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IN THE SUPREME COURT OF THE STATE OF NEVADA

GAMBINO GRANADA-RUIZ, Petitioner, vs. **EIGHTH JUDICIAL DISTRICT COURT JUDGE, THE HONORABLE KATHLEEN DELANEY,** Respondents, and **THE STATE OF NEVADA,** Real Party in Interest.	Supreme Court No. _____ District Court No. C-15-305044-1 Dept. No. XXV

APPENDIX TO PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION

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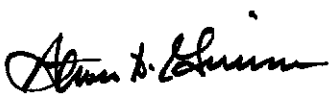

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GAMBINO GRANADA-RUIZ ID 05700197 Defendant,	CASE NO. C-15-305044-1 DEPT. NO. 25

MOTION TO DISMISS-DOUBLE JEOPARDY-

Date: _____

Time: _____

COMES NOW, Defendant Gambino Granada-Ruiz, by and through his attorneys David M. Schieck, Special Public Defender, Alzora B. Jackson, Chief Deputy Special Public Defender, and JoNell Thomas, Chief Deputy Special Public Defender, and hereby moves the Court to dismiss this case based upon a violation of Mr. Granada-Ruiz's Federal Constitutional rights under the Fifth and Fourteenth Amendments, and based upon a violation of his Double Jeopardy rights under Article 8, Section 1 of the Nevada Constitution. Mr. Granada-Ruiz has already faced

trial in this matter, but a mistrial was declared during jury deliberations. There was no manifest necessity for the mistrial so Double Jeopardy bars further prosecution.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities which follow and any arguments of counsel entertained by the Court at the time of the hearing of this motion.

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and

TO: STEVE WOLFSON, CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff

PLEASE TAKE NOTICE that the undersigned will bring the Motion to Dismiss - Double Jeopardy, on for hearing on 12-28-16, at the hour of 9:00A a.m.

INTRODUCTION

Defendant Gambino Granada-Ruiz has already faced one trial for the State charges against him. During deliberations, based upon the misconduct of a single juror, this Court declared a mistrial. There was no manifest necessity to do so. The Constitutional guarantee against Double Jeopardy precludes a second trial under these circumstances.

FACTS RELEVANT TO THE MISTRIAL

On March 13, 2015, the State indicted Mr. Granada-Ruiz for Murder and Battery with Substantial Bodily Harm based upon an altercation with Mr. Doolittle. Trial began on September8, 2015 and lasted for over eight days. The State was given ample opportunity to present its case, and it did so by calling numerous witnesses and introducing over 100 exhibits. The State argued that Mr. Granada-Ruiz committed first-degree murder by killing Mr. Doolittle and acting with premeditation and deliberation. Mr. Granada-Ruiz defended the charges by asserting that he acting in self-defense and arguing that Mr. Doolittle was highly intoxicated at the time of the altercation.[1]

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[1]Dr. McIntyre testified that Mr. Doolittle was a heavy daily vodka drinker, had liver problems associated with heavy drinking, that his alcohol level, at the time he was admitted into Sunrise was 66. The doctor could not express any opinion whether a 66 would be a BAC of .66. This point was never developed any further, but the jury was not instructed to disregard this line.

Prior to deliberations, jury instructions were settled and the jury was instructed on the principles of self-defense and malice. These issues were also thoroughly addressed by counsel for the State and defense during closing arguments.

Jury deliberations began on Friday, September 18, 2015 at 3:44 p.m. and continued until 6:20 p.m. that evening, when the jurors were excused for the weekend with instructions to return the following Monday. On Monday, September 21, 2015, the jury resumed deliberations at 10:00 a.m. Later that day, at approximately 11:30 a.m. to 11:45 a.m., a notice was received from the foreperson (Juror No. 10) indicating that Juror No. 3 was experiencing complications from high blood pressure. Juror No. 3 also stated that he had issues with his vision. Trans. 9/21/15 pg. 4. After being examined by medical staff, deliberations continued and then lunch was served. Id.

Around 3:00 p.m., another note was received from the foreperson stating that the panel was 11 to 1, and it became apparent that Juror No. 3 was no longer participating in deliberations. Id. at 5. The court contacted counsel and informed them of this information. Id. The court also instructed the marshal to tell the jurors to continue deliberating. Id. The marshal informed the court of his belief, based on the way that Juror No. 3 was positioned, that he was not deliberating with the other jurors. Id. at 6. At that time, two additional notes were received, from Jurors No. 3 and No. 12. Id. The note from Juror No. 3 stated that he fact checked a law on the internet and refused to not consider that law despite the judge's instruction. Id. Juror No. 12 stated that Juror No. 3 had researched the law over the weekend. Id. at 6-7. Counsel was called to court at this point. Id. at 7.

The court then stated that it was not clear whether Juror No. 3 had shared this information with the other jurors and stated "I highly suspect that he has in some fashion or another shared this information that he has and then I do not have any choice but to consider this a mistrial and to end the case." Id. at 7. The prosecutor informed the court of its belief that there should be a two part inquiry: first, did the rogue juror share the information; and two, can the other jurors disregard that information. Id. at 7-8. The prosecutor further noted that it sounded like the other

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of inquiry. Dr. McIntyre also testified that he has encountered intoxicated individuals who were angry, and did things they normally would not do. Trans. Sept 15, 2016 at pp. 22-27.

jurors were on the opposite side of this juror, so it sounded like the other jurors were not influenced by his information. Id. at 9. Defense counsel noted that she was not prepared for the issue and believed there was actual case law on point, while noting that if the information was shared it was a huge problem and probably created a bad record. Id. at 9. This court also noted that it was not prepared for this issue and had also not researched the case law. Id. It expressed its fairly strong opinion that if the juror shared the information, there would be a mistrial. Id. at 10. The State again noted that there should be a two part evaluation, which involved an inquiry into whether the jurors could disregard the information. Id. at 11. This court stated that it would need to see some case law addressing that issue. Id. at 11. Mr. Granada-Ruiz was not present during portion of the proceeding. Id. at 12.

After a break, and after Mr. Granada-Ruiz was brought to the courtroom, discussion continued concerning the situation. Id. at 12, 14. The court informed Mr. Granada-Ruiz that counsel were doing research on the issue, but the court had determined that if the juror had shared information with the other jurors that would likely have to declare a mistrial. Id. at 14. The court continued to express its conclusion that if the research was shared, a mistrial would be declared. Id. at 15. The court addressed Mr. Granada-Ruiz and informed him that this was not a decision that would be made by him or counsel, but it was instead the court's decision to make. Id. at 16.

At this point, the prosecutor informed the court of research on the issue and cited to Meyer v. State, 119 Nev. 554, 80 P.3d 447 (2003). The prosecutor noted that the Nevada Supreme Court, in evaluating cases of juror misconduct, found that exposure to an extraneous influence did not always impermissibly prejudice the jury and that it was necessary to evaluate each case on its own facts to determine the degree and pervasiveness of the prejudicial influence from the misconduct. Id. at 17-18. The State argued that the juror should be examined to determine whether they could ignore the extrinsic research and continue with deliberations by relying on the courts instructions. Id. at 18. Defense counsel cited to Zana v. State, 125 Nev. 541, 216 P.3d 244 (2009), and like the prosecutor, acknowledged that several factors should be reviewed in determining whether there was prejudice, including how long the material was

discussed, when the misconduct occurred relative to the verdict, the specificity or ambiguity of the information, and whether the information was material. Trans. 9/21/15 at 19.

The district court then examined the foreperson, Juror No. 10. He testified that before lunch, and before the time that Juror No. 3 sent a note about his medical condition, Juror No. 3 stated that he had done some research on the internet. Id. at 21-22. It was probably 45 minutes to an hour after they started deliberations that day. Id. at 26. They were deliberating and it was mentioned, but Juror No. 12 told Juror No. 3 that part of their instructions was not to do research. Id. at 22. It was brought to Juror No. 10's attention that Juror Nos. 3 and 12 were having this discussion. Id. at 23. When Juror No. 3 brought up that he researched information, all of the jurors were "following that, hey, you were not supposed to do that, you know, no outside influence, no outside information." Id. at 23-24. They continued with deliberations and had lunch. Id. at 24. After lunch, it was brought up a few more times and tension was high. Id. at 24. Juror No. 12 volunteered to write a note informing the court that Juror No. 3 researched information. Id. Juror No. 3 also stated that he was writing a note. Id. Juror No. 3 had discussed the research of what he found on the internet, while the other jurors told him that he was not supposed to do that because he had now been influenced by an outside source. Id. at 25. Juror No. 12 described informed the court that Juror No. 3 researched something that was said during closing argument by the prosecution, and specifically about the laws of premeditation and whether it "doesn't have to be a minute, two minutes, three minutes, four minutes, basically, that doesn't play a circumstance in determining if it's premeditation, meaning, there doesn't have to be a big elapse of time for it to be determined – ." Id. at 28. Jurors discussed the instruction which said that closing arguments were not evidence. Id. at 29. Juror No. 10's understanding was that Juror No. 3 wanted a better understanding of premeditation so he did his own research.[2] Id. at 30. He also did research about a .66 alcohol level that was made in reference to the victim. Id. at 30. Jurors focused on telling Juror No. 3 that he could not use the closing argument as

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[2]The transcript identifies the speaker as Juror No. 3, but it is apparent from the context and the transcript as a whole that Juror No. 10 was the person being examined at this point.

evidence. Id. at 31. The other jurors again told Juror No. 3 that he was not supposed to do any outside research, but at that point they were not focused on the instructions. Id. at 32.

Following Juror No. 10's testimony, this Court stated the following:

> I don't see how the Court could find anything [other] than this is material to the case, that there was a lengthy discussion. Even if I had individuals who indicated they could set it aside my concern obviously would be that they now know, and that's why I tried to stay away from that part of the discussion where they fall on either side of this debate, if you will, and that they may say, Well, I can set it aside because they are now looking for a particular outcome and we absolutely cannot run that risk.
>
> So I am of the mindset at this point in time subject to hearing further argument from counsel that we have no alternative but to declare a mistrial in this trial.

Id. at 33-34. The State disagreed and noted that they had not heard any testimony that the information affected the deliberations or prejudiced the jurors. Id. at 34. The State also noted that it sounded as though the other 11 jurors were rejecting the information provided by Juror No. 3. Id. This court noted that there was deliberation on the information provided by Juror No. 3. Id. at 34-35. Defense counsel stated that they were kind of flummoxed and asked to hear from Juror No. 3. Id. at 35-36.

Juror No. 3 testified that he wrote a note to the court which stated: "Juror No. 3, by his own admission fact-checked a law brought in front of the Court on the Internet. Also Juror No. 3 refused to not consider that law per judge's instruction." Id. at 38. He explained that during Friday's deliberations it was hectic and there was disagreement over one law that the prosecutor quoted. Id. at 39. He had a question he wanted to reference and they said he could not and it really was not the law. Id. at 39. Specifically, during closing argument, the prosecutor

> referenced a law that says self-defense only goes so far within reason, that if you are self-defending yourself that you can self-defend yourself up to a point but when it's not self-defense anymore, like in this case the guy goes unconscious and it still happens then from that point it's not self-defense anymore so it is more first degree because I guess then he had a reference like a traffic light kind of reference or something and that short of span can determine first degree, so it does not have to be planned for days.

Id. at 41. He researched the issue because he was contradicted and was told that the prosecutor's statement was not a law. Id. at 43. He went on the internet and looked for "a law that said if you have self-defense it's only self-defense until such and such. . ." and found that it was easier to

understand in layman's terms on a legal website than the Nevada site. Id. at 44. He did not realize it was wrong to do the research until they talked about it that day and the other jurors told him that his research was not the law. Id. at 44. He told them that what he found about the law confirmed that what the prosecutor said was correct. Id. at 44-45. He also researched blood alcohol level but he did not bring this issue up with the other jurors during deliberations. Id. at 45. On the issue of self-defense, the jurors discussed the issue on Friday, but he did not do his research until Saturday. Id. at 47. He informed the other jurors of his research on Monday when he was explaining his vote. Id. at 47-48. The other jurors told him that the court had instructed the juror to ignore that, that they were not supposed to look at that. Id. at 49. They told him he could not consider the law he researched as evidence or grounds for him to base an opinion on and that it was stricken from the record. Id. The other jurors tried to show him the paper, but what they were showing him was vague. Id. at 50. The court then excused the juror and sent him back to the deliberation room. Id. at 51.

The parties agreed that Juror No. 3 was not able to serve. Id. at 52. Defense counsel noted that Mr. Granada-Ruiz was upset but noted their understanding that the court was going to declare a mistrial and asked if the court could find out what the 11-1 was. Id. at 54. The court clarified: "The Court has found that there is a clear basis for mistrial, that there is no way that the Court can be ensured that any product of deliberation of this juror can be fair and impartial and based on what is appropriate, if you will, to reach a verdict and I will make a final statement for the record. Id. at 54-55.

The foreperson reentered the courtroom and after a brief discussion of the blood alcohol issue, the court informed him that:

> the Court has made a determination that the circumstances here constitute manifest necessity, which is our term of art legally, that we have to declare a mistrial. That the particular facts and circumstances that have been found to have occurred here in these deliberations are such that a fair and impartial trial has become impossible from the Court's review and that we have no choice but to conclude these proceedings.

Id. at 59. Upon questioning from the court, the foreperson stated that the vote was 11 to 1 for a not guilty verdict. Id. at 59. The court again clarified the record:

> Just to be clear for the record, I do not think anyone has requested the mistrial. The Court has determined from the information that the mistrial is required. But at this point I will make my record asking or conceding, but at the end of the day it is the Court's determination that is being made.

Id. at 59. The court then informed the remaining jurors of its decision. Id. at 59- 62.

A new trial is scheduled for February 13, 2017. Mr. Granada-Ruiz respectfully submits that a second prosecution of this matter would violate his state and federal constitutional rights against Double Jeopardy and that the charges must therefore be dismissed.

ARGUMENT

There was no manifest necessity for a mistrial. This court's sua sponte declaration of a mistrial was an abuse of discretion and reprosecution is barred by the Double Jeopardy Clauses of the state and federal constitutions. Although Juror No. 3 was appropriately removed from the jury, there was no showing that the remaining jurors were prejudiced by his misconduct. An alternate juror was available and should have been ordered to replace Juror No. 3. The jury should have been admonished not to consider any information provided by Juror No. 3 and to begin deliberations anew with the alternate juror. Such a remedy would have provided the parties with a fair trial while still protecting Mr. Granada-Ruiz's important constitutional right to have his trial completed in the first proceeding.

A. The Constitutional Right Against Double Jeopardy Prohibits Multiple Prosecutions For The Same Offense

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, protects a criminal defendant against repeated prosecutions for the same offense. Oregon v. Kennedy, 456. U.S. 667, 671 (1982). The policy underlying this protection is to ensure that

> ". . . the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty."

United States v. Jorn, 400 U.S. 470, 479 (1971) (quoting Green v. United States, 355 U.S. 184, 187-88 (1957)). The Double Jeopardy Clauses also encompasses the defendant's "'valued right to have his trial completed by a particular tribunal.'" Kennedy, 456 U.S. at 671-72 (quoting

Wade v. Hunter, 336 U.S. 684, 689 (1949)). There are cases, however, in which the public's interest in fair trials and just judgments prevails over the defendant's valued right to have his trial concluded before the first jury impaneled. Arizona v. Washington, 434 U.S. 497 (1978). A second trial, however, is allowed only if there was a manifest necessity for a mistrial of the first. "Manifest necessity"" means a "high degree" of necessity must exist before a mistrial may properly be declared." Washington, 434 U.S. at 511. The power to declare a mistrial "ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes." United States v. Perez, 22 U.S. 579, 580 (1824).

Here, there was no manifest necessity for a mistrial as other viable alternatives existed for addressing the juror misconduct. Specifically, this Court should have dismissed Juror No. 3, ensured that the remaining jurors could disregard any information provided by Juror No. 3, substituted an alternate juror, and instructed the jury to begin deliberations anew.

B. Not Every Exposure To Extrinsic Information Requires A Mistrial

A jury's exposure to extrinsic information does not automatically result in reversal of a judgment and grant of a new trial. United States v. Steele, 785 F.2d 743, 746 (9th Cir. 1986). In situations where the jury obtains or is exposed to extrinsic information, a new trial is required when there exists a reasonable possibility that the extrinsic material could have affected the verdict. United States v. Vasquez, 597 F.2d 192, 193 (9th Cir. 1979). The determination depends upon a considered review of the details and circumstances of each case. Marino v. Vasquez, 812 F.2d 499, 505 (9th Cir. 1987). "[D]ue process does not require a new trial every time a juror has been placed in a compromising situation." Smith v. Phillips, 455 U.S. 209, 217 (1982). See also United States v. Olano, 507 U.S. 725, 738 (1993) (specific analysis of prejudice is required for claims of irregularities during jury deliberations). The court's inquiry following a colorable claim of jury taint which surfaces during jury deliberations is twofold: to ascertain whether a taint-producing event occurred, and if so, to assess the magnitude of the event and the extent of any resulting prejudice. United States v. Bradshaw, 281 F.3d 278, 289 (1st Cir. 2002). "If the court finds both a taint-producing event and a significant potential for prejudice the court must then consider the extent to which prophylactic measures (such as the discharge of particular

jurors or the pronouncement of curative instructions) will suffice to alleviate that prejudice." Id. (citation omitted).

C. The Information Researched By Juror No. 3 Was Not Prejudicial

Cases involving claims of juror misconduct require a considered review of the details and circumstances of each case. Bagnariol, 665 F.2d at 884. Not all cases or juror misconduct require a new trial, but instead the ultimate question concerns the prejudice they may have worked on the fairness to the defendant's trial. United States v. Armstrong, 654 F.2d 1328, 1332 (9th Cir. 1981); Barker v. State, 95 Nev. 309, 313, 594 P.2d 719, 721 (1979) (finding juror misconduct, but affirming conviction because there was no prejudice to the defendant). "'Each case turns on its own facts, and on the degree and pervasiveness of the prejudicial influence possibly resulting.'" Meyer v. State, 119 Nev. 554, 561, 80 P.3d 447, 453-54 (2003) (quoting United States v. Paneras, 222 F.3d 1235, 1246 (11th Cir. 2000). See also Zana v. State, 125 Nev. 541, 547, 216 P.3d 244, 248 (2009) (noting that juror misconduct was not prejudicial where the information obtained through the juror's independent research was vague, ambiguous, and only discussed for a brief time); Hover v. State, 2016 Nev. Unpub. Lexis 468 (Nev. Sup. Ct. 2016) (attached) (unpublished order affirming conviction and finding that although Juror No. 8 engaged in misconduct by conducting research on the proceedings and contesting the district court's instruction on the law, a new trial was not warranted because the jury did not permit Juror No. 8 to share the results of the research and because there was no showing of prejudice). Factors to be considered include how the material was introduced to the jury, the length of time it was discussed by the jury, the timing of its introduction, whether the information was vague or ambiguous, whether it was cumulative, whether it involved a material or collateral issue, or whether it involved inadmissible evidence. Bowman v. State, 132 Nev. Adv. Opn. 74, __ P.3d ___ (Nev. 2016) (citing Meyer, 119 Nev. at 566, 80 P.3d at 456).

1. The Legal Definition Acquired By Juror No. 3 Did Not Differ Significantly From The Court's Instruction And Was Therefore Not Prejudicial

In evaluating the issue of prejudice, it is necessary to consider the nature of the information which was improperly researched by Juror No. 3. Mr. Granada-Ruiz submits that

the research conducted by the juror on the issues of premeditation and deliberation does not differ in any meaningful way from the instructions provided by the court.

In evaluating prejudice from a juror's misconduct based upon acquiring a definition during deliberations, courts consider a number of factors, such as:

> (1) The importance of the word or phrase being defined to the resolution of the case.
>
> (2) The extent to which the dictionary definition differs from the jury instructions or from the proper legal definition.
>
> (3) The extent to which the jury discussed and emphasized the definition.
>
> (4) The strength of the evidence and whether the jury had difficulty reaching a verdict prior to the introduction of the dictionary definition.
>
> (5) Any other factors that relate to a determination of prejudice.

Mayhue v. St. Francis Hosp., 969 F.2d 919, 924 (10th Cir. 1992).

Here, Juror No. 3 sought to verify whether statements made by the prosecutor during closing argument correctly stated the law. Rather than reviewing the court's instructions, as he should have done, he researched these concepts on the internet. The information he obtained, however, did not differ significantly from the court's definitions.

In Instruction No. 16, the jury was instructed in relevant part as follows:

> Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.
>
> Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the trier of fact believes from the evidence than the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.
>
> The law does not undertake to measure in units of time the length of period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

Likewise, in Instruction No. 22, the jury was instructed in relevant part as follows:

> For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing, sufficient for the voice of reason and humanity to be heard; for if there should appear to have been an interval between the assault or provocation given and the killing sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge and punished as murder. The law assigns no fixed period of

time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.

This issue was also addressed in Instructions No. 28 and 30:

> The killing of another person in self-defense is justified and not unlawful when the person who kills actually and reasonably believes:
> 1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and
> 2. That it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.
>
> A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person who kills must act under the influence of those fears alone and not in revenge.
>
> . . . .
>
> An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

The legal definition improperly acquired by Juror No. 3 did not differ significantly from the court's instructions and was therefore not prejudicial. Under such circumstances, a new trial is not warranted. See United States v. Bagnariol, 665 F.2d 877, 883, 889 (9th Cir. 1981) (noting finding that external research conducted by a juror added nothing to the evidence before the jury and could not have affected the verdict); United States v. Kupau, 781 F.2d 740, 744-45 (9th Cir. 1986) (reversal of a judgment was not required based upon the use of a dictionary by jurors to look up the definitions of two words where the extraneous information did not materially influence the verdict); United States v. Rodriguez-Aguirre, 108 F.3d 1228, 1232, 1239 (10th Cir. 1997) (new trial not warranted based upon the act of one juror who looked up the definition of "distribution" and shared that definition with other jurors the following day where there was no showing that any of the jurors relied upon or attached any significance to the dictionary definition).

2. There Was No Prejudice Because The Other Jurors Were Not Influenced By Juror No. 3, As Evidenced By Their Constant Refusal To Listen To His Wrongly Acquired Definition and The 11-1 Vote Against His Position.

The record here establishes that Juror No. 3 did not influence the other jurors, but instead stood alone in both his vote and his use of a legal definition acquired from the internet. When the other jurors learned that Juror No. 3 had conducted outside research, they insisted that he was

wrong to do so and they told him the court had told them that they had to rely on the court's instructions. Their vote of 11-1 demonstrated that Juror No. 3 was not influential over the other jurors and that they were not prejudiced by the information which he attempted to present to them.

In a case in which the jurors do not change their votes upon learning extrinsic information, it is improbable that the jurors were prejudiced. Tanksley v. State, 113 Nev. 997, 1002, 946 P.2d 148, 152 (1997). "Jurors' exposure to extraneous information via independent research or improper experiment is . . . unlikely to raise a presumption of prejudice." Meyer, 119 Nev. at 565 & n.28, 80 P.3d at 456 & n.28 (citing cases). See also Lane v. State, 110 Nev. 1156, 1162, 881 P.2d 1358, 1363-64 (1994) (affirming conviction after a juror committed misconduct by providing a handbook on jury nullification to other jurors after the trial court removed the offending juror, other jurors acknowledged that they heard him read from the book but assured the court that they would abide by their oaths and follow the instructions, and appointing an alternate juror).

The jurors, aside from Juror No. 3, were not prejudiced by the extrinsic information. Without prejudice, the grant of a new trial was not warranted and deliberations should have been allowed to continue.

D. Mistrial Was A Drastic Remedy and Other Measures Should Have Been Considered.

It would have been appropriate for this Court to individually examine each of the remaining jurors and, upon confirmation that each was not prejudiced by Juror No. 3's conduct and information, issued a supplemental instruction to disregard the information and follow the court's written instructions. See Conforte v. State, 77 Nev. 269, 271-72, 362 P.2d 274, 276 (1961) (approving of this procedure for a pre-verdict issue of misconduct). This court had the authority to remove the offending juror and substitute an alternate juror. Viray v. State, 121 Nev. 159, 161, 111 P.3d 1079, 1080 (2005). In Viray, the Nevada Supreme Court found that a trial court properly released a juror who did not follow the court's admonishment, while retaining another juror who had a discussion with the offending juror. Id. at 161-62, 111 P.3d at 1081. The

juror who remained assured the trial court that he had not made up his mind and would withhold his personal opinions about the case until it was finally submitted to the jury for deliberation. Id. In Viray, the Nevada Supreme Court described the procedure for removing and replacing a juror who has violated the district court's admonishment. Id. at 163, 111 P.3d at 1082. In evaluating whether to replace the offending juror or declare a mistrial, the trial court must conduct a hearing to determine if a violation occurred and whether the misconduct was prejudicial. Id. "Prejudice requires an evaluation of the quality and character of the misconduct, whether other jurors have been influenced by the discussion, and the extent to which a juror who has committed misconduct can withhold any opinion until deliberation." Id. Under appropriate circumstances, a trial court can replace a juror with an alternate during deliberations instead of declaring a mistrial. Id. A mistrial is not warranted where a non-offending juror was not influenced by the offending juror. See id. at 163, 111 P.3d at 1083.

E. In Other Similar Cases, A Mistrial Was Not Warranted

Facts similar to those presented here were considered by the Ninth Circuit Court of Appeals in Bayramoglu v. Estelle, 806 F.2d 880 (9th Cir. 1986). In that case, a juror contacted a law librarian about the distinction between first and second degree murder and the attendant penalties. Id. at 882. That same juror later discussed her beliefs about psychiatrists, an incident involving her son, and her refusal to consider a conviction for second-degree murder, with another juror. Id. at 885. Although defense counsel requested a mistrial, the trial court dismissed the juror at issue, appointed an alternate, instructed the jury regarding their duties when an alternate is added, and instructed the remaining jurors to disregard the information about the penalty, which had been provided by the juror who committed misconduct. Id. Several hours later the jury returned a verdict, which was affirmed by the California Court of Appeals and ultimately by the Ninth Circuit Court of Appeals. Id. at 885, 887-88. Of particular relevance here was the finding that other jurors rejected and ignored the offending juror's efforts to share her legal research with them. Id. at 888. It was unlikely that the jurors were persuaded by the external information and a curative instruction to the newly constituted jury was sufficient to cure the prejudicial impact of the evidence. Id.

Facts similar to those considered here were also presented in State v. Gunnell, 973 N.E.2d 243 (Ohio 2012). In that case, a juror looked up the definition of "perverse" and printed out information on the differences between involuntary and voluntary manslaughter. Id. at 246. The trial conducted a brief examination of the juror and then heard argument from counsel, who both suggested that a curative instruction would be a reasonable remedy. Id. at 247. Nonetheless, the trial court declared a mistrial and found that the juror had been irreparably tainted. Id. at 247-48. The Ohio Supreme Court found that the questioning of the juror was not sufficient to establish prejudice. "The questions did not unearth what bias, if any, the juror absorbed as a result of reading the forbidden material." Id. at 451 (citation omitted). It further found that the examination "did not establish whether that bias, if any, could be cured by further instruction from the court." Id. Unless demonstrated otherwise, it should be assumed t hat the members of the jury follow their oaths. "Mere supposition, surmise, and possibility of prejudice are not sufficient. This distinction is a simple but critical one, and one that was overlooked by the trial judge in this case." Id. at 251. In Gunnell, the Ohio Supreme Court found that the trial court abused its discretion in declaring a mistrial without conducting a full inquiry on prejudice and without considering other alternatives, such as a cautionary instruction. Based upon this finding, it found that Double Jeopardy principles prohibited further prosecution of the defendant as there was no manifest necessity for the mistrial. Id. at 250-52.

In this case, a mistrial was erroneously declared. Less drastic remedies, such as replacing the offending juror with the alternate, instructing the jury to disregard Juror No. 3's comments, and instructing the jury to begin deliberations anew would have sufficiently cured the misconduct committed by Juror No. 3, while still respecting and honoring Mr. Granada-Ruiz's constitutional rights against Double Jeopardy.

CONCLUSION

The power to declare a mistrial "ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes." United States v. Perez, 22 U.S. 579, 580 (1824). This standard was not met in this case. Accordingly, a new trial is not constitutionally permissible.

WHEREFORE, Gambino Granada-Ruiz prays that this Court respectfully consider the merits of this motion, and after hearing grant this motion, and dismiss this case.

DATED: 12/15/2016

SUBMITTED BY

/s/ JONELL THOMAS

ALZORA B. JACKSON
JONELL THOMAS
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that service of the Motion to Dismiss - Double Jeopardy, was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

PARTY	EMAIL
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE email: motions@clarkcountyda.com

Dated: 12/15/16

/s/ Kathleen Fitzgerald

Legal Executive Assistant for
Special Public Defender

EXHIBIT A

Hover v. State

Supreme Court of Nevada

February 19, 2016, Filed

No. 63888

Reporter
2016 Nev. Unpub. LEXIS 468 *

GREGORY LEE HOVER, Appellant, vs. THE STATE OF NEVADA, Respondent.

Notice: AN UNPUBLISHED ORDER SHALL NOT BE REGARDED AS PRECEDENT AND SHALL NOT BE CITED AS LEGAL AUTHORITY. SCR 123.

Subsequent History: US Supreme Court certiorari denied by Hover v. Nev., 2016 U.S. LEXIS 5812 (U.S., Oct. 3, 2016)

Judges: [*1] Parraguirre, C.J., Douglas, J., Gibbons, J., Hardesty, J., Saitta, J., Pickering, J. CHERRY, J., dissenting.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction in a death penalty case. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Gregory Hover and Richard Freeman kidnapped, sexually assaulted, robbed, and murdered Prisma Contreras outside of Las Vegas, Nevada. Ten days later, Hover broke into the home of Julio and Roberta Romero in Las Vegas, Nevada. He bound and shot Julio, forced Roberta to retrieve certain property, shot her, and left the home with jewelry and bank cards. Julio died as a result of his injuries; Roberta survived. Hover and Freeman also robbed the slot areas of three Las Vegas grocery stores. Lastly, while in pretrial detention, Hover attacked his cellmate with scissors.

A jury found Hover guilty of conspiracy to commit kidnapping; five counts of conspiracy to commit robbery; conspiracy to commit sexual assault; conspiracy to commit murder; five counts of burglary while in possession of a deadly weapon; three counts of first-degree kidnapping with the use of a deadly weapon; four counts of robbery with the use of a [*2] deadly weapon; two counts of robbery with the use of a deadly weapon, victim 60 years of age or older; sexual assault with the use of a deadly weapon; two counts of murder with the use of a deadly weapon; first-degree arson; two counts of burglary; attempted murder with the use of a deadly weapon; and battery by a prisoner with the use of a deadly weapon. The jury sentenced Hover to death for each murder conviction and the district court imposed numerous consecutive and concurrent sentences for the remaining convictions. In this appeal, Hover alleges numerous errors during the guilt and penalty phases of trial.

Guilt phase issues

Juror challenges

Hover raises several challenges to district court decisions during voir dire.

First, Hover contends that the district court erred in denying his challenges of prospective jurors whom he contends were predisposed toward a death sentence. We discern no abuse of discretion. *See Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (reviewing a district court's decision whether to excuse potential jurors for abuse of discretion). Despite the jurors' preference for harsher punishments, they acknowledged that Hover was innocent until proven guilty and that they would listen to all the evidence presented, [*3] follow the court's instructions, and fairly consider all possible penalties. *See id.* (providing that reviewing court must inquire "'whether a prospective juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath.'" (quoting *Leonard v. State (Leonard II)*, 117 Nev. 53, 65, 17 P.3d 397, 405 (2001) (internal quotes omitted))). Moreover, the challenged prospective jurors were not ultimately empaneled and Hover does not allege that any juror actually empaneled was unfair or biased. *See Blake v. State*, 121 Nev. 779, 796, 121 P.3d 567, 578 (2005) ("If the jury actually seated is

impartial, the fact that a defendant had to use a peremptory challenge to achieve that result does not mean that the defendant was denied his right to an impartial jury.").

Second, Hover contends that the district court erred in granting the State's challenge to a potential juror. We discern no abuse of discretion. *See Weber*, 121 Nev. at 580, 119 P.3d at 125. The record established that the juror's views would "'prevent or substantially impair the performance of [her] duties as a juror in accordance with [her] instructions and oath.'" *Id.* (quoting *Leonard II*, 117 Nev. at 65, 17 P.3d at 405). In particular, despite the beyond a reasonable doubt standard, the potential juror stated that she would require proof of a defendant's guilt beyond any doubt **[*4]** in order to impose the death penalty. *See Browning v. State*, 124 Nev. 517, 526, 188 P.3d 60, 67 (2008) ("The focus of a capital penalty hearing is not the defendant's guilt, but rather his character, record, and the circumstances of the offense.").

Third, Hover argues that the district court erred in denying his objection pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986) to the State's use of a peremptory challenge. We conclude that Hover failed to demonstrate a prima facie case of discrimination as required under *Batson*. *See Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006) (providing that "the opponent of the peremptory challenge must make out a prima facie case of discrimination"). Under the totality of the circumstances, the strike of one African-American juror while another African-American juror remained on the panel, did not establish an inference of discrimination in this case. *See Watson v. State*, 130 Nev. Adv. Rep. 76, 335 P.3d 157, 166 (2014) (providing that to establish a prima facie case, "the opponent of the strike must show 'that the totality of the relevant facts gives rise to an inference of discriminatory purpose" (quoting *Batson*, 476 U.S. at 93-94)). Thus, the burden did not shift to the State to proffer a race-neutral reason for the strike. *Ford*, 122 Nev. at 403, 132 P.3d at 577 (providing that once a prima facie case of discrimination is established "the production burden then shifts to the proponent of the challenge to assert a **[*5]** neutral explanation for the challenge"). Nevertheless, the State proffered several race-neutral reasons for striking the juror that were not belied by the record. Therefore, the district court did not abuse its discretion in denying Hover's challenge.

Positron emission tomography (PET) scan

Hover argues that the district court abused its discretion in denying his motion to obtain a PET scan because funding was available and the district attorney did not object to the testing. *See State v. Second Jud. District Court*, 85 Nev. 241, 245, 453 P.2d 421, 423-24 (1969) (reviewing denial of motion seeking payment of defense expenses for an abuse of discretion). We disagree for two reasons. First, Hover did not request a PET scan below but instead requested a Magnetic Resonance Imaging (MRI) scan.[1] The district court cannot be faulted for failing to order a scan that was not requested. Second, Hover did not meet his burden of demonstrating that either scan was necessary. *See Gallego v. State*, 117 Nev. 348, 370, 23 P.3d 227, 242 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 127 Nev. Adv. Rep. 69, 263 P.3d 235 (2011). Counsel conceded in the district court that the defense expert witness did not request the scan or conclude that it was necessary to diagnose Hover but sought testing merely because Hover was "facing a death sentence."[2] *See Jaeger v. State*, 113 Nev. 1275, 1285, 948 P.2d 1185, 1191 (1997) (Shearing, C.J., concurring) ("[T]he guarantees of due **[*6]** process do not include a right to conduct a fishing expedition."). The district court cannot be faulted for denying a request that was not made nor supported by some basis for the request.

Cross-examination of DNA analyst

Hover also contends that the district court abused its discretion in preventing him from cross-examining the DNA analyst about errors in other cases.[3] The record indicates that the analyst had worked at the lab at the time when significant errors were revealed. Therefore, Hover claims that the district court abused its discretion in concluding that the events of which Hover complained were irrelevant without conducting an evidentiary

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[1] An MRI scan generates detailed images of the organs and tissues of the body. A PET scan employs a radioactive tracer drug to reveal how the tissues and organs are functioning.

[2] In his reply brief, Hover asserts that the psychological expert indicated that a scan was necessary, however he does not cite to the record where such an assertion was made.

[3] Hover also contends that cross-examination about the lab's prior errors in DNA identification would expose bias on the part of the analyst or department. It is unclear how the lab's prior errors could influence the analyst in such a way as to lead to a "personal and sometimes unreasoned judgment." Merriam-Webster's Collegiate Dictionary 110 (10th ed. 1995).

hearing. *See Patterson v. State*, 129 Nev. Adv. Rep. 17, 298 P.3d 433, 439 (2013) ("[A]n abuse of discretion occurs whenever a court fails to give due consideration to the issues at hand."); *see Collman v. State*, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000) ("The decision to admit or exclude evidence rests within the trial court's [*7] discretion, and this court will not overturn that decision absent manifest error."). We agree that the district court should have allowed the consideration of this matter but conclude that the error was harmless. *See Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008) ("If the error is of constitutional dimension, then . . . [this court] will reverse unless the State demonstrates, beyond a reasonable doubt, that the error did not contribute to the verdict."). There is no indication that the witness was involved in any of the prior cases where errors were shown to have occurred. Therefore, her conclusions would not have been significantly undermined by the prohibited cross-examination. Moreover, while her conclusions were arguably powerful, there was substantial evidence of Hover's guilt notwithstanding that evidence. Hover repeatedly implicated himself in the sexual assault and murder of Contreras in statements that were consistent with physical evidence. In addition, cell phone records placed Hover in the area where Contreras' body was found, surveillance video showed a car like Hover's following Contreras' Jeep, Freeman's fingerprint was found on a matchbook at the scene, and surveillance video showed Hover and Freeman purchasing [*8] bleach and disposing of clothing shortly after the murder.

Cross-examination of Marcos Ramirez

Hover contends that the district court improperly limited his cross-examination of Marcos Ramirez, who he was accused of attacking in pretrial detention, to preclude questioning about prior arrests and convictions for violent crimes. We discern no abuse of discretion. *See Collman*, 116 Nev. at 702, 7 P.3d at 436. The district court permitted Hover to ask whether Ramirez told Hover about his prior record during their detention and Ramirez acknowledged that he told Hover about his three convictions for domestic violence.[4] That prior conduct therefore was relevant to establishing Hover's defense. *See Daniel v. State*, 119 Nev. 498, 515, 78 P.3d 890, 902 (2003) ("[E]vidence of specific acts showing that the victim was a violent person is admissible if a defendant seeks to establish self-defense *and was aware of those acts*."). On the other hand, whether [*9] Ramirez had been arrested for coercion and a probation violation alleging battery with a deadly weapon was not relevant because prior arrests did not demonstrate that he had committed prior acts of violence. *See Daniel*, 119 Nev. at 512-13, 78 P.3d at 900 ("An arrest shows only that the arresting officer thought the person apprehended had committed a crime . . . . An arrest does not show that a crime in fact has been committed, or even that there is probable cause for believing that a crime has been committed.").

Witness' outburst

Hover contends that the district court erred in denying his motion for mistrial based on Roberta Romero's outburst during her testimony. We disagree. Given the brevity of the outburst, in relation to both Roberta's testimony and the entirety of the guilt-phase testimony, the swift manner in which the district court addressed it, and the fact that statements were not translated for the jury, the outburst likely did not unduly influence the jury. [*10] *See Johnson v. State*, 122 Nev. 1344, 1358-59, 148 P.3d 767, 777 (2006) (providing that an isolated incident of the victim's brother passing out in response to a crime scene photograph did not render the penalty hearing fundamentally unfair). Therefore, the district court did not abuse its discretion in denying the motion for a mistrial. *See Rose v. State*, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007).

Bad act testimony

Hover argues that the district court erred in permitting the State to elicit testimony about uncharged ATM robberies on the ground that he opened the door to that evidence. We discern no plain error. *See Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007) (reviewing unobjected to error for plain error affecting substantial rights). The initial discussion about the ATM robberies occurred during defense questioning. Although it may have been unnecessary for the State to refer to the ATM robberies on redirect, the comment was brief and the State did not elicit further testimony about the robberies. Therefore, Hover failed to demonstrate that the State's comment prejudiced his substantial rights. *See id.* at 543, 170 P.3d at 524 (requiring that appellant demonstrate that error which is apparent from "a casual inspection of the record" was

[4] Ramirez testified that he had one felony conviction for third-offense domestic violence. *See* NRS 200.485 (providing that, under certain circumstances, first and second domestic violence offenses are punishable as misdemeanors and the third offense is punishable as a felony).

prejudicial).

Impermissible impeachment

Hover contends that the State impermissibly impeached its own witness by eliciting testimony that her [*11] prior conviction for child molestation involved consensual sexual contact with a 15-year-old when the witness was herself 19 years old. We agree. Although a party may "'remove the sting'" of impeachment by questioning its own witness about the existence of prior convictions, *United States v. Ohler*, 169 F.3d 1200, 1202 (9th Cir. 1999) (quoting F.R.E. 609 advisory committee's note to 1990 amendment), a witness may not be impeached by questioning about the sentence imposed or the facts underlying the conviction, *see Jacobs v. State*, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) (providing that sentence imposed on witness is not relevant to impeachment); *Plunkett v. State*, 84 Nev. 145, 147, 437 P.2d 92, 93 (1968) (providing the circumstances underlying prior convictions are not relevant to impeachment). Nevertheless, this error was harmless. *See Valdez*, 124 Nev. at 1189, 196 P.3d at 476 (explaining that errors that are not of a constitutional nature do not warrant reversal unless they "substantially affect[ed] the jury's verdict"). The witness' testimony, which chiefly described the January 28, 2010 robbery, was detailed and corroborated by other evidence.

Improper identification

Hover contends that the district court erred in permitting Detective Karl Lorson to testify that Freeman was not the perpetrator depicted in the three surveillance videos and that the perpetrator of the robberies was the same individual. We conclude [*12] that the district court did not abuse its discretion in permitting Detective Lorson to testify that Freeman was not in the surveillance videos. Detective Lorson had two opportunities to observe Freeman prior to viewing the surveillance footage. During those instances, he observed Freeman's physique and facial features. Thus, there is a reasonable basis for concluding that he could more likely correctly recognize Freeman or indicate that it was not Freeman in the video. *See Rossana v. State*, 113 Nev. 375, 380, 934 P.2d 1045, 1048 (1997) (providing a lay witness's opinion testimony "regarding the identity of a person depicted in a surveillance photograph" is admissible "if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury." (internal quotation marks omitted)). However, the district court erred in permitting Detective Lorson to testify that, though the surveillance videos did not depict Freeman, the videos all depicted the same perpetrator. Detective Lorson's testimony did not establish that he had a reasonable basis to more likely correctly determine that the same perpetrator was shown in all three videos. However, the error did not affect Hover's substantial [*13] rights, *see Nelson*, 123 Nev. at 543, 170 P.3d at 524, as there was substantial evidence besides this testimony which indicated that Hover robbed the three grocery stores.

Hover*'s admission to a correctional officer*

Hover argues that the district court erred in admitting testimony about a statement he made to a corrections officer in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). We disagree. Hover was in custody when he admitted to slashing Ramirez.[5] *See Taylor v. State*, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998). However, the corrections officer's query about whether Hover had sustained injuries was not an "interrogation" under *Miranda*, in that it was not reasonably likely to elicit an incriminating response from Hover. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). Therefore, the district court did not err in denying the motion to suppress.

Gruesome photographs

Hover contends that the district court erred in admitting unduly prejudicial autopsy photographs. He further contends that a photograph depicting a feminine pad near the victim, which was introduced during the penalty phase of trial, was inflammatory because it suggests [*14] that he sodomized Contreras. We conclude that this claim lacks merit. The district court enjoys broad discretion in matters related to the admission of evidence, *Byford v. State*, 116 Nev. 215, 231, 994 P.2d 700, 711 (2000), including the admission of "photographs . . . as long as their probative value is not substantially outweighed by their prejudicial effect," *Libby v. State*, 109 Nev. 905, 910, 859 P.2d 1050, 1054 (1993), *vacated on other grounds*, 516 U.S. 1037, 116 S. Ct. 691, 133 L. Ed. 2d 650 (1996). Although the autopsy photographs are gruesome, they were relevant in that they assisted the medical examiner in testifying about Contreras' cause of death, the manner in which

[5] Corrections Officer Roger Cole testified that he "asked [Hover] if he had any injuries and he state that, no. And then he told me that he had sliced the [Ramirez]'s back. [Ramirez] stood up, took the scissors from [Hover], and cut his hand."

she received the injuries, and the condition of her body when it was discovered. As to the photograph that was introduced during the penalty phase of trial, Hover failed to show that the district court abused its discretion. The district court concluded that the photograph was admissible because it constituted physical evidence that corroborated the testimony that Contreras was sodomized which "would have been even more painful than sexual assault through intercourse vaginally." The pain inflicted on Contreras during Hover's crimes against her was relevant to establishing an aggravating circumstance alleged by the State. *See* NRS 200.033(8).

Freeman's bad act evidence

Hover argues that the district [*15] court erred in denying him the opportunity to introduce evidence that Freeman possessed child pornography and had committed prior crimes involving knives because the evidence could have shown that Freeman was more culpable in the sexual assault and murder. We discern no abuse of discretion, *see Ramet v. State*, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009) (reviewing district court's decision to admit or exclude for an abuse of discretion), because evidence that Freeman possessed child pornography or had committed other crimes with knives was not admissible to prove or refute the allegation that Hover sexually assaulted Contreras, see NRS 48.045(2) ("Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.").

Insufficient evidence of kidnapping for Julio Romero

Hover argues that the State failed to produce sufficient evidence to support his conviction for kidnapping Julio Romero because there was no evidence that Julio had been moved for any purpose beyond the completion of the robbery and therefore the kidnapping was merely incidental to the robbery. We disagree. The evidence established that Hover moved Julio from the front door to another bedroom where he [*16] was taped to a chair and shot. Hover had taken Julio's wallet from the kitchen, but no evidence suggests that anything of value was taken from the bedroom in which Julio was found. Therefore, the movement was not necessary to complete the robbery. *See Mendoza v. State*, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006) (explaining that to be a separate crime when arising from the same conduct as a robbery, a kidnapping must involve (1) "movement or restraint [that has] independent significance from the act of robbery itself," (2) "create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery," or (3) "involve movement, seizure or restraint substantially in excess of that necessary to its completion"); *see also Wright v. State*, 94 Nev. 415, 418, 581 P.2d 442, 444 (1978) (setting aside a kidnapping conviction because "the movement of the victims appear[ed] to have been incidental to the robbery and without an increase in danger to them"), *modified on other grounds by Mendoza*, 122 Nev. at 274, 130 P.3d at 181. Further, Hovers statements to his cellmate indicated that Julio was bound and murdered before Hover searched the home for valuables. Because the restraint had an "independent significance from the act of robbery," *Mendoza*, 122 Nev. at 276, 130 P.3d at 181, and the evidence satisfies the elements of kidnapping, *see* NRS 200.310(1), sufficient evidence supports [*17] Hover's conviction for kidnapping. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Brady/Giglio evidence

Hover contends that the State failed to disclose evidence related to whether Ramirez received a benefit for his testimony in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). We disagree. Nothing in the record suggests that Ramirez's guilty plea agreement or sentence was premised on any benefit from the State in exchange for his testimony at Hover's trial. Therefore, the district court did not err in denying this claim. *See Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000) (employing de novo standard of review for *Brady* challenges raised in the district court).

Prosecutorial misconduct

Hover identifies two arguments by the prosecutor that he contends constitute prosecutorial misconduct. Prejudice from prosecutorial misconduct results when "a prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process." *Thomas v. State (Thomas I)*, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004). The challenged comments must be considered in context and "'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'" *Hernandez v. State*, 118 Nev. 513, 525, 50 P.3d 1100, 1108 (2002) (quoting *United States v. Young*, 470 U.S. 1, 11, 105 S.

Ct. 1038, 84 L. Ed. 2d 1 (1985)). Because Hover failed to object, his claims are reviewed for plain error affecting his substantial rights. *See* NRS 178.602; *Gallego*, 117 Nev. at 365, 23 P.3d at 239.

First, Hover contends that the State's argument that **[*18]** Hover committed the crimes as a result of racial animus was not supported by the evidence. *See Rice v. State*, 113 Nev. 1300, 1312, 949 P.2d 262, 270 (1997) (noting that a prosecutor has a duty to refrain from making statements that cannot be proved at trial), *abrogated on other grounds by Rosas v. State*, 122 Nev. 1258, 1265 n.10, 147 P.3d 1101, 1106 n.10 (2006). We disagree. Evidence introduced at trial showed that Hover told Ramirez that he "killed some Mexicans." Further, the evidence clearly demonstrates that Hover levied his most violent actions against Latino victims. Therefore, he failed to demonstrate that the district court plainly erred.

Second, Hover argues that the State impermissibly shifted the burden of proof when it argued that "[t]he only person who doesn't believe that—or doesn't state that Gregory Hover is guilty of Count 31 is [defense counsel] Christopher Oram." We disagree. When read in context, the challenged comment contends that, given the consistent accounts from Ramirez, the officers on the scene of the jail assault, and Hover's own admission, it was not unreasonable for the correctional officers to decide not to collect video of the incident. Thus, the observation that defense counsel was the only individual who-believed it was necessary to obtain the video was a proper response to Hover's argument **[*19]** that there was insufficient evidence to convict because prison staff failed to collect video evidence. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (requiring that prosecutor's comments must be considered in context in which they were made). While the comment could also be taken as disparaging of the defense's argument, *see Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004) (providing that a prosecutor may not disparage legitimate defense tactics), it did not shift the burden of proof. Therefore, Hover failed to demonstrate that the district court plainly erred.

Juror misconduct

Hover argues that the district court erred in denying his motion for a mistrial based on juror misconduct. He asserts that removing the offending juror was not sufficient to address the misconduct. We discern no abuse of discretion. *See Viray v. State*, 121 Nev. 159, 164, 111 P.3d 1079, 1083 (2005) (recognizing district court's discretion to address juror misconduct); *Meyer v. State*, 119 Nev. 554, 563-64, 80 P.3d 447, 455 (2003) (providing that a defendant must establish that juror misconduct occurred and was prejudicial in order to prevail on a motion for mistrial). Juror 8 engaged in misconduct by conducting research on the proceedings and contesting the district court's instruction on the law. *See Valdez*, 124 Nev. at 1186, 196 P.3d at 475 ("A jury's failure to follow a district court's instruction is intrinsic juror misconduct."); *see also Meyer*, 119 Nev. at 565, 80 P.3d at 456 ("[O]nly in extreme **[*20]** circumstances will intrinsic misconduct justify a new trial."). However, the jury did not permit juror 8 to share the results of his research and quickly informed the court of his actions. No other juror learned the results of that research. Therefore, Hover failed to demonstrate a "reasonable probability" or likelihood that the juror misconduct affected the verdict." *Meyer*, 119 Nev. at 564, 80 P.3d at 455; *see also Zana v. State*, 125 Nev. 541, 548, 216 P.3d 244, 248 (2009) (noting that court should consider (1) how long the jury discussed the extrinsic evidence, (2) when the discussion occurred relative to the verdict, (3) the specificity or ambiguity of the information, and (4) whether the issue involved was material).

Jury instructions

Hover contends that the district court erred in giving several instructions during the guilt phase of trial. Specifically, he contends that the implied malice instruction does not use language a reasonable juror would understand, the premeditation instruction does not sufficiently differentiate the elements of first- and second-degree murder, the equal and exact justice instruction confused the jury, and the reasonable doubt instruction impermissibly minimized the burden of proof. We discern no abuse of discretion. *See Crawford v. State*, 121 Nev. 746, 748, 121 P.3d 582, 585 (2005) (noting district court's **[*21]** broad discretion to settle jury instructions). This court has upheld the language used in the implied malice instruction, *see Leonard v. State*, 117 Nev. 53, 78-79, 17 P.3d 397, 413 (2001) (the statutory language of implied malice is well established in Nevada and accurately informs the jury of the distinction between express and implied malice); *Cordova v. State*, 116 Nev. 664, 666, 6 P.3d 481, 483 (2000) (the substitution of the word "may" for "shall" in an implied malice instruction is preferable because it eliminates the mandatory presumption); the premeditation instruction, *see Byford v. State*, 116 Nev. 215, 236-37, 994 P.2d 700, 714-15 (2000); and the equal and exact justice instruction, *see Thomas v.*

State, 120 Nev. 37, 46, 83 P.3d 818, 824 (2004); *Daniel v. State*, 119 Nev. 498, 522, 78 P.3d 890, 906 (2003); *Leonard v. State*, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998). In addition, the district court gave Nevada's statutory reasonable doubt instruction as set forth in and mandated by NRS 175.211, and we have repeatedly upheld the constitutionality of that instruction. *See, e.g., Chambers v. State*, 113 Nev. 974, 982-83, 944 P.2d 805, 810 (1997); *Evans v. State*, 112 Nev. 1172, 1191, 926 P.2d 265, 277 (1996); *Lord v. State*, 107 Nev. 28, 40, 806 P.2d 548, 556 (1991), *limited on other grounds by Summers v. State*, 122 Nev. 1326, 1331, 148 P.3d 778, 782 (2006).

Penalty phase issues

Freeman's bad act evidence

Hover argues that the district court erred in denying him the opportunity to introduce evidence of Freeman's bad acts and upbringing to present a proportionality argument. We discern no abuse of discretion. *See Ramet*, 125 Nev. at 198, 209 P.3d at 269. As "[t]he focus of a capital penalty hearing is . . . [the defendant's] character, record, and the circumstances of the offense," evidence related to Freeman's upbringing and prior record **[*22]** were not relevant to determining Hover's sentence. *See Browning*, 124 Nev. at 526, 188 P.3d at 67; *see also* NRS 48.025(2) ('Evidence which is not relevant is not admissible."). Further, the district court was not required to allow evidence related to Freeman's background because proportionality of sentences between similarly situated defendants is not constitutionally mandated. *See Pulley v. Harris*, 465 U.S. 37, 44, 104 S. Ct. 871, 79 L. Ed. 2d 29 (1984) (rejecting claim that appellate court must review proportionality of a defendant's sentence against similarly situated defendants).

Testimony of Freeman's attorney

Hover contends that the district court erred in denying his request to introduce the testimony of Freeman's attorney to describe the terms of Freeman's guilty plea agreement. We disagree. Because Freeman's guilty plea agreement was admitted into evidence during the penalty phase of trial, testimony about the contents of that agreement was not necessary. *See* NRS 48.035(2) ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.").

Prosecutorial misconduct

Hover contends that the State engaged in several instances of prosecutorial misconduct during the penalty phase of trial.

First, **[*23]** Hover argues that the State improperly asserted that he had been stalking Contreras because there was no evidence supporting this statement. We disagree. Witnesses to whom Hover described the rape and murder of Contreras realized from his description of the events that he had been infatuated with her. As there was some evidence introduced at trial which supported the State's argument, *see Rice*, 113 Nev. at 1312, 949 P.2d at 270 (noting prosecutor's duty to refrain from making statements that cannot be proved at trial), the district court did not abuse its discretion in overruling the objection to the comment.

Second, Hover contends that the State improperly implied that Hover intended to sexually assault Roberta but could not because he did not have time.[6] We disagree. The State's comment does not overtly suggest that Hover planned to sexually assault Roberta. Therefore, the district court did not plainly err in concluding that the statement was too "amorphous" to imply a plan on Hover's part that was not borne out by the evidence. *See Patterson*, 111 Nev. at 1530, 907 P.2d at 987 (providing that plain error must be "so unmistakable that it reveals itself by a casual inspection of the record").

Third, Hover argues that the State improperly suggested that Hover's disposal of a firearm before committing the charged crimes indicated that he had committed other uncharged crimes. We disagree. The State's argument is supported by evidence introduced at the penalty hearing. In particular, witnesses testified that Hover had approached an individual on whom he was supposed to serve process while brandishing a firearm and Hover, Freeman, and Pamela Lindus had robbed an elderly man at an ATM. Therefore, Hover failed to demonstrate that the district court abused its discretion in overruling the objection.

Jury instructions

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[6] During penalty phase opening arguments, the prosecutor stated that the evidence **[*24]** would show "why and how Roberta was shot and what was going to happen to her had that phone call from Mr. Freeman come into that home and caused the defendant to leave early."

Hover argues that: (1) the instruction concerning weighing aggravating and mitigating circumstances did not conform to the beyond-a-reasonable-doubt standard of *Johnson v. State*, 118 Nev. 787, 802, 59 P.3d 450, 460 (2002); the "moral culpability" language in the instruction defining mitigating circumstances was not broad enough to define mitigating circumstances; and the instructions failed to define "felony involving the use or threat of violence to the [*25] person of another." Hover did not object to the instructions below and we conclude that the district court did not plainly err in instructing the jury. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (reviewing unobjected-to error for plain error affecting substantial rights). As to the weighing of aggravating and mitigating circumstances, the instruction here comports with our decision in *Nunnery v. State*, 127 Nev. 749, 127 Nev. Adv. Rep. 69, 263 P.3d 235, 253 (2011), that the weighing of aggravating and mitigating circumstances is not a factual determination and thus it is not subject to the proof beyond a reasonable doubt standard. As for the "moral culpability" language in the mitigation instruction, considering the instruction as a whole we are not convinced that the jury was reasonably likely to understand the instruction to limit its ability to consider "any aspect of [the defendant's] character or record as a mitigating circumstance regardless of whether it reflected on his moral culpability," *Watson*, 130 Nev. Adv. Rep. 76, 335 P.3d at 173, particularly where one or more of the jurors found many mitigating circumstances that related to Hover's background and character and were unrelated to the crime. And lastly, the phrase "felony involving the use or threat of violence" does not use words with "technical legal meaning" and is commonly understood; [*26] it therefore needed no further definition. *See Dawes v. State*, 110 Nev. 1141, 1146, 881 P.2d 670, 673 (1994).

Constitutionality of the death penalty

Hover argues that the death penalty violates the Eighth Amendment of the United States Constitution's prohibition against cruel and unusual punishment because it does not sufficiently narrow the class of persons eligible for the death penalty. He further contends that the death penalty is cruel and therefore violates the Nevada Constitution's prohibition against cruel or unusual punishments. Similar arguments have been previously rejected by this court. *See, e.g., Thomas v. State (Thomas II)*, 122 Nev. 1361, 1373, 148 P.3d 727, 735-36 (2006) (reaffirming that Nevada's death penalty statutes sufficiently narrow the class of persons eligible for the death penalty); *Colwell v. State*, 112 Nev. 807, 814-15, 919 P.2d 403, 408 (1996) (rejecting claims that Nevada's death penalty scheme violates the United States or Nevada Constitutions). Therefore, no relief is warranted on this claim.

Cumulative error

Hover contends that the cumulative effect of errors warrants reversal of his convictions and sentences. "The cumulative effect of the errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." *Hernandez*, 118 Nev. at 535, 50 P.3d at 1115. However, a defendant is not entitled to a perfect trial, merely a fair one. *Ennis v. State*, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). Based on the foregoing discussion of Hover's claims, we conclude that [*27] any error in this case, when considered either individually or cumulatively, does not warrant relief.

Mandatory review

NRS 177.055(2) requires that this court review every death sentence and consider whether (1) sufficient evidence supports the aggravating circumstances found, (2) the verdict was rendered under the influence of passion, prejudice or any arbitrary factor, and (3) the death sentence is excessive. First, sufficient evidence supported the aggravating circumstances found regarding each murder—Hover had been convicted of more than one count of murder; Hover had been convicted of numerous crimes involving the use or threat of violence; Contreras' murder occurred in the flight after Hover committed burglary while in possession of a firearm, first-degree kidnapping with the use of a deadly weapon, and robbery with the use of a deadly weapon; Hover subjected Contreras to nonconsensual sexual penetration before he murdered her; Hover mutilated Contreras' body after killing her; Julio's murder occurred during or in the flight after Hover committed burglary while in possession of a firearm, robbery with the use of a deadly weapon, and first-degree kidnapping with the use of a deadly weapon; and [*28] Julio was murdered to prevent Hover's arrest. Second, nothing in the record indicates that the jury reached its verdict under the influence of passion, prejudice, or any arbitrary factor. And third, considering the plethora of violent crimes Hover committed during his two-week spree, which included kidnapping, rape, armed robbery, burglary, two murders, and attempted murder and the evidence in mitigation, we conclude that his sentence was not excessive.

Having considered Hover's contentions and concluded

that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

/s/ Parraguirre, C.J.

Parraguirre

/s/ Douglas, J.

Douglas

/s/ Gibbons, J.

Gibbons

Hardesty, J.

Hardesty

/s/ Saitta, J.

Saitta

/s/ Pickering, J.

Pickering

Dissent by: CHERRY

Dissent

CHERRY, J., dissenting:

In my view, the district court abused its discretion in denying Hover's motion for transportation to undergo medical imaging. And I agree with the majority that the district court erred in limiting the cross-examination of the DNA analyst, permitting Detective Karl Lorson to testify that the surveillance videos depicted the same perpetrator, and allowing the State to impermissibly "remove the sting" of its own witness' prior conviction, but in contrast, **[*29]** I believe those errors affected Hover's substantial rights. I therefore dissent.

Medical imaging

The district court must order payments of reasonable amounts for expert services incidental to an indigent defendant's defense when those services are "proper and necessary." *State v. Second Jud. District Court*, 85 Nev. 241, 245, 453 P.2d 421, 423-24 (1969). For instance,

> when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in the evaluation, preparation, and presentation of the defense.

Ake v. Oklahoma, 470 U.S. 68, 83, 105 S. Ct. 1087, 84 L. Ed. 2d 53 (1985). Attendant to this obligation is to provide for medical testing, including imaging, that is necessary to assist the psychiatrist in preparing a defense. Accordingly, I disagree with the majority's conclusion that the district court did not abuse its discretion in denying the motion for medical imaging to assist in preparing Hover's defense. Hover's motion indicated that funding was available. As the district court did not have a significant interest in assuring that funding for indigent defendants' court-appointed expenses were protected, the defense's failure to file a **[*30]** more robust pleading detailing why the expenses were necessary and proper should not have proved fatal. Further, I am not convinced that appellate counsel's argument that the district court failed to order a PET scan (when an MRI scan was requested below) should significantly undermine Hover's assertion of error on appeal. Both scans are routinely used to diagnose neurological conditions. *See* Mayo Clinic Staff, Tests and Procedures, MRI, Definition (August 17, 2013), *available at http:www.mayoclinic.org/tests-procedures/mri/basics/definition/prc-20012903* ; Mayo Clinic Staff, Tests and Procedures, Positron emission tomography (PET) scan, Definition (May 6, 2014) *available at http:www.mayoclinic.org/tests-procedures/petscan/basics/definition/prc-20014301* . Counsel's failure to recognize a meaningful distinction between the procedures that are outside counsel's area of expertise should not preclude this court from meaningfully reviewing the district court's order.

Moreover, I cannot say that the error in denying this motion was harmless. The record does not indicate that Hover had a significant criminal history prior to the instant offenses. Although he had abused drugs several years before **[*31]** the instant offenses, the record reveals no prior crimes of violence. Shortly before the instant spree, Hover's wife reported that he began behaving bizarrely and she urged him to seek professional help. He then engaged in repeated and seemingly out-of-character episodes of brutal and callous violence. In light of this evidence, I cannot say that the failure to permit this testing did not have a "substantial and injurious effect or influence in determining the jury's verdict" or sentence. *Knipes v.*

State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008) (quotation marks and citations omitted). As this psychological evidence could undermine evidence related to Hover's ability to premeditate and deliberate as well as mitigate his conduct, I would reverse his convictions for first-degree murder (Counts 9 and 21), attempted murder (Count 25), and his death sentences.

DNA analyst

I agree with the majority that the district court abused its discretion in prohibiting the proposed cross-examination of the State's DNA analyst. However, I disagree with the majority's conclusion that the error did not contribute to the verdict beyond a reasonable doubt. *See Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008) ("If the error is of constitutional dimension, then . . . [this court] will reverse unless [it is shown], **[*32]** beyond a reasonable doubt, that the error did not contribute to the verdict."). The expert's testimony that both Hover and Contreras' DNA was present on a condom found at the crime scene was the most decisive evidence of Hover's involvement in Contreras' rape and murder. *See Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 62, 129 S. Ct. 2308, 174 L. Ed. 2d 38 (2009) ("Modern DNA testing can provide powerful new evidence unlike anything known before."); *see also* Kimberly Cogdell Boies, *Misuse of DNA Evidence is not Always a "Harmless Error": DNA Evidence, Prosecutorial Misconduct, and Wrongful Conviction*, 17 Tex. Wesleyan L. Rev. 403, 406-07 (2011) (providing that "juries are more likely to convict when the prosecution presents DNA evidence," despite the fact that "DNA has the same likelihood for human error as do other types of evidence" (citations omitted)). Although there was other evidence presented that supported the verdicts, it was not nearly as powerful as the unchallenged DNA evidence. For example, the cell tower location evidence could not pinpoint Hover's location at the time of the murder, nor could it even indicate that the tower Hover's call routed through was the closest to him. See Alexandra Wells, *Ping! The Admissibility of Cellular Records to Track Criminal Defendants*, 33 St. Louis U. Pub. L. Rev. 487, 494 (2014) (noting that "cell signals **[*33]** go to the tower with the strongest signal, which is not always the cell tower geographically closest to the cell phone"). And Hover's jailhouse confession must be viewed with suspicion, not solely because it is testimony of a jailhouse informant, *see* Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 Wake Forest L. Rev. 1375, 1376-77 (2014) ("[N]o evidence is more intrinsically untrustworthy than the allegations of a jailhouse snitch."), but also because the informant was the victim of one of Hover's alleged crimes. The remaining evidence, which consisted of surveillance video showing similar cars, physical evidence that implicated Richard Freeman, a cryptic comment by Hover about a dream, and surveillance video showing Freeman and Hover making purchases at Wal-Mart, was not so powerful that the unchallenged DNA evidence did not contribute to the verdicts on Contreras' sexual assault and death. Accordingly, I would reverse Hover's convictions for conspiracy to commit kidnapping, robbery, sexual assault, and murder (Counts 1 through 4); burglary while in possession of a deadly weapon (Count 5); first-degree kidnapping with the use of a deadly weapon (Count 6); robbery with the use of a deadly weapon (Count 7); sexual assault **[*34]** with the use of a deadly weapon (Count, 8); murder with the use of a deadly weapon (Count 9); and first-degree arson (Count 10).

Identification from surveillance videos and improper impeachment

I agree with the majority that the district court erred in permitting Detective Lorson to testify, based on his observation of the surveillance videos, that the perpetrator of the robberies was the same individual and that the State improperly "removed the sting" of impeachment from Pamela Lindus' testimony by introducing the facts underlying her conviction for child molestation. But in my opinion, the prohibited identification affected Hover's substantial rights, *see Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007) (reviewing un-objected to error for plain error affecting substantial rights), and the improper impeachment was not harmless, *see Valdez*, 124 Nev. at 1189, 196 P.3d at 476. Detective Lorson and Lindus provided the only testimony that implicated Hover in the robbery of Tohme. Tohme could not identify Hover as the perpetrator. Further, Hover's ex-wife, who had years to observe him and had identified him as the perpetrator in the other surveillance videos, could not identify him as the perpetrator of the robbery and burglary. Therefore, it was likely that Detective Lorson's **[*35]** testimony strongly influenced the jury's verdict on the charges related to the Tohme incident. *See U.S. v. Gutierrez*, 995 F.2d 169, 172 (9th Cir. 1993) (observing that expert testimony of a police officer may "carr[y] an aura of special reliability and trustworthiness" (quotations omitted)). The only remaining admissible evidence linking Hover to the Tohme robbery was Lindus' testimony. In informing the jury that Lindus had engaged in a prohibited sexual relationship between two

teenagers, the State clearly cast Lindus and her testimony in a less objectionable light than it would have been had jury been left with the mere fact that. Lindus had been convicted of child molestation. Therefore, I cannot conclude that inclusion of unfairly bolstered testimony by Lindus and inadmissible identification by Detective Lorson did not have an substantial effect on the jury's verdicts of conspiracy to commit robbery (Count 28); burglary while in possession of a firearm (Count 29); and robbery with the use of a deadly weapon, victim 60 years of age or older (Count 30).

Consequently, I would reverse Hover's convictions relative to the Contreras' kidnapping, sexual assault, and murder (Counts 1-10); Julio's murder (Count 21); Roberta's attempted murder (Count [*36] 25); the Tohme robbery (Counts 28-30); and his death sentences.[7]

/s/ Cherry, J.

Cherry

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[7] I also conclude that there was a reasonable likelihood that the jury misunderstood the moral culpability language in the mitigating circumstances instruction. *See Watson v. State*, 130 Nev. Adv. Rep. 76, 335 P.3d 157, 176 (2014) (Cherry and Saitta, JJ., dissenting in part). However, as I would reverse Hover's murder convictions, it is unnecessary to address errors that occurred during the penalty hearing.

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GAMBINO GRANADA-RUIZ, aka,
Gambino Grandaruiz, # 6005262

Defendant.

CASE NO: C-15-305044-1

DEPT NO: XXV

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR DOUBLE JEOPARDY

DATE OF HEARING: JANUARY 18, 2017
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NICOLE J. CANNIZZARO, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Dismiss for Double Jeopardy.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On March 13, 2014, Gambino Granada-Ruiz (hereinafter "Defendant") was charged by way of Criminal Complaint with one count of Battery Resulting In Substantial Bodily Harm (Category C Felony – NRS 200.481). On April 7, 2014, the State filed an Amended Criminal Complaint charging Defendant with Count 1 – Attempt Murder (Category B Felony – NRS 200.010, 200.030, 193.330) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C Felony – NRS 200.481). A preliminary hearing was set for May 21, 2014. The Clark County Grand Jury heard testimony on April 22, 2014, and returned a true bill against Defendant. On April 23, 2014, Defendant was charged by way of Indictment with Count 1 – Attempt Murder (Category B Felony – NRS 200.010, 200.030, 193.330) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C Felony – NRS 200.481). An initial arraignment date was scheduled for May 12, 2014.

On May 14, 2014, Defendant was arraigned on the charges contained in the Indictment, pled not guilty, waived his right to trial within sixty (60) days, and a trial date was scheduled for September 17, 2014, with a calendar call date of September 8, 2014. On June 23, 2014, defense counsel moved to withdraw from the case, and that motion was granted. On July 14, 2014, Michael Pandullo confirmed as counsel, and a status check on trial readiness was set for July 28, 2014. On July 30, 2014, defense counsel again moved to withdraw. On August 4, 2014, Betsy Allen was appointed as counsel of record. A new trial date was set for November 17, 2014, with a calendar call date of November 10, 2014.

The November 10, 2014, trial date was vacated, and the matter was reset. On March 5, 2015, and March 12, 2015, the Clark County grand Jury again heard testimony in the instant case, and returned a true bill against Defendant for Count 1 – Murder (Category A Felony – NRS200.010, 200.030) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C felony – NRS 200.481). On March 18, 2015, Defendant was arraigned on the Indictment charging him with Count 1 - Murder (Category A Felony – NRS200.010, 200.030), and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C felony – NRS 200.481).

Defendant pled not guilty to the charges, and a trial date was scheduled for May 11, 2015, with a calendar call date of May 4, 2015.

On May 4, 2015, Defendant requested a continuance of the trial date, which was granted. A new trial was eventually scheduled for September 8, 2015, with a calendar call date of August 31, 2015. Trial began in this case on September 8, 2015. On September 18, 2015, the parties submitted the case to the jury for deliberations. During the course of deliberations, one juror engaged in misconduct by researching case law online, and shared his findings with the other jurors. On September 21, 2015, this Court declared a mistrial.

On December 15, 2016, Defendant filed the instant Motion to Dismiss, to which the State now responds.

STATEMENT OF THE FACTS

On September 8, 2016, trial commenced in the instant case. After seven (7) days of trial testimony, the case was submitted to the jury on September 18, 2016. Later that day the jury was sent home for the weekend, and ordered to return the following Monday, September 21, 2016. The jury returned on Monday and began deliberations that morning. At about 11:30 am, the Court received a note from the jury foreperson stating that one of the jurors, Juror Number 3, was feeling ill, had high blood pressure, and wanted to go home. See, reporter's Transcript of Jury Trial ("JTT"), September 21, 2015, Case Number C-305044, p. 3. The Court advised the marshal to call medical and have medical staff attend to Juror No. 3. Id. The marshal then went to Juror No. 3 and advised him that medical staff was on its way, and Juror No. 3 indicated he was also experiencing some visions problems. Id. at 4. The marshal advised medical staff of the issues once they arrived, and they proceeded to examine Juror No. 3. Id. Following examination by medical staff, Juror No. 3 indicated he could take blood pressure medicine he had for his high blood pressure, and advised he would like to continue to deliberate. Id. The jury resumed deliberations shortly thereafter. Id.

Later that afternoon, at around 3:00 pm, the Court again received a note from the jury foreperson advising the jury was deadlocked at 11 to 1. Id. at 5. When the marshal entered the jury deliberation room to get the note, he noticed Juror No. 3 had physically distanced himself

from the other jurors, and the marshal relayed his observations to the Court. Id. The Court then elected to call counsel and advise of the note from the foreperson. Id. The jury was also told to continue deliberating. Id. at 5-6. The marshal further advised the Court he did not think the jury was actually deliberating, based upon how the jurors were situated in the room, with Juror No. 3 having separated himself from the remaining jurors. Id. at 6. The Court became concerned about a possible hung jury, although the jury had been told to continue with deliberations. Id. The Court then received two (2) additional notes from the foreperson – one authored by Juror No. 3, and one authored by Juror No. 12. Id.

The first note, from Juror No. 3, stated that he had researched and fact checked a law on the internet, and that he refused to disregard the information he researched on the internet in his deliberations, even though the Court had already provided an instruction advising the jury it was not to consider outside evidence, nor conduct any outside research. Id. the second note, from Juror No. 12, stated that Juror No. 3 had done research on the internet over the weekend, and apparently had shared that with the other members of the jury. Id. at 6-7. The Court indicated it was unclear, based upon these notes, whether Juror No. 3 had shared any extrinsic research with the rest of the jury, and to what extent. Id. at 7.

At that point, the Court noted it was unsure of whether this issue rose to the level of declaring a mistrial, or if it was a situation where the Court would be able to sit an alternate juror and allow the jury to continue with deliberations. Id.

The Court indicated that after mulling over the options available, it felt the best course of action was to canvass the jurors. Id. at 8. The Court further advised it had prior cases where information came up during the course of a trial, and had canvassed jurors one by one. Id. The Court went on to state it felt the canvass was necessary to make a determination of whether a mistrial was necessary. Id. The State agreed with the Court, noting it would be important to determine whether the information was shared amongst the jurors, and further, whether the jurors were tainted by the information or whether they could disregard the information and continue with deliberations. Id. at 8-9. Defense counsel disagreed with the State, and noted it would be a "huge problem" if the information was shared, regardless of whether the other

jurors disagreed with Juror No. 3 and were standing by a different vote. Id. at 9. Defense counsel went on to indicate to the Court it was an issue just for Juror No. 3 to have shared outside information. Id.

The Court then indicated it too, felt a mistrial may be necessary if the information was shared between jurors, regardless of whether the other jurors could or would disregard the information. Id. at 10. The Court did, however, indicate it needed additional information before getting to the point of declaring a mistrial. Id. The State relayed it had previously dealt with a very similar issue, and in that instance, the Court had canvassed the juror and allowed him to continue to deliberate after clarifying he would disregard the extrinsic information. Id. Defense counsel stated that approach was "frightening," and the Court indicated it would still need to canvass the jurors to determine whether a mistrial was appropriate, acknowledging it was clear from Juror No. 3's note that he was unwilling to disregard the extrinsic evidence he looked up on the internet. Id. at 11-12.

Defendant appeared for the proceedings at this point, and the Court proceeded to explain to him what happened with the jury. Id. at 12-14. In doing so, the Court acknowledged that it would carefully consider the extent of the information shared with the jury and whether it would be possible to replace Juror No. 3 with an alternate, or whether the jury was so impermissibly tainted that a mistrial was necessary. Id. at 14-15. The Court went on to explain it would wait to base its decision on whether to declare a mistrial until after the jurors had been canvassed and the Court had additional information. Id. at 15-16.

The State then cited this Court to Meyer v. State, 119 Nev. 554, and indicated the inquiry involved not only whether the information was shared, but also, whether the remaining members of the jury could disregard the information, and whether the extrinsic information was so prejudicial as to render the verdict unreliable. Id. at 16-18. The defense likewise directed this Court to Zana v. State, 216 P.3d 244, and argued the inquiry should focus not on whether the information could be disregarded by the other jurors, but rather, what the extent of the information shared was, whether it was material to the case, how long the jurors discussed the extrinsic information, and the relative specificity of the information. Id. at 18-

19. Defense counsel went on to argue "I don't think that asking if they could set it aside cured the problem of what might have been discussed." Id. at 19

Following argument by counsel, this Court began questioning the foreperson, Juror No. 10. Id. The Court inquired whether Juror No. 10 was aware if Juror No. 3 had shared any extrinsic information with all of the jurors, or whether the information had been shared separately with just Juror No. 12. Id. at 20-21. Juror No. 10 went on to explain Juror No. 3 shared the results of his internet investigation with all of the jurors as a group, prior to lunch being served that afternoon, and prior to his complaints about his well-being. Id. at 21-22. Juror No. 10 explained that the jury was going "back and forth" in their deliberations and discussion, and at some point, Juror No. 3 mentioned he had done research on the internet. Id. at 22. After lunch, Juror No. 12 advised Juror No. 3 the instructions stated they were not to conduct any outside research, and that he had violated the Court's instructions. Id. at 22-23.

Upon further questioning of the Court, Juror No. 10 explained that Juror No. 3 brought up the independent research earlier in the day, and that all of the jurors had discussed his findings in their deliberations. Id. at 23-24. He went on to state the jurors continued discussing the findings, and that it was repeatedly brought up because of high tensions in the deliberation room. Id. at 24. The Court again clarified whether the jury merely discussed whether outside research was permitted by the instructions, or whether they discussed the specific research, and Juror No. 10 clarified they discussed the specific research. Id. at 25-27. The Court explained it was considering whether this was "a situation where that information could be potentially prejudicial to the decision making and ultimately whether or not that information, you know, the length of the discussion, the circumstances of the discussion and whether or not that's something that can now be [put aside]." Id at 27.

Juror No. 10 explained the first part of the research involved premeditation and the length of time associated with premeditation. Id. at 28. He further indicated the jury discussed the research presented by Juror No. 3, and were not readily aware of the specific jury instruction on that issue, nor was the focus of the discussion on any specific jury instruction. Id. at 27-28. Additionally, Juror No. 3 researched information about blood alcohol content and

discussed those findings with the other jurors as well. Id. at 30-31. The jurors continued to discuss the extrinsic evidence regarding premeditation, and even advised the Court he "[didn't] think anyone really went back and focused on the instructions right there in front of them as much as listening to what Juror No. 3 was saying." Id. at 32. Juror No. 10 was then excused from the courtroom. Id.

The Court, outside the presence of any members of the jury, then specifically noted the discussion about premeditation and deliberation was material to the case, that a lengthy discussion about these elements had occurred, and that it would be impossible to realistically ask the jury to set aside what they previously discussed. Id. at 33. Specifically, this Court stated it felt a mistrial was warranted after reviewing the testimony provided by Juror No. 10, and then invited counsel to weigh in on the subject. Id.

At this point, the State specifically asked this Court to consider whether the jury could set the information aside, noting there had not been a dearth of testimony about whether the discussion affected the jury's stance, or their ultimate decision. ID. at 34. The Court noted the testimony clearly indicated the jurors deliberated on the information presented by Juror No. 3, and that they did so for a lengthy period of time, and further, that the jurors did not ultimately go back to the instructions and tailor their deliberations accordingly. Id. at 34-35. Rather, the Court noted the jury continued to deliberate *only* upon the information given to them by Juror No. 3. Id. at 35.

Defense counsel indicated the only request from the defense would be to hear from Juror No. 3, but noted they agreed with the Court about the extent and breadth of the deliberations. Id. at 35-36. Ms. Allen specifically advised the Court:

> [To talk with Juror No. 3] is our only request. At this point, sadly, I think I somewhat agree with the Court on the permeated; it was not a little bit. And premeditation, whoever he research is pretty huge in this case. That is a huge issue. It is like the issue.

Id. at 36.

Juror No. 3 was then questioned by the Court. Id. at 37. Juror No. 3 then went on to say he disagreed with the other jurors about a law quoted by the State in its closing argument, and that the jury had differing views about the law. Id. at 39. Juror No. 3 expressed he believed the

argument made in closing by the State was that self-defense can only go so far, and that no specific time period was required for premeditation. Id. at 40-41. He went on to explain he needed to clarify just what the law was, and so, he went home and conducted his own research online. Id. at 41-42. The Court requested whether he had looked at the instructions to resolve the issue, but Juror No. 3 advised that none of the jurors looked at the instructions to resolve the issue, so he researched it instead. Id. 42-43. He went on to explain he had researched everything from premeditation to self-defense, to the blood alcohol content allegedly discussed at trial and what the numbers mentioned by the doctor could even mean. Id. at 43-45.

Juror No. 3 went on to describe how the other juris had discussed blood alcohol content, what their thoughts and views were about the blood alcohol content, and who was asking what questions about his findings. Id. The Court went on to question which pieces of evidence from trial were reviewed in the deliberation room, to include which medical documents they were reviewing. Id. at 45-46. Juror No. 3 then explained how the jury had discussed blood alcohol content, and how he went about researching that issue. Id. at 46-47. Juror No. 3 again reiterated how he had done research over the weekend, and had discussed it and argued about it with the other jurors. Id. at 48-51. Juror No.3 was then dismissed from the courtroom and ordered to return to the deliberation room. Id. at 51.

The Court then discussed with counsel the documents referenced by Juror No. 3 that he claimed Juror No. 10 was looking at and referencing in the deliberation room. Id. Defense counsel clarified no medical records containing any printed numbers had ever been admitted at trial. Id. The Court then asked if it would be worthwhile to ask Juror No. 10 about the typed documents mentioned by Juror No. 3, and defense counsel agreed they wanted to hear from him as well. Id.

The State attempted to argue to the Court that it was conceding the Juror had done outside research, which was the first part of the inquiry requested by the State before the Court indicated it was more serious than just whether the juror had done outside research, and indicated that "we are all coming to the incredibly difficult, incredibly sad realization that we

have a juror who was probably unable to serve, frankly, from the discussion here today." Id. at 52. The defense agreed, and the Court went on to explain the real issue was the length of the discussion between the jurors about the outside research. Id. at 52-53.

Defense counsel indicated it understood the Court's concerns, and noted Defendant was upset with the idea of staying on house arrest because the case would have to be retried. Id. Defense counsel then stated:

> So it's my understanding that the Court is going to declare a mistrial. I don't know if we are going to go down that road of trying to discuss it. I think Ms. McNeill and I would ask the Court to find out what the 11 to 1 was.
>
> Id. at 54.

The Court asked if the parties objected to asking the foreperson what the jury vote was prior to sending notes to the Court advising of the deadlock and the outside research. Id. at 54. Both counsel for the defense indicated they were in favor of the Court's request. Id. Counsel for the State attempted to clarify whether the Court was in fact, declaring a mistrial, prior to any inquiry of the foreperson, and the Court made clear it was declaring a mistrial, stating:

The Court has found that there is a clear basis for mistrial, that there is no way that the Court can be ensured that any product of deliberation of this juror can be fair and impartial and based on what is appropriate, if you will, to reach a verdict

Id. at 54-55.

At no point did the defense or Defendant object to the Court's declaration of a mistrial, or ask for any further explanation for a mistrial, nor was there ever a request to simply replace Juror No. 3 with an alternate. Id. at 55.

The Court then brought Juror No. 10 back to the courtroom and inquired about the conversation between him and Juror No. 3 about the medical records and blood alcohol content. Id. at 55. Juror No. 10 related he met with Juror No. 3 on the way into Court that morning and the two of them discussed the research Juror No. 3 had done at home, as well as conversations Juror No. 3 had with his wife regarding the deliberations and the blood alcohol

content issue. Id. at 55-56. He went on to explain how the jurors had discussed blood alcohol content levels, and they had referred to some reports admitted at trial. Id. at 56-58.

The Court then explained to Juror No. 10 it was declaring a mistrial, stating: "the particular facts and circumstances that have been found to have occurred here in these deliberations are such that a fair and impartial trial has become impossible from the Court's review and that we have no choice but to conclude these proceedings." Id. at 58. Neither the defense counsel nor Defendant objected to the Court's declaration, nor did they ever ask for the Court to consider alternatives to a mistrial. Id. At this point, the Court asked Juror No. 10 what the vote was, and he indicated the jury voted eleven (11) to one (1) not guilty. Id. The Court then turned its attention to defense counsel and specifically asked if there was anything further counsel needed, to which Ms. McNeill stated there was not. Id.

The Court then went on to state:

Just to be clear for the record, I do not think anyone has requested the mistrial. The Court has determined from the information that the mistrial is required. But at this point I will make my record asking or conceding, but at the end of the day it is the Court's determination that is being made.

Id. at 59. Neither defense counsel nor Defendant attempted to object to the Court's determination. Id. The Court then indicated to counsel and the members of the jury that is did not find, based upon the testimony presented, that the deliberations could go forward because of the outside information, the interference with the deliberations the discussion about that information caused, and the fact that none of the jurors had reported the research to the Court, but rather, based their deliberations upon that information. Id. at 59-61. The jury was then discharged, and counsel requested a status check the following Monday. Id. at 63.64.

LEGAL ARGUMENT

The Double Jeopardy Clause the Fifth Amendment does not bar a second trial in the instant case. The Double Jeopardy Clause is designed to ensure the State does not utilize its resources to make multiple attempts to prosecute an individual for the same crime repeatedly. Throughout the lengthy inquiry that occurred prior to the Court's declaration of a mistrial,

there was no objection on behalf of defense counsel or Defendant to the Court's declaration, nor was there a request to adopt an alternative to the mistrial, such as seating an alternate juror. In fact, through the Court's inquiry, the defense supported and agreed with the Court's decision. Even if this Court does not find Defendant consented to the mistrial, this Court nevertheless had a proper basis upon which to declare a mistrial. The jury twice advised the Court it was deadlocked, and the Court could have declared a mistrial based upon their failure to come to a unanimous verdict. Secondarily, this Court did not abuse its discretion when it found Juror No. 3's extrinsic research went above and beyond mere research, and instead, significantly encroached into the deliberations among the jurors, and so infected the discussion that any verdict would not have been the product of a fair and unbiased deliberation. There was manifest necessity to warrant a mistrial, and thus, the retrial for Defendant is not barred by the Fifth Amendment's Double Jeopardy clause.

I. The Double Jeopardy Clause Is Not Absolute, And Does Not Operate As A De Facto Bar Against Multiple Trials.

The Fifth Amendment to the United States Constitution states "No person shall [] be subject for the same offense to be twice put in jeopardy." U.S. Const. Amend. V. The Double Jeopardy Clause prohibits anyone from being prosecuted twice for the same crime. Id. This prohibition, however, does not universally entitle a defendant to avoid prosecution whenever a trial before the first tribunal does not result in a final judgment. Wade v. Hunter, 336 U.S. 684, 688-689, 69 S.Ct. 834, 837 (1949). Indeed, the United States Supreme Court has noted the Double Jeopardy Clause does not constitute a bright line rule prohibiting prosecution of cases a second time when there is no verdict reached, noting such a rule "would create an insuperable obstacle to the administration of justice in many cases in which there is no semblance of the type of oppressive tactics at this the double-jeopardy prohibition is aimed." Id. For example, in instances where a jury may be unable to reach a unanimous verdict, where the court discovers a member of the jury harbors some bias, or where other facts may come to light that indicate to the court that the jury is unable to fulfill its duty, the court's duty is to discharge the jury and direct a retrial, and such action does not violate a defendant's

constitutional right against double jeopardy. Id. Accordingly, a defendant may "be retried without violating double jeopardy if, in the 'exercise [of] a sound discretion' and 'taking all the circumstances into consideration,' the trial court determines that 'the ends of public justice' make mistrial a 'manifest necessity.'" Glover v. Eighth Jud. Dist. Ct., 125 Nev. 691, 701-02, 220 P.3d 684, 692 (2009) (quoting United States v. Perez, 22 U.S. 579, 580, 6 L. Ed. 165 (1824)) (citing Ex Parte Maxwell, 11 Nev. 428, 435, 436 (1876)). Thus, there are instances, such as a deadlocked jury, or where impermissible evidence is placed before the members or a jury, where a mistrial is required if there exists a "manifest necessity," and in those cases, the double jeopardy bar does not attach. Id. (citing Logan v. United States, 144 U.S. 263, 12 S.Ct. 617, 36 L. Ed. 429 (1892); Arizona v. Washington, 434 U.S. 497, 514, 516, 98 S.Ct. 824, 54 L. Ed. 2d 717 (1978); Hylton v. Dist. Ct., 103 Nev. 418, 426, 743 P.2d 622, 628 (1987)).

The crux of whether the double jeopardy bar applies is whether there was a manifest necessity to warrant the mistrial or whether the ends of public justice are met by granting a mistrial. When evaluating whether manifest necessity exists to warrant a mistrial, the trial judge must consider the totality of the circumstances and determine whether justice is best served by declaring a mistrial. Washington, 434 U.S. at 505-06, 98 S. Ct. at 830. As the United States Supreme Court has repeatedly stated:

> We think, that in all cases of this nature, the law has invested Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated. They are to exercise a sound discretion on the subject; and it is impossible to define all the circumstances, which would render it proper to interfere. To be sure, the power ought to be used with the greatest caution, under urgent circumstances, and for very plain and obvious causes.... But, after all, they have the right to order the discharge; and the security which the public have for the faithful, sound, and conscientious exercise of this discretion, rests, in this, as in other cases, upon the responsibility of the Judges, under their oaths of office.

Id. at 506, 98 S. Ct. at 830, n. 18 (citing United States v. Perez, 9 Wheat. 579, 580 (1824)).

Applying this standard to any particular trial is not "mechanical," nor undertaken "without attention to the particular problem confronting the trial judge." Id. at 506, 98 S. Ct. at 830-31. It is therefore the judge's duty to evaluate the particular facts of any given case to determine whether a jury's verdict is based upon fair and reasonable evaluation of the evidence, or whether the verdict may be the product of frustrated deliberations or improper consideration of evidence or argument. Id. at 509, 98 S. Ct. at 832.

II. The Court Properly Found Manifest Necessity And The Ends Of Public Justice Warranted A Mistrial.

A. Defendant Did Not Object To The Mistrial, And Did Not Request An Alternative Remedy.

Double jeopardy does not apply where a defendant requests the mistrial or where a defendant consents to a mistrial. Benson v. State, 111 Nev. 692, 695, 895 P.2d 1323, 1326 (1995) ("As a general rule, a defendant's motion for, or consent to, a mistrial removes any double jeopardy bar to reprosecution.") (citing Melchor-Gloria v. State, 99 Nev. 174, 178, 660 P.2d 109, 111 (1983)). Where a court sua sponte declares a mistrial, if a defendant consents to the mistrial declaration, he cannot later claim the double jeopardy bar applies. Id.

In this case, the defense did not object to the Court's suggestion of a mistrial, and in fact, upon several requests of the Court, never once suggested any other remedy, nor raised any objection to the mistrial. Indeed, following questioning of Juror No. 10, the defense was asked if there was anything they wished to raise, and counsel indicated the only request was to question Juror No. 3 specifically. Following the questioning of Juror No. 3, the Court asked of counsel whether there was anything further that needed to be addressed, and counsel indicated it only wanted to hear what the decision was between the jurors prior to the notes being given to the Court. The State notes this Court did make clear neither the prosecution nor the defense was requesting a mistrial, but rather that the mistrial was the sole decision of the Court. However, it bears noting that despite the Court's decision, Defendant never once requested an alternative remedy, nor disagreed with the Court's own analysis. Indeed, even prior to the Court making the actual finding that a warrant was required out of manifest

necessity, Defendant never attempted to object, nor offer to the Court what other analysis or questioning could be done to ensure a mistrial was appropriate. Absent any objection, and absent any additional request, Defendant cannot now claim double jeopardy applies to bar his subsequent trial where he consented to this Court's findings.

Defendant argues other alternatives would have been more appropriate, and that this Court did not properly find prejudice as a result of the juror misconduct. In doing so, Defendant cites to State v. Gunnell, 973 N.E.2d 243, 247 (2012), and claims this Court erred in declaring a mistrial. The facts and circumstances in Gunnell, however, differ greatly from the facts and circumstances in the present case. In Gunnell, a juror conducted outside research into the definition of the word "perverse" and into the legal definitions of manslaughter. Id. at 245-46. Upon entering the courtroom the day following the juror's outside research, the bailiff noticed the juror had in her possession, several pieces of paper that contained the results of her research. Id. These pieces of paper were intercepted and the juror was subsequently questioned by the court. Id. at 247-48. During the examination, the juror indicated she did not share any of the information with the other jurors. Id. The court then asked the parties what the particular remedy should be, given the circumstances, and both the prosecution and the defense requested a curative instruction. Id. The court then called a recess, and upon reconvening, the court indicated it did not believe a curative instruction would be particularly effective, and that he did not believe the juror could be convinced to disregard the information. Id. The prosecution then requested a mistrial, which was granted. Id.

In holding the trial court abused its discretion in declaring a mistrial, the Ohio Supreme Court noted the trial court did not conduct an inquiry into any prejudice to the juror as a result of the research, or whether the juror would have been amenable to a curative instruction. Id. at 248-49. The prosecution argued on appeal the mere fact a juror had done outside research was sufficient, along with the court's doubt as to whether a curative instruction would be effective, was enough to warrant a mistrial without further inquiry. Id. The Ohio Supreme Court noted it was insufficient to warrant a mistrial based solely on the fact a juror conducted outside research, and noted the trial court did not adequately canvass the juror. Id. The Court

noted, however, that generally, the trial court is given wide latitude and discretion in determining a mistrial is necessary, but that in this particular case, the inquiry of the court was insufficient. Id. at 249-51.

The instant case is notably different from Gunnell. Here, Juror No. 3 not only conducted outside research, but also shared that research with the other jurors, whereas in the latter case, the juror was stopped short of sharing the information by the bailiff at the entrance to the courtroom. In this case, the juror was able to share that information, and also, according to both Juror No. 3 and Juror No. 10, the jury deliberated at length for several hours over the meaning of the research conducted by Juror No. 3. Juror No. 3 went on to advise the Court he could not separately consider the Court's instructions in light of the research he had completed. This case is significantly different because the information researched by Juror No. 3 entered the jury deliberation room and was discussed and deliberated on by the members of the jury. Moreover, this Court conducted a lengthy inquiry into the juror misconduct and questioned two separate jurors prior to deciding a mistrial was required. The analysis present in Gunnell is inapplicable here because the two cases are vastly different. As such, this Court should deny the instant motion, as an alternative remedy was not appropriate to cure the defect in this case.

Defendant never objected to the Court's decision for a mistrial despite being given multiple opportunities to voice any concerns. This Court asked counsel several times what else would be necessary, and never once was an alternative remedy deemed to be an appropriate avenue, nor was there a voiced objection to the mistrial. Accordingly, Defendant consented to the mistrial, and cannot now later claim the mistrial was inappropriate and that a subsequent trial would be barred.

B. Even If Defendant Did Not Consent To The Mistrial, This Court Nevertheless, Did Not Abuse Its Discretion And Properly Ordered A Mistrial.

While the State's contention is that Defendant consented to the mistrial, even if Defendant had not consented to the mistrial, the double jeopardy bar does not prohibit a retrial when the mistrial was done out of legal necessity. Thus, in order for the double jeopardy bar

to apply, the court must have erred in declaring a mistrial, by acting irrationally or irresponsibly. Washington, 434 U.S. at 514, 98 S. Ct. at 834.

The important aspect of whether the double jeopardy bar applies is whether the trial court properly found there was a manifest necessity for a mistrial, or that it was dictated by the ends of justice. In Glover v. Eighth Judicial District Court, the Nevada Supreme Court noted the inquiry into whether manifest necessity existed to warrant a mistrial is not whether a different judge would have made the same decision, but rather, whether the court abused its discretion when making the decision to declare a mistrial. Glover, supra at 697, 220 P.3d at 689. Thus, the relevant inquiry is whether this Court properly found a mistrial was required as a matter of manifest necessity, keeping in mind this Court was in the best position to make that determination.

While it is true not every exposure by a jury to extrinsic information constitutes grounds for declaring a mistrial, in evaluating whether the extrinsic evidence affected the jury's deliberations, the trial court is in the best position to make that determination, and its decision is afforded substantial weight. United States v. Steele, 785 F.2d 743, 746 (9th Cir. 1986).

> The trial judge is uniquely qualified to appraise the probable effect of information on the jury, the materiality of the extraneous material, and its prejudicial nature. He or she observes the jurors throughout the trial, is aware of the defenses asserted, and has heard the evidence. The judge's conclusion about the effect of the alleged juror misconduct deserves substantial weight.

Id. (citing United States v. Bagnariol, 665 F.2d 877, 855 (9th Cir. 1981), cert. denied, 456 U.S. 962, 102 S. Ct. 2040 (1982)).

In Steele, the jury requested the bailiff to bring them a dictionary in the course of their deliberations. Id. at 744-45. The jury then used the dictionary to look up certain words pertaining to the case against the defendant, who was charged with copyright infringement and conspiracy to commit copyright infringement. Id. The jury returned a verdict convicting the defendant with copyright infringement, but were unable to come to a unanimous decision with regards to the conspiracy charge. Id. After discovering the jury had been provided a copy of a dictionary during their deliberations, the court asked the parties to prepare briefing on

whether a new trial was warranted, and what questions they would want asked by the foreman. Id. at 745. Several jurors were questioned, and advised the court they had looked up words such as conspiracy, plagiarism, conspirator, and doubt. Id. The jurors went on to state they discussed using the dictionary, but ultimately referenced the instructions provided to them by the court in coming to their verdict. Id. The court denied the defendant's motion for a new trial, finding the use of the dictionary did not prejudice the jury. Id. The Ninth Circuit affirmed the trial court's decision, specifically noting that the specific questioning of the jurors elicited that they did not supplant any legal definitions with those found in the dictionary, and held the trial court did not err in utilizing its judgment following the evidentiary hearing to deny the motion for a new trial. Id. at 745-49.

In Zana v. State, 125 Nev. 541, 547, 216 P.3d 244, 248 (2009), the Nevada Supreme Court upheld a district court's denial of the defendant's motion for a new trial due to juror misconduct, noting not every instance of juror misconduct necessitates a new trial. In Zana, the jury considered evidence regarding a pornographic website alleged to have been visited by the defendant. Id. Following the first day of deliberations, one of the jurors went home and attempted to search for the website at home, without success. Id. The juror shared his unsuccessful attempt with the other members of the jury. Id. The district court then found there was no basis for a mistrial because the information shared was vague, ambiguous, and only discussed briefly among the jurors. Id. Further, the district court found this misconduct was not prejudicial to the jury's deliberations, and therefore, found no basis for a mistrial. Id. at 547-48, 216 P.3d at 248-49. In upholding the district court's decision, the Nevada Supreme Court pointed to the fact the jury only discussed a fruitless search, that they returned to deliberations for several more hours thereafter, that there was little, if any, probative value as a result of the search, and the information would not influence or prejudice the average, hypothetical juror. Id.

The instant case differs substantially from either Steele or Zana. In Steele, the use of the dictionary to look up common definitions of words was found not to have influenced the jury's deliberations, as they ultimately resorted to the court's instructions. Further, the jury's

use of the dictionary to define ordinary terms did not supplant the legal definitions given to the jury by the court. In this case, Juror No. 3's use of the internet to search for issues relating to blood alcohol content, to search premeditation and deliberation, and to search law on self-defense from an admitted "lay-man's" internet law site is markedly different and goes much further than a definition of a particular word. It bears noting, also, that the court in Steele made a distinction between the use of a dictionary to define particular commonplace words when used in a legal definition because the legal definition nevertheless required them to apply particular elements, and those elements were provided by the court. Here, Juror No. 3 supplanted the court's instructions for his own self-conducted internet law research.

Unlike Zana, where the internet search produced no results, the jury did not deliberate at length over the search, and the court found a search which produced nothing was not influential one way or another in terms of the jury's deliberations; here, the internet searches conducted by Juror No. 3 *were* the substance of the deliberations. In this case, the Court found the jury deliberated at length about

Defendant argues it is insufficient for this Court to have found that merely because the jury deliberated about the improper research a mistrial was warranted because the legal research conducted by Juror No. 3 resulted in the same definitions as the Court's instructions to the jury. Defendant goes on to assert that because the definitions were "correct" there can be no prejudice as a result of the misconduct. This assertion, however, is belied by the record. Even this Court noted Juror No. 3 was confused and unaware of what he was attempting to research, and had difficulty articulating his findings, or even why he felt he needed to do outside research to the Court. The record does not demonstrate that Juror No. 3 looked up the proper law, and properly applied it to the case at hand.[1] This Court repeatedly noted it was

[1] Even assuming *arguendo*, that Juror No. 3 had applied the appropriate law and properly understood the instructions from this Court, a mistrial would have been the appropriate remedy nevertheless. If Juror No. 3 were applying the correct law, and his outside research did not improperly taint the jury, then the result of deliberations was a hung jury. Juror No. 3 was a holdout juror who refused to side with the remaining eleven jurors, despite hours of deliberations, and despite an edict from this Court to continue to deliberate. If the jury was not

unclear what had been researched by Juror No. 3, and what his confusion was directed towards. It was unclear even from the answers provided by Juror No. 3 what he was attempting to clarify, and thus, to assert he had done correct and proper research is unsupported by the record.

In Illinois v. Somerville, 410 U.S. 458, 459, 93 S. Ct. 1066, 1068 (1973), the trial court declared a mistrial on request of the prosecution because the indictment was insufficient on its face and no Illinois rule or statute permitted its amendment. The prosecutor realized the Indictment charging defendant with theft failed to allege defendant intended to permanently deprive the owner of his property, a necessary element under Illinois law. Id. The court granted the prosecutor's motion for a mistrial, finding there was manifest necessity to warrant a mistrial. Id. at 460-61. In upholding the trial court's decision, the Supreme Court again noted there was no "rigid formula" that was to be applied to each case, but rather, reiterated it is within the trial court's broad discretion to declare a mistrial. Id. at 462-63. The proper inquiry, therefore is whether the mistrial is "dictated by 'manifest necessity' or the 'ends of public justice.'" Id. at 463, 93 S. Ct. at 1070. "The ends of public justice" or "'the public's interest in fair trials designed to end in just judgments,'" is likewise an important consideration for the trial court in determining whether an impartial verdict could be reached. Id. (citing Wade v. Hunter, 336 U.S. 684, 689, 69 S.Ct. 834 (1949)). The Court held the Double Jeopardy clause did not bar retrial, even though the trial had commenced and there was a procedural error in the Indictment that was no fault of the defendant's. Id. The Court focused on the "ends of public justice" in justifying the mistrial, noting the case would have been reversed on appeal and the Court likely saved time and energy in granting the mistrial and allowing the prosecution to seek a second indictment. Id.[2]

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tainted and Juror No. 3's research was proper research, then the jury was a hung jury, and thus, warranted a mistrial.

[2] In its decision, the Supreme Court noted a number of instances where a mistrial was warranted, and in each of those instances, noted the trial court was given wide discretion in determining whether manifest necessity warranted a mistrial.

In this case, the Court did not abuse its discretion, and made a very lengthy inquiry into what the jury had discussed, and how far the misconduct went during deliberations. Of particular importance in this Court's decision was the recognition that by asking so many questions about the misconduct, the Court would be signaling to the remaining jurors that whatever position Juror No. 3 had taken in regards to the law and the evidence was incorrect, and this Court expressed concerns that by telling them to disregard what Juror No. 3 had done, it would be implicitly telling the jury that the verdict reached by Juror No. 3 was incorrect, or that in some way the Court wanted the jury to come to a particular decision. The Court's acknowledgement of the prejudice that accompanied the lengthy questioning of the jury imparts that a mistrial was of manifest necessity, and furthermore, speaks to whether the jury's decision would be fair, impartial, and unencumbered or influenced by Juror No. 3's research. Much has been made also of the fact the jury was at an eleven to one decision, with Juror No. 3 being the lone vote for guilty. At the point where deliberations had continued for hours about Juror No. 3's research, any vote by the jury was tainted by his misconduct.

The Court conducted a very lengthy inquiry into the misconduct, the legth and type of discussion that was had about the independent research conducted by Juror No. 3. The record demonstrates Juror No. 3 not only conducted outside research, but also shared that research with the other jurors, who then deliberated upon that research for hours before finally advising the Court about the misconduct. The jury very clearly considered and deliberated about outside research, and the record was clear in establishing the prejudice of the outside research to those deliberations. There is nothing in the record to indicate this Court acted irresponsibly in determining a mistrial was warranted, and because this Court was in the best position to make that determination, there is no reason to grant Defendant's instant motion.

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CONCLUSION

This Court properly found a mistrial was warranted by manifest necessity and to meet the ends of justice. The Double Jeopardy bar against subsequent prosecutions is not applicable in this case because Defendant consented to the mistrial, and never requested any remedy to the Court's decision to declare a mistrial. Furthermore, this Court properly conducted a thorough canvass of the jurors, and properly found misconduct had occurred and that it had prejudiced the jury, thus warranting a mistrial. For these reasons, the State respectfully requests this Court to deny Defendant's instant motion in its entirety.

DATED this 9th day of January, 2017.

Respectfully submitted,

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BY /s/ Karen Mishler for
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion to Dismiss for Double Jeopardy., was made this 10th day of January, 2017, by Electronic Filing to:

JoNell Thomas, Special Public Defender
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/s/ Stephanie Johnson
Secretary for the District Attorney's Office

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GAMBINO GRANADA-RUIZ Defendant,	CASE NO. C-15-305044-1 DEPT. NO. 25

DEFENDANT'S REPLY TO THE STATE'S OPPOSITION TO MOTION TO DISMISS-DOUBLE JEOPARDY

DATE: 1/18/17
TIME: 9:00 A.M.

COMES NOW, Defendant Gambino Granada-Ruiz, by and through his attorneys David M. Schieck, Special Public Defender, Alzora B. Jackson, Chief Deputy Special Public Defender, and JoNell Thomas, Chief Deputy Special Public Defender, and hereby replies to the State's opposition to his motion to dismiss based upon double jeopardy.

A. REPLY TO THE STATE'S FACTUAL ASSERTIONS

The relevant facts are set forth in the motion to dismiss and are not repeated here. A reply, however, is necessary to one of the State's factual assertions in its opposition.

The State claims the following:

> [Juror No. 3] went on to explain he had researched everything from premeditation to self-defense, to the blood alcohol content allegedly discussed at trial and what the numbers mentioned by the doctor could even mean. id. at 43-45.
>
> Juror No. 3 went on to describe how the other [jurors] had discussed blood alcohol content, what their thoughts were about the blood alcohol content, and who was asking what questions about his findings. Id. The Court went on to question which pieces of evidence from trial were reviewed in the deliberation room, to include which medical documents they were reviewing. Id. at 45-46. Juror No. 3 then explained how the jury had discussed blood alcohol content, and how he went about researching that issue. Id. at 46-47. Juror No. 3 again reiterated how he had done research over the weekend, and had discussed it and argued about it with the other jurors. Id. at 48-51.

Opposition at page 8. The record does not support this claim. Juror No. 3 testified as follows:

> One more thing but not the law. There was a part about toxology (sic) on there, on your guys' stuff that said .60, the blood level of alcohol. And the gal asked a question about it and I did not bring this up in there. I am telling you but nobody knows about this.

Transcript 9/21/15 at page 45. Juror No. 3 then explained that another juror read that the blood alcohol level was .60 on one of the exhibits and a juror asked "you would be dead, wouldn't you?" Id. at 46-47. The conversation about blood alcohol level took place on Friday, and then Juror No. 3 did research on the issue over the weekend, but he did not reveal that research to the other jurors when they returned for deliberations. Id. at 47. In contrast, he did inform the other jurors about his research on the law which he had researched based upon the prosecutor's closing argument about self defense. Id. at 47-48. The foreperson also testified that no outside information was brought in concerning the blood alcohol level, and that this information was in the evidence that was given to them. Id. at 57. Juror No. 3 informed the foreperson that he had done research on the blood alcohol level, but the foreperson told him that he was not supposed to do any research. Id. at 56. The discussion about outside research on the blood alcohol level did not come up in the discussion amongst the other jurors. Id. at 56.

B. REPLY TO THE STATE'S ARGUMENT

As with the Statement of Facts, the Argument relevant to the motion to dismiss is set forth at length in the motion and those arguments are not repeated here. This reply is limited to

refuting the State's arguments on specific issues.

Mr. Granada-Ruiz did not consent to the mistrial

The State argues that Mr. Granada-Ruiz did not object to the mistrial and did not request an alternate remedy. Opposition at page 13. The State correctly notes that "[d]ouble jeopardy to not apply where a defendant requests the mistrial or where a defendant consents to a mistrial." Id. (citing Benson v. State, 111 Nev. 692, 695, 895 P.2d 1323, 1336 (1995)). Here, however, Mr. Granada-Ruiz neither requested the mistrial nor consented to the mistrial. Rather, this Court made it clear for the record that no one had requested a mistrial and the Court itself had determined that a mistrial was required. Id. at 59.

Alternate remedies were available

The State argues that this Court did not abuse its discretion by declaring a mistrial without first considering other alternative remedies. Opposition at 14. It argues that this case is different than State v. Gunnell, 973 N.E.2d 243, 247 (2012), because in that case the parties asked what the remedy should be for a juror's misconduct in conducting outside research, and both the prosecution and defense requested a curative instruction. Opposition at page 14. Mr. Granada-Ruiz acknowledges that Gunnell differs from the exact facts presented here in that the juror in that case did not share her research with other jurors. Id. at 246. Another difference exists because Ohio does not allow the use of an alternate juror after deliberations begin. Id. at 247. The point of Gunnell, however, remains relevant: a district court must consider alternatives before taking the drastic step of declaring a mistrial. Id. at 251.

The State next argues that a mistrial was mandated because Juror No. 3 advised the Court that he could not separately considered the Court's instruction in light of his own research. Opposition at 15. Mr. Granada-Ruiz in no way contests the fact that it was proper to dismiss Juror No. 3 as a juror. A viable alternative remedy existed, however, because the remaining original jurors could have been instructed to disregard any information shared by Juror No. 3, an alternate juror could have been seated, and deliberations began anew. The record reveals that instructing the other jurors to disregard information provided by Juror No. 3 would have been successful as the jurors themselves repeatedly informed him that his actions were improper, told

him that outside research was not allowed, voted contrary to his position, and he was physically isolated from the other jurors. See Trans. 9/21/15 at 5-6. At a minimum, the other jurors could have been questioned about whether they could follow the Court's instructions and could disregard any information shared by Juror No. 3.

The State asserts that this Court asked counsel several times what else would be necessary and never once was an alternate remedy deemed to be an appropriate avenue. Opposition at 15. The State fails to cite to the record in support of this claim. The transcript of the proceedings shows that this Court considered the appointment of an alternate in the event that Juror No. 3 had not shared his research with other jurors, but this same action was not considered as a remedy after it was found that Juror No. 3 had attempted to share his legal research with the other jurors, even though the other jurors rejected his outside research and an alternate juror was available. See Trans. 9/21/15 at 7 ("I highly suspect that he has in some fashion or another shared this information that he has and then I do not have any choice but to consider this a mistrial and to end this case."). The State correctly noted that part of the inquiry should be whether the other jurors could disregard that information and follow the instructions, while defense counsel stated that she was not prepared for the issue. Id. at 8-9. Likewise this Court acknowledged that it had not done research on the case law on the issue. Id. Following a recess, and after Mr. Granada-Ruiz arrived to court, this Court stated the following:

> So at this point the Court had no alternative once it received that information but to talk to counsel and have them return and call you to return so that we could find out from the jurors where we stand. Here's where we stand. If this juror did this independent research and has not shared that information or any specifics of that information with any of the other jurors during deliberation it is possible that he could be excused and an alternate juror brought in to deliberate in his place at which point the jurors would be instructed to restart their deliberation with the alternate present.
>
> If he has In fact shared this information with the other jurors then the Court has determined, although counsel has been doing some efforts to research this because obviously this all just came up, that we had determined that it is likely that we will have to declare a mistrial and lose the benefit of the time and effort that we have all put into this trial because we cannot ensure that we would have a verdict that was fair and impartial and not influenced by outside influences.

Id. at 14. This Court reiterated that neither Mr. Granada-Ruiz nor counsel would make the

decision as to whether a mistrial should be declared as it was the Court's decision to make. Id. at 15.

This Court abused its discretion by declaring a mistrial

The State argues that in order for the double jeopardy bar to apply, this Court must have erred in declaring a mistrial, by acting irrationally or irresponsibly. Opposition at 15-16 (citing Arizona v. Washington, 434 U.S. 497, 514 (1978)). While the Supreme Court in Washington did state that a trial court's action of declaring a mistrial could not be condoned if the trial judge acted irrationally or irresponsibly, id., the Court did not state that these would be the only circumstances in which a trial court's decision would be found improper. Rather, the Court found review of the decision turned on the exercise of sound discretion. Id.

Here, it is Mr. Granada-Ruiz's contention that this Court did not apply the correct legal standard in assessing the prejudice element of its determination as to whether the juror's misconduct necessitated a mistrial. Specifically, this Court focused on whether the outside research was shared with other jurors, but the prejudice inquiry should have also addressed the nature of the research and whether it was contrary to the existing instructions, as well as the impact of that research on the other jurors and whether they could set aside that information and base their decision solely upon the court's instructions. It is also his contention that because this Court did not employ the correct legal standard that it necessarily abused its discretion by granting a mistrial. See Cooter v. Hartmarx Corp., 496 U.S. 384, 405 (1990) (A court "would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence."); Rish v. Simao, 368 P.3d 1203, 1209 (Nev. 2016) (same).

There was no manifest necessity for a mistrial

The State contends that this Court did not abuse its discretion in finding that there was manifest necessity for a mistrial. Opposition at 16. It cites to United States v. Steele, 785 F.2d 743, 746 (9th Cir. 1986) in support of its argument. Opposition ta 16. Steele, however, supports Mr. Granada-Ruiz's position in that is reflective of the type of inquiry which should have taken place here prior to the declaration of a mistrial. Specifically, in Steele, upon learning that jurors

had consulted a dictionary to determine the meaning of certain words, the trial judge (1) requested that counsel file points and authorities regarding the legal effect of the jury's unauthorized use of the dictionary; (2) directed the parties to propose questions to be asked of the jurors by the court; (3) questioned all of the jurors and made specific inquiries about their research; and (4) compared the dictionary definitions at issue with the jury instructions and made a determination as to whether any differences in the definitions was prejudicial. Id. at 745-46. After this thorough analysis, the trial court determined that a new trial was not warranted and the Ninth Circuit Court of Appeals agreed. Id. at 746-49. Steele is fully consistent with Mr. Granada-Ruiz's position here and supports his contention that a mistrial should not have been declared under the circumstances of this case.

The State attempts to distinguish this case from Steele and Zana v. State, 125 Nev. 541, 216 P.3d 244 (2009), by arguing that in this case, Juror No. 3 used the internet to search for information about blood alcohol content, premeditation and deliberation, and self-defense. Answering Brief at 18. Juror No. 3, however, did not share his information about blood alcohol content with the other jurors, and there was no showing of any kind that either (1) the information he found about premeditation and self-defense was meaningfully different than the law as defined in the court's instructions, and (2) the other jurors accepted or acted upon his research. Instead, the record shows, by the 11-1 vote, the physical distance between the jurors observed by the marshal, and the testimony of both Juror No. 3 and the foreperson, that the other jurors did not accept Juror No. 3's definitions and instead told him that it was wrong to conduct outside research. There was also no showing whatsoever that upon removal of Juror No. 3, and the seating of an alternate juror, that the jury could not follow the Court's instructions and conduct their deliberations without reference to the outside information.

The State next argues that even assuming that Juror No. 3's misconduct did not mandate a mistrial, that it would have been necessary to declare a mistrial because the jury was hung.

Opposition at 18 fn. 1. The State fails to cite any authority in support of this argument.[1] This argument was never presented to this Court in the proceedings which led to the mistrial. To the contrary, both parties and the district court were in agreement that Juror No. 3 should be excused. The remedy upon his dismissal should have been appointment of an alternate juror and instructions for the newly constituted jury to begin deliberations anew. See Carroll v. State, 111 Nev. 371, 373, 892 P.2d 586, 587 (1995).

The ends of public justice are not served by a new trial

The State contends that under Illinois v. Somerville, 410 U.S. 458 (1973), a mistrial may be declared where it is dictated by manifest necessity or the ends of public justice. Opposition at 19. In Somerville, a mistrial was declared before any evidence had been presented based upon a deficiency in an indictment which could not be promptly corrected. Id. at 459. Here, in stark contrast, a mistrial was declared after the complete presentation of the State's case: after opening statements, after weeks of testimony by witnesses, after closing arguments, in the second day of deliberations. In this case "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." United States v. Jorn, 400 U.S. 470, 479 (1971) (quoting Green v. United States, 355 U.S. 184, 187-88 (1957)). In considering the totality of the circumstances which are relevant to an "ends of justice" analysis, it is important that 11 jurors had found that the State failed to meet its burden of proof and that Mr. Granada-Ruiz should be acquitted. The only juror who did not hold this view was the one who committed blatant misconduct. The State had a full and fair opportunity to present its case, and in doing so it did not convince over 90% of the jurors that Mr. Granada-Ruiz should be convicted. The Double Jeopardy Clauses encompasses the defendant's "'valued right to have his trial completed by a particular tribunal.'" Oregon v.

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[1]The jury here had deliberated for only a few hours and had not been given an Allen or dynamite charge. See Wilkins v. State, 96 Nev. 367, 372-373, 609 P.2d 309, 312 (1980). It would have been premature to declare a mistrial based upon a finding that the jury was hopelessly deadlocked.

Kennedy, 456. U.S. 667, 671-72 (1982) (quoting Wade v. Hunter, 336 U.S. 684, 689 (1949)). That right was violated here.

CONCLUSION

Mr. Granada-Ruiz respectfully submits that his Double Jeopardy rights were violated by the declaration of a mistrial in this case and that he cannot be tried a second time for these charges. The Indictment must therefore be dismissed.

DATED: 1/13/2017

SUBMITTED BY

/s/ JONELL THOMAS

ALZORA B. JACKSON
JONELL THOMAS
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that service of the Defendant's Reply to the State's Opposition to Motion to Dismiss - Double Jeopardy, was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

PARTY	EMAIL
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Dated: 1/13/2017

/s/ Kathleen Fitzgerald
Legal Executive Assistant for
Special Public Defender

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DEPT. NO. 25

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA, Plaintiff, vs. GAMBINO GRANADA-RUIZ, Defendant.	REPORTER'S TRANSCRIPT OF MOTION TO DISMISS-DOUBLE JEOPARDY/MOTION FOR OR RELEASE

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: WEDNESDAY, JANUARY 18, 2017

REPORTED BY: Sharon Howard, C.C.R. #745

APPEARANCES:

For the State: NICOLE CANNIZZARO, ESQ.
BINU PALAI, ESQ.

For the Defendant: ALZORA JACKSON, ESQ.
JONELL THOMAS, ESQ.

* * * * *

LAS VEGAS, NEVADA; WEDNESDAY, JANUARY 18, 2016

P R O C E E D I N G S

* * * * *

THE COURT: Page 3, State of Nevada vs. Gambino Granada-Ruiz. I'll note that Mr. Granada-Ruiz is present out of custody. Go ahead and state your appearances. We'll pick up where we left off with the argument with regard to the motion to dismiss.

MS. JACKSON: Good morning, your Honor. Alzora Jackson and Jonell Thomas with the office of the Clark Counted Special Public Defender here with Mr. Granada-Ruiz out of custody.

THE COURT: Good morning.

MS. CANNIZZARO: Good morning, your Honor. Nicole Cannizzaro and Binu Palai on behalf of the State.

THE COURT: Thank you.

So I have had the chance now to review all of the pleadings in the case. We had continued the matter. It was a fairly quick set. Ms. Cannizzaro asked for an opportunity to brief in response. We have now seen the State's opposition.

I know that we had some argument, or at least touched upon some issues, when we were here before. The primary focus being, did the court have other alternatives.

Was there really manifest injustice here and manifest necessity such that there would have been an injustice not granting this, or were there alternatives that could have been or should have been accessed by the court.

One of the things that was interesting I think that was pointed out in the opposition -- I'm throwing this out there because I do have such vivid recollection of this circumstance -- was that the State is arguing, well, defense at the time wasn't arguing for anything. And the reality was truthfully in that particular case I think we can all honestly say what we thought was happening in that jury room, until we canvassed the folks, was the State was the one who was arguing, well, let's not throw the baby out with the bath water, so to speak. Let's see if we can save this matter, if it's only been a few things, or if it hasn't been pervasive.

One of the things I think you go through very well Ms. Jackson, sort of all the considerations that you have to come into and how pervasive this was. One of the things that stood out when it started to unfold of what actually occurred here was that that particular juror who had independently researched over the weekend shared the fact that that occurred with the foreperson who he happened to run into coming into the building that morning. The foreperson rather doing his duty to allow the court to be

aware and counsel to be aware that this had occurred so only perhaps this individual would be lost to us -- we had two alternates at the time. Or if we needed to lose that person and the foreperson, we still had two alternates. But contrary to that, the foreperson not only did not say anything but allowed this individual to come in, and it was quite patently obvious that the jurors, all of them, had been exposed to this information. All of them had looked at that information throughout the course of the day. I don't believe we ended up actually being -- having identified to us the circumstances and being able to actually discuss it with folks until well into the later part of the afternoon before it came to light what was occurring.

Those are the circumstances from which we then, now, in hindsight have to go back and look and say were there circumstances.

One of the last things to wrap up before I throw it to you, Ms. Jackson, on your motion and hear any final argument for today's purposes is the Court had indicated before it brought in Juror No. 3 or the foreperson to have any discussions that, you know, if it turned out that the circumstances were such that this was limited or limited to discussions that occurred or some other reason to believe that this had not permeated the deliberations for this significant period of time and all the jurors had not been

exposed that we'd consider some alternative. But if the circumstances turned out to be it was much more pervasive, then the Court was going to understand that that would be the necessity to declare the mistrial.

I said it in advance so that -- not necessarily to predetermine an outcome. But I said it in advance because of the circumstances of what I was anticipating, which was somehow we'd want to start to qualify the circumstances after the fact. I wanted everyone to know the playing field I expected.

I didn't know what the information was that was going to come to light and where it would land on the spectrum, but I wanted everybody to understand the playing field.

Then of course we all got the eleventh-hour surprise where the 11 to 1 was going was in favor of Mr. Granada-Ruiz and not in favor of the State.

I give that by way of background to see how then you want to fit your arguments into those facts and circumstances. I personally believe, but this is not driving my decision in any way, that this would have been a mistrial regardless. Because at the time that this came to light it came to light because that particular juror was no longer deliberating. That particular juror could not be moved off of his position. That particular juror, for all intents and purposes, had drawn the line in the sand. Those

are my words, not anybody else's.

Ms. Jackson.

MS. JACKSON: Your Honor, thank you. With all due respect my learned co-counsel, who is a much, much more brilliant writer than I am, Ms. Jonell Thomas, authored the motion and the reply.

THE COURT: I never know when I see these things who did what.

MS. JACKSON: She is a much better writer than I am.

THE COURT: The pleadings were spectacular on both sides. It really gave the court the opportunity to step back and do the gut check and review everything and have, at least, a tentative opinion coming in here today. But I always reserve a final opinion until I hear full argument.

Ms. Thomas.

MS. THOMAS: Thank you, your Honor. If I could just clarify. Did the court receive the reply and have a chance to review that. It was filed last Friday.

THE COURT: We have seen all the documents.

MS. THOMAS: Your Honor, I think the prejudice analysis has to go one step farther. And that is not just were the other jurors exposed to the information, but what was that information that they received. Was it different then the Court's instructions. And could they disregard the

information they received from Juror No. 3 and begin their deliberations anew, only looking at the Court's instruction.

When we closely examine prejudice in those terms, which I think the case law instructs, that we need to -- that we first look at what is it that Juror No. 3 found out. And he -- the record, contrary to what the State said in its opposition, bears out that he did not share the information about the blood alcohol level with the remaining jurors. That he, in fact, did that research. Certainly that was misconduct. He should have been removed from the jury for that. As well as his legal research. But as to the blood alcohol level, he did not share that information.

What he did share was his research --

THE COURT: Just to clarify the record. The Court's recollection of that circumstance is he shared it with the foreperson on the way into the courthouse, but the deliberations, what he shared in his independent research focused solely on the self-defense issue. I think it was clarified that that blood alcohol discussion did not come up in the group.

MS. THOMAS: I think that's correct.

My reading was that he told the foreperson I did this research, but did not tell him the contents of the research, his conclusions that he came up with.

THE COURT: I can't say I independently recall the

circumstances. We had quite a bit of discussion with the foreperson, so that would be in the record. Because once we realized what was occurring we had the foreperson -- we had the foreperson in first. Then we had the foreperson come back in. My recollection, I guess, was that there was some discussion about what it was that he had looked into on the blood alcohol content with the foreperson, but not detailed details. But that neither of them had brought that up or discussed that with the remainder of the panel.

MS. THOMAS: I certainly agree that most of the focus was on the legal research dealing with the definitions of premeditation and deliberation as they related to the self-defense concept. I think when we look at that and what with the content of his research that he shared and compare it to the jury instructions, there's really not much of a difference.

He's saying that deliberation -- and he based this based on the prosecutor's argument, closing argument, and there was no objections to that. The prosecutor argued, as they often do, that premeditation can be instantaneous. Like going through a traffic sign and deciding to run a red light. But it doesn't have to be a day or two. It can just take minutes. This is a common argument. We see it all the time. And there is language in the premeditation instruction that bears that out. Albeit different then the

deliberation instruction.

So when we look at the content what did he find as he did his research. That premeditation doesn't have to take a long time. That does not differ from what the court's instructions were. He's not bringing in a whole new concept. He's not bringing in something that's contrary to the court's instructions. Although he certainly should not have been out there doing that research, it's not like he came in with something completely contrary or really anything contrary to what the court had told the other jurors.

The second part of the prejudice that's critical to look at is how did the other jurors handle that information. And throughout the transcript we see the other jurors telling him, you weren't supposed to do that. You weren't supposed to go out and do research. You were supposed to follow the court's instruction. We're not going to look at your definitions.

There's the 11 to 1 split that's known from the beginning. There's the fact that the marshall reports the juror is off by himself and is not deliberating with those other jurors. So when you look at it in that context, had the court brought those jurors in and said, can you disregard what Juror No. 3 stated, the response to going to be, well, we already did disregard it. We had already

rejected what he was saying. And I think there is every indication in the record that those jurors could have set aside that information, had an alternate brought in and have deliberations begin anew, instead of the very drastic remedy of declaring a mistrial.

THE COURT: Ms. Cannizzaro, can I just interrupt you with one thing. One of the things that strikes me is there was a significant time frame that went on here that I don't think is necessarily being accounted for.

The first opportunity the court was aware that there had been some desire on the part of -- well, the foreperson brought out two notes. One from Juror No. 3's own admission of what he had done. And one from another juror. I can't remember the number.

MS. CANNIZZARO: No. 12.

THE COURT: 12 -- who sort of basically was acknowledging what No. 3 had done and the concerns. That was somewhere around mid-afternoon. They started deliberating at 9:00 in the morning. And I think the first indication of trouble, if you wanted to call it that, was some indication that Juror No. 3 was having some medical issues around mid-day. At which point we got him a medical person in. They checked him out. They indicated he said he could continue to deliberate and was going to go back and deliberate.

The portrayal here that there really wasn't any lengthy discussions, or that there really wasn't any deliberations, or ultimately that these folks sort of rejected it out of hand, he shouldn't have done that, and moved on. That's not the impression the court had at the time. I know this is a little difficult. As I said, we are doing a hindsight is 20/20 analysis to some degree here. From the foreperson's explanation it appeared that they had spent a goodly part of the day deliberating on this information. Whether they ultimately, at the end of the day, were persuaded or not is not the same thing as they weren't potentially tainted and influenced in some fashion. I guess I'm asking you to speak to that. Do you recognize from your review that time frame of deliberation.

MS. THOMAS: I do. It certainly -- they deliberated, as I read the record, for some time Friday afternoon.

THE COURT: He did his research on Friday -- weekend.

MS. THOMAS: They were having a dispute over the blood whole level and other issues. He did his research. He tells the foreperson on Monday morning as they're walking to the courthouse that he did this research. The foreperson tells him you weren't supposed to do that, but does not come to the court.

Juror No. 3 has been having some additional issues that morning, resulting in the medical call. The foreperson goes in and sees that No. 3 is not deliberating.

Then we have the notes coming back out saying he's not deliberating.

THE COURT: So -- not to belabor the point. I want to get your recitation of the facts.

I'm not factoring in -- if I'm going back to look at, as you pointed out in your briefing -- the factors to consider are myriad, but they include how is the material to be introduced, the length of time it was discussed by the jurors, the timing of that introduction. You going into some discussion about whether it would make it ambiguous, whether it was substantially different from the instructions.

I guess my point is my understanding of we had several hours of deliberation on this information before it started to go south because Juror No. 3 wasn't going to move, and the other jurors were ready to move on. But that doesn't mean it wasn't material and permeating their deliberations for a good part of the day. That's again sort of the thought process the court has as far as its understanding.

Your recitation of those facts still seem to stand on a position of, well, once it was revealed that this juror did the research, everybody was like you weren't supposed to do

that, then there was no discussion, and then they moved on and he was ostracized thereafter. That is not the impression the court had from the discussion.

MS. THOMAS: Your Honor, I apologize if that's the impression I gave. Certainly it was several hours that they were in there. I don't think the record bears out that that was the only topic they were discussing during those several hours. I think they were deliberating as the mystery of the deliberations go. We never really know what goes on in there. There could have been other subjects as well.

THE COURT: I just remember the foreperson indicating, we pretty much were talking about it all day.

MS. THOMAS: Certainly premeditation and self-defense are the issues in the case. This is not a who dunnit. This is what was the state of mind.

I would expect that to be at the heart of deliberations, but I think, again, looking at how was he brought in any different than what the court's instruction said. How is this jury prejudiced by whatever he had to say.

And critically I think there has to be an examination of the jurors. Can you set this aside.

THE COURT: That's what the State specifically advocated for.

MS. THOMAS: I think that that examination needed

to happen and it didn't happen. I realize certainly I had days to research this. I think in these proceedings it would have benefited for everyone to walk away and not come back with one case, but to do some research. So the record is clear, this was a new situation for the court, new situation for defense counsel. And I think a little more research, a little more analysis should have entered into this before decisions were made.

THE COURT: If only district court judges had the luxury.

MS. THOMAS: The opposite side of that now is we're facing the time for a whole new trial, preparation for a whole new trial.

And finally, and I don't want to take up all afternoon here. I think everything is really set forth in writing. But at the bottom there there are two things. Mr. Granada-Ruiz stood trial. This is not a case where a mistrial was declared immediately after jury selection, or in opening statement. There was witnesses, testimony, and closing arguments, and he ran that course that he's expected to run. And to expect him to do it a second time is exactly what the double jeopardy clause is designed to protect against.

It's designed to protect against these prosecutors now going over those transcripts and figuring out how they could

do it better. And working with witnesses to make sure their presentation is better. And going to the other jurors, perhaps, and saying what did we do wrong. What could we do next time. That's exactly why we have a double jeopardy clause, is to prohibit those kind of actions from taking place.

THE COURT: So Ms. Thomas, this may be an unfair questions, but I've got to put it out there anyway.

The record also reflects that these jurors were deadlocked. The record also reflects they had stopped deliberating. They were no longer going to deliberate. Juror No. 3 was not going to move off his position. I believe there was some reports in some fashion, and whether or not it's in the questions or is in the dialogue with the individuals, that basically, you know, Juror 3 was separated from the table and not even engaged any longer. And it was going to sit there 11 to 1. So there was going to be a mistrial regardless, right.

MS. THOMAS: No, your Honor. Respectfully not.

THE COURT: Why not -- I can't pull a juror out that doesn't want to deliberate and put an alternate in. If they're deadlocked and they can't reach a unanimous verdict and it's 11 to 1, even if it's an acquittal, it's a deadlock, and it's a mistrial. This sort of understanding that somehow you've got some guy who something happened and

now we just pull him out and put someone else in, you know, if this had not come to light we'd have sat there with a deadline, would we not.

MS. THOMAS: I agree completely. The court can't pull out a juror because they either -- it's 11 to 1.

But the court can, and the court should pull out a juror who is committed misconduct. Who, by his own notes, his own testimony went out and did research over the weekend, contrary to the court's instructions. Who did factual research, who did legal research. Both parties under trial court agreed Juror No. 3 should not have been there. He committed misconduct. It was entirely proper to dismiss him, seat an alternate. Tell the jury, make sure they disregard what they heard and tell them to start deliberations anew.

THE COURT: My point is it all came to light at the same time. What came to light first was that they were no longer deliberating. What came to light second was because the note -- the order they came out -- the first note -- we're not deliberating. We're deadlocked. Tell us what to do, and I said get back in there and keep deliberating. They went back in to keep deliberating and about 45 minutes to an hour later came out, well, I've done this research and I'm not budging. This other person said he's done this research and we can't -- whatever. So the

deadlock issue came first. I did not declare a mistrial at that sometime. I told them to keep deliberating. Then what came to light was the research. So it all came up at the same time. It didn't come up that we found out he was researching and pull the plug. It came up as a deadlock first, and I told them to keep deliberating.

MS. THOMAS: Your Honor, this is not a case in which a dynamite instruction was given where the jury had been out for 4 days. It was really a matter of hours after a lengthy trial and the juror wasn't -- the mistrial was not declared because we are a hung jury. The mistrial was declared because of the juror misconduct. And we contend, and according to the case law put out in authorities, that the remedy there is to dismiss that juror and seat an alternate. It's one of the reasons we have alternates.

Finally, your Honor, in looking at the ends of justice analysis I think it is relevant that 11 of 12 jurors, the ones who weren't committing the misconduct, all voted in favor of acquitting Mr. Granada-Ruiz. What possible ends of justice analysis would say, yeah, one juror, less than 10 percent, let's do a second trial. The State had a fair opportunity here to put on their evidence. They failed to convince over 90 percent of the jurors that he was guilty. We should be done. And although that's not traditionally a part of a mistrial analysis, a double jeopardy analysis, I

think when the court is looking at the ends of justice it's a consideration that the court can make.

THE COURT: Ms. Cannizzaro.

MS. CANNIZZARO: Thank you, your Honor.

What the double jeopardy clause is meant to protect against is the State making multiple attempts to attempt to convict somebody. What I would note, a lot of the case law that I looked at was that those -- the case law is replete with instances wherein the State is requesting the mistrial, or wherein the State is acting inappropriately and forces the issue of a mistrial.

In this case what I would point the court to, and I know your Honor is well aware of this, the State did not cause this mistrial we did not ask for that mistrial. So to --

THE COURT: At some point Mr. Palai did join in in what he perceived to be the defense request for mistrial.

MS. CANNIZZARO: Your Honor, what I would note about that, and I think that that's absolutely a correct point, is that when we came into this courtroom to discuss the notes that had been received by your Honor, no one was jumping immediately to a mistrial. It was is this a mistrial. So, yes, we can sit here and talk about how perhaps the parties should have done some additional briefing, but I think the briefing done at this point

indicates that the court went through a proper analysis, regardless of that fact.

When we look at the cases wherein an alternate juror was sat, several examples that were brought up Bowman vs. State, Zana vs. State, and State vs. Castaneda, in each one of those instances what is different in this case is in each one of those instances the juror misconduct either didn't reach the deliberation room or was not discussed at length by the jury. In this case neither the court nor the parties jumped to any conclusions with respect to the mistrial. Instead this court opted to canvass the jurors and starting with the foreperson who not only advised this court that the research had been done, but that it had been discussed at length.

I know that we want to jump to the end where we're talking about 11 to 1 deadlock, but if you review the testimony from the foreman, Juror No. 10, he indicated that the jury was going back and forth in their deliberation and their discussions and at some point that's when the research entered and that's when he started discussing the research. We aren't talking about 11 jurors who sat around for hours saying we are for not guilty and this one is for guilty and at the eleventh hour this juror said, well, I did some research and that's how come. This is something that was discussed back and forth and went back and forth and it

played a significant factor in the deliberations themselves. I think your Honor was correct in pointing out that this deliberation about this outside research went on for quite some time.

If you look at the case law, this is exactly the type of circumstance in which the courts are saying, listen, if this was a juror who didn't make it into the deliberation room, it would be more appropriate to seat an alternate juror. But what was reflected in this court's canvass of the jury foreperson -- also Juror No. 3, who committed the misconduct and then the subsequent canvass again of the jury foreperson, who said this information had been shared very early that morning, had been discussed at length. The juror foreperson -- Juror No. 10 also went on to say that the jurors continued to discussion the findings of Juror No. 3, and that it was repeatedly brought up because of the high tensions in the jury deliberation room.

Your Honor, this is not a situation where this outside research did not play a very significant factor in how the jury ultimately came to the conclusion. I think everyone in this courtroom was honestly surprised and shocked when we learned that this had been going on all day long. This wasn't a mere mention of something that was not material to the case.

Additionally, I think when you look at the record, even

this court was confused about what exactly it was that Juror No. 3 had found online, because he himself indicated that what he researched online was different from what he found in the court's instructions that were contained in the jury deliberation room. So we have a lot of information that's being shared, that's being deliberated upon that's influencing the ultimate outcome of this trial. And what the ends of justice is meant to talk about and what creates a manifest necessity to declare a mistrial is when the jury's verdict is no longer based upon the evaluation of the evidence in this case, giving both sides equal and fair weight to what has been presented and where it's being influenced by outside resources. That's why a mistrial was absolutely necessary in this case. And that's how come when we first started we were talking about, well, how do we go about this. I know your Honor was there for that. We went through a very lengthy canvass of several jurors before coming to the ultimate conclusion. I think everybody was upset and shocked and honestly angry about the fact that this had been going on all day long, that it substantially influenced this jury's ultimate decision, and the reason for the deadlock. There is no way, as this court aptly pointed out, to parse those things out and to give some sort of curative instruction or to seat an alternate juror, when the deliberations have been based so much on what this juror had

researched.

I think it's simplistic to say that because at the end of the day the jury was 11 to 1 that these jurors were rejecting what that juror had said based upon the testimony of Juror No. 10. The foreperson indicated that they actually were going back and forth. The tensions were high. Then they had a lot of discussions around this particular research. No one brought that to the court's attention at 9:30 in the morning when they started to discuss this. The jury foreperson didn't bring that to the court's attention when he was walking into the courtroom.

A lot of these other cases we're talking about there's no prejudice, no manifest necessity, that information isn't reaching the jury deliberation room. And even if it is, somebody is advising the court immediately that that occurred. If that was the situation, certainly I think potentially we can talk about the outcome being different. We can talk about the State's argument would definitely be different in this regard. I think the court absolutely exercised sound discretion in its ultimate determination based upon the very lengthy canvass of these jurors. And at that point a mistrial was absolutely necessary.

THE COURT: Thank you.

Ms. Thomas, any final word.

MS. THOMAS: Your Honor, I think it's critical to

look at what did this juror bring to that jury deliberation room. He told them that premeditation doesn't have to the last an hour, or a day, or even a few minutes. That it can be instantaneous, as fast as going through a stop light. That was the prosecutor's closing argument. It is difficult for me to understand how the prosecutors can complain now that the jurors heard the same information that they said in closing and that that's prejudicial.

When you look at the content of what the juror researched and compare it to the jury instructions, it's the same. So what is the harm. It was absolutely wrong of him to do that research, in addition to the factual research, but when you look at the content of what he shared and say how can the State claim that when he goes in there and says the State was right in their closing argument, how can they now say that's unfair. That's not right.

When it became clear through the examination of the jurors that the 11 to 1 split was in favor of the Defendant, that's when the State changed its tune. That's when the State finally called for a mistrial. They were right early on that it wasn't right just to look at prejudice in terms of was the information shared. It needed to go a step farther. What was the information. How was it harmful. And also could the jurors set that aside. When you look at those two factors, they were correct that a mistrial

shouldn't be granted without a specific showing of prejudice.

In this case, the prejudice finding isn't supported adequately by the record. And the mistrial should not have been declared that prematurely. And double jeopardy now prohibits the next trial.

Thank you.

THE COURT: I have said this a couple of times already today in the argument, and we need to come to a conclusion here.

The idea of hindsight being 20/20, this really is entirely a hindsight argument. One of the things that also stands out to me is that -- I have to be candid. It still wasn't a hundred percent clear to me after we had canvassed Juror No. 10, the foreperson, and Juror No. 3, and then it finally dawned on us he'd been researching, it wasn't until we brought the foreperson back that we all truly connected to the idea that this was an 11 to 1 acquittal, rather then 11 to 1 conviction, and that was the twist.

At that point we already knew from the lengthy canvass of the foreperson and from the lengthy canvass of Juror 3 the level of involvement the material information in the deliberations that already occurred. And there wasn't any doubt in anyone's mind that a mistrial was an absolute manifest necessity, including the court's.

I think with this hindsight now, that we brought the foreperson back in to find out what the vote actually was, makes it seem so unjust. But the reality is -- I would suggest to you, and I have no statistics to back this up -- but I would suggest to you that the reason why both of us thought -- and I certainly know I did -- that we were looking at an 11 to 1 conviction is because the vast majority of the time that's what it is. And God forbid that we have a situation where somebody did some research, somebody did something and we have an 11 to 1 to convict, then we said, no, no, you can set that aside. Let's pull the one person out and put someone else in, and now you have a conviction. Now someone has gone to prison on a conviction that we have no way to know for sure how that information coming in changed everybody.

What we know are the factors are that we have to look at was it material. How involved was it in the deliberations and what the circumstances were. I just cannot justify hindsight, even knowing it was an 11 to 1 to convict (sic), which is what we found out in the third round of canvassing, I cannot look at this and say that somehow there's not a manifest necessity for a mistrial. God forbid I ever employ a standard in this department that jurors can have all day, half day minimum deliberations on material matters that all the jurors are discussing and somehow look

at that and say that's not a basis for a mistrial. I cannot in hindsight look back on the circumstances here and find that there was a basis not to have declared a mistrial, or there were any other options that the court should have or could have employed.

I don't disagree with any of the assessments made in terms of, you know, that this juror simply didn't get it. The instructions were there, and his justification for his research was I didn't see that information in the instructions so I had to go and look at it. And to some extent what he found may have very well matched either arguments of the prosecutors or the instructions. But the bottom line was that it was material information, it was deliberated on for a significant period of time, and the court had, right or wrong, indicated going into the canvassing of the jurors that if this could be something that could be parsed out, if this could be something the juror could be pulled out and alternates put in and it not have been something that was material and permeated the deliberations, then we would absolutely want to do that. But that's not what occurred here. I cannot in hindsight find that there is a basis to apply a double jeopardy argument.

It's a very difficult call to make. I again as a participant in these processes, I can tell you right now

that it's changed how I do jury selection in a significant way. Hopefully we'll never have a reoccurrence of it. But to step back and just look straight at what is the requirement for double jeopardy to attach and the circumstances in this case, I believe still to this day in hindsight that there was manifest necessity at that time. I also, just a side note, believe it still would have ultimately resulted in a mistrial based on the deadlock. But that's neither here nor there. As you said, my declaration was based on the research that the juror had done that he had brought to the table that had been discussed clear with all the jurors and that that was the manifest necessity for the mistrial. I can't let hindsight undue that.

So the motion to dismiss, based on double jeopardy, is denied.

MS. THOMAS: Your Honor, it's our intent to file a writ of prohibition with the Nevada Supreme Court. Might we ask for a stay of trial pending resolution.

THE COURT: Haven't we already continued the trial anyway.

MS. THOMAS: It's scheduled for February.

THE COURT: I thought we continued it.

MR. PALAI: We discussed the possibility of continuing, your Honor, but we --

THE COURT: Certainly. I have no quibble whatsoever with the Supreme Court being asked to take a look at this. I don't know when or how they will do that.

If we left the trial date and you get an emergency motion up there to get it looked at, but if you wanted to do that how long it would take. I think we all understood this was going to be continuing anyway.

Understanding it's continuing, we can go into a later stack in the year to give you the opportunities to have that reviewed by our appellate courts and their sound discretion and how they view these circumstances. I have no problem continuing the matter for that purpose.

We also have the issue remaining, and I asked the defense to bring forward if they had more information with regard to the request to be off house arrest, but before we do that let's look at the trial dates.

Our stacks, as we know it, we have a September stack. We have a November -- September early October stack. Then we have an -- an early September through early October. Then we pick up again mid-November through mid-December. Those are the end of year stacks, if we're going out that far.

MR. PALAI: Defense counsel's pleasure.

MS. JACKSON: I would prefer the October stack. I have been -- I believe in Department 5, where I was this

morning, a capital matter was set for February 13th. I asked them before I left there to set that capital case in September and because I'm here I don't know what date they gave me. I believe that capital case will resolve. But I know how Mr. Granada-Ruiz feels about going forward, and that's why I'm being very candid with the court.

My capital case is probably 80 percent resolved, but it's a capital case. I have to just -- if I may just find out when they set that.

THE COURT: Please. If you can get your internet contact in here feel free.

While you're doing that, right now I do have a capital case set in my September stack. It was continued out of this stack already. I would expect it to go, but it is also one that has the potential it could resolve. I don't know. I have the latter part of the stack with no trials set. And I have the very beginning of the stack with no trials set. So that's September. Of course we have the November -- correct my if I'm wrong, we might have looked at it at some point and set to be a trial and because of the circumstances and the facts of the case that wasn't desirable, if I'm not mistaken.

MS. JACKSON: I found out they set the capital matter for September of 2018. So, yea. We can set this one.

THE COURT: My first week in September would be September 5th.

MR. PALAI: Court's indulgence. I have a firm set in Judge Elsworth's. I'm just checking the date. September 8th, that works.

THE COURT: September 5th.

MR. PALAI: That works.

THE COURT: I'll have my clerk call out the official calendar call and trial dates.

THE CLERK: Calendar call August 28th at 9:30.

MR. PALAI: September 6th is when Judge Elsworth has the firm dates -- murder case in her courtroom. Also coincidentally a mistrial. So I can -- can we get a different date.

THE COURT: September 18th.

MR. PALAI: That's fine.

THE CLERK: Calendar call September 11th at 9:30. Jury trial September 18th at 10:30.

THE COURT: Last matter on calendars is the motion for OR release and setting reasonable bail. I don't want to further belabor this issue since we have been on calendar I think by State's count 9 times, defense's count is something less than that, but any number of times. What I invited was there to be information more compelling and all I mean by that is some substantiation that there had actually

continued to be difficulties. And I put that to the defense to provide.

MS. JACKSON: Your Honor, yes. I misapprehended the reason for contact from Mr. Granada. Every time he has an appointment, I would receive a communication. When I sought to obtain back up documentation, it was from 14 and 15, and I did secure the verification of residence. I have nothing further to present in that regard.

THE COURT: I'm going to deny and I'll still say without prejudice the motion for OR release or setting of reasonable bail, but ultimately the request is being to OR release the Defendant so he is no longer bound to house arrest. I will always leave in place my prior determination, which is if he's not in the community and he has to be elsewhere with family in another community, I'm not going to try to have some sort of tethering, if you will, follow him elsewhere. If he remains in this community, going to school in this communities and the circumstances of this community, nothing has changed from the court's prior assessment, and I don't perceive there to be an impediment to his medical requirements being met. So again it's denied without prejudice.

MS. JACKSON: Thank you.

MS. CANNIZZARO: One quick housekeeping matter. Ms. Jackson did request the State for some additional copies

of the medical records in this case, so, for the record, I'm giving her a copy of those. They should be on that disc.

THE COURT: Okay. Thank you. I know we spent a lot of time on this matter today. It's important to do that. I appreciate everybody's preparations and discussions. We will see you again on a future date.

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CERTIFICATE

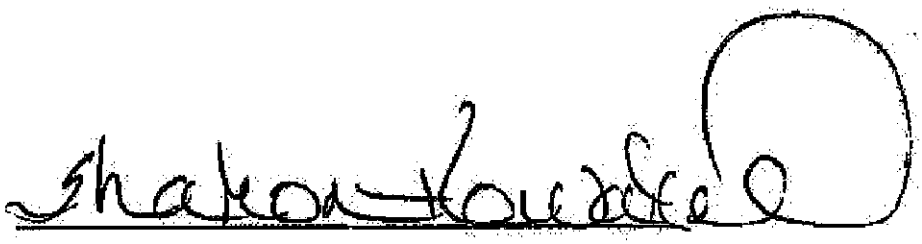
OF

CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth; that the testimony and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing is a true record of the testimony and of all objections made at the time of the proceedings.



Sharon Howard
C.C.R. #745

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GAMBINO GRANADA-RUIZ, aka,
Gambino Grandaruiz, #6005262

Defendant.

CASE NO: C-15-305044-1

DEPT NO: XXV

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: JANUARY 18, 2017
TIME OF HEARING: 9:00 AM

THIS CAUSE having come on for hearing before the Honorable KATHLEEN DELANEY, District Judge, on the 18th day of January, 2017, the Petitioner being present, represented by and through his counsel, ALZORA JACKSON, ESQ. and JONELL THOMAS, ESQ., the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through NICOLE J. CANNIZZARO, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On March 13, 2014, Gambino Granada-Ruiz (hereinafter "Defendant") was charged by way of Criminal Complaint with one count of Battery Resulting In Substantial Bodily

Harm (Category C Felony – NRS 200.481). On April 7, 2014, the State filed an Amended Criminal Complaint charging Defendant with Count 1 – Attempt Murder (Category B Felony – NRS 200.010, 200.030, 193.330) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C Felony – NRS 200.481). The Clark County Grand Jury heard testimony on April 22, 2014, and returned a true bill against Defendant. On April 23, 2014, Defendant was charged by way of Indictment with Count 1 – Attempt Murder (Category B Felony – NRS 200.010, 200.030, 193.330) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C Felony – NRS 200.481).

2. On March 5, 2015, and March 12, 2015, the Clark County grand Jury again heard testimony in the instant case, and returned a true bill against Defendant for Count 1 – Murder (Category A Felony – NRS200.010, 200.030) and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C felony – NRS 200.481). On March 18, 2015, Defendant was arraigned on the Indictment charging him with Count 1 - Murder (Category A Felony – NRS200.010, 200.030), and Count 2 – Battery Resulting in Substantial Bodily Harm (Category C felony – NRS 200.481).
3. A trial was eventually scheduled for September 8, 2015, with a calendar call date of August 31, 2015. Trial began in this case on September 8, 2015.
4. After seven (7) days of trial testimony, the case was submitted to the jury on September 18, 2015. Later that day the jury was sent home for the weekend, and ordered to return the following Monday, September 21, 2015.
5. The jury returned on Monday and began deliberations that morning. At about 11:30 am, the Court received a note from the jury foreperson stating that one of the jurors, Juror Number 3, was feeling ill, had high blood pressure, and wanted to go home. The Court advised the marshal to call medical and have medical staff attend to Juror No. 3. The marshal advised medical staff of the issues once they arrived, and they proceeded to examine Juror No. 3. Following examination by medical staff, Juror No. 3 indicated he

could take blood pressure medicine for his high blood pressure, and advised he would like to continue to deliberate. The jury resumed deliberations shortly thereafter.

6. Later that afternoon, at around 3:00 pm, the Court again received a note from the jury foreperson advising the jury was deadlocked at 11 to 1. When the marshal entered the jury deliberation room to get the note, he noticed Juror No. 3 had physically distanced himself from the other jurors, and the marshal relayed his observations to the Court. The Court then elected to call counsel and advise of the note from the foreperson.

7. The jury was instructed to continue deliberating. The Court then received two (2) additional notes from the foreperson – one authored by Juror No. 3, and one authored by Juror No. 12.

8. The first note, from Juror No. 3, stated that he had researched and fact checked a law on the internet, and that he refused to disregard the information he researched on the internet in his deliberations, even though the Court had already provided an instruction advising the jury it was not to consider outside evidence, nor conduct any outside research. The second note, from Juror No. 12, stated that Juror No. 3 had done research on the internet over the weekend, and apparently had shared that with the other members of the jury. The Court indicated it was unclear, based upon these notes, whether Juror No. 3 had shared any extrinsic research with the rest of the jury, and to what extent.

9. At that point, the Court noted it was unsure of whether this issue rose to the level of declaring a mistrial, or if it was a situation where the Court would be able to sit an alternate juror and allow the jury to continue with deliberations.

10. The Court ultimately decided the best course of action was to canvass the jurors and then make a determination of whether a mistrial was necessary.

11. The Court first questioned the foreperson, Juror No. 10. and inquired whether Juror No. 10 was aware if Juror No. 3 had shared any extrinsic information with all of the jurors, or whether the information had been shared separately with just Juror No. 12. Juror No. 10 explained Juror No. 3 shared the results of an internet investigation with all of the

jurors as a group, prior to lunch being served that afternoon, and prior to his complaints about his well-being.

12. Juror No. 10 explained that the jury was going "back and forth" in their deliberations and discussion, and at some point, Juror No. 3 mentioned he had done research on the internet. Juror No. 10 explained that Juror No. 3 brought up the independent research earlier in the day, and that all of the jurors had discussed his findings in their deliberations. The jurors continued discussing the findings, and they were repeatedly brought up because of high tensions in the deliberation room.

13. Juror No. 10 explained the first part of the research involved premeditation and the length of time associated with premeditation. He further indicated the jury discussed the research presented by Juror No. 3, and were not readily aware of the specific jury instruction on that issue, nor was the focus of the discussion on any specific jury instruction. Additionally, Juror No. 3 researched information about blood alcohol content and discussed those findings with Juror No. 10 while walking into the courthouse that morning. The jurors continued to discuss the extrinsic evidence regarding premeditation, and even advised the Court he "[didn't] think anyone really went back and focused on the instructions right there in front of them as much as listening to what Juror No. 3 was saying."

14. The testimony clearly indicated the jurors deliberated on the information presented by Juror No. 3, that they did so for a lengthy period of time, and further, that the jurors did not ultimately go back to the instructions and tailor their deliberations accordingly. Rather, the jury continued to deliberate upon the information given to them by Juror No. 3.

15. Juror No. 3 was then canvassed by the Court. Juror No. 3 explained he disagreed with the other jurors about a law quoted by the State in its closing argument, and that the jury had differing views about the law. Juror No. 3 felt he needed to clarify what the law was, and so, he went home and conducted his own research online over the course of the weekend. Juror No. 3 testified that none of the jurors looked at the instructions

to resolve the issue, so he researched it instead. Juror No. 3 testified he had researched everything from premeditation to self-defense, to the blood alcohol content.

16. The Court declared a mistrial, stating "[t]he Court has found that there is a clear basis for mistrial, that there is no way that the Court can be ensured that any product of deliberation of this juror can be fair and impartial and based on what is appropriate, if you will, to reach a verdict."

17. The Court stated: "[j]ust to be clear for the record, I do not think anyone has requested the mistrial. The Court has determined from the information that the mistrial is required. But at this point I will make my record asking or conceding, but at the end of the day it is the Court's determination that is being made."

18. Manifest necessity required the Court to declare a mistrial.

19. The extrinsic research conducted by Juror No. 3 during the course of the trial was material to the facts and issues presented to the jury.

20. The jurors deliberated and discussed the extrinsic research found by Juror No. 3 for hours, from the first morning hour to the middle of the afternoon.

21. There was no practical way for the Court to parse out what constituted proper and appropriate deliberations based upon the evidence presented at trial and the extrinsic research conducted by Juror No. 3.

22. The Court considered alternate options, however, replacing Juror No. 3 with an alternate juror was an impracticable solution given the permeation of the extrinsic evidence discussion.

CONCLUSIONS OF LAW

23. The Fifth Amendment to the United States Constitution states "No person shall [] be subject for the same offense to be twice put in jeopardy." U.S. Const. Amend. V. The Double Jeopardy Clause prohibits anyone from being prosecuted twice for the same crime. Id. This prohibition, however, does not universally entitle a defendant to avoid prosecution whenever a trial before the first tribunal does not result in a final judgment. Wade v. Hunter, 336 U.S. 684, 688-689, 69 S.Ct. 834, 837 (1949).

24. The United States Supreme Court has noted the Double Jeopardy Clause does not constitute a bright line rule prohibiting prosecution of cases a second time when there is no verdict reached, noting such a rule "would create an insuperable obstacle to the administration of justice in many cases in which there is no semblance of the type of oppressive tactics at this the double-jeopardy prohibition is aimed." Id. Accordingly, a defendant may "be retried without violating double jeopardy if, in the 'exercise [of] a sound discretion' and 'taking all the circumstances into consideration,' the trial court determines that 'the ends of public justice' make mistrial a 'manifest necessity.'" Glover v. Eighth Jud. Dist. Ct., 125 Nev. 691, 701-02, 220 P.3d 684, 692 (2009) (quoting United States v. Perez, 22 U.S. 579, 580, 6 L. Ed. 165 (1824)) (citing Ex Parte Maxwell, 11 Nev. 428, 435, 436 (1876)).

25. When evaluating whether manifest necessity exists to warrant a mistrial, the trial judge must consider the totality of the circumstances and determine whether justice is best served by declaring a mistrial. Washington, 434 U.S. at 505-06, 98 S. Ct. at 830.

26. Applying this standard to any particular trial is not "mechanical," nor undertaken "without attention to the particular problem confronting the trial judge." Id. at 506, 98 S. Ct. at 830-31. It is therefore the judge's duty to evaluate the particular facts of any given case to determine whether a jury's verdict is based upon fair and reasonable evaluation of the evidence, or whether the verdict may be the product of frustrated deliberations or improper consideration of evidence or argument. Id. at 509, 98 S. Ct. at 832.

27. Thus, in order for the double jeopardy bar to apply, the court must have erred in declaring a mistrial, by acting irrationally or irresponsibly. Washington, 434 U.S. at 514, 98 S. Ct. at 834.

28. While it is true not every exposure by a jury to extrinsic information constitutes grounds for declaring a mistrial, in evaluating whether the extrinsic evidence affected the jury's deliberations, the trial court is in the best position to make that determination, and its

decision is afforded substantial weight. United States v. Steele, 785 F.2d 743, 746 (9th Cir. 1986).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss Double Jeopardy shall be, and it is, hereby denied.

DATED this 22nd day of February, 2017.

DISTRICT JUDGE

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

BY 10178
NICOLE J. CANNIZZARO
Deputy District Attorney
Nevada Bar #11930

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of Findings of Facts, Conclusions of Law and Order, was made this 22nd day of February, 2017, by Electronic Filing to:

ALZORA B. JACKSON, Chief Deputy Special Public Defender
Email: Ajackson@clarkcountynv.gov
Jonell Thomas, Chief Deputy Special Public Defender
Email: thomasjn@clarkcountynv.gov

Secretary for the District Attorney's Office

14F04063X: BP/ckb/L4

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **March 13, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

March 13, 2015 **11:45 AM** **Grand Jury Indictment**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 10C

COURT CLERK: April Watkins

RECORDER: Cheryl Carpenter

REPORTER:

PARTIES PRESENT:

Allen, Betsy.	Attorney for Deft.
Cannizzaro, Nicole J.	Attorney for Pltf.
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Edmond James. Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 14BGJ042X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C305044-1, Department 25. State requested warrant and argued bail. Opposition by Ms. Allen. COURT ORDERED, SUMMONS ISSUED to Deft's counsel, Betsy Allen, Esq., and matter SET for initial arraignment. Exhibit(s) 1-29 lodged with Clerk of District Court.

SUMMONS (O.R./H.A.)

3/18/15 9:00 AM INITIAL ARRAIGNMENT (DEPT. 25)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **March 18, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

March 18, 2015 **9:00 AM** **Initial Arraignment**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Court NOTED, the alleged victim has since passed away; therefore, the State has filed a new Indictment with new charges.

Ms. Cannizzaro argued that Defendant be held without bail. Opposition by Ms. Allen, arguing he is not a danger to the community and has remained in full compliance in with the terms of House Arrest. COURT ORDERED, Defendant's custody status will remain as is; NOTING that Defendant is not a danger to the community, and nothing has changed that would warrant altering a change in custody. Following a conference at the Bench, Court NOTED, the Coroner's Office provided the State with an autopsy report three month after the alleged victim was deceased; therefore, the delay in filing new charges is by no fault of the State.

COURT FURTHER ORDERED, case DISMISSED; as the State will proceed in Case No. C305044-1.

O.R./H.A.

5/4/2015	9:30 am	Calendar Call
5/11/2015	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 04, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 04, 2015 **9:30 AM** **Calendar Call**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Tena Jolley

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	DA/Attorney for State of Nevada
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Ms. Allen advised that she has an assemblyman who will be an expert in the case and requested a short continuance of the trial. Furthermore, Defendant will waive his right to speedy trial. Court confirmed Deft's. understanding that once he waives his right to speedy trial he cannot re-invoke. Ms. Cannizzaro had no objection to continue the trial and requested that Defendant's Motion set for May 6, 2015 be continued as well. Based on the stipulation of the parties, COURT ORDERED, Defendant's Motion in Limine set for May 6, 2015, RESCHEDULED and Trial Date VACATED and RESET.

O.R./H.A.

5/13/15 9:00 AM DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PICTURES

6/22/15 9:30 AM CALENDAR CALL

6/29/15 10:30 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 13, 2015

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 13, 2015 9:00 AM Defendant's Motion in Limine to Exclude Pictures from Trial

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Ms. Cannizzaro requested a continuance for an opportunity to file an opposition; noting there was a miscommunication as to today's hearing being on calendar.

COURT NOTED, the parties are not intentionally attempting to delay the matter or inconvenience Defendant; and ORDERED, matter CONTINUED; State to file its opposition no later than Friday, May 15, 2015; defense may orally reply at the next hearing. Ms. Cannizzaro advised she will have the opposition filed today. COURT SO NOTED.

O.R./H.A.

Continued to: 5/18/2015 9:00 am

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 18, 2015

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 18, 2015 **9:00 AM** **Defendant's Motion in Limine to Exclude Pictures from Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Ms. Allen argued in support of the motion, advising there is nothing in the State's response that explains the victim's cause of death, as there were multiple reasons such as kidney failure and sepsis; none of which are depicted in the photographs or videos. Ms. Allen further argued that the pictures are prejudicial to her client, and invoke sympathy and inflame the jury.

Opposition by Ms. Cannizzaro, arguing that the State should submit whatever pictures sought to be introduced; as they have a right to prove its case to a jury, and the pictures are relevant to this case. Ms. Cannizzaro suggested the Court review the evidence in-camera and make a determination as to what will and will not be admitted. Further arguments by counsel.

COURT ORDERED, no ruling will be rendered at this time, as it is premature; however, the Court will make its determination of will be allowed at the time of trial. COURT NOTED, it is unlikely that this Court will permit much of any of the pictures, beyond 1 or 2, that would show the continuation that there was not some sort of recovery, then a relapse of something else occurring. COURT FURTHER NOTED, the video does not appear to have any value, and there is likelihood it will not be admitted.

Ms. Cannizzaro advised the Court that she has another trial scheduled contemporaneously with this matter; and requested this case be moved. COURT NOTED, mid-June may be amenable to the Court's availability; and ORDERED, matter SET for Status Check; Defendant's presence waived for the next hearing. Ms. Allen stated if the trial is reset, she will provide a written acknowledgment from her client. COURT SO NOTED. Ms. Cannizzaro to prepare the order, indicating the Court has not ruled on the motion, as it is premature to make that determination at this time; Court will address it at trial.

O.R./H.A.

5/20/2015	9:00 am	Status Check: Possible Change of Trial Date
6/22/2015	9:30 am	Calendar Call
6/29/2015	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 20, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 20, 2015 **9:00 AM** **Status Check: Possible Change of Trial Date**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney

JOURNAL ENTRIES

- Court NOTED the week of June 22, 2015 was preserved for this matter to be tried. Counsel advised that week is amenable to both sides. Ms. Cannizzaro noted subpoenas went out later than usual; however, she does not anticipate there being an issue.

Upon the Court's inquiry, counsel advised this matter is expected to last approximately 3 to 4 judicial days, with 5 to 7 witnesses. COURT SO NOTED, and ORDERED, calendar call and trial dates VACATED and RESET. COURT FURTHER ORDERED, calendar call will not be offset, and will be heard with the 9:00 am matters.

O.R./H.A.

6/17/2015	9:00 am	Calendar Call
6/22/2015	1:30 pm	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **June 17, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

June 17, 2015 **9:00 AM** **All Pending Motions**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant

JOURNAL ENTRIES

- CALENDAR CALL.....STATE'S NOTICE OF MOTION AND MOTION TO STRIKE DEFENDANT'S NOTICE OF EXPERT WITNESSES, OR IN THE ALTERNATIVE, MOTION IN LIMINE.....STATE'S NOTICE OF MOTION AND MOTION TO CONTINUE

As to the State's Motion to Strike Defendant's Notice of Expert Witnesses, or in the Alternative, Motion in Limine:

Ms. Cannizzaro advised the Court that the largest problem the State has with the witness testifying is that there is no evidence produced that shows Defendant was ever diagnosed with Post Traumatic Stress Disorder (PTSD); without that, this testimony is irrelevant to these proceedings. Ms. Cannizzaro noted that she reviewed the discovery in her possession, and she has records that indicate a potential diagnosis. Ms. Cannizzaro argued that the only military records provided consist of a 1-page discharge report stating Defendant served and was discharged; there is no mention of PTSD or any other psychological issues. Further argument by Ms. Cannizzaro, stating there is no need to allow the expert because there is insufficient evidence.

Opposition by Ms. McNeill, arguing that Dr. Chambers is a licensed psychologist, who makes the diagnosis; additionally, if he had prepared a report, one would have been provided to the State. Ms.

McNeill further argued that the State has all of the records the doctor reviewed, and he will not make any legal conclusions or opine as to Defendant's state of mind. Ms. McNeill stated that Dr. Chambers will give an opinion about PTSD, and how much that can affect a person.

COURT ORDERED, motion DENIED; noting there is adequate evidence to allow the doctor to testify, as it would help the jury and is the appropriate circumstance for the information to be provided.

As to State's Motion to Continue:

Ms. Allen argued that the State as 5 experts she can utilize for this trial; therefore, there is no need to continue. Opposition by Ms. Cannizzaro, arguing that Dr. Simms is the physician who completed the report and although there are other experts she can use, there may be questions raised that only Dr. Simms can answer. Ms. Cannizzaro further argued that the State is not seeking a lengthy continuance, just until after July 21 when the doctor returns to this jurisdiction.

COURT ORDERED, motion GRANTED; noting the State has shown good cause, met its burden; and Dr. Simms prepared the report and is a necessary witness. COURT FURTHER ORDERED, counsel to confer with their respective witnesses to determine availability; matter SET for Status Check. FURTHER ORDERED, Defendant's presence waived for the next hearing; and this Court will entertain an alternative to House Arrest; trial date VACATED.

O.R./H.A.

6/24/2015 9:00 am Status Check: Witness Follow Up/Reset Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **June 24, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

June 24, 2015 **9:00 AM** **Status Check: Witness Follow Up/Reset Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant

JOURNAL ENTRIES

- Ms. Cannizzaro advised the Court that this case should be eligible for overflow; and there are not many witnesses the State anticipates calling. Ms. Allen noted she electronically mailed Ms. Cannizzaro via "Dropbox" all necessary information; and Ms. Allen received confirmation that Ms. Cannizzaro opened the file.

Upon the Court's inquiry, Ms. Cannizzaro concurred; and added she has access to every piece of information provided by Ms. Allen.

COURT SO NOTED, and ORDERED, matter SET for trial.

O.R./H.A.

8/31/2015	9:30 am	Calendar Call
9/8/2015	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **July 06, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

July 06, 2015 **9:00 AM** **Defendant's Motion to Release from House Arrest**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Ms. Allen argued in support of the motion, stating Defendant had surgery on his knees, and must have the House Arrest bracelet removed for MRIs, which is cumbersome; additionally, the fees are creating a hardship for her client. Ms. Allen further argued that Defendant has the relationships with people who reside in this area, he served in the military, and he has no criminal history.

Opposition by Ms. Cannizzaro, arguing that the terms of Defendant's House Arrest conditions can be modified; however, the State does not believe he is an appropriate candidate for House Arrest, and should be remanded without bail today. Ms. Cannizzaro further argued that Defendant is a flight risk if he is not supervised by House Arrest. Further argument by Ms. Allen.

COURT NOTED, an inclination to have Defendant remain on House Arrest; however, ORDERED, matter CONTINUED one (1) week, as this Court intends to reach out to the House Arrest program for additional information. FURTHER ORDERED, Defendant's presence waived for the next hearing.

O.R./H.A.

Continued to: 7/13/2015 9:00 am

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **July 13, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

July 13, 2015 **9:00 AM** **Defendant's Motion to Release from House Arrest**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney

JOURNAL ENTRIES

- Ms. Allen advised the Court that Defendant went to the emergency room; however, he is en route to today, as he wishes to address the Court. Ms. Cannizzaro noted the State has nothing to add.

COURT ORDERED, Motion DENIED, Defendant shall remain on House Arrest (H.A.); however, this Court will sign any and all necessary orders to ensure Defendant has the ability to have the equipment removed for medical appointments and placed back on upon completion of doctors' visits. COURT FURTHER ORDERED, Ms. Allen to advise the State and Chambers of her client's appointments, to allow processing of the order.

Order for Transcripts SIGNED IN OPEN COURT.

O.R./H.A.

8/31/2015	9:30 am	Calendar Call
9/8/2015	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **August 31, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

August 31, 2015 **9:30 AM** **Calendar Call**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant

JOURNAL ENTRIES

- Parties announced ready for trial. Following a conference at the Bench to discuss scheduling, COURT NOTED, counsel anticipate trial to last approximately 6 to 7 days; and being dark on Monday, September 14, 2015.

Ms. Cannizzaro advised the Court that she will provide Ms. Allen with any copies of documents or photographs today; additionally, Ms. Cannizzaro acknowledged receipt of Defendant's medical records from Ms. Allen.

COURT SO NOTED, and ORDERED, matter SET for trial on Tuesday, September 8, 2015 at 1:15 pm for counsel; and 1:30 pm for the jury.

O.R./H.A.

9/8/2015 1:15 pm Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 04, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 04, 2015 **9:30 AM** **Further Proceedings: Document Disclosures**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Keri Cromer

REPORTER: Brenda Schroeder

PARTIES PRESENT:	Allen, Betsy	Attorney for Deft.
	Cannizzaro, Nicole J.	Attorney for State
	Granda-Ruiz, Gambino	Defendant
	McNeill, Monique A.	Attorney for Deft.
	Palal, Binu G.	Attorney for State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Arguments by counsel regarding why the disclosure of four transcribed statements pertaining to witnesses located in Detective Buddy Embrey's 3/12/14 report didn't happen until yesterday, whether the evidence was exculpatory or inculpatory, and whether or not the domestic violence claims could be substantiated. Court indicated that it sounded like there was exculpatory evidence that was not turned over by the State and requested that Ms. Allen be specific about what the remedy should be. Ms. Allen requested for either a dismissal of the case or for the State to advise them on exactly who they were going to call to testify and what kind of testimony they would be giving. Mr. Palal cited applicable case law regarding dismissal. Detective Buddy Embrey sworn and testified. Mr. Palal advised it was the State's position that, since the Deft. was out-of-custody, the trial should be continued out of an abundance of caution. Ms. Allen opposed a continuance as they have twice before announced ready to proceed. Matter trailed for the Court to come up with an appropriate remedy.

Matter recalled. Colloquy between the Court and the State regarding statement review and follow-

up efforts. Court expressed its concern regarding negligent case preparation and advised Mr. Perez should have been subpoenaed. Ms. Cannizzaro advised Mr. Perez had been subpoenaed but there was never any follow-up. Court advised Mr. Perez needed to be found and his testimony needed to be procured. Colloquy regarding whether or not Ms. DiMasi intended to be present for the trial. Court directed counsel to have Mr. Perez subpoenaed. COURT ORDERED, oral request for dismissal DENIED. Upon Court's inquiry, Deft. advised he would not authorize a trial continuance. COURT FURTHER ORDERED, 8/8/15 jury trial STANDS. Court directed counsel to be present at 1:00 pm. Court directed Deft. to speak with counsel between now and Tuesday regarding the benefits of continuing the jury trial. Court advised Deft. that he would be canvassed on Tuesday regarding whether or not to continue the jury trial or to go forward with it. Upon Court's request, State exited the courtroom for it to speak to the Deft. Court reiterated to the Deft. that he could ask for a continuance to subpoena witnesses due to the late disclosure of information and advised it would make the fullest record of what Deft.'s decision was on Tuesday regarding whether or not the jury trial would be continued.

State present and the Court reviewed what took place in its absence. Court directed the State to reissue a subpoena to Mr. Perez, to undertake efforts to ensure that his address was accurate, as well as to contact his employer. Upon Ms. McNeill's request, Court directed the State to narrow down their list of witnesses. Ms. Cannizzaro advised that, as they became aware of more witnesses, they would notify opposing counsel and an e-mail would be sent to them this afternoon.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 08, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 08, 2015 **1:00 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- **OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:** Colloquy between the Court and counsel regarding the jury selection process; and possible witnesses to be called. Upon the Court's inquiry, Defendant advised he is ready to proceed, despite there being new information received. COURT NOTED, this Court does not perceive defense counsel will be ineffective by going forward with Defendant's acknowledgment.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Voir dire commenced.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Allen advised the Court that the State tentatively extended an offer of 2nd Degree Murder. Ms. Cannizzaro concurred, and noted the parties were too far apart to come to a specific agreement. COURT SO NOTED.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Voir dire continued. COURT ORDERED, matter CONTINUED. Jury admonished.

O.R./H.A.

9/9/2015 9:00 am Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 09, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 09, 2015 **1:00 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court NOTED, potential jury #12 has been excused, due to communication received by him to Chambers regarding a family issue.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Voir dire resumed. COURT ORDERED, matteR CONTINUED to September 10, 2015.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy between the Court and counsel as to causes for excusals.

O.R./H.A.

9/10/2015 1:15 pm Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 10, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 10, 2015 **1:15 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY PANEL: Following a colloquy between the Court regarding exhibits, COURT ORDERED, State's proposed Exhibit #85 ADMITTED.

INSIDE THE PRESENCE OF THE JURY: Panel sworn. Clerk of the Court read the Indictment to the jurors. Opening statements by counsel. Testimony and evidence presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Ms. Allen advised the Court that the defense stipulates to all of the State's exhibits, except Numbers 81, 82, 83, 84, 89, and 90. Ms. Cannizzaro concurred, and noted those will be withdrawn. COURT SO ORDERED. Counsel further advised that Defendant's exhibits have no such stipulations. COURT SO NOTED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED to Tuesday, September 15, 2015. Jury admonished.

O.R./H.A.

9/15/2015 1:30 pm Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 15, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 15, 2015 **1:30 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Tena Jolley

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Ms. Allen advised that the wrong medical device was provided as Defendant's Proposed Exhibit N and provided a replacement knee brace which was exchanged as Proposed Exhibit N.

INSIDE THE PRESENCE OF THE JURY: Testimony and Exhibits presented. (See Worksheets). COURT ORDERED, matter CONTINUED to Wednesday, September 16, 2015. Jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: Court directed counsel to exchange proposed Jury Instructions by Wednesday, September 16, 2015.

O.R./H.A.

9/16/2015 1:30 pm Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 16, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 16, 2015 **1:30 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- **OUTSIDE THE PRESENCE OF THE JURY:** Ms. Allen and Ms. McNeill advised the Court of various concerns regarding the victim's family and recorded threats being made. Upon the Court's inquiry, Mr. Palal advised the family has not disclosed anything regarding defense counsel to him; however, it may be best to instruct them again. COURT SO NOTED.

INSIDE THE PRESENCE OF THE JURY: Testimony and evidence presented (see worksheets). COURT ORDERED, matter CONTINUED. Jury admonished.

O.R./H.A.

9/17/2015 1:00 pm Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor | **COURT MINUTES** | **September 17, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 17, 2015 **1:00 PM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- **OUTSIDE THE PRESENCE OF THE JURY:** Colloquy between the Court and counsel regarding witness scheduling and jury instructions.

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

OUTSIDE THE PRESENCE OF THE JURY: Counsel discussed jury instructions. Court advised Defendant of his right not to testify.

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

OUTSIDE THE PRESENCE OF THE JURY: Court made a record of the two Bench Conferences that occurred during testimony.

INSIDE THE PRESENCE OF THE JURY: State rested its case-in-chief. Testimony and exhibits presented. COURT ORDERED, matter CONTINUED. Jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: Court made a record of the two Bench Conferences that occurred during Defendant's testimony. Following argument by counsel regarding a reasonable doubt clause, COURT ADVISED counsel that this Court will review other cases and determine how those matters were handled.

O.R./H.A.

9/18/2015 9:00 am Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 18, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 18, 2015 9:00 AM Jury Trial

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Tena Jolley

REPORTER: Sharon Howard

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented. (See Worksheets.) Defense rested.

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled on the record. Statements by counsel regarding conferences at the Bench, and the objections raised during testimony.

INSIDE THE PRESENCE OF THE JURY: Court instructed the jury. Closing arguments by counsel. At the hour of 3:44 p.m., the jury retired to deliberate.

OUTSIDE THE PRESENCE OF THE JURY: COURT ADMONISHED observers that they are to be respectful and non-disruptive at the time the verdict is rendered. Exhibits not offered or withdrawn returned to counsel.

At the hour of 6:20 p.m. the jury was excused for the weekend to return on Monday, September 21, 2015 at 10:00 a.m.

O.R./H.A.

9/21/15 10:00 AM JURY DELIBERATION

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 21, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 21, 2015 **10:00 AM** **Jury Trial**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
McNeill, Monique A.	Attorney for Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- Jury returned at the hour of 10:00 am to continue deliberations, during which, several notes were received from the panel. COURT ORDERED, all counsel and Defendant to the courtroom. Deputy D.A.s Nicole Cannizzaro and Binu Palal present; Monique McNeill and Betsy Allen present without Defendant. Ms. Allen advised the Court that Defendant is en route.

COURT ADVISED the parties that at approximately 11:30 am to 11:45 am, a note was received from the Foreperson (Juror #10) indicating that Juror #3 was experiencing complications from high blood pressure; additionally, at 3:00 pm, another note was received from the Foreperson stating that the panel was 11 to 1, and Juror #3 was no longer participating in deliberations. COURT FURTHER ADVISED, two additional notes were received from Jurors #3 and #12 stating that Juror #3 had conducted independent research over the weekend regarding a law given by the Court, and made statements that he would not follow the law.

Mr. Palal argued that that Juror #3's research may not have affected the rest of the panel. Opposition by Ms. Allen, arguing that it is a large problem that creates a bad record, as Juror #3 went outside of his responsibilities as a juror. Defendant present. Court ADVISED Defendant as to what occurred in his absence. Ms. Cannizzaro cited "119 Nev. 554 Meyer v. State (Nev. 2003)" and "216 P.3d 244 Zana v. State (2009)"; and opposed an automatic mistrial. COURT ORDERED, Foreperson to the courtroom.

Upon the Court's inquiry, Foreperson advised that Juror #3 mentioned the independent research in front of the group, and the information he obtained online was discussed as part of deliberations; further, Juror #3 researched premeditation, amount of time, and alcohol content. Foreperson returned to the jury room.

Mr. Palal argued that the panel rejected Juror #3's information, and no affects have been raised as to how deliberations were affected. Ms. McNeill requested that Juror #3 before brought in for questioning. Ms. Allen noted that premeditation is a large issue in this case. COURT ORDERED, Juror #3 to the courtroom.

Upon the Court's inquiry, Juror #3 advised he was did research because he was seeking clarification, and went online to look for a law regarding self-defense and toxicology. Juror #3 returned to the jury room.

COURT NOTED, after questioning, it is clear that Juror #3 cannot serve, as his responses were incoherent. COURT FURTHER NOTED, at this point, there is no way this Court can ensure that Defendant will receive a fair and impartial trial; therefore, ORDERED, this case has resulted in a MISTRIAL; entire panel to be brought in the courtroom.

COURT ADMONISHED the jury panel at their lack of bringing Juror #3's research to the attention of the Court sooner, and continuing to proceed with deliberation. Jury excused. COURT ORDERED, matter SET for a Status Check to determine how the parties wish to proceed.

O.R./H.A.

9/28/2015 9:00 am Status Check: Status of Case

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **September 28, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

September 28, 2015 9:00 AM **Status Check: Status of Case**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Granda-Ruiz, Gambino	Defendant
Palal, Binu G.	Deputy District Attorney
Rashbrook, Matthew J.	Attorney for Defendant
Allen, Betsy	Attorney

JOURNAL ENTRIES

- Ms. Allen advised the Court that Defendant has retained attorney Robert Langford's office to represent him moving forward; and she will be provide counsel with the file this week. Mr. Rashbrook concurred. COURT SO NOTED.

Following a colloquy between the Court and counsel regarding scheduling, COURT ORDERED, matter SET for trial.

Mr. Rashbrook advised the Court that a Motion for Own Recognizance will be filed immediately, with the anticipated setting date of October 7, 2015. COURT SO NOTED, and FURTHER ORDERED, counsel to contact Chambers, should Master Calendar set the Motion on a different day.

O.R./H.A.

4/11/2016	9:30 am	Calendar Call
4/18/2016	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **October 07, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

October 07, 2015 **9:00 AM** **Defendant's Motion for Release from House Arrest**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:

Allen, Betsy	Former Attorney for Defendant
Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
Langford, Robert L	Attorney for Defendant

JOURNAL ENTRIES

- Mr. Langford argued in support of the motion, stating there has been a significant change in circumstances, particularly, the jury in the previous trial deadlocking at an 11 to 1 not guilty; additionally, the State could not meet its burden, and Defendant has had no violations while on House Arrest.

Opposition by Ms. Cannizzaro, arguing that Defendant has no ties to the community; and although he can posture what the jury was going to do, no actual verdict was reached, and any comments regarding that are speculation. Ms. Cannizzaro requested the motion be denied, and Defendant surrender his passports, as he is a danger to the community. Statement by Defendant. Further arguments by counsel.

COURT ORDERED, motion DENIED; and NOTED that none of the factors weigh in favor of Defendant being released from House Arrest, as he has no ties to the community and no one to vouch for him. COURT FURTHER NOTED, although this Court believes Defendant will follow the rules, and will appear at future hearings, it is not believed Defendant is not a danger to the community in light of the circumstances brought out during trial. COURT FURTHER ORDERED, there is no reason to change the status quo at this time; State to prepare the order.

Ms. Allen advised the Court that she provided Mr. Langford with Defendant's file, with the exception of a video. Ms. Cannizzaro noted she will provide Mr. Langford with that discovery. COURT SO NOTED.

Mr. Langford advised that there was a confrontation this morning between Defendant and the alleged victim's brother; and requested the parties ensure the safety of everyone. COURT ADMONISHED Defendant and the alleged victim's family that any actions that would interfere this case from proceeding will only result in a delay from all parties reaching a resolution.

O.R./H.A.

4/11/2016	9:30 am	Calendar Call
4/18/2016	10:30 am	Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES **October 26, 2015**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

October 26, 2015 **9:00 AM** **Defendant's Motion for Own Recognizance Release/Setting Reasonable Bail**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Brenda Schroeder

PARTIES PRESENT:
Langford, Robert L — Attorney for Defendant
Palal, Binu G. — Deputy District Attorney

JOURNAL ENTRIES

- Mr. Langford argued in support of the motion, stating Defendant has strong family ties in Knoxville, TN, where his sister has indicated he can reside with her; additionally, Defendant's mother will use her home as collateral for Defendant's bail. Mr. Langford further argued that the costs associated with House Arrest (HA) are creating a hardship for his client, who has dropped out of school and started searching for employment.

Opposition by Mr. Palal, arguing that there have been no substantial changes in circumstances that would warrant the Court altering its ruling and reasons made at the previous hearing.

COURT ORDERED, motion GRANTED; bail REINSTATED and REDUCED to $50,000.00. COURT FURTHER ORDERED, if Defendant is residing in this jurisdiction without family, then he shall be placed on House Arrest; Defendant need not surrender his passports.

NIC

4/11/2016 9:30 am Calendar Call
4/18/2016 10:30 am Jury Trial

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **April 06, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

April 06, 2016 **3:22 PM** **Minute Order**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

JOURNAL ENTRIES

- Due to counsel unavailability, parties stipulate and Court agrees to continue calendar call and trial dates in the normal course.

COURT ORDERS trial date VACATED and RESET; Mr Langford to provide acknowledgment from Defendant.

BOND

2/6/2017	9:30 am	Calendar Call
2/13/2017	10:30 am	Jury Trial

CLERK'S NOTE: A copy of this Minute Order has been electronically mailed to Deputy D.A. Binu Palal, Esq.; and counsel for Defendant, Robert Langford, Esq. */db 4.6.2016*

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **April 25, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

April 25, 2016 **9:00 AM** **Defendant's Motion to Reset Trial Date**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Abbatangelo, Anthony L	Attorney for Defendant
Colquitt, Ronald	Attorney for Defendant
Granda-Ruiz, Gambino	Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- COURT NOTED the Substitution of Attorney has been filed; and it was anticipated there would be a change regarding the trial date.

Mr. Palal advised the Court that the State has no objection to the currently scheduled trial date in February 2017; additionally, the defense indicated a Motion will be filed to address Defendant's custody status. Mr. Colquitt noted that Defendant resides out of state, needs to be in this jurisdiction; however, those issues will be address in a written motion. COURT NOTED if it is a matter that does not need Defendant's input, and is a scheduling Motion, the Court will waive his presence; however, if anything substantive is to be discussed, Defendant must be present.

Mr. Colquitt advised that the defense has not yet received the file from prior counsel, Robert Langford; further, Defendant has an appointment at the Veterans Administration office on May 7th at 9:00 am; and requested his client be allowed to remain in the state until that appointment.

COURT ORDERED, Defendant may stay in this jurisdiction for the completion of the appointment with no House Arrest component; however, if he is in this state after that date, then Defendant shall be placed on House Arrest. COURT FURTHER ORDERED, matter SET for Status Check.

BOND

5/9/2016 9:00 am Status Check: Defendant's Return to Tennessee

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 09, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 09, 2016 **9:00 AM** **Status Check**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER: Sharon Howard

PARTIES PRESENT:

Colquitt, Ronald	Attorney for the Deft
Granda-Ruiz, Gambino	Defendant
Palal, Binu G.	Attorney for the State
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Colquitt requested a continuance; advised he needs to file a Motion to modify the conditions of the Bail Motion for Deft to return to Tennessee. The State argued Deft needs to be on House Arrest (H.A.) until all the issues have been resolved. COURT ORDERED, MATTER CONTINUED. Without proof of SCAN Deft is going on House Arrest (H.A.)

BOND

5-11-16 9:00 AM STATUS CHECK: DEFT'S RETURN TO TENNESSEE (DEPT. XXV)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 11, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

May 11, 2016 **9:00 AM** **Status Check: Defendant's Return to Tennessee**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

REPORTER: Sharon Howard

PARTIES PRESENT:

Colquitt, Ronald	Attorney for Defendant
Granda-Ruiz, Gambino	Defendant
Palal, Binu G.	Deputy District Attorney

JOURNAL ENTRIES

- Mr. Colquitt advised the Court that the defense is still in the process of trying to obtain the file from prior counsel, Robert Langford; additionally, Mr. Colquitt noted that is currently writing to a motion to address the issues regarding Defendant's staying in this jurisdiction. Mr. Colquitt argued that his client is a veteran who is receiving treatment for a torn ACL from the Veterans' Administration (VA) Office, and the doctors are unable to perform MRI and CAT scans with the House Arrest monitoring bracelet on; further, the costs associated with House Arrest create a financial hardship for Defendant. Upon the Court's inquiry, Mr. Colquitt advised that Defendant has three follow-up appointments with his doctors on May 20th, May 23rd, and June 11th.

Opposition by Mr. Palal, arguing that a Defendant is going to have inconveniences when being accused of murder; moreover, the State has been more than reasonable and accommodating with Defendant, and there are VA offices throughout the country. Further argument by Mr. Colquitt.

COURT DIRECTED Mr. Colquitt to file his motion by the end of this week; and when that matter has been calendared, the Court will make a final determination at that time as to Defendant's custody status. COURT ORDERED, the parties will also address if the file has been received from Mr. Langford, as it is this Court's expectation the file be provided, or that Mr. Langford be present. FURTHER ORDERED, the no direct or indirect contact with the victim's family or anyone related to this case still applies for Defendant.

BOND

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **July 18, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

July 18, 2016 **9:00 AM** **Motion to Reconsider**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Michele Tucker
Shelley Boyle

REPORTER: Sharon Howard

PARTIES PRESENT:	Cannizzaro, Nicole J.	Attorney for the State
	Colquitt, Ronald	Attorney for the Defendant
	Granda-Ruiz, Gambino	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

Defendant Granada-Ruiz PRESENT out of custody.

Statements by the Court. Mr. Colquitt argued as to defendant having medical issues and needing to have an MRI, which cannot be done with the ankle bracelet on. Mr. Colquitt further argued as to lowering the bond to allow defendant to pay for transcripts and defense. Court indicated there has been communication with House Arrest if an appointment is made they can meet the defendant there and remove the anklet for the testing and then replace it after. Mr. Colquitt argued he has records from the VA indicating they have called House Arrest and they have never appeared. Mr. Colquitt requested and Order for 24 hours to remove the anklet for medical testing. Ms. Cannizzaro argued this is the eighth time they have argued the same issue and nothing has changed. The defendant is a danger to the community and has no ties to this community. Further argued the defendant has been residing in Tennessee. Ms. Cannizzaro objected to removing the anklet and argued for defendant to remain on House Arrest. Ms. Cannizzaro argued defendant did not check in with House Arrest last week and he is not appropriate for an O.R. release. Mr. Colquitt argued the defendant is doing everything he can to please the Court and has reached out to family members to try and move back to Las Vegas. Ms. Colquitt further argued they are not asking for an O.R. release just requesting the

bond be lowered and released from House Arrest for a short period of time. Court inquired of the defendant if he was still enrolled in school. Defendant advised he cannot get the G.I. Bill until this matter is resolved. COURT ORDERED, BOND MODIFIED from $50,000.00 to $20,000.00; Defendant is to REMAIN ON HOUSE ARREST and REMAIN in the community. Court STATED it would consider an Order to have the House Arrest meet the Defendant at his appointment to remove the ankle bracelet for his medical procedure. Mr. Colquitt advised he would prepare the Order.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 10, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

October 10, 2016	**9:00 AM**	**Motion to Withdraw as Counsel**	**Ronald A. Colquitt, Esq.'s Motion to Withdraw as Attorney of Record for Defendant**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Kathy Klein

REPORTER: Sharon Howard

PARTIES PRESENT:

Abbatangelo, Anthony L.	Attorney for Deft.
Brown, Curtis	Attorney (Public Defender)
Giles, Michael G.	Deputy District Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Abbatangelo appearing on behalf of the law firm. Court noted Court understood the circumstance in the relationship from the affidavit filed and noted the last known contact information for the Deft. was not completely listed. Mr. Abbatangelo noted he could provide the address, telephone number and e-mail address of the Deft. on the order. Colloquy regarding the Deft. obtaining Counsel with funds that are held. Deft. noted the District Attorney was holding his funds. COURT ORDERED, Motion to Withdraw as Attorney of Record for Defendant, GRANTED. Court directed Counsel to prepare the order and include the complete contact information of the Deft. including phone and e-mail address. Court noted the set trial date and stated the Deft. will need to have representation. Mr. Brown, from the Public Defenders Office and within the audience, stated the Deft. would need to have appointed counsel. The Court to contact Drew Christensen for appointment of counsel and SET a status check regarding the appointment of new counsel.

BOND/ H.A.

10/12/16 9:00 AM STATUS CHECK: APPOINTMENT OF NEW COUNSEL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 12, 2016

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

October 12, 2016 **9:00 AM** **Status Check: Appointment of Counsel**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Katrina Hernandez

RECORDER: Dalyne Easley

REPORTER:

PARTIES PRESENT:

Cannizzaro, Nicole J.	Deputy District Attorney
Granda-Ruiz, Gambino	Defendant
Schieck, David Michael	Special Public Defender
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted it previously granted Defense Counsel's motion to withdraw. Ms. Cannizzaro advised there is an issue with the bond. Mr. Schiek advised they received a call from Drew Christensen's office. COURT ORDERED, Special Public Defender's office APPOINTED; trial dates STAND; and Defendant confirmed upon inquiry he is staying in the state on house arrest. Mr. Schiek to do a conflicts check and place the matter back on calendar if necessary.

BOND/H.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **December 28, 2016**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

December 28, 2016 **9:00 AM** **All Pending Motions**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Shelley Boyle

REPORTER: Sharon Howard

PARTIES PRESENT:	Cannizzaro, Nicole J.	Attorney for State
	Granda-Ruiz, Gambino	Defendant
	Jackson, Alzora Betrice	Attorney for Deft.
	Thomas, Jonell	Attorney for Deft.

JOURNAL ENTRIES

DEFT'S MOTION TO DISMISS DOUBLE JEOPARDY...DEFT'S MOTION FOR OWN RECOGNIZANCE RLEASE AND REMOVAL FROM HOUSE ARREST

- Upon Court's inquiry, Ms. Cannizaro stated the Motions were set before she was able to provide a written response and requested one week to respond. Ms. Jackson requested the Motion for Own Recognizance (O.R.) Release be argued today, the Motion to Dismiss Double Jeopardy can be continued. COURT ORDERED, State's Response to Deft's Motion to Dismiss Double Jeopardy DUE BY 01/06/17, Deft's. Reply DUE BY 01/13/17. Arguments by counsel on the Motion for O.R. Release. Ms. Jackson stated Deft. has medical issues and House Arrest are not facilitating Deft's visits to the Veteran's Hospital appointments furthermore, Deft. has obtained the G.I. Bill so he can attend UNLV. Ms. Cannizaro argued Deft. was already attending school when the event happened, House Arrest is more than willing to accommodate Deft. with his medical visits, there is nothing new to be argued regarding an O.R. release. Further argument by counsel. COURT FURTHER ORDERED, both matters CONTINUED. COURT DIRECTED counsel for Deft. to provide supplements to the Motion for O.R Release to show Deft's current living situation, proof of efforts to have medical appointments, rescheduling and issues with House Arrest appearing at Deft's medical appointments. COURT ADVISED, it may issue a decision prior to the next hearing date if the supplements are received.

BOND / H.A.

CONTINUED TO: 01/18/17 9:00 A.M. (BOTH)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **January 18, 2017**

C-15-305044-1 State of Nevada
vs
Gambino Granda-Ruiz

January 18, 2017 **9:00 AM** **All Pending Motions**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Shelley Boyle

REPORTER: Sharon Howard

PARTIES PRESENT:	Cannizzaro, Nicole J.	Attorney for State
	Granda-Ruiz, Gambino	Defendant
	Jackson, Alzora Betrice	Attorney for Deft.
	Palal, Binu G.	Attorney for State
	Thomas, Jonell	Attorney for Deft.

JOURNAL ENTRIES

- DEFT'S MOTION TO DISMISS DOUBLE JEOPARDY...DEFT'S MOTION FOR OWN RECOGNIZANCE RELEASE AND REMOVAL FROM HOUSE ARREST

MATTER TRAILED for Ms. Jackson and Ms. Cannizzaro to appear.

MATTER RECALLED, Ms. Jackson and Ms. Cannizzaro now present. All other parties present as before.

DEFT'S MOTION TO DISMISS DOUBLE JEOPARDY
Extensive argument regarding the independent research done by Juror number 3, when Juror number 3 informed the Foreperson of their findings, when the other members of the jury panel were informed of Juror number 3's findings, when juror number 3 ceased deliberating with the other jurors, and when it became clear the jury was deadlocked. COURT STATED ITS FINDINGS, and ORDERED, Motion DENIED.

Ms. Jackson requested a STAY of the trial. Colloquy regarding the Nevada Supreme Court's possible

review of the matter and scheduling. COURT ORDERED, Trial date VACATED and RESET.

DEFT'S MOTION FOR OWN RECOGNIZANCE RELEASE AND REMOVAL FROM HOUSE ARREST
Argument by Ms. Jackson and Ms. Cannizzaro. COURT ORDERED, Deft's. Motion DENIED WITHOUT PREJUDICE. Ms. Cannizzaro stated she provided Deft's counsel. a copy of the additional medical records they requested.

BOND/ HA

09/11/17 9:30 A.M. CALENDAR CALL

09/18/17 10:30 A.M. JURY TRIAL