSON, located at 1661 Broadmere Street, Las Vegas, Clark County, Nevada, said Defendants did possess and/or gain possession of a deadly weapon, to wit: a 9mm rifle and/or a hand gun and/or pellet gun, during the commission of the crime and/or before leaving the structure; the Defendant being responsible under one or more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s home as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning fire, striking and killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit this crime.

//

//

1 COUNT 3 – HOME INVASION WHILE IN POSSESSION OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully and feloniously forcibly enter an inhabited
3 dwelling, to-wit: 1661 Broadmere Street, Las Vegas, Clark County Nevada, without
4 permission of the owner, resident, or lawful occupant, to-wit: JOSEPH LARSEN and/or
5 MONTY GIBSON, the said Defendant did possess and/or gain possession of a deadly weapon
6 consisting of a 9mm Firearm and/or a hand gun and/or pellet gun, during the commission of
7 the crime and/or before leaving the structure; the Defendants being responsible under one or
8 more theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
9 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
10 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
11 and/or acting as a lookout and/or by acting as the “get away” driver, SUMMER LARSEN
12 identifying JOSEPH LARSEN’s home as a target and/or meeting with the co-defendants to
13 plan the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA
14 and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons
15 to rob JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking open
16 the front door to the residence, thereafter, JOSEPH LARSEN shooting at the JORGE
17 MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of
18 the property, JORGE MENDOZA and/or JOSEPH LAGUNA returning fire, striking and
19 killing MONTY GIBSON, the co-conspirators acting in concert throughout and/or 3) a
20 conspiracy to commit this crime.

21 COUNT 4 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously attempt to take personal
23 property, to-wit: lawful money of the United States and/or marijuana, from the person of
24 JOSEPH LARSEN, or in his presence, by means of force or violence, or fear of injury to, and
25 without the consent and against the will of JOSEPH LARSEN, by entering his home with a
26 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
27 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
28 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more

1 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
2 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
3 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
4 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
5 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
6 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
7 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA
8 going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one
9 of the conspirators breaking open the front door to the residence, thereafter, JOSEPH LARSEN
10 shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA
11 to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning
12 fire at JOSEPH LARSEN, the co-conspirators acting in concert throughout and/or 3) a
13 conspiracy to commit this crime.

14 COUNT 5 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

15 did then and there wilfully, unlawfully, and feloniously attempt to take personal
16 property, to-wit: lawful money of the United States and/or marijuana, from the person of
17 MONTY GIBSON, or in his presence, by means of force or violence, or fear of injury to, and
18 without the consent and against the will of MONTY GIBSON, by entering his home with a
19 weapon to take the property by force, thereafter JOSEPH LARSEN shooting at the defendants
20 to prevent the taking of the property, with use of a deadly weapon, to-wit: a 9mm Firearm
21 and/or a hand gun and/or pellet gun; the Defendants being responsible under one or more
22 theories of criminal liability, to wit: 1) by directly or indirectly committing the acts
23 constituting the offense and/or 2) by aiding and abetting in the commission of the crime by
24 Defendant DAVID MURPHY, aka, David Mark Murphy driving co-conspirators to scene
25 and/or acting as a lookout and/or by acting as the "get away" driver, SUMMER LARSEN
26 identifying JOSEPH LARSEN's home as a target and/or meeting with the co-defendants
27 and/or unidentified co-conspirators to plan the robbery of JOSEPH LARSEN and/or MONTY
28 GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA and/or JOSEPH LAGUNA

1 going to the residence with weapons to rob JOSEPH LARSEN and/or MONTY GIBSON, one
2 of the conspirators breaking open the front door to the residence, thereafter, JOSEPH LARSEN
3 shooting at the JORGE MENDOZA and ROBERT FIGUEROA and/or JOSEPH LAGUNA
4 to prevent the taking of the property, JORGE MENDOZA and/or other conspirators returning
5 fire, striking and killing MONTY GIBSON, the co-conspirators acting in concert throughout
6 and/or 3) a conspiracy to commit this crime.

7 COUNT 6 – MURDER WITH USE OF A DEADLY WEAPON

8 did then and there wilfully, unlawfully, feloniously, with premeditation and
9 deliberation, and with malice aforethought, kill MONTY GIBSON, a human being, by
10 shooting at and into the body of the said MONTY GIBSON, with a deadly weapon, to-wit: a
11 firearm, the defendants being responsible under one or more theories of criminal liability,
12 to-wit: 1) by directly or indirectly committing the acts constituting the offense and/or 2) by
13 aiding and abetting in the commission of the crime by Defendant DAVID MURPHY, aka,
14 David Mark Murphy driving co-conspirators to scene and/or acting as a lookout and/or by
15 acting as the “get away” driver, SUMMER LARSEN identifying JOSEPH LARSEN’s home
16 as a target and/or meeting with the co-defendants and/or unidentified co-conspirators to plan
17 the robbery of JOSEPH LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or
18 ROBERT FIGUEROA and/or JOSEPH LAGUNA going to the residence with weapons to rob
19 JOSEPH LARSEN and/or MONTY GIBSON, one of the conspirators breaking open the front
20 door to the residence, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and
21 ROBERT FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property,
22 JORGE MENDOZA and/or other conspirators returning fire, striking and killing MONTY
23 GIBSON, the co-conspirators acting in concert throughout and/or 3) a conspiracy to commit
24 this crime; the defendants being responsible under one or more of the following principles of
25 criminal liability, to-wit: 1) by having premeditation and deliberation and/or 2) during the
26 perpetration or attempted perpetration of a robbery and/or burglary and/or Home Invasion.

27 //

28 //

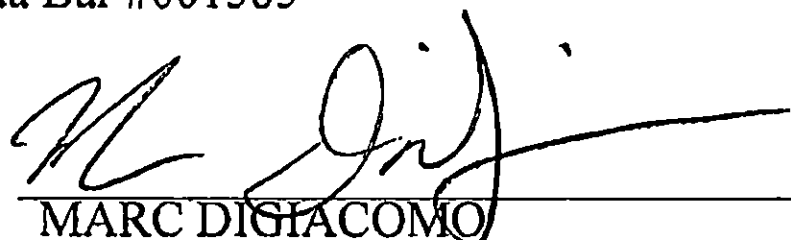
1 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and with malice aforethought
3 attempt to kill JOSEPH LARSEN, a human being, by shooting at JOSEPH LARSEN, with use
4 of a deadly weapon, to-wit: a 9mm Firearm and/or a hand gun and/or pellet gun, the defendants
5 being responsible under one or more theories of criminal liability, to-wit: 1) by directly or
6 indirectly committing the acts constituting the offense and/or 2) by aiding and abetting in the
7 commission of the crime by Defendant DAVID MURPHY, aka, David Mark Murphy driving
8 co-conspirators to scene and/or acting as a lookout and/or by acting as the “get away” driver,
9 SUMMER LARSEN identifying JOSEPH LARSEN’s home as a target and/or meeting with
10 the co-defendants and/or unidentified co-conspirators to plan the robbery of JOSEPH
11 LARSEN and/or MONTY GIBSON, and JORGE MENDOZA and/or ROBERT FIGUEROA
12 and/or JOSEPH LAGUNA going to the residence with weapons to rob JOSEPH LARSEN
13 and/or MONTY GIBSON, one of the conspirators breaking open the front door to the
14 residence, thereafter, JOSEPH LARSEN shooting at the JORGE MENDOZA and ROBERT
15 FIGUEROA and/or JOSEPH LAGUNA to prevent the taking of the property, JORGE
16 MENDOZA and/or other conspirators returning fire at JOSEPH LARSEN, the co-conspirators
17 acting in concert throughout and/or (3) a conspiracy to commit this crime.

18 DATED this 28th day of May, 2015.

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

21
22 BY


23 MARC DIGIACOMO
24 Chief Deputy District Attorney
Nevada Bar #6955

25 ENDORSEMENT: A True Bill

26 
27 _____
28 Foreperson, Clark County Grand Jury

Names of witnesses testifying before the Grand Jury:

BRENING, JUSTIN, UNKNOWN ADDRESS

DAY, ROGER, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

DUTRA, DR. TIMOTHY, CCME, 1704 PINTO LN., LVN

FIGUEROA, ROBERT, UNKNOWN ADDRESS

HALL, ASHLEY, 6401 BAMBOO PL., LVN

JENSEN, BARRY, LVMPD P#3662

LARSEN, JOSEPH, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

LARSEN, STEVEN, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

WILLIAMS, TOD, LVMPD

Additional witnesses known to the District Attorney at time of filing the Indictment:

ESTAVILLO, MICHELLE, 1219 WESTLUND DR., LVN

GIBSON, LATONYA, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

MENDOZA, AMANDA, 1219 WESTLUND DR., LVN

ROWE, TRACY, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

SALGADO, RENEE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

WALKER, GENE, c/o CCDA/VWAC, 200 LEWIS AVE., LVN

14BGJ019ACDE/14F14997ACDE/dd-GJ

LVMPD EV# 140921-3020

(TK12)

DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

)
)
) CASE NO. C-15-303991-4
)
)
) DEPT. XVIII
)
)
) **TRANSCRIPT OF PROCEEDINGS**
)
)
)
)
)

GRAND JURY RETURN

0074

1 **LAS VEGAS, NEVADA; MAY 29, 2015**

2 [Proceeding commenced at 11:44 a.m.]

3
4 THE COURT: We're on the record. This is time set for Grand
5 Jury Returns. Are there -- presented to the Court?

6 MS. TALIM: Yes, Your Honor. Yesterday the Grand Jury met on
7 Grand Jury Case Number 14BGJ019 A, C, D, and E, and by a vote of 12
8 or more returned a true bill against Defendants Jorge Mendoza,
9 Summer Larsen, David Murphy, Joseph Laguna on one count, conspiracy
10 to commit robbery; one count, burglary while in possession of a
11 deadly weapon; one count, home invasion while in possession of a
12 deadly weapon; two counts, attempt robbery with deadly weapon; one
13 count, murder with use of a deadly weapon; one count, attempt
14 murder with use of a deadly weapon.

15 THE COURT: Good morning, Mr. James.

16 MR. JAMES: Good morning.

17 THE COURT: On behalf of the Clark County Grand Jury, did 12
18 or more members of the Grand Jury concur in a finding a true bill
19 as to each count as to each Defendant?

20 MR. JAMES: Yes, Your Honor.

21 THE COURT: Very well. It'll be assigned Case Number 303991.
22 Tracking is to District Court Department Number 5. Is there a
23 request for warrant or summons?

24 MR. DIGIACOMO: Judge, there's a request for warrant -- Marc
25 DiGiacomo for the State. These are supersedings indictments, same

1 charges, same Defendants. They're already currently in District
2 Court on no-bail holds. And so I would request to just -- to
3 reissue the no-bail holds based upon this superseding indictment.

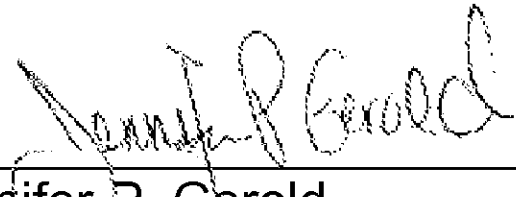
4 THE COURT: One week warrant, no bail. One week return in
5 Department 5.

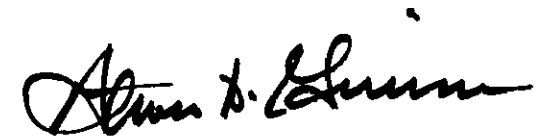
6 THE CLERK: It'll be June 3rd, at 9:00 a.m.

7 THE COURT: Exhibits 1 through 30 have been lodged with the
8 Clerk of the Court.

9 [Proceeding concluded at 11:46 a.m.]

10
11
12
13
14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23
24 
25 Jennifer P. Gerold
Court Recorder/Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

SUMMER LARSEN; DAVID MURPHY;
JOSEPH LAGUNA,

Defendant.

CASE NO. C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JUNE 1, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE
DEFENDANTS' PETITION FOR WRIT OF HABEAS CORPUS**

APPEARANCES:

For the Plaintiff:

MARC DIGIACOMO, ESQ.
Deputy District Attorney

For Summer Larsen:

GREGORY COYER, ESQ.

For David Murphy:

CASEY LANDIS, ESQ.

For Joseph Laguna:

MONIQUE MCNEILL, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 MONDAY, JUNE 1, 2015 AT 9:54:51 A.M.

2
3 THE COURT: Case number C-303991, State of Nevada versus Summer
4 Larsen; David Murphy and Joseph Laguna. How is everybody?

5 MR. DIGIACOMO: Good morning, Your Honor. Marc Digiacommo for the
6 State.

7 THE COURT: All right. So, I spent an inordinate amount of time on this over
8 the weekend. But I read the entire transcript of all of the Grand Jury proceedings. I
9 read it and then I read all the briefs. I read the cases that were cited as well as the
10 cases cited in those cases so I'm pretty – I feel pretty ready to go here.

11 So, I wanted to – I thought I'd start with the Summer Larsen writ. So,
12 did you want to add anything?

13 MR. COYER: Good morning, Your Honor. Gregory Coyer, 10013, on behalf
14 of Ms. Larsen who is present in custody. I would like to address the threshold issue
15 of whether or not this Court can even consider the testimony of Robert Figueroa as
16 co-defendant testimony that has to be corroborated.

17 THE COURT: I – I read – I started out -- and I read all of the transcript without
18 reading his testimony first.

19 MR. COYER: Okay.

20 THE COURT: That's what I did –

21 MR. COYER: That's smart.

22 THE COURT: -- first.

23 MR. COYER: It makes sense.

24 THE COURT: Okay.

25 MR. COYER: The Heglemeier v. State case which I cited, 111 Nev. 1244,

1 states: "That if there's no independent inculpatory evidence tending to connect the
2 Defendant with the offense then there is no corroboration even though the
3 accomplice may be corroborated in other regards." Robert Figueroa's testimony
4 stated – and I know you read it. The gist of what I'm addressing is that these four
5 individuals, Mendoza, Murphy, Laguna and Figueroa, they go out to rob house A
6 which is out on the northwest part of town and they get there and they look at the
7 house and they size up the situation and they feel like it just can't be done at that
8 point in time. The group then goes back to I believe it's Laguna's residence – one of
9 the residences of the co-defendants and they do what he describes as a re-grouping.
10 They abandon that plan to rob house A and they come up with a new plan to rob a
11 house that actually ends up being the subject residence.

12 According to Robert Figueroa that plan, the plan to rob Joey Larsen's
13 house, is created on Sunday after they abandon the plan to rob the first house.
14 Now, that is what I presume to be the truth because here we have Mr. Figueroa
15 who's got a very, very good deal going with the State where he's gotten his murder
16 charge reduced down to robbery with use. So, we have to look at what if anything
17 corroborates that as it relates to my client Ms. Larsen. I don't think the State would
18 disagree with this. The only thing that they –

19 THE COURT: Well, it's really more – you're kind of taking it I think a little
20 backwards. I think you really need to say – setting aside the accomplice testimony
21 -- you can't because the statute says and the case law says you can't, somebody
22 can't be convicted basically solely on the testimony of an accomplice. So, you need
23 to see if there's something that connects the person to the crime independent of that
24 accomplice testimony and then if there is then the accomplice testimony can be
25 considered, correct?

1 MR. COYER: Yes.

2 THE COURT: So –

3 MR. COYER: And I don't think really – it matters whether we look at Ashley
4 Hall's testimony first or Robert Figueroa's testimony first because ultimately what I'm
5 getting at is what Ashley Hall testifies to cannot be true if what Robert Figueroa
6 testifies to is true. I find those two testimonies to be mutually exclusive. Now, the
7 State may disagree with me, the Court may disagree with me, but –

8 THE COURT: But the Court –

9 MR. COYER: -- one thing is for sure –

10 THE COURT: -- but the Court's not at liberty to decide which witnesses –

11 MR. COYER: That's true.

12 THE COURT: -- to believe.

13 MR. COYER: That's true. But here's what we –

14 THE COURT: I mean, that's for the jury, right?

15 MR. COYER: -- here's what we – what we can do. We take the testimony of
16 Robert Figueroa and Ashley Hall, look at them together and see what kind of
17 reasonable inferences we can make. If what Robert Figueroa is saying is true then
18 it is absolutely reasonable to infer – appropriate to infer that whatever Summer was
19 saying in Ashley's car on Saturday had no connection – had – was not related to the
20 robbery at Joey Larsen's home. And the reason for that is because the plan to rob
21 Joey Larsen's home did not come up until the middle of the day on Sunday.

22 So, whatever Summer was talking to Ashley about in that car could not
23 have been related to the robbery of Joey Larsen's home because that plan didn't
24 come until the next day.

25 THE COURT: Well, I – I think that you assume certain things that – you can't

1 necessarily assume that Robert Figueroa was privy to what conversations there may
2 have been between other participants in the conspiracy and Ms. Larsen.

3 MR. COYER: I'm not -- will all due respect, I'm not making that assumption
4 I'm just reading his testimony from the Grand Jury transcripts when he says: "We
5 abandoned house A, we go back to I think it's Joey Laguna's house and Doughboy,
6 David Murphy, comes up with a new plan." That's Figueroa's testimony.

7 So, you could assume that Doughboy and Summer have something
8 going on but that's an improper assumption because there's no evidence of that,
9 unfortunately, that was presented to the Grand Jury. I think it would be erroneous to
10 assume that Summer and David Murphy have something going on that Robert
11 Figueroa is not privy to because there's just --

12 THE COURT: I'm not --

13 MR. COYER: -- no evidence --

14 THE COURT: -- I'm not assuming that, I'm just saying I think you're assuming
15 certain things that's not there in evidence. And I look at was there a crime
16 committed? Absolutely. That's not a question. Is there any evidence -- slight or
17 marginal evidence that connects Summer Larsen to that crime?

18 MR. COYER: And in the Court's opinion that evidence is what?

19 THE COURT: In the Court's opinion that evidence is her statements to Ashley
20 --

21 MR. COYER: Okay.

22 THE COURT: -- in the car. Is it lots of evidence? No, but the standard is
23 pretty low, slight or marginal evidence. Will the State be able to convict on that kind
24 of evidence? Maybe not if they don't have anything more by the time of trial. But
25 that's not the standard at this point. I'm not saying it's fabulous saying, I'm saying

1 it's slight, marginal evidence.

2 MR. COYER: Sure.

3 THE COURT: That's a very low standard.

4 MR. COYER: But the question – does the incident with Ashley at all by itself, if
5 we exclude Robert Figueroa, does that give slight or marginal evidence that my
6 client was involved and that she's connected to the actual robbery? I don't think that
7 it does. I think you have to look at Robert Figueroa in conjunction with Ashley Hall
8 in order to get to a probable cause finding. The problem with that is once you fold in
9 Figueroa's testimony we can't ignore that it doesn't jive with Ashley Hall's. We just
10 can't ignore that, that here's something being talked about on Saturday and here is
11 Robert Figueroa saying that this plan wasn't even created until Sunday afternoon.

12 And so, I think that Ashley Hall by herself is insufficient and Robert
13 Figueroa by his self is insufficient.

14 THE COURT: Now, would you agree with me that there are conspiracies
15 where not every co-conspirator within the conspiracy is aware of every part of the
16 conspiracy?

17 MR. COYER: I would agree that those types of conspiracies to exist.

18 THE COURT: So, that's the thing that when you say look at Figueroa's
19 testimony creates the impossible that Larsen was aware of this or encouraged or did
20 anything to be involved in this later robbery that did happen –

21 MR. COYER: Well –

22 THE COURT: -- at the time that Ashley is hearing this, but, you know, I don't
23 think that you can assume that.

24 MR. COYER: I think that the State still has a burden to show some evidence
25 even slight or marginal that my client was involved in a conspiracy that had

1 something to do with robbing Joey Larsen's home. And -- now maybe we can say
2 for the sake of argument that she was involved in a conspiracy to rob the guy in the
3 first house but then that plan was abandoned and the four -- the four individuals, not
4 my client, my client is not involved in the meeting -- or the re-grouping, a new
5 conspiracy is formed at that re-grouping meeting to go and rob Joey Larsen. And
6 my client -- it's undisputed my client is not involved in that. Mr. Figueroa has never
7 met her, she wasn't there at the -- at the re-grouping and she wasn't present at the
8 robbery -- at the attempted robbery of Joey Larsen's house. So, yes, you can be
9 involved in a conspiracy where you don't know all the details but I think what we
10 have here is arguably some, you know, untoward conduct going on and some
11 discussions that were going on about a possible conspiracy to do something, but
12 then that all changes, it's all abandoned and a new conspiracy is created to rob Joey
13 Larsen and my client doesn't have anything to do with that, Your Honor.

14 THE COURT: State.

15 MR. DIGIACOMO: Thank you, Judge. I think you hit the nail on the head.
16 This isn't about -- as it relates to Ms. Larsen corroborating Mr. Figueroa, the
17 question is is Ashley Hall tending to connect this Defendant to the crime? And when
18 she makes a statement of future intent which is "I'm gonna rob Joey Larsen
19 tomorrow" that statement may be used to establish she did rob Joey Larsen the next
20 day. And so when she says those things and earlier in the day is talking about
21 committing a robbery at 8:30 and then later tells a witness I plan on -- in -- on
22 robbing Joey tomorrow then that's evidence which tends to connect her to the crime
23 then you could add in Mr. Figueroa. What Mr. Figueroa says is Mr. Murphy is telling
24 me that Mr. Larsen -- he doesn't know Mr. Larsen, the guy who owns the house,
25 girlfriend, ex-girlfriend or something like that that he still calls up and cries to has set

1 this up and we go over there to commit that robbery.

2 I appreciate the defense of no really, I was conspiring to commit the
3 earlier robbery but we don't know what conversations Mr. Murphy had directly with
4 Ms. Larsen and what conversations – well, we do know what conversations Murphy
5 had with Figueroa but we don't know what he said to Laguna and you don't know
6 what was said to Mendoza, Murphy's cousins' husband. And so ultimately there's
7 certainly sufficient evidence which tends to connect Ms. Larsen to the commission of
8 the crime and thus she's properly held to answer by the Grand Jury.

9 THE COURT: Well, I agree. I mean, I think that it's slight or marginal
10 evidence but it does connect her and so I'm gonna deny the petition and discharge
11 the writ as to Summer Larsen.

12 And so that brings us to David Murphy. And so – so I note that Mr.
13 Murphy doesn't argue that the accomplice testimony is not corroborated, he argues
14 other grounds. No Marcum notice, failure to present exculpatory evidence, coercion
15 of Joey Larsen's testimony, violation of Larsen's 5th Amendment right and hearsay
16 evidence being presented to the Grand Jury, is that accurate?

17 MR. LANDIS: Yes, ma'am.

18 THE COURT: Okay. All right. So, do you want me to kind of tell you how I --
19 looking at this?

20 MR. LANDIS: Of course, I'd be happy to hear that. What could I say? I don't
21 want to steal the prosecutor's news, but I believe he's secured another indictment
22 which makes a few of my issues moot based on his representations to me today
23 and they in effect would be the hearsay arguments. I believe he's presented
24 different evidence at a new Grand Jury which would probably make those issues
25 moot. Based on those representations I wasn't going to argue those issues today –

1 THE COURT: Oh. Okay.

2 MR. LANDIS: -- and I was going to focus on the others. I'm happy to hear the
3 Court's guidance as to where our mind is on the other issues though.

4 THE COURT: All right. So, what, you presented a new case and got the
5 dismissal --

6 MR. DIGIACOMO: Correct.

7 THE COURT: -- affidavits -- records after.

8 MR. DIGIACOMO: I had -- for the record and not that it's relevant to the writ,
9 but we received certified copies of Mr. Murphy's phone records themselves, cell
10 tower location records for those as well, and then in order to relay any concerns as it
11 relates to pawn record we called the guy who actually took the pawn from Mr.
12 Murphy. So, if that's an issue, not that it would, you know -- I think Mr. Landis is
13 correct in the sense that it'll be moot because it'll be held be new process if those
14 are the issues that he wants to address but I did not present. If the Court wants to
15 address the Figueroa plea certainly it's the State's position -- it has always been our
16 position that they don't need a new Marcum for the same Grand Jury and then
17 obviously the third issue is related to Mr. Larsen and his testimony before the Grand
18 Jury. So, those three issues I'll represent as an officer to the Court were not
19 addressed in the new proceeding.

20 THE COURT: Okay. All right. So, the -- my thoughts on that -- the first
21 argument about the Marcum notice is since a Marcum notice really requires that
22 notice be given to the Defense that, hey, we're gonna go to the Grand Jury on this
23 and so if you want to present anything let us know. That's -- then the ball is in our
24 court and you say, yes, I want to know, I want to -- I want to present something.

25 Here your argument is you want -- you believe that exculpatory

1 evidence that you would have wanted to present would be that Mr. Figueroa was
2 given some kind of favorable treatment. So, are you arguing that you would have
3 asked the D.A. that you just tell the Grand Jury that or what? Because obviously it's
4 – your Defendant isn't gonna come in and testify to that, right?

5 MR. LANDIS: Correct. I would submit a letter or correspondence that would
6 say it is our opinion that you have a duty to present this, Figueroa's deal to the
7 Grand Jury. Obviously the ball would be in their court to make the decision as to
8 whether or not they're gonna do that. But, yes, that is a hundred percent our
9 position anyway.

10 Regarding the notice in general, anything that requires notice in a legal
11 proceeding if that same event happens a second time notice is already required
12 again and I think it's hard to find an exception to that rule be it an eviction, a
13 probation revocation, but generally if notice is required the first time it's going to be
14 required the second time and I think in this circumstance the reason that a second
15 notice would be required is sensical. And what I mean is time can pass, more time
16 than what happened in this case between a first Grand Jury and a second Grand
17 Jury. In a murder case without a statute of limitations it could in theory be ten years
18 between the first Grand Jury presentment and the second Grand Jury presentment
19 and under the State's position no notice would be required to be given to the
20 Defendant for the second Grand Jury presentment. A lot can happen in those
21 periods of time, exculpatory evidence can become known and quite frankly a
22 defendant could choose to testify in front of the second Grand Jury when they didn't
23 want to exercise that right in front of the first Grand Jury and by not providing notice
24 I think it deprives the Defendant of the opportunity to exercise those choices. And
25 just the fact that they provided notice the first time I just don't see how that remedies

1 the situation where the Defendant still has a right to do these things if they want to if
2 they have notice that they're going back to the Grand Jury. But specifically to this
3 case what you said is correct, that is what we would have done if we would have
4 known they were going to a second Grand Jury.

5 THE COURT: I didn't find that you cited to any authority that would say that –
6 that the request that you would have made to the D.A. that this is exculpatory
7 evidence. That in fact that is exculpatory evidence. It doesn't explain away the
8 charge, it may certainly be something relative and relevant to impeachment but I
9 don't see that it explains away the charge.

10 MR. LANDIS: And I don't think there is case law directly on point in either
11 respect, but my position is exculpatory evidence explains away the charge. I think
12 those terms are used in this context interchangeably even though they're probably
13 not interchangeable terms and I think the State took issue with my use of
14 exculpatory. I think we all know what the case law says evidence which tends to
15 explain away the charge.

16 My position is this. Of course general impeachment or prior
17 inconsistent statements those are not going to qualify. There's plenty of case law
18 that says that but when it's something this important to a witnesses credibility which
19 I couldn't imagine something more important than this, I do believe it's something
20 the Grand Jury has a right to know about. And by way of an example they have to
21 be instructed on accomplice testimony and that it needs to be corroborated, a Grand
22 Jury does. And I think that's put in place to protect the accused and to give the
23 Grand Jury the power to assess the credibility of an informant. And to say that that
24 protection is there -- but we don't need the protection where the Grand Jury gets to
25 know that this person has a deal which has put them before them to testify. I just

1 think it infringes on the powers of the Grand Jury and I think it creates a situation
2 where they're not getting a fair look at the evidence. There is no case law in
3 Nevada I'll admit that but I do believe it's a proper rule when it's something this
4 intrinsic to the credibility of a witness or to their bias that it should be presented to a
5 Grand Jury.

6 THE COURT: All right. And does the State have any –

7 MR. DIGIACOMO: Yeah. My only response is that -- obviously is that
8 impeachment evidence is not evidence which tends to explain away the charge. All
9 the case law that is available in Nevada that talks about what explains away that the
10 charge specifically excludes those items like the motives for a witness to testify their
11 conflicts of interest or the inconsistency in their statements. Mr. Figueroa was
12 indicted by the Grand Jury that he testified in front of, he subsequently entered plea
13 in this Court. That is not evidence which tends to explain away the charge and as
14 such it does not qualify under the statute and whether they made the request or
15 didn't make the request is irrelevant to the legal analysis. The statute says if I have
16 evidence which tends to explain away the charge I have to present it. This has
17 never been found nor is there any way to argue that this is evidence which tends to
18 explain away the charge.

19 THE COURT: Well, I think that the – you know, when you didn't indicate any
20 desire to, you know, ask for when the presentment was gonna be made and ask for
21 – when you got the Marcum notice that – that that – that notice was sufficient,
22 nothing changed and that you said here in court that the only thing you wanted to
23 present was, I guess, the details of the deal or something. But again, that wasn't –
24 the State is not obligated to do that, it's not exculpatory evidence, there's no
25 authority. It's otherwise – and it's pretty clear, it's just not exculpatory evidence, it's

1 impeachment kind of. You know, you could use it for impeachment purposes.

2 Let's go to the second – well, actually the second thing which she had
3 as B was that the State failed to present critical exculpatory evidence and we
4 already discussed that.

5 MR. LANDIS: The only issue remaining that is outside of that hearsay
6 category would be the Joseph Larsen –

7 THE COURT: Right.

8 MS. LANDIS: -- refusal to testify.

9 THE COURT: Right. So, I didn't see any authority that the Defendant has a
10 right to assert Fifth Amendment rights of a witness in a proceeding.

11 MR. LANDIS: Of course he doesn't, but if a witnesses testimony is compelled
12 improperly I still think that can infringe on a Defendant's rights.

13 THE COURT: Okay. You're making assumptions but –

14 MR. LANDIS: A hundred percent. And the reason I'm making assumptions –
15 two different things. Number one, in their return they take the position that that final
16 statement made to the Grand Jury and the transcript to the effect of I'm going to be
17 asking Judge Baker to hold a hearing. Their position is that statement was made
18 with Joseph Larsen not in the Grand Jury room. Obviously Mr. Digiacomo is not the
19 person presenting it, I don't know if we can take that as fact based on his
20 representations in their writ.

21 The other thing I would say is we don't know the communications that
22 occurred. And I think this is more important, the communication that occurred
23 outside of the Grand Jury room between the prosecutor, Mr. Larsen, I believe the
24 lead detective was there and I believe a D.A. investigator was there. I think it's
25 possible that things were said to him that caused him to testify out of fear and I think

1 that would still put me in a position to raise the issues.

2 THE COURT: Okay. But that's the thing. So, let's assume that all that
3 happened and that he was somehow forced to testify against his will in violation of
4 his Fifth Amendment rights. So –

5 MR. LANDIS: Well, I'll –

6 THE COURT: -- as to you, as to --

7 MR. LANDIS: I'll phrase it –

8 THE COURT: -- your client.

9 MR. LANDIS: If the remedy is not to the Defendant who is indicted then I don't
10 understand what remedy there would exist to create – to cure this problem.

11 THE COURT: The remedy would be that if the State chose to prosecute Mr.
12 Larsen for something and used – that they would either be able to use the testimony
13 against him or maybe preclude it from in fact prosecuting him for any admissions
14 that he made --

15 MR. LANDIS: And I –

16 THE COURT: -- in violation of his rights.

17 MR. LANDIS: -- respect that – and I respect that, but just – there's trial
18 situations is where a witness can invoke their Fifth Amendment rights and that
19 decision can directly affect a Defendant's trial rights. I think we all know these
20 situations where you're bouncing a witnesses Fifth Amendment rights versus
21 Defendant's witnesses, to call a witness or rights to call witnesses, and I think it's
22 the same kind of balance here where you have to look at the Defendant's rights in
23 the Grand Jury proceedings. And I think if they are overcoming a witnesses desire
24 to invoke the Fifth Amendment infringes on a Defendant's rights as it pertains to the
25 Grand Jury –

1 THE COURT: First –

2 MR. LANDIS: -- proceeding.

3 THE COURT: -- of all you're assuming that – that he wanted to invoke his
4 Fifth Amendment right. That certainly is not – his response was when he was asked
5 – when he said "I refuse to testify." And he was asked "why are you refusing to
6 testify? He said: "I don't want to."

7 MR. LANDIS: Sure.

8 THE COURT: That's what he said. He didn't say I'm invoking my Fifth
9 Amendment right or I don't want to testify against my interest or I don't want to say
10 anything that could get me in trouble, nothing, not a hint.

11 MR. LANDIS: I respect that and I don't disagree, but I would say he did not
12 have counsel -- not that they had a duty to provide, but he did not have counsel
13 for – he didn't say the exact words that the Court would want but I think if you look at
14 what he did say combined with the fact that we all know there was incriminating
15 things he was likely to testify about I think you can look at his statements and read
16 that as an indication of a Fifth Amendment.

17 THE COURT: All right. So, again, if I give that to you I still don't think that
18 you're -- the remedy is dismissal of an indictment for your client so –

19 MR. LANDIS: And I –

20 THE COURT: -- and there's no authority certainly to support such that I can
21 see.

22 MR. LANDIS: I respect that.

23 THE COURT: Okay. So – and that's the last argument other than hearsay
24 which is now moot.

25 MR. LANDIS: And I – can I just say this about the –

1 THE COURT: Sure.

2 MR. LANDIS: -- hearsay? I'm assuming Mr. Digiacomo is telling the truth, I
3 have no reason to doubt him. I would presume if the Grand Jury transcript reads
4 different I could re-raise whatever issues pertaining to that. I just want to make that
5 clear.

6 MR. DIGIACOMO: Sure. He'd have the right to file a writ on the indictment if
7 he feels that he still has a viable issue on a writ. I have no objection to that.

8 THE COURT: All right. So – and that being the case I will even rule on that
9 last issue. And so since the other issues that you've raised I don't believe are
10 supported by the law the writ is – the petition is denied and the writ is discharged.
11 Okay.

12 And then finally we have Joey Laguna, and basically the argument here
13 is that if we set aside the testimony of the accomplice that there's not enough to
14 connect him and so that's why I – actually I started because for some reason I had
15 originally read this writ first. I think I had started but I – I couldn't get through it in
16 time for our last hearing and so I started with this one and that was what alerted me
17 to I'm gonna read this without reading Figueroa's testimony first. And so the – I
18 delved into the cases because I wanted to know what were the factual patterns of
19 the cases that you cited me to.

20 So for instance the Austin case, with just the primary cite of course, was
21 a possession of narcotics case. In that case the defendant goes to what has been
22 the bus station in Beatty, Nevada at the Exchange Club which is now a hardware
23 store by the way. But he goes there and the evidence is that he goes in, he buys a
24 glass of milk and picks up a woman, puts her in his car, he's gonna apparently pick
25 her up from the bus station that's it. They – the cops arrest him and she has drugs

1 in her bag and there is evidence from somebody else who says that this was all –
2 the drug deal and the person was deemed to be an accomplice and the Court ended
3 up saying that basically there was absolutely no evidence of the possession or
4 constructive possession by the target defendant Austin. And so we really can't get
5 there, there's nothing that, you know, does that.

6 The Austin case cites to ex parte Hutchinson I believe which is a 1960
7 case. That case was an interesting because it was a burglary by a police officer
8 who – whose partner in crime and literally his police officer partner basically said
9 that yes we committed this burglary together. And the evidence was such – it was
10 interesting. I think that it must have been at a time – I think the actual burglary was
11 committed in 1957 if I recall, the actual crime itself even though the case isn't until
12 '60, and then it must have been that they changed the statute to change it from, you
13 know, you have to have a break-in, you used to have to have a break-in because
14 the Court actually opined that there wasn't even evidence of a burglary but merely a
15 grand larceny. And remember we're again talking about you gotta at least have
16 evidence of the underlying charge before you could even get to an accomplice
17 testimony.

18 So, here we had – first of all, they're saying, gee, we didn't even have
19 any evidence of burglary aside from – because the victim said she just came into
20 her beauty salon and found a hair dryer and something else missing and that's it,
21 and I don't really know how – I must have left the door unlocked because I can't – or
22 the person had a key. The accomplice of course provided the evidence that they
23 jimmied the door open, but there was really no evidence underlying that there was a
24 burglary committed. So, the only evidence whatsoever was the accomplice's
25 testimony and that's what the Court focused on and said, "Well, they're – yes, we

1 know that he was a police officer in the vicinity and was on duty but that's not
2 enough to connect him to a burglary." That's like he was one of many people in
3 town that day.

4 And so – so basically what I was looking for in these cases was – were
5 facts to differentiate because obviously, you know, these cases are old. These
6 cases are before cell phones and cell phone towers. And so the issue to me was, is
7 this more than just saying, well, yeah he was in town? And I think it is. I mean, I
8 think it's on the edge of that and it – that it – so that's why I spent so much time with
9 it frankly because I thought it was a close call and maybe the State will disagree with
10 that, I mean, because it's certainly pretty damning evidence. But I think it's more
11 than, yeah, he's – he's in town in a general area because if it was one – one call,
12 one place but we have all of these calls being made and we have – we know when
13 the robbery happened because of evidence completely independent from the
14 accomplice's testimony. Obviously we had many eyewitnesses telling us when
15 certain things happened and then we have all of the telephone traffic happening and
16 hitting on cell phone towers that are at the scene of the murder and then going away
17 from that. And so to me that does connect Laguna to the crime and then once it
18 does – but, you know, slight or marginal evidence that connects him to that then the
19 rest of the testimony can come in. So that's how I analyzed it. Go ahead.

20 MS. MCNEILL: And I appreciate the time you took to read all of those cases,
21 Your Honor.

22 I would say that as far as putting him in the area what I found
23 interesting is they didn't present any witnesses to say what that area is. I mean, we
24 don't know where the cell phone tower was, there's no evidence that showed where
25 he was in relation to the cell phone tower. I don't even know if they can do that after

1 the fact to do a triangulation to pinpoint where he was. So, it puts him in an area but
2 we don't know what that area was. Was it a five mile radius? Was it a ten mile
3 radius? Was it two hundred yards away? So, putting him in the area could be a
4 fairly large section of town that he could have been in and he could have been on
5 the edge of that area. There was no testimony that tells us what that area was. I
6 think that was a little concerning because it's very vague what they mean by he was
7 in the area of the incident. And I would just submit that all of the telephone calls –
8 the only evidence as to – to connect anyone that he – that Mr. Laguna made a
9 telephone call to is Robert Figueroa. He – how they can – he's not connected to
10 Summer Larsen in any way, how he's connected to Mendoza or Murphy it all comes
11 from Mr. Figueroa. So, those telephone records are meaningless without the
12 testimony of Mr. Figueroa.

13 THE COURT: Well, no, no. Not necessarily because remember Mr. Figueroa
14 is – you know, there's testimony of eyewitnesses, there is a blood trail, You know,
15 we know – we believe that – I mean, there's other testimony regarding Mr. Figueroa.

16 MS. MCNEILL: Certainly. Certainly -- the connection that he made phone
17 calls to Mr. Figueroa who is involved certainly but to connect him to others to show a
18 conspiracy, to connect him to Mr. Murphy or to Mr. Mendoza or even just phone
19 calls between he and Mr. Figueroa around that time I don't know if it was enough to
20 get to a conspiracy but I know that Your Honor has fully read the briefs and it
21 sounds like you disagree with that. I don't think that the fact that he's laid that there
22 are these phone records show the conspiracy between two people who are arguably
23 know each other. And again, I don't know that we know what this area was that he
24 was allegedly in.

25 THE COURT: State.

1 MR. DIGIACOMO: Judge, I think you analyzed it correctly. It's not a single
2 phone call at a single location; it's the fact that independent of Mr. Figueroa, Mr.
3 Mendoza clearly was involved in the home invasion. Mr. Figueroa clearly involved
4 in the home invasion. The evidence from the eyewitnesses clearly indicative of at
5 least three people turns out to be four, but at least three people being present at that
6 scene.

7 Once you establish Mendoza and Figueroa and the other evidence as it
8 relates to Summer Larsen and David Murphy and you look at these phone records,
9 these phone records in and of themselves could convict Mr. Laguna of the crime
10 because the only thing you have to do is sit down with these phone records and
11 follow them. And the one thing I would disagree with Mr. McNeill is that there was
12 no location of the tower to the residence. There's a picture of it and it's literally right
13 directly behind where this house is and it's right at the time period that the 9-1-1
14 calls are coming and then there's calls coming in and then there's calls to Figueroa's
15 phone as Figueroa's phone stays at the crime scene and there's calls to Mendoza,
16 and they're still there and there's a car driving away from that scene that they had to
17 have arrived in. And so even if you were to take Figueroa out of the loop the phone
18 records themselves establish Laguna's involvement in the crime and then you get to
19 get to Mr. Figueroa, and certainly after you get to Mr. Figueroa there's more than
20 enough evidence to convict Mr. Laguna let alone hold him to answer.

21 THE COURT: Well, as I say I do think when you – you know, when you
22 exclude first exclude the accomplice testimony that, you know, the standard is slight
23 or marginal and I think we need that and then once we need that then the
24 accomplice testimony can come in. And I did assume that, yes, because there were
25 exhibits that were being shown to the Grand Jury and one of those was an exhibit

1 about a cell phone tower and the locations because you were trying to get that
2 across to the Grand Jury.

3 I sometimes have the disadvantage that I – even though I get the
4 transcript I don't get the exhibits and so sometimes that's – I have to ask for those
5 actually because there are times when the transcripts aren't clear enough for me to
6 even discern that, but I think I had enough in this case so – the writ – petition is
7 denied, the writ is discharged.

8 MR. DIGIACOMO: Judge –

9 THE COURT: Thank you very much though for your --

10 MR. DIGIACOMO: -- one last –

11 THE COURT: -- briefs.

12 MR. DIGIACOMO: -- matter to save these three lawyers. The return for the
13 new indictment is Wednesday, I'm assuming we're gonna keep the same trial dates.
14 Mr. Mendoza is not here so I'm willing to come down and arraign Mr. Mendoza on
15 Wednesday. But if we want to arraign the three defendants on the second
16 superseding indictment I can tell the Court the only language difference between the
17 first and second is that it says second now. There was no change to the language
18 or the charges to the defendants. If they want to enter their not guilty pleas and
19 keep their trial dates we can do that.

20 THE COURT: Would you like to do that? Do you – do we have the new – the
21 indictment?

22 MR. DIGIACOMO: My understanding is that the lawyers have it and that they
23 provided them to the Defendant.

24 THE COURT: And would you like to do that so you don't have to come back
25 on Wednesday?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[All counsel respond yes, Your Honor]

MS. MCNEILL: And I have provided Mr. Laguna copies just for the record and explained to him –

THE COURT CLERK: [indecipherable]

MR. DIGIACOMO: It's in here on Wednesday. We were directed to the department.

THE COURT: All right. And so do you wish for me to enter in pleas of not guilty for all of them?

MS. MCNEILL: Please, Your Honor.

THE COURT: All right. And you're gonna waive the reading of the amended which is not changed in any way. It's the second amended indictment.

All right. We'll keep the trial date that we have.

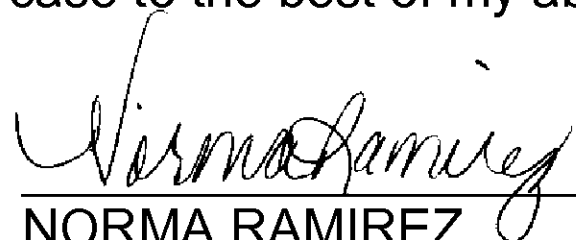
MR. DIGIACOMO: Thank you, Your Honor.

THE COURT: Thank you.

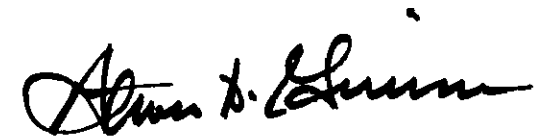
[Proceedings concluded at 10:33:39 a.m.]

* * * * *

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



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ROBERT FIGUEROA, JORGE
MENDOZA, SUMMER LARSEN, DAVID
MURPHY, JOSEPH LAGUNA,
Defendants.

CASE NO. C-303991-2
C-303991-1
C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

AUGUST 31, 2015

**RECORDER'S TRANSCRIPT OF HEARING RE
STATUS CHECK: WITHDRAW PLEA / STATUS CHECK: TRIAL SETTING**

APPEARANCES:

For the Plaintiff:

AGNES M. LEXIS, ESQ.
Deputy District Attorney

For Robert Figueroa:

LUCAS J. GAFNEY, ESQ.

For Jorge Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.

For Summer Larsen:

GREGORY E. COYER, ESQ.

[Additional appearances on following page]

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 ADDITIONAL PARTIES

2 DAVID MURPHY

CASEY A. LANDIS, ESQ.

3 JOSEPH LAGUNA

NO APPEARANCE

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MONDAY, AUGUST 31, 2015 AT 10:13:15 A.M.

2
3 THE COURT: Okay. Case number C303991, State of Nevada versus Robert
4 Figueroa, Jorge Mendoza, Summer Larsen, David Murphy and Joseph Laguna. We
5 have Mr. Figueroa's status check on withdrawal of plea. So, let's hear about that
6 first.

7 MR. GAFNEY: Your Honor we've spoken to Mr. Figueroa and he's decided
8 not to withdraw his plea at this stage.

9 THE COURT: Mr. Figueroa, is that correct?

10 DEFENDANT FIGUEROA: Yes, ma'am.

11 THE COURT: All right.

12 MR. GAFNEY: And, Your Honor, can we approach just briefly?

13 THE COURT: Sure.

14 [Bench conference]

15 THE COURT: All right. So, we'll go ahead – where are we with that though?
16 We were – we were just trailing, we haven't set a sentencing date on that, correct?

17 MR. GAFNEY: No, Your Honor. As far as I'm concerned, I think we'd
18 probably want to trail it until after the trial.

19 THE COURT: Right. So, we're – you're gonna stay on the case, Mr. Brown
20 will be relieved since you're kind of up to speed on plea negotiations and whatnot.
21 And you're happy with that?

22 DEFENDANT FIGUEROA: Yes, ma'am.

23 THE COURT: Okay. Very good. And so status check – now on the trial
24 setting as to the remaining Defendants, that's Jorge Mendoza, Summer Larsen,
25 David Murphy and Joseph Laguna.

1 MR. LANDIS: I think we're all here except for Ms. McNeill who asked was
2 here earlier and asked us to stand in for her.

3 THE COURT: All right. And so how are we doing? We don't have a trial
4 setting at this point, correct?

5 MR. LANDIS: It was continued today to do that.

6 THE COURT: Yeah. So, have you talked amongst yourselves at all or where
7 do we need to look for you?

8 MR. GAFNEY: Ms. McNeill stated before she left anything in December or
9 after that would be fine with her. I would agree with that, I can't speak for anyone
10 else.

11 THE COURT: Early December?

12 MR. LANDIS: That's fine.

13 MR. WOLFBRANDT: That's fine.

14 [Colloquy between the Court and the court clerk]

15 THE COURT: We're getting my JEA, we're trying – we've been trying to
16 coordinate through a spreadsheet what firm settings we have and what availability.
17 So, if you'll just hang in there for about a minute and we'll call something else and
18 we'll come right back to you.

19 [Matter trailed at 10:17:19 a.m.]

20 [Matter recalled at 10:22:47 a.m.]

21 THE COURT: Okay. Recalling case number C303991, State of Nevada
22 versus Jorge Mendoza, Summer Larsen, David Murphy and Joseph Laguna.

23 And where are we on that?

24 THE COURT CLERK: It looks like October – yeah, I thought it would go – it
25 would bleed in if it's more than one – it's surely more than one week. It would bleed

1 into one week of our civil.

2 [Colloquy between the Court and court clerk]

3 MR. LANDIS: Ms. McNeill represented that she was hoping for later.

4 [Colloquy between the Court and court clerk]

5 MR. LANDIS: I'd ask for the second option so we can hopefully maybe do
6 something sooner.

7 [Colloquy between the Court and court clerk]

8 THE COURT: So, make sure we put in the minutes from the last time that this
9 is – or on calendar status check resetting a firm trial date so the substitute judge
10 knows that.

11 MR. GAFNEY: I'm sorry. Your Honor, did you just say this was off calendar?

12 THE COURT: What?

13 MR. GAFNEY: The status check.

14 THE COURT: No.

15 MR. GAFNEY: Okay.

16 THE COURT: We're -- was putting it -- we're giving you a status check date.

17 THE COURT CLERK: Oh, yours won't be here though, right?

18 THE COURT: Oh, I'm sorry.

19 THE COURT CLERK: Okay.

20 THE COURT: Not you --

21 MR. GAFNEY: Right. I don't --

22 THE COURT: -- you're good.

23 THE COURT CLERK: We could do a status check like the 23rd. September.

24 MR. GAFNEY: And that's gonna be a status check on Mr. Figueroa's
25 sentencing --

1 THE COURT: Right.

2 MR. GAFNEY: -- date, right?

3 THE COURT: Right. Status check, sentencing. Did you get the date for
4 coming back to set the trial? Did she give it to you?

5 MS. LEXIS: Was that one the 21st?

6 THE COURT: I don't think they know what it is. Denise –

7 THE COURT CLERK: Oh, I'm sorry.

8 THE COURT: -- they don't know what the date is.

9 THE COURT CLERK: Oh, I thought I gave it to them. September 21st at 9:00.

10 MS. LEXIS: And then for Mr. Figueroa it's the 23rd?

11 THE COURT: The 23rd.

12 THE COURT CLERK: Yeah. I mean, I thought she gave it to you guys first.

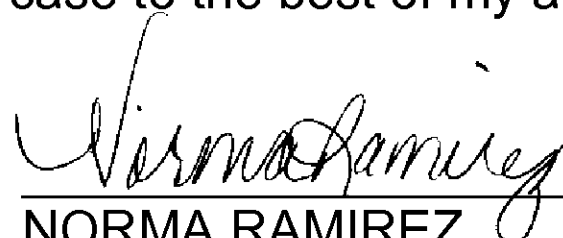
13 THE COURT: Okay.

14 UNIDENTIFIED COUNSEL: Thank you, Your Honor.

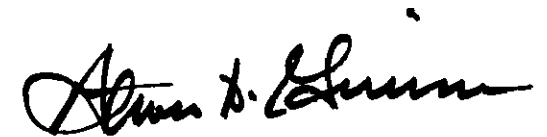
15 THE COURT: All right. Thank you.

16 [Proceedings concluded at 10:25:40 a.m.]

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

21 

22 NORMA RAMIREZ
23 Court Recorder
24 District Court Dept. XXII
25 702 671-0572



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA, SUMMER
LARSEN, DAVID MURPHY, JOSEPH
LAGUNA

Defendants.

CASE NO. C-303991-1
C-303991-3
C-303991-4
C-303991-5

DEPT. V

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

SEPTEMBER 21, 2015

RECORDER'S TRANSCRIPT OF HEARING RE

STATUS CHECK: FIRM TRIAL SETTING

APPEARANCES:

For the Plaintiff:

AGNES M. LEXIS, ESQ.
Deputy District Attorney

For Jorge Mendoza:

WILLIAM L. WOLFBRANDT, ESQ.

For Summer Larsen:

GREGORY E. COYER, ESQ.

For David Murphy:

CASEY A. LANDIS, ESQ.

For Joseph Laguna:

MONIQUE A. MCNEILL, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 MONDAY, SEPTEMBER 21, 2015 AT 9:15:37 A.M.

2
3 THE COURT: Okay. Well, we got Jorge Mendoza, Summer Larsen, David
4 Murphy and Joseph Laguna. The record will reflect the presence of all four
5 Defendants. Counsel, for the record, if you'd indicate your representations, please.

6 MS. MCNEILL: Yes, Your Honor. Monique McNeill on behalf of Mr. Laguna.

7 MR. COYER: Good morning. Gregory Coyer on behalf of Summer Larsen
8 who is present in custody.

9 MR. LANDIS: Casey Landis on behalf of David Murphy.

10 MR. WOLFBRANDT: And good morning. Lou Wolfbrandt for Jorge Mendoza.

11 MS. LEXIS: And Agnes Lexis for the State. Good morning.

12 THE COURT: Good morning. All right. This is on for a status check and for a
13 trial setting. Is there any reason we shouldn't set trial?

14 MS. MCNEILL: No, Your Honor.

15 MS. LEXIS: No, Your Honor.

16 THE COURT: There's Mendoza – there was another Defendant that has a
17 Motion to Withdraw plea set for –

18 MS. LEXIS: That's been handled, Your Honor.

19 THE COURT: When – that's been --

20 MS. LEXIS: That's been handled. That's Mr. Figueroa. I believe he made the
21 decision not to withdraw his plea so we would just need to continue his rendition of
22 sentence past the trial date in this case.

23 THE COURT: Okay. Okay. How long is this case gonna take to try?

24 MS. LEXIS: Two weeks.

25 MS. MCNEILL: That's probably – that sounds right.

1 THE COURT: Okay. When do you want it?

2 MR. LANDIS: We were here about – sorry to interrupt. We were here about
3 two weeks ago for a trial setting and the Court just didn't have any dates that were
4 within the next year so that's why it was continued until today. So, we're optimistic
5 that you have a date that's –

6 THE COURT CLERK: Well, since it's two weeks and it's gonna be a – she
7 wants – the Judge wants to set it as a firm trial setting. You're actually gonna look
8 even past August of, I guess, what you guys discussed that last date. You're
9 looking at September for a two week firm set because her June and July are filled
10 with firm sets.

11 MR. LANDIS: And she wants it to be a firm set?

12 THE COURT CLERK: That's what the calendar reflects. The earliest
13 available for a firm set for two weeks would be September 12, 2016.

14 MR. WOLFBRANDT: I guess we gotta take it.

15 THE COURT: I guess you're gonna have to get it. All right. That'll be the
16 order. And we'll need a calendar call.

17 THE COURT CLERK: The calendar call will be – I believe it's – today is
18 Tuesday. So, it'll be September 6th at 9:00 a.m. for calendar call and jury trial will be
19 September 12, 2016 at 1:30 p.m.

20 THE COURT: That'll be the order.

21 MS. MCNEILL: Thank you.

22 THE COURT: Have a good day.

23 * * * * *

24 * * * * *


25 * * * * *

1 MS. LEXIS: Thank you.

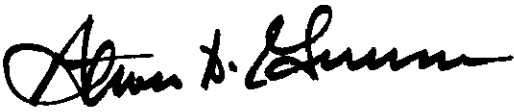
2 [Proceedings concluded at 9:18:24 a.m.]

3 * * * * *

4
5
6
7
8 ATTEST: I do hereby certify that I have truly and correctly transcribed the
9 audio/video recording in the above-entitled case to the best of my ability.

10 

11 NORMA RAMIREZ
12 Court Recorder
13 District Court Dept. XXII
14 702 671-0572
15
16
17
18
19
20
21
22
23
24
25


CLERK OF THE COURT

MOT
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
LANDIS LAW GROUP
200 Hoover Ave.
Las Vegas, Nevada 89101
Telephone: 702.487.3650
Facsimile: 702.664.2632
E-mail: clandis@lvjusticeadvocates.com
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID MURPHY,

Defendant.

CASE NO.: C-15-303991-4

DEPT. NO.: V

MOTION TO SEVER

COMES NOW, the Defendant, DAVID MURPHY, by and through his attorney, CASEY A. LANDIS, ESQ., and hereby moves this Court pursuant to NRS 174.165, Article 1 Section 8 of the Nevada Constitution and hereby respectfully requests this Honorable Court issue an Order severing Mr. Murphy from a joint trial with his codefendants.

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

POINTS AND AUTHORITIES

1. Relevant Procedural History

This case centers around an attempted home invasion and resulting murder that transpired on September 21, 2014. Five individuals would eventually be arrested and charged as members of the conspiracy behind these crimes. The five arrests were not effectuated on, or near, the same date. Jorge Mendoza, the first individual arrested, was found near the location of the event and arrested within an hour of the crime. Joseph Laguna, the last person arrested, was not apprehended until February 13, 2015. Initially, all defendants were charged for the crimes through a criminal complaint filed in Las Vegas Justice Court (Case No. 14F14997A-E). The justice court case never progressed to a preliminary hearing due the State's decision to seek and obtain an Indictment before the date scheduled for the preliminary hearing.

The State began presenting the case to a grand jury on January 8, 2015. By that date, all defendants except Laguna were in custody for the charges at issue here. The State continued its grand jury presentment on January 29, 2015. At the conclusion of the January 29th presentment, the grand jury returned a true bill charging Jorge Mendoza, Summer Larsen, and David Murphy with home invasion, murder, conspiracy to commit murder and related crimes.

On February 23, 2015, Mendoza, Larsen, and Murphy were arraigned on the indictment birthed at the conclusion of the January 29th grand jury presentment. All three defendants entered not guilty pleas and received a trial date of April 27, 2015.

Robert Figueroa, who once stood as a similarly charged codefendant in justice court, found his way to district court in this case by navigating a divergent path. On October 23, 2014, three days after his arrest, Figueroa reached out to the prosecutor assigned to this case to negotiate a plea bargain in exchange for his testimony against his codefendants. A day later, two Las Vegas Metropolitan Police Department (hereinafter "LVMPD") detectives responded to the jail and conducted a taped interview with Figueroa. During said interview, Figueroa was assisted by court-appointed counsel. Having reached an agreement to testify with the State, Figueroa testified before the grand jury during the January 29th grand jury presentment.

...

1 On February 27, 2015, the State filed a Superseding Indictment, the caption of which
2 reflected the absence of Robert Figueroa and the addition of Joey Laguna.

3 On March 9, 2015, defendants Mendoza, Larsen, Murphy, and Laguna were present in
4 court and arraigned on the Superseding Indictment. Presently, a single jury trial for all four
5 defendants is scheduled for September 12, 2016. The instant motion to sever follows.

6 **2. Facts Relevant to Defendant Murphy's Request for Severance**

7 To gain a proper perspective for Murphy's severance argument that follows, it is
8 necessary to ascertain the State's theory of prosecution in this case. The State's theory, when
9 considered in unison with some of the physical evidence collected, sheds light on the likely
10 defense theory the multiple defendants will offer at trial. Appreciating those anticipated trial
11 defenses lies at the heart of Murphy's argument requesting severance from the remaining
12 defendants set for trial in this case.

13 Joseph Larsen (hereinafter "Joseph") was the lawful inhabitant of the house that was
14 stormed by multiple men during the evening of September 21, 2014. At that house, Joseph lived
15 with a roommate, Monty Gibson, who was shot and killed during the attempted home invasion on
16 September 21, 2014. Joseph illegally sold marijuana out of the house.

17 Summer Larsen (aka Rice) (hereinafter "Summer"), one of the defendants in this case,
18 was married to Joseph as of September, 2014. However, Joseph and Summer were estranged and
19 not living together for the months preceding the attempted home invasion.

20 Summer and David Murphy were familiar with one another because they lived in the same
21 neighborhood in Las Vegas as children. In fact, their parents still inhabited the nearby homes in
22 2014. It is the prosecution's belief that Summer and Murphy were in a sexual, dating relationship
23 during the time leading up to the attempted home invasion. Further, the State alleges that
24 Summer wanted to recruit people to burglarize Joseph's house and that she enlisted Murphy in the
25 conspiracy.

26 The State suspects that Summer was involved based, in large part, on the statements made
27 to the police by Ashley Hall. Hall claimed that the week before the attempted home invasion,
28 Summer called her and asked for a ride. Thereafter, Summer asked Hall to pick up an

1 unidentified black male. With all three individuals present in Hall's vehicle, Summer and the
2 unknown male discussed burglarizing a marijuana dealer's house on the following Sunday. After
3 the black male exited the car, Hall confronted Summer and, according to Hall, Summer admitted
4 that Joseph's house was the place she and the black male intended to victimize on Sunday.

5 Sometime in the early afternoon of Sunday, September 21, 2014, Joseph was informed of
6 Summer's conversation, which Hall overheard. Instead of vacating the potential crime scene,
7 Joseph readied the handguns available to him and prepared to protect his domain. As Joseph
8 awaited the intruders, his roommate Monty Gibson came home and joined in the defensive
9 efforts.

10 At around 8 p.m. on September 21, 2014, three armed men approached the front door of
11 Joseph's residence. Robert Figueroa, once a co-defendant in this case, entered into an agreement
12 to testify in this case after he was apprehended. As part of his induced testimony, Figueroa
13 admitted to a grand jury previously impaneled in this case that he was the first of the three men to
14 reach Joseph's front door. Upon reaching the front door, Figueroa hit it twice with his shoulder
15 and it busted open.

16 As soon as Figueroa entered the front doorway, he was instantly shot in the face below his
17 lip. The shock of being shot caused Figueroa to drop to the floor. Figueroa then got up and
18 turned to run away. As he turned, he was shot again in the left side, above his hip near his ribs.
19 Figueroa made it out the front door and ran down the street away from the house. He could
20 continue to hear gunfire as he was running away. Figueroa made it into the back yard of a house
21 in the neighborhood and hid.

22 After the gun fire subsided, Joseph and Monty believed that the assailants had retreated
23 from their failed home invasion. Monty informed Joseph that he was going to go close the front
24 door of the residence. As Monty neared the door, Joseph heard a single gunshot and then
25 observed Monty fall to the ground. Thereafter, Monty was unresponsive to Joseph's verbal calls.

26 Jorge Mendoza also received a bullet wound from the attempted home invasion.
27 Specifically, Mendoza received a gunshot wound to his upper-left leg, resulting in a broken
28 femur. A neighbor, Roger Day, started observing the events after the first gun shots drew his

1 attention. Day observed Mendoza sitting almost nearly in front of Joseph's residence. Mendoza
2 appeared to have suffered an injury to one of his legs. Day watched Mendoza scooting down the
3 street, unable to stand up and walk. Day could see that Mendoza was in possession of a rifle as
4 he made his way down the street. Day could hear Mendoza yelling for help in the direction of the
5 other suspects.

6 Upon their arrival to the crime scene, the police found two distinctive blood trails that
7 originated around the front of Joseph's residence. One of the blood trails led the police to a car
8 parked in front of a house that was about 150 yards from Joseph's residence. Inside that car,
9 police found an injured Mendoza. A rifle was located a short distance away from Mendoza. The
10 second blood trial was followed along multiple streets of the neighborhood, but it failed to lead
11 the police to the location of a suspect. The State believes that this second, longer blood trial was
12 left by Figueroa as he fled the scene.

13 Once Mendoza was transported to the hospital for medical treatment, two homicide
14 detectives interviewed him at his hospital bed. Mendoza stated that he was in his car and driving
15 through the neighborhood, but had nothing to do with the attempted home invasion that occurred
16 near where he was located. Instead, Mendoza told the police that he was flagged down by a
17 pedestrian within Joseph's subdivision. Upon stopping his vehicle Mendoza was car-jacked by
18 the pedestrian and multiple other men who pulled up moments later. One of the assailants was
19 armed with a rifle and Mendoza wrestled with the man to gain control of the rifle. During that
20 struggle, Mendoza sustained a gunshot wound but, nevertheless, he was able to take the rifle
21 away from the man before they drove off in Mendoza's vehicle. Thereafter, Mendoza took cover
22 in a random, unlocked vehicle. Mendoza claimed that he did not seek help once police cars were
23 present on the street because he didn't know if it was safe to exit the vehicle.

24 Mendoza was arrested upon his release from the hospital. Weeks later, a confidential
25 informant told the police that Figueroa was also one of the men involved in the plot. The police
26 located Figueroa and discovered he had two recent gunshot injuries consistent with those
27 sustained by the first assailant that entered Joseph's residence. Resultantly, the police concluded
28 that Figueroa was one of the conspirators and arrested him.

1 Interviews with Ashley Hall and other acquaintances of Summer caused the police to
2 arrest Summer for her alleged role in planning this crime. From Clark County Detention Center,
3 Summer made multiple jail calls to David Murphy. During these recordings, neither Summer nor
4 Murphy admitted to any involvement in the failed home invasion scheme.

5 As part of their investigation, the police determined, what they believe to be, the cellular
6 phone numbers for Mendoza, Laguna, Figueroa, and Murphy. The police then received the call,
7 text, and cellular location records for all four of the cellular phone numbers they tied to the
8 suspects. Mendoza's cellular phone records showed that two phone calls and a text message were
9 sent from the number the police associated with Murphy to Mendoza's phone. Laguna's cellular
10 phone records revealed multiple contacts between his phone and the numbers the police
11 associated with Figueroa and Murphy. Further, Laguna's cellular location data showed his phone
12 hitting off of a cellular tower in close proximity to the crime scene a short time after the police
13 were called. Figueroa's cellular location data also showed his phone hitting off of a cellular
14 tower near the crime scene from minutes after the crime until early the next morning.

15 During the course of their investigation, the police learned that there was some facts that
16 linked some of the defendants to each other prior to the events on September 21, 2014. As
17 previously mentioned, Summer and Murphy knew each other since a very young age. Murphy
18 was also related to Mendoza based on Mendoza's marriage to Murphy's cousin, Amanda
19 Mendoza. Laguna and Figueroa knew each other well because they shared a prison cell as
20 roommate inmates within the Nevada State Prison system. Figueroa told the police that he and
21 Laguna continued to maintain regular contact after the men were released from prison.

22 As of the date of this Motion, all of the defendants, with the exception of Figueroa, have
23 enter pleas of not guilty and remain set for trial. This Motion represents the first request by any
24 of the defendants for trial severance of the parties.

25 ...

26 ...

27 ...

28 ...

1 **3. Argument**

2 **A. Introduction**

3 The interests of judicial economy are far outweighed by the severe prejudice that will
4 result from conducting a joint trial with Murphy and his codefendants. As further detailed herein,
5 the probable theory of defense that will be advanced by Murphy at trial is undeniably antagonistic
6 to the defense that one, if not more, of his codefendants will present to the jury. Resultantly, it is
7 impossible to conduct joint jury trials of Murphy and his codefendants if all the defendants are to
8 each enjoy fair trials wherein they can advance their respective defense theories to the jury in a
9 meaningful way. If the defendants are all tried jointly, Murphy and, at least one, of his
10 codefendants will be forced to defend from the attacks hurled by each other more than they need
11 to defend themselves from the allegations advanced by the State. This inherent and unavoidable
12 antagonism makes a joint trial impractical. This Court should, therefore, grant Murphy's request
13 for a separate trial in this case.

14 **B. Relevant Law**

15 Two defendants may be charged together in the same Information when they are alleged
16 to have participated in the same acts which give rise to a criminal offense. NRS 173.135.
17 However, "if it appears that a defendant ... is prejudiced by a joinder of ... defendants," the district
18 court has authority to sever a joint trial. NRS 174.165(1); Rodriguez v. State, 117 Nev. 800, 808,
19 32 P.3d 773, 778 (2001). "[S]everance should be granted when the defendant 'shows that the
20 core of the co-defendant's defense is so irreconcilable with the core of his own defense that the
21 acceptance of the co-defendant's theory by the jury precludes acquittal of the defendant.'" United
22 States v. Mayfield, 189 F.3d 895, 899 (9th Cir 1999). Inconsistent or antagonistic defenses entitle
23 defendants to a severance of trials if they are antagonistic to the point that they are mutually
24 exclusive. Rodriguez v. State, 117 Nev. 800, 810 (2001). As the Nevada Supreme Court has
25 explained:

26 [D]efenses become "mutually exclusive" when the core of the codefendant's
27 defense is so irreconcilable with the core of [the defendant's] own defense that the
28 acceptance of the codefendant's theory by the jury precludes acquittal of the
defendant.

1 Rowland v. State, 118 Nev. 31, 45 (2002), citing United States v. Throckmorton, 87 F.3d 1069,
2 1072 (9th Cir.1996).

3 The Ninth Circuit Court of Appeals has also examined the issue of prejudice caused in
4 some cases based upon a failure to sever trials of defendants with antagonistic defenses:

5 The joinder of defendants advocating mutually exclusive defenses can have
6 a prejudicial effect upon the jury, and hence the defendants, in a number of ways.

7 Defendants who accuse each other bring the effect of a second prosecutor
8 into the case with respect to their codefendant. In order to zealously represent his
9 client, each codefendant's counsel must do everything possible to convict the other
10 defendant. The existence of this extra prosecutor is particularly troublesome
11 because the defense counsel are not always held to the limitations and standards
12 imposed on the government prosecutor. Opening statements. . . can become a forum
13 in which gruesome and outlandish tales are told about the exclusive guilt of the
14 "other" defendant. . . . Counsel can make and oppose motions that are favorable to
15 their defendant, without objection by the government.

16 Cross-examination of the government's witnesses becomes an opportunity
17 to emphasize the exclusive guilt of the other defendant or to help rehabilitate a
18 witness that has been impeached. Cross-examination of the defendant's witnesses
19 provides further opportunities for impeachment and the ability to undermine the
20 defendant's case. The presentation of the codefendant's case becomes a separate
21 forum in which the defendant is accused and tried. Closing arguments allow a final
22 opening for codefendant's counsel to portray the other defendant as the sole
23 perpetrator of the crime.

24 Joinder can provide the individual defendants with perverse incentives.
25 Defendants do not simply want to demonstrate their own innocence, they want to
26 do everything possible to convict their codefendants. These incentives may
27 influence the decision whether or not to take the stand, as well as the truth and
28 content of the testimony.

29 The joint trial of defendants advocating mutually exclusive defenses
30 produces fringe benefits for the prosecution. Joinder in these cases can make a
31 complex case seem simple to the jury: convict them both.

32 The government's case becomes the only unified and consistent
33 presentation. It presents the jury with a way to resolve the logical contradiction
34 inherent in the defendants' positions. While the defendants' claims contradict each
35 other, each claim individually acts to reinforce the government's case. The
36 government is further benefitted by the additive and profound effects of repetition.
37 Each important point the government makes about a given defendant is echoed and
38 reinforced by the codefendant's counsel.

Joinder of defendants who assert mutually exclusive defenses has a final

1 subtle effect. All evidence having the effect of exonerating one defendant implicitly
2 indicts the other. The defendant must not only contend with the effects of the
3 government's case against him, but he must also confront the negative effects of the
4 codefendant's case.

United States v. Tootik, 952 F.2d 1078, 1082-83 (9th Cir. 1991).

5 The increased risk of prejudice caused by joint codefendant trials does not only exist in
6 those cases where the codefendants present antagonistic defenses. In cases where the evidence
7 against one of the codefendants is overwhelming and the evidence against the other codefendant
8 is not, unfair prejudice can require severance because of the risk of "spillover prejudice." See
9 United States v. DeRosa, 670 F.2d 889, 898-99 (9th Cir. 1982). The Ninth Circuit has recognized
10 that "a great disparity in the amount of evidence introduced against joined defendants may, in
11 some cases, be grounds for severance." United States v. Douglas, 780 F.2d 1472, 1479 (9th Cir.
12 1986); United States v. Patterson, 819 F.2d 1495, 1503 (9th Cir. 1987). "For example, evidence
13 of a codefendant's wrongdoing in some circumstances erroneously could lead a jury to conclude
14 that a defendant was guilty. When many defendants are tried together in a complex case and they
15 have markedly different degrees of culpability, this risk of prejudice is heightened." Zafiro v.
16 United States, 506 U.S. 534, 539 (1993) (citations omitted).

17 In United States v. Donaway, 447 F.2d 940, 942-43 (9th Cir. 1971), the defendant was
18 charged for his role in a horse race fixing conspiracy, which was relatively minor in comparison
19 to the conduct of the codefendants at the joint trial. On appeal, the Ninth Circuit noted that less
20 than 50 pages of the 2,300 page trial transcript were directly relevant to the guilt or innocence of
21 Donaway. Id. Based on this enormous disparity in the sheer volume of evidence against the
22 separate codefendants, the Court reversed the trial court's denial of severance. "Despite the trial
23 judge's sincere effort to keep the jury aware of the limitations in the admissibility of evidence,"
24 "we find it impossible to conclude on the facts here that appellant was not severely prejudiced by
25 the evidence relevant only to the co-defendants." Id. at 943; see also, Chartier v. State, 124 Nev.
26 760, 767 (2008) (reversing the denial of a severance motion because "The cumulative effect of
27 accumulation of evidence of guilt which comes from being tried with other defendants may
28 indeed become so unfairly prejudicial that severance is warranted.") (citations and quotations

omitted).

No matter its potential sources, “district courts must determine the risk of prejudice from a joint trial based on the facts of each case.” Marshall v. State, 118 Nev. 642, 648 (2002). After identifying the potential sources of prejudice in a joint codefendant trial and assessing their likelihoods, a district should sever codefendants “if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.” Chartier, 124 Nev. at 765 (citations and quotations omitted).

C. Severance Should be Granted Because Defendants will Present Antagonistic Defenses at Trial

Murphy should be severed from his codefendants in this case because no less than two of the Defendants will have antagonistic defenses at trial. Specifically, the respective defenses of Murphy and Mendoza are “mutually exclusive” to one another in the exact manner that the Nevada Supreme Court previously described as unfairly prejudicial. See Rowland v. State, 118 Nev. 31, 45 (2002). At trial, Murphy intends to present the defense that he didn’t drive the assailants to Joseph’s house on the offense date and had nothing to do with the planning or execution of that plot. Counsel for Murphy submits, based on information and belief, that Mendoza will argue at trial that his criminal acts in approaching the residence with a firearm were the product of duress.¹ See NRS 194.010(7). Put differently, Mendoza will argue that Murphy and other defendants threatened him with death or great bodily harm, which reasonably forced him to commit the criminal acts he is charged with. See United States v. Contento-Pachon, 723 F.2d 691, 693 (9th Cir. 1984) (There are three elements of the duress defense: (1) an immediate threat of death or serious bodily injury, (2) a well-grounded fear that the threat will be carried out, and (3) no reasonable opportunity to escape the threatened harm).

The defense that he had nothing to do with the conspiracy, which Murphy will argue at

¹ Murphy is cognizant of the reality that he is unable to conclusively prove what defense Mendoza will present at trial. Of course, the only way to accurately make this determination would require Mendoza to reveal his trial strategy, which Murphy lacks the power to compel. Nevertheless, Murphy is confident that Mendoza will present this defense at trial based on the state of the evidence and the potential defenses available to him.

1 trial, is wholly antagonistic to a defense that argues that Murphy was a party to the conspiracy.
2 As such, if Murphy and his are tried jointly, the jury will essentially be left to determine which
3 defendant's defenses were correct, instead of fairly and reliably determining the guilt or
4 innocence of each individual defendant, as is constitutionally required. If a single jury hears the
5 respective defenses of Murphy and his codefendants, it will be impossible for them to return not
6 guilty verdicts as to all of the defendants. Acceptance of either theory of defense will necessitate
7 a guilty verdict for the defendant whose defense was rejected by the jury. That reality makes the
8 respective defenses mutually exclusive to one another and requires severance to preserve the fair
9 trial rights of all defendants. See United States v. Mayfield, 189 F.3d 895, 900 (9th Cir. 1999)
10 (finding codefendant trial defenses mutually exclusive because the core of the defenses made it
11 impossible to accept one theory and acquit the defendant whose theory was rejected).

12 There is no jury instruction or procedural cure that will avoid the inherent antagonism of
13 these defense theories. If tried together, the attorneys representing the defendants will be
14 competing with each other more than they will be competing with the State. See Tootik, 952 F.2d
15 at 1082-83. Since counsel for each defendant will be aware that the codefendant's defense must
16 be rejected in order for their own defense to be accepted, defense counsel will do everything
17 possible to derail and diminish the theory of defense advanced by the other party. A joint trial
18 guarantees that either Murphy or Mendoza will be convicted by the jury. This reality ensures
19 prejudice to one, if not both, defendants and eviscerates this Court's ability to ensure that all
20 defendants receive a fair trial. Any interest in judicial economy and efficiency pales in
21 comparison to the unconstitutional prejudice caused by a joint trial for all of the codefendants in
22 this case.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

D. Spillover Prejudice and the Cumulative Effect of a Joint Trial will Deprive
Murphy of a Fair Trial

“[T]he cumulative effect of accumulation of evidence of guilt which comes from being tried with other defendants may indeed become unfairly prejudicial that severance is warranted.” Chartier, 124 Nev. at 767 (citations and quotations omitted). The evidence against Murphy in this case is very slight. Further, most of the evidence against Murphy is circumstantial. The only direct evidence against Murphy is the purchased testimony of codefendant, turned informant Figueroa. Beyond said induced testimony, the State’s case against Murphy consists of: (1) a single cellular phone “hit” off of a cellular phone tower in the general proximity to the crime on the same day it occurred; (2) cellular phone records that show he communicated with Laguna and Mendoza the same night of the crime; and (3) evidence that shows that Summer called Murphy from jail after she was arrested.

The strength of the State’s evidence against Mendoza is on the other end of the spectrum. A neighbor witnesses a man crawl away from Joseph’s house with a rifle in his lap. Not long after, the police find Mendoza in a car near where the neighbor watched his crawl. Mendoza has a gunshot wound to his leg and a rifle and gloves are found nearby. A blood trail is found starting in front of Joseph’s house and ending close to the car where Mendoza was hiding. Mendoza tells the police that he just happened to be carjacked by unknown men on the same block as the attempted home invasion at roughly the same time. Mendoza further claims the rifle he possessed was inadvertently pulled off of the car stealing assailant he struggled with. He kept hiding in the car after there was a clear presence of police on the street because he didn’t know if it was safe to exit the car. The vast difference in the amount of evidence that will be presented against Murphy and Mendoza increases the risk of unfair prejudice that will cloud a joint trial of all defendants in this case. See United States v. Baker, 10 F.3d 1374, 1390-91 (9th Cir. 1993) (finding that the “consequent risk of spillover prejudice cannot be ignored” when “comparatively peripheral defendants” must sit through trials as vast evidence that is irrelevant to their case is admitted against a codefendant).

...

Should the Court allow this trial to go forward as charged, the jury will be prevented from making a reliable judgment about Murphy's guilt or lack thereof. In this case, it is not just the fact that Mendoza's attorney will become a second prosecutor, or the fact that Murphy and Mendoza will present antagonistic defenses that presents a problem; It is the combined cumulative effect of these factors and the likelihood of spillover prejudice that creates an environment where Murphy will not receive a, Constitutionally required, fair trial. See Chartier, 124 Nev. at 767.

Judicial economy and the other benefits of a joint trial are outweighed in this case based on the high probability of unfair prejudice that a joint trial will produce. The deprivation of a fair trial is a cost too high to risk based on the facts of this case. The prejudice will be particularly prevalent in this trial where, not only are the defenses antagonistic, but the evidence of guilt also overwhelming points to Mendoza and not to Murphy. Severance is warranted in this case to protect Murphy's Constitutional rights to a fair trial and to an impartial jury.

4. Conclusion

As Murphy would be unduly prejudiced by having to proceed to trial with Mendoza he asks this Court to sever his trial from that of his codefendants pursuant to NRS 174.165 and based on the legal authority cited in this motion.

DATED this 31st day of March, 2016.

LANDIS LAW GROUP

/s/ Casey A. Landis
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
200 Hoover Ave.
Las Vegas, Nevada 89101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the above captioned Motion to Sever
will be heard on the 18 day of April, 2016, at 9:00 a.m. in Department V of the Eighth
Judicial District Court, County of Clark, State of Nevada.

DATED this 31st day of March, 2016.

LANDIS LAW GROUP

/s/ Casey A. Landis
CASEY A. LANDIS, ESQ.
Nevada Bar No. 9424
200 Hoover Ave.
Las Vegas, Nevada 89101

CERTIFICATE OF EMAIL

I hereby certify that service of the above and forgoing was made this 31st
day of March, 2016, by email to:

CLARK COUNTY DISTRICT ATTORNEY
Email: PDmotions@clarkcountyda.com

By /s/ Casey A. Landis

MC
PP
DA
Aor

Allen D. Blum

CLERK OF THE COURT

Casey
Landis

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Case No.: C-15-303991-4

Plaintiff,

Dept. No.: V

V.

Docket No.:

DAVID MURPHY

5/2/16 @ 9:00am

Defendant

MOTION TO DISMISS COUNSEL
AND
APPOINTMENT OF ALTERNATE COUNSEL

COMES NOW, the Defendant, DAVID MURPHY,
moves this honorable court to DISMISS COUNSEL,
CASEY A. LANDIS, and appoint other counsel to
represent this defendant.

This motion is based upon all papers, pleadings
and documents on file. Factual statements set forth
in the POINTS AND AUTHORITIES contained
therein.

Dated this First day of April, 2016

DAVID MURPHY

DEFENDANT

CLERK OF THE COURT

APR 06 2016

RECEIVED

RECEIVED

APR 04 2016

CLERK OF THE COURT

1

POINTS AND AUTHORITIES

It is respectfully requested of this court to grant this Motion to Dismiss Counsel for the reasons listed below:

I. PROCEDURAL BACKGROUND

Since CASEY A. LANDIS was appointed Counsel on December 19, 2014, defendant, DAVID MURPHY, has been prejudiced and suffered manifest injustice based on Counsel's refusal or failure to:

1) Set up a direct line of communication; Counsel has no working phone account set up with the CLARK COUNTY DETENTION CENTER, so defendant may call or leave messages.

2) File motions, obtain documents or other information that may greatly benefit defense at trial.

3) Keep his word; Counsel does not follow through on dates or deadlines he sets.

4) Thoroughly take investigative measures in this case; and subsequently not using all available resources to assist in defense.

5) Notify defendant that a conflict of interest exist. Counsel for defendant is associated in a firm with counsel who represents a co-defendant.

II. ARGUMENT

DEFENDANT, DAVID MURPHY, asserts he is being denied his right to effective representation due to wholly inadequate actions of his court appointed counsel. Further, counsel's innate action comport to nothing more than a violation of defendants due process rights.

Counsel has no phone account set up with the CLARK COUNTY DETENTION CENTER, so defendant has no direct line of contact with counsel. Counsel, CASEY A. LANDIS, has promised defendant on multiple occasions, beginning in December 2014, to fix this issue, but has yet to be done. Also counsel has not provided defendant with a physical address at which defendant may contact through mail. Private Investigator Richard Franky recently obtained an address from counsel, CASEY LANDIS, and provided this to defendant, DAVID MURPHY, however this address is the same address as co-defendant counsel, GREGORY COVER. Defendants only means of communication is through a third party text message or phone call.

Counsel, CASEY A. LANDIS, rarely keeps his word or shows up to visit with defendant on the dates he says he will. Counsel often goes months without keeping his word to visit defendant.

Counsel has repeatedly ignored defendants requests that he file motions, obtain documents and or information that may help with defense and or prepare for trial.

1 Counsel has told defendant "don't worry, it
2 will all work out, be patient."

3 Counsel has given defendant, DAVID MURPHY,
4 multiple deadlines for when counsel will have
5 motions prepared and filed, but has yet to keep
6 his word, for over 8 months.

7 Counsel also ignored defendant, DAVID MURPHY's,
8 requests that counsel hire a private investigator and
9 a phone expert to assist in case. After over six months
10 of requests from defendant, Counsel did hire a private
11 investigator, KRISTINE MAUTNER. Counsel allowed
12 Kristine Mautner to make no effort to assist in
13 defense in any way for an additional six months.
14 Counsel often told defendant, "Good private investigators
15 are hard to find."

16 It was not until defendant asked counsel
17 to hire Richard Franky as private investigator, did
18 counsel finally get rid of Kristine Mautner.

19 Counsel has yet to find a phone expert
20 which defendant has requested he do so for
21 over a year.

22 Defendant has an unqualified right to
23 legal assistance that expresses loyalty to said defendant.
24 "The right to counsel is the right (also) to effective
25 assistance of counsel." Cuyler v. Sullivan 100 S. Ct.
26 1708 (1980); and Frazier v. U.S. 18 F. 3d 778
27 (9th Cir. 1994). Thus, the adversarial process
28 protected by the Sixth amendment requires that the
29 accused have "Counsel acting in the role of an advocate."
30 Anders v. California, 387 S. Ct. 1368 (1967)

1 A party whose counsel is unable to provide
2 effective or adequate assistance is no better than
3 one who has no counsel at all; and any appeal(s)
4 would be futile in its gesture. *Evitts v. Lucey*
5 105 S. Ct. 830 (1985); *Douglas v. California*, 83 S. Ct.
6 814 (1963)

7 Appointed Counsel for this defendant has done
8 less than the bare minimum to fairly/properly
9 represent him, and has refused to investigate
10 matters or use all available resources to assist in
11 defense and prepare for trial, this alone is a
12 viable claim to ineffective counsel. *Crandel v.*
13 *Bunnell* No. 92-5530 D.C. No. CV-90-6419-WJR
14 (5); filed May 25, 1994 (9th Cir)

15 Therefore, defendant contends that although
16 Counsel has been appointed in this case, the
17 actions of counsel, or lack thereof, have created
18 unfair prejudice and obstacles which do not
19 comport the fair procedures owed to the defendant.

20 The plurality opinion in *Evitts* and
21 *Douglas*, *infra*, made it very clear that:

22 "There is lacking that equality demanded
23 by the fourteenth amendment, where the "rich man"
24 enjoys the benefit of the law being righteously
25 practiced; in that, counsels' examination step-by-step
26 (into the record of the case), and research of the law,
27 and a marshaling of the facts/arguments in his
28 behalf is done as should befit an advocate of
29 defense; while the indigent, so burdened by a
30 preliminary determination that his case is without

1 Merit, is forced to Shift for himself." 105 S. Ct.

2 At 842j 83 S. Ct. At 816-17

3 Notwithstanding the strong policy favoring
4 autonomy, "ethical, professional and constitutional
5 principals" establish counsels standards owed to
6 his/her client. See: American Bar Association (ABA),
7 and Professional Responsibility Code (CPR).

8 Counsel, CASEY A. LANDIS, has failed to
9 inform/notify defendant that a conflict of interest
10 exists. Counsel for defendant is associated in a
11 firm, COVER and LANDIS, with counsel, GREGORY
12 COVER, who is counsel for co-defendant, SUMMER
13 RICE. This creates a conflict of interest as per
14 Nevada Rules of Professional Conduct, Rule 1.7. & 1.8.

15 Defendant has provided multiple letter heads
16 and documents which show defendant's counsel,
17 CASEY A. LANDIS and co-defendant's counsel,
18 GREGORY COVER are and have been associated
19 in a firm, COVER and LANDIS. (See Attachments)
20 Recently private investigator, RICHARD FRANKY,
21 provided the current address that counsel, CASEY A.
22 LANDIS gave him, 600 S. Tonopah Dr., Suite 220
23 Las Vegas, Nv. 89106, this is the same address
24 of co-defendant's counsel, GREGORY COVER.
25 It is a conflict of interest for counsel to represent
26 two co-defendants without the informed, written
27 consent of clients, and while lawyers are
28 associated in a firm, that which applies to anyone
29 of them, shall apply to all of them. Defendant,
30 DAVID MURPHY, was never informed of this conflict,

1 nor has defendant given his consent to go on
2 being represented by counsel, inspite of this conflict.
3 Only through his own diligence and research has
4 the defendant become aware of this.

5 So clearly, a conflict of interest now exist
6 between counsel/Client (defendant), as all faith and
7 trust has been diminished as a result of counsel's
8 actions or lack thereof, and a "Showing" of conflict
9 of interest requires no showing of prejudice.

10 *Cuyler v. Sullivan*, 100 S.Ct. at 1717.

11 The law addresses itself to actualities.
12 Adjudication is not a mere mechanical process,
13 nor does it compel any either (or determination.)
14 *Griffin v. Illinois*, 76 S. Ct. 585 592-594
15 (1956)

16 Therefore, fundamental fairness requires
17 the abolition of prejudice which defendant is
18 presently suffering. This is an actuality that the
19 law must address. Anything short of abdication
20 would further a manifest of injustice. The
21 "effectiveness (in assistance) of counsel" is an
22 individual's most fundamental right, for without
23 it, every other right defendant has to assert
24 becomes affected.

25 Dated this First day of April, 2016. Respectfully
26 Submitted,

27 DAVID MURPHY
28 (defendant)
29
30

1 Dated this first day of April, 2016.
2 I, DAVID MURPHY, do solemnly swear, under
3 penalty of perjury, that the above (aforementioned)
4 text of Motion to Dismiss Counsel.... is
5 accurate, and is correct to the best of my
6 knowledge.

7 (NRS 171.102 and NRS 208.165)

8 Respectfully Submitted,

9 David Murphy

10 (Defendant)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

Case No. 62464

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE JAMES M.
BIXLER, DISTRICT JUDGE,
Respondents,

and
EDMOND PAUL PRICE,
Real Party in Interest.

**ANSWER TO EMERGENCY PETITION FOR WRIT OF
MANDAMUS OR IN THE ALTERNATIVE PROHIBITION**

COMES NOW, Attorneys CASEY A. LANDIS and GREGORY E.
COVER, on behalf of the Real Party in Interest, EDMOND PAUL PRICE,
and pursuant to the Order of this Court hereby Answers the Emergency
Petition for Writ of Mandamus or in the Alternative Prohibition.

This Answer is based on the following Points and Authorities and all
papers and pleadings in the separately filed Appendix.

Dated this 22nd day of January, 2013.

COVER & LANDIS, LLC

By: /s/ Gregory E. Cover
GREGORY E. COVER, ESQ.

Nevada Bar No. 10013
601 South Tenth Street, Ste 104
Las Vegas, Nevada 89101
Telephone: 702.885.9580
Facsimile: 702.664.2632
Email: geoyer@covermandis.com

By: /s/ Casey A. Landis
CASEY A. LANDIS, ESQ.

Nevada Bar No. 09424
601 South Tenth Street, Ste 104
Las Vegas, Nevada 89101
Telephone: 702.885.9580
Facsimile: 702.664.2632
Email: clandis@covermandis.com

POINTS AND AUTHORITIES

FACTUAL SUMMARY

Edmond Price has been charged by way of indictment with a litany of
serious charges, including Conspiracy to Commit Murder, Conspiracy to
Commit Kidnapping, Conspiracy to Commit Robbery, First Degree
Kidnapping With Use of a Deadly Weapon Resulting in Substantial Bodily
Harm, Burglary While in Possession of a Deadly Weapon, Robbery With
Use of a Deadly Weapon, Attempt Murder With Use of a Deadly Weapon,
Battery With Use of a Deadly Weapon Resulting in Substantial Bodily
Harm.

The facts giving rise to these charges stem from an incident that
occurred at Whiskey Pete's Hotel & Casino in Primm, Nevada on June 26,
2010. Ronald Wall and Edmond Price were business associates. Mr. Wall
had previously purchased over \$80,000.00 of precious metals from Mr.
Price. In June of 2010, Mr. Wall again expressed his interest to purchase
precious metals from Mr. Price and arranged for the two to meet in Primm at
Whiskey Pete's. Mr. Price arrived with a female companion, Victoria
Edelman. Mr. Wall arrived armed with two pistols.

What actually transpired in the hotel room at Whiskey Pete's was not
a business transaction, but a violent struggle between Mr. Wall and Mr.
Price. Mr. Wall claims he was robbed and viciously attacked. Mr. Price
contends that it was Mr. Wall who attacked first in an attempt to rob Mr.
Price, who then simply acted in self-defense. At some point in the struggle,
Ms. Edelman became involved and struck Mr. Wall in the head with a metal
object, seriously injuring him. By the end of the struggle, Mr. Price and Ms.
Edelman were able to leave the hotel while Mr. Wall remained in the room
injured. Since the date of the incident, Mr. Price has consistently maintained
his innocence and insisted that he acted in self-defense.

RE: State v, Murphy, c-15-303991-4

1 message

Marc DiGiacomo

<Marc.DiGiacomo@clarkcountyda.com>

To: Casey Landis <clandis@lvjusticeadvocates.com>

Cc: Agnes Lexis <Agnes.Lexis@clarkcountyda.com>

Mon, Mar 30, 2015 at 1:45 PM

Hey Casey, along with the 3078 pages of discovery, there were 45 audio/video files on the same disks. Did you receive those? I believe Agnes is trying to coordinate a time for all defense counsel to go to homicide and review the books to see if there is anything contained therein that has not been previously discovered which we will allow you to mark and make copies of. That should satisfy our obligations under the statutes. Should we generate any discovery in the DA's office, that will obviously also made available. As to the names and addresses of the witnesses, we will comply with our obligation to file a timely witness notice. If after filing the notice, we learn of updated addresses, they will be provided forthwith. I just returned from a lengthy time out of the office today and they moved me back to Clark Place so my entire office is currently in boxes. Agnes has the files currently so it is best to coordinate with her.

Thanks....MD

From: Casey Landis [mailto:clandis@lvjusticeadvocates.com]

Sent: Monday, March 30, 2015 12:09 PM

To: Marc DiGiacomo

Subject: State v, Murphy, c-15-303991-4

Marc,

Attached please find a "Department V discovery letter," if you will...

1000 X-1-2/18/16

"Attachment C"



Casey Landis <clandis@lvjusticeadvocates.com>

David Murphy # 00859628

1 message

Kristal Wagner <kristal.wagner@naphcare.com>

To: Casey Landis <clandis@lvjusticeadvocates.com>

Wed, Jul 8, 2015 at 2:35 PM

Good afternoon, Mr Landis

I have secured permission to arrange for the eye exam for your client, Mr Murphey. As we will have to go through the entire facility procedure for referrals and scheduling outside appointments, I imagine it will be a minimum of a few weeks, and could be longer depending on the optometrist's schedule. I will let you know when the exam has taken place.

Kristal Wagner

Admin Assistant

Clark County Detention Center

NaphCare, Inc.

702-671-5698 phone

702-366-0576 fax

CONFIDENTIALITY NOTICE: This communication and its attachments may contain confidential or privileged information intended solely for the use of the individual or entity to whom it is addressed. If you are not an intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it (or any portion of the contents) or the attachments is strictly prohibited. If you have received this communication in error, please contact the sender and immediately destroy all copies of the communication and attachments. Thank you.

0133

Handwritten: 7/8/15 2:35 PM

"Attachment D"

Gregory E. Coyer, Esq.
Attorney At Law

COYER LAW OFFICE

600 S. Tonopah Dr., Suite 220
Las Vegas, Nevada 89106

Cell: 702.885.9580

Desk: 702.802.3088

Fax: 702.802.3157

Email: gcoyer@coyerlaw.com

Same address
Casey A. Landis provided
to P.I. Richard Franky
recently (Feb, 2016)
April 14, 2015 as his current
office address

VIA ELECTRONIC MAIL TO:

Clark County District Attorney
Attn: Agnes Lexis, Esq.
200 Lewis Avenue
Las Vegas, NV 89155
Email: agnes.lexis@clarkcountyda.com

RE: Your extrajudicial statements to the Las Vegas Review-Journal regarding the following case: State of Nevada v. Summer Larsen, Case No.: C-15-303991-3

Dear Agnes:

As you know I represent the defendant Summer Larsen (aka Summer Rice) in the above-referenced matter. It has come to my attention that you recently provided information to the Las Vegas Review-Journal. Mr. Chris Kudialis subsequently penned the news article attached hereto as **Exhibit A**. Within the text of Mr. Kudialis' article, there are numerous statements about the case attributed to you personally (See **Exhibit A**).

Of particular concern to me are the following statements, specifically attributed to you:

- (1) "Joey Larsen will not face charges, Clark County prosecutor Agnes Lexis said. Losing his roommate and being robbed by his wife is enough punishment for Larsen, Lexis said." (See **Exhibit A**);
- (2) "Lexis said the two communicated in phone calls recorded by the jail and that Rice asked her husband for bail money." (See **Exhibit A**);
- (3) "Larsen is trying to repair his marriage with Rice, Lexis said, despite knowing she was behind the deadly invasion of his home." (See **Exhibit A**);
- (4) "'Joey knows what happened,' Lexis said. 'But whether he actually believes it is another thing.'" (See **Exhibit A**).

Since reading the news article, I have corresponded with both Mr. Kudialis and his editor, Adam Causey. Neither individual gave me any reason to believe that you were misquoted or that the information provided by you was taken out of context. Clearly, you volunteered the information in the article attributable to you.

DAVID MURPHY

Clarke County Detention Center
330 s. Casino Center Blvd.
Las Vegas, Nevada
89101

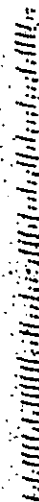
5

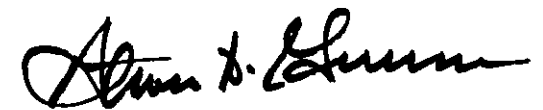


SENT FROM CCDC

Clark County Clerk of Court,
Regional Justice Center
200 Lewis Ave. 3rd floor
Las Vegas, Nevada
89101

LEGAL





CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
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 DAVID MARK MURPHY,
13 #0859628
14 Defendant.

CASE NO: C-15-303991-4

DEPT NO: V

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

16 DATE OF HEARING: 4/18/16
17 TIME OF HEARING: 9:00 AM

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

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

24 **STATEMENT OF FACTS**

25 On Sunday, September 21, 2014, Joseph Larsen (hereinafter "Joey") and his roommate,
26 Monty Gibson (hereinafter "Monty") were in their home located at 1661 Broadmere Street in
27 Las Vegas, Clark County, Nevada, when they heard a "boom" at the door. Grand Jury
28 Transcripts (hereinafter "GJT"), Volume 2 (hereinafter "V"), p. 70, line 25; p. 71, lines 1-3.

1 Joey heard another "boom" at the door, which he later learned was the sound of his front door
2 being kicked in, before he saw two (2) masked men armed with weapons run into his home.
3 GJT, V-2, p. 71, lines 1-3; p. 76, lines 4-9; p. 76, lines 19-20. Joey, who was armed with a .40
4 caliber Glock and a .38 caliber unknown make and model, fired at the men. GJT, V-2, p. 71,
5 lines 1-3; p. 74, lines 10-12. The armed intruders fired back at Joey. GJT, V-2, p. 71, lines 1-
6 3. Through the gunfire, Joey heard the first intruder, who was wearing an orange ski mask,
7 make a grunting sound, which caused Joey to believe that he had shot one of the men. GJT,
8 V-2, p. 76, lines 21-25; p. 78, lines 14-18. Joey continued to return and receive gunfire, but
9 he could not tell if both men were shooting. GJT, V-2, p. 78, lines 23-25; p. 79, lines 1-4.
10 Joey was not sure where his roommate and friend, Monty was during the gunfire exchange but
11 Joey recalled seeing the first masked intruder armed with a rifle. GJT, V-2, p. 80, lines 2-5; p.
12 85, lines 2-5. Joey could not identify either of the intruders. GJT, V-2, p. 84, lines 18-21.

13 A short time later, the intruders stopped firing. GJT, V-2, p. 80, lines 10-12. Joey
14 looked at the hallway from where he hid in the kitchen area and saw that the intruders had left
15 his home. GJT, V-2, p. 80, lines 11-13. Monty came out from behind another wall, stating
16 that he was going to close the front door. GJT, V-2, p. 80, lines 13-18. Joey walked behind
17 Monty as they both made their way to the door. GJT, V-2, p. 80, lines 13-18. Joey saw Monty
18 look outside prior to Monty pushing the door shut. GJT, V-2, p. 81, lines 21-25; p. 82, lines
19 1-4. It was then that Joey heard a single gunshot and he saw Monty drop to the floor in the
20 doorway. GJT, V-2, p. 82, lines 5-10. Joey looked outside but he did not see anyone. GJT,
21 V-2, p. 82, lines 11-12. Joey retreated back into the home and called out for Monty to say
22 something. GJT, V-2, p. 83, lines 10-15. Hearing no response from Monty and hearing police
23 sirens in the distance, Joey called his father, Steve Larsen (hereinafter "Steve"). GJT, V-2, p.
24 83, lines 16-24. Joey called the police shortly after his father's arrival. GJT, V-2, p. 85, lines
25 9-11.

26 Roger Day, a retired California Corrections Officer, was living at 10025 Long Cattle
27 Avenue, which was located on the corner of Long Cattle Avenue and Broadmere Street, on
28 September 21, 2014. GJT, V-2, p. 21, lines 1-14; p. 30, lines 18-20. He was at home watching

1 TV in his living room when he heard gunshots. GJT, V-2, p. 21, lines 22-25. Roger walked
2 to his front door and when he looked out, he saw a man in a black and grey bandana styled ski
3 mask pointing and shooting a handgun towards 1661 Broadmere. GJT, V-2, p. 22, lines 15-
4 18; p. 23, lines 1-19. He saw this suspect shoot 2-3 times, then the suspect took off running
5 down Long Cattle. GJT, V-2, p. 25, lines 17-22. This suspect did not appear injured nor did
6 he did appear to have trouble running away as he sprinted down the dark street. GJT, V-2, p.
7 29, lines 7-24; p. 30, lines 1-4. Roger never saw this suspect again. GJT, V-2, p. 25, lines 20-
8 22. Roger indicated that the shots he heard from this suspect's handgun sounded weird,
9 "almost like, like an air gun or like maybe he had a silencer or something." GJT, V-2, p. 27,
10 lines 17-23.

11 Roger grabbed his cell phone and called 911. GJT, V-2, p. 22, lines 15-18. He then
12 went to his closet and grabbed his handgun. GJT, V-2, p. 24, lines 1-6. It was then that he
13 saw another male "scooting on his rear end down the street." GJT, V-2, p. 24, lines 1-6. Roger
14 assumed that the male suspect had been shot. GJT, V-2, p. 24, lines 1-6. This male suspect
15 was wearing a bright orange ski mask so Roger could not see his face. GJT, V-2, lines 7-13.
16 The suspect was sitting almost in front of 1661 Broadmere when Roger first saw him. GJT,
17 V-2, p. 24, lines 18-22. Then, Roger saw him scooting back towards his house down onto
18 Long Cattle, at which point the suspect stopped right in front of Roger's home. GJT, V-2, p.
19 24, lines 18-22. Roger saw that this suspect had a dark or black colored assault rifle in his
20 hand as he was scooting backwards on the street. GJT, V-2, p. 26, lines 2-15. Roger saw the
21 suspect with the orange ski mask take his mask off and heard him call out for help towards
22 one of the other suspects. GJT, V-2, p. 26, lines 11-15. At that point, Roger knew that the
23 suspect in the orange ski mask was injured, like he had been shot in the left leg. GJT, V-2, p.
24 26, lines 19-21.

25 Jorge Mendoza (hereinafter "Mendoza") was found hiding in a car in front of a home
26 located on Long Cattle Avenue. GJT, V-2, p. 100, lines 1-5. Police followed a blood trail,
27 which was approximately one hundred fifty (150) yards from 1661 Broadmere Street, to the
28

1 vehicle. GJT, V-2, p. 100, lines 1-25. Mendoza had a gunshot wound to the left leg/thigh,
2 resulting in a broken femur. GJT, V-2, p. 100, lines 15-19.

3 While at the scene, police located another blood trail that continued east down Long
4 Cattle Avenue and through other small side streets within the neighborhood. GJT, V-2, p.
5 101, lines 4-21. The blood trail was approximately 3/10 of a mile long and led police away
6 from where Mendoza was taken into custody. GJT, V-2, p. 101, lines 8-21. The second,
7 longer blood trail was later discovered to have been left by Robert Figueroa (hereinafter
8 "Figueroa"). GJT, V-2, p. 101, lines 22-25; p. 102, lines 2-21.

9 Figueroa testified before the Grand Jury on January 29, 2015. Figueroa and Joseph
10 Laguna, a.k.a. Maton (hereinafter "Laguna") were cell mates for approximately nine (9)
11 months in a jail in Winnemucca. GJT, V-2, p. 33, lines 21-25; p. 34, lines 6-8. Figueroa
12 maintained contact with and became friends with Laguna long after they were released from
13 custody. GJT, V-2, p. 34-35. The two maintained contact even through 2014. GJT, V-2, p.
14 35, lines 24-25; p. 36, lines 1-4.

15 On or between 6:00-7:00 a.m. on Sunday, September 21, 2014, Laguna called Figueroa.
16 GJT, V-2, p. 36, lines 2-7; p. 37, lines 15-18; p. 43, lines 18-23. Laguna told Figueroa that he
17 and "Dough Boy" (later identified as David Murphy) had "something lined up" and they
18 wanted Figueroa to participate. GJT, V-2, p. 36, lines 10-12; p. 108, lines 6-25. Figueroa had
19 only been around Murphy 2-3 times before this day. GJT, V-2, p. 56, lines 22-24.

20 Approximately two (2) hours after the initial phone call, Figueroa was picked up at his
21 home by Laguna and another male, later identified as Jose Mendoza. GJT, V-2, p. 37, lines
22 23-25; p. 38, 1-4. Figueroa did not know Mendoza at that time. GJT, V-2, p. 38, lines 5-25.
23 Laguna and Mendoza arrived in an older model, light brown car. GJT, V-2, p. 39, lines 4-7.
24 Mendoza was driving while Laguna sat in the front passenger seat. GJT, V-2, p. 39, lines 8-
25 11. Figueroa knew when he got into the vehicle and sat in the back passenger seat that they
26 were all going to "rob a house" of marijuana. GJT, V-2, p. 39, lines 17-23.

27 The three men made their way to a house on the northwest side of town where they
28 eventually met up with David Murphy, a.k.a. Dough Boy (hereinafter "Murphy"). GJT, V-2,

1 p. 40, lines 8-17. Mendoza, Laguna and Figueroa pulled up alongside Murphy's vehicle where
2 the men spoke for a short time. GJT, V-2, p. 40, lines 19-22. Murphy was by himself in a
3 white Ford pick-up truck. GJT, V-2, p. 41, lines 6-11. Murphy pointed out that he was going
4 to wait around the corner from the house they planned to rob. GJT, V-2, p. 40, lines 19-25; p.
5 41, lines 15-17. Mendoza, Laguna and Figueroa drove by a house located in a cul-de-sac.
6 GJT, V-2, p. 41, lines 20-25. They drove to the end of the street when they noticed "a whole
7 bunch of people out there." GJT, V-2, p. 41, lines 20-25. They left for a second but eventually
8 returned to the home after Laguna said, "Let's go back there, we're going to do this." GJT,
9 V-2, p. 41, lines 20-25. They parked the car a quick second. GJT, V-2, p. 41, lines 20-25; p.
10 42, lines 1-4. Right before they were about to get out of the car, Mendoza said, "this ain't
11 right, there's too many people outside." GJT, V-2, p. 42, lines 1-4. Figueroa saw a lawn crew
12 and a couple of other people at the house. GJT, V-2, p. 42, lines 1-4. At that time, Laguna,
13 Mendoza, Murphy and Figueroa abandoned their plan to rob the home and made their way to
14 Laguna's house to regroup. GJT, V-2, p. 42, lines 5-15. They arrived at Laguna's home at
15 approximately 11:00 – 11:30 a.m. GJT, V-2, p. 42, lines 16-19.

16 While at Laguna's home, Murphy came up with another plan. GJT, V-2, p. 42, lines
17 20-23. Murphy told the other men that he knew of another home they could rob of marijuana
18 later that night. GJT, V-2, p. 42, lines 20-23; p. 43, line 1. At that time, Murphy told Figueroa,
19 Laguna and Mendoza that he believed the second home would contain a significant amount of
20 marijuana. GJT, V-2, p. 43, lines 6-9. Specifically, Murphy told them that there would be
21 anywhere from 30-50 pounds of marijuana at the second home because the resident of the
22 second home had just "re-upped" his marijuana supply from the resident of the first home they
23 planned to rob earlier that day.¹ GJT, V-2, p. 43, lines 10-17. During this conversation,
24 Figueroa asked Murphy how he knew the information about the second house. GJT, V-2, p.
25 58, lines 10-18. Murphy explained that he was having a sexual relationship with Joey Larsen's
26 girlfriend. GJT, V-2, p. 58, lines 15-25. Based on what Murphy said, Figueroa believed that

27
28

¹ It is believed that the resident of the first home was the marijuana supplier for the resident in the second home, later identified as Joey Larsen's home, located at 1661 Broadmere Street.