

1 CODE No. 2505  
2 CHRISTOPHER J. HICKS  
3 #7747  
4 P. O. Box 11130  
5 Reno, Nevada 89520  
6 (775) 328-3200  
7 Attorney for Plaintiff

Electronically Filed  
Mar 02 2017 09:42 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 \* \* \*

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR16-0298

14 JOHN THOMAS KEPHART,

Dept. No. 7

15 Defendant.

16 NOTICE OF APPEAL

17 Notice is hereby given that Plaintiff above-named, hereby appeals to the Supreme Court  
18 of Nevada from this Court's Order granting Motion to Suppress, filed on February 28, 2017.

19 AFFIRMATION PURSUANT TO NRS 239B.030

20 The undersigned does hereby affirm that the preceding document does not contain the  
21 social security number of any person.

22 DATED: March 1, 2017.

23 CHRISTOPHER J. HICKS  
District Attorney

24 By /s/ JOSEPH R. PLATER  
JOSEPH R. PLATER  
25 Appellate Deputy  
26

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Christine Brady  
Washoe County Public Defender

2

1 CODE No. 1310  
2 CHRISTOPHER J. HICKS  
3 #7747  
4 P. O. Box 11130  
5 Reno, Nevada 89520  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR16-0298

16 JOHN THOMAS KEPHART,

Dept. No. 7

17 Defendant.

18  
19 CASE APPEAL STATEMENT

20 1. Appellant, the State of Nevada, hereby files this Case Appeal Statement.

21 2. Honorable, Patrick Flanagan, Chief District Court Judge.

22 3. Counsel for Appellant The State of Nevada is:

23 CHRISTOPHER J. HICKS  
24 District Attorney

25 Joseph R. Plater  
26 Deputy District Attorney  
P. O. Box 11130  
Reno, Nevada 89520

4. Appellate counsel for Respondent John Thomas Kephart is:

Christine Brady  
Washoe County Public Defender  
P.O. Box 11130  
Reno, Nevada 89520-0027

1           5. Counsel for Appellant and Respondent are licensed to practice law in the State of  
2 Nevada.

3           6. Not applicable.

4           7. Not applicable.

5           8. Not applicable.

6           9. The Indictment was filed in the district court on February 24, 2016. Respondent's  
7 Objection to Admission of Prior Convictions as a Felony Enhancement and Motion to Dismiss  
8 was filed on January 12, 2017.

9           10. This appeal is from an order granting Respondent's Objection to Admission of Prior  
10 Convictions as a Felony Enhancement and Motion to Dismiss, filed on February 28, 2017.

11           11. This case has not previously been the subject of an appeal or original writ proceeding  
12 in the Supreme Court.

13           12. This appeal does not involve child custody or visitation.

14           13. Not applicable.

15           This is a fast track appeal.

16                               AFFIRMATION PURSUANT TO NRS 239B.030

17           The undersigned does hereby affirm that the preceding document does not contain the  
18 social security number of any person.

19                       DATED: March 1, 2017.

20                               CHRISTOPHER J. HICKS  
21                               District Attorney

22                               By /s/ JOSEPH R. PLATER  
23                               JOSEPH R. PLATER  
24                               Deputy District Attorney  
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Christine Brady  
Washoe County Public Defender

3

1 CODE No. 2505  
2 CHRISTOPHER J. HICKS  
3 #7747  
4 P. O. Box 11130  
5 Reno, Nevada 89520  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR16-0298

16 JOHN THOMAS KEPHART,

Dept. No. 7

17 Defendant.

18 \_\_\_\_\_/

19 REQUEST FOR ROUGH DRAFT TRANSCRIPT

20 TO: Stephanie Koetting:

21 The State of Nevada, Appellant above-named, requests preparation of a transcript of the  
22 proceedings before the district court, as follows:

23 Date of Proceeding: February 13, 2017.

24 Portion of the transcript requested: All (Motion to Suppress Hearing).

25 I recognize that I must personally serve a copy of this form on the above-named court  
26 reporter and opposing counsel, and that the above-named court reporter shall have twenty (20)  
days from the receipt of this notice to prepare and submit to the district court the rough draft  
transcript requested herein.

///

///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: March 1, 2017.

CHRISTOPHER J. HICKS  
District Attorney

By /s/ JOSEPH R. PLATER  
JOSEPH R. PLATER  
Appellate Deputy

## CERTIFICATE OF PERSONAL SERVICE

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on March 1, 2017, I personally served a true copy of the foregoing document, addressed to:

Stephanie Koetting  
1822 Fox Run Road  
Reno, NV 89523

/s/ DESTINEE ALLEN  
DESTINEE ALLEN



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Christine Brady, Washoe County Public Defender

/s/ DESTINEE ALLEN  
DESTINEE ALLEN

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

**Case History - CR16-0298**

**DEPT. D7**

**HON. PATRICK FLANAGAN**

Report Date & Time

3/2/2017

8:37:43AM

**Case Description: STATE VS. JOHN THOMAS KEPHART (D7)**

<b>Case ID:</b>	<b>CR16-0298</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>2/24/2016</b>
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**Parties**

PLTF	STATE OF NEVADA - STATE
DA	Michael Bolenbaker, Esq. - 10520
DA	Terrence P. McCarthy, Esq. - 2745
DEFT	JOHN THOMAS KEPHART - @1282626
PD	Christine Brady, Esq. - 11065
PD	Maizie Whalen Pusich, Esq. - 2808
PNP	Div. of Parole & Probation - DPNP

**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
1	50239	1/11/2017	ISI DOMESTIC BATTERY

**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
1	50239		
2	NC01		

**Release Information**

*Custody Status*

1/18/2017	BAIL - BOND	FOUND GUILTY BY JURY
5/11/2016	BAIL - BOND	SUPERVISED BY PRETRIAL

**Hearings**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
1 D7	ARRAIGNMENT	5/11/2016 09:00:00	5/11/2016

Event Extra Text: ON INDICTMENT AND APPOINTMENT OF COUNSEL	<b>Disposition:</b> D455 5/11/2016
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<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
2 D7	ARRAIGNMENT	5/18/2016 09:00:00	5/18/2016

Event Extra Text: CONT'D FROM MAY 11, 2016 - ON INDICTMENT - PD APPOINTED - SUPERVISED BAIL ORDERED	<b>Disposition:</b> D455 5/18/2016 FOR ENTRY OF PLEA
--	--

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>	<i>Disposed Date</i>
3 D7	STATUS HEARING	6/8/2016 09:00:00	6/8/2016

Event Extra Text:	<b>Disposition:</b> D435 6/8/2016
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Case Description: STATE VS. JOHN THOMAS KEPHART (D7)					
Case ID:	CR16-0298	Case Type:	CRIMINAL	Initial Filing Date: 2/24/2016	
DEFT TO REMAIN ON SUPERVISED BAIL; TO REPORT AS DIRECTED					
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
4	D7	ENTRY OF PLEA	6/22/2016	09:00:00	6/22/2016
Event Extra Text: DEFT ARRAIGNED ON MAY 18, 2016			<b>Disposition:</b> D725 6/22/2016 TO COUNTS I AND II OF THE INDICTMENT		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
5	D7	MOTION TO CONFIRM TRIAL	1/4/2017	09:00:00	1/4/2017
Event Extra Text: TRIAL SCHEDULED 1/17/17 - 4 DAYS			<b>Disposition:</b> D425 1/4/2017 MOTION TO CONFIRM TRIAL - GRANTED		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
6	D7	EXHIBITS TO BE MARKED W/CLERK	1/13/2017	09:30:00	1/13/2017
Event Extra Text:			<b>Disposition:</b> D596 1/13/2017		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
7	D8	PRE-TRIAL MOTIONS	1/17/2017	09:30:00	1/17/2017
Event Extra Text:			<b>Disposition:</b> D435 1/17/2017		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
8	D8	TRIAL - JURY	1/17/2017	10:30:00	1/17/2017
Event Extra Text: 4 DAYS			<b>Disposition:</b> D832 1/17/2017 DAY 1		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
9	D8	TRIAL ONGOING	1/18/2017	08:00:00	1/18/2017
Event Extra Text: DAY 2			<b>Disposition:</b> D895 1/18/2017 DOMESTIC BATTERY		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
10	D7	Request for Submission	2/8/2017	09:41:00	2/13/2017
Event Extra Text: OBJECTION TO ADMISSION OF PRIOR CONVICTIONS AS A FELONY ENHANCEMENT AND MOTION TO DISMISS ON JANUARY 12, 2017			<b>Disposition:</b> S200 2/13/2017 02.13.17 - OBJ TO ADMISSION OF PRIOR CONVICT RULED ON IN OPEN COURT BY JUDGE MADDOX; MS. BRADY TO SUBMIT ORDER - ks		
	<b>Department</b>	<b>Event Description</b>	<b>Sched. Date &amp; Time</b>		<b>Disposed Date</b>
11	D8	MOTION TO SUPPRESS	2/13/2017	08:00:00	2/13/2017

Case Description: STATE VS. JOHN THOMAS KEPHART (D7)			
Case ID:	CR16-0298	Case Type:	CRIMINAL
		Initial Filing Date:	2/24/2016
Event Extra Text: OBJECTION TO ADMISSION OF PRIOR CONVICTIONS AS A FELONY ENHANCEMENT AND MOTION TO DISMISS **DEFT NEEDS TO BE PROVIDED WITH PSI QUESTIONNAIRE		<b>Disposition:</b> D425 2/13/2017 MOTION TO SUPPRESS PRIOR CONVICTIONS AS A FELONY ENHANCEMENT GRANTED. COUNSEL BRADY TO PROVIDE ORDER.	

### Agency Cross Reference

Code	Agency Description	Case Reference I.D.
DA	District Attorney's Office	DA161350
PC	PCN number	PCNSPPD0044599C
SP	Sparks Police Department	SPD159329

### Actions

Action Entry Date	Code	Code Description	Text
2/24/2016	1795	Indictment	
2/24/2016	1695	** Exhibit(s) ...	REPORT OF THE GRAND JURY
2/24/2016	1300	Bench Warrant Filed-Case Clsd	BAIL SET IN THE AMOUNT OF \$20,000.00 BONDABLE
2/25/2016	COC	Evidence Chain of Custody Form	
2/25/2016	NEF	Proof of Electronic Service	Transaction 5388089 - Approved By: NOREVIEW : 02-25-2016:16:16:26
2/25/2016	NEF	Proof of Electronic Service	Transaction 5388417 - Approved By: NOREVIEW : 02-25-2016:17:10:29
2/25/2016	FIE	**Document Filed in Error	
2/25/2016	MIN	***Minutes	REPORT OF THE GRAND JURY - 02-24-16 - Transaction 5388416 - Approved By: NOREVIEW : 02-25-2016:1
2/26/2016	4189	Grand Jury Transcript	FEBRUARY 24, 2016 GRAND JURY TRANSCRIPT - Transaction 5388955 - Approved By: YVILORIA : 02-26-2
2/26/2016	NEF	Proof of Electronic Service	Transaction 5388980 - Approved By: NOREVIEW : 02-26-2016:10:07:57
3/28/2016	1775	General Receipt	WASHOE COUNTY DISTRICT ATTORNEY
4/19/2016	BAIL	**Bailbond Posted	
5/11/2016	NEF	Proof of Electronic Service	Transaction 5510607 - Approved By: NOREVIEW : 05-11-2016:14:52:11
5/11/2016	3835	Report...	INDIGENCY REPORT AND FINDING - Transaction 5510593 - Approved By: RKWATKIN : 05-11-2016:14:51:06
5/11/2016	2715	Ord Appointing Counsel	Transaction 5511285 - Approved By: NOREVIEW : 05-11-2016:16:34:56
5/11/2016	NEF	Proof of Electronic Service	Transaction 5511288 - Approved By: NOREVIEW : 05-11-2016:16:35:47
5/17/2016	MIN	***Minutes	ARRAIGNMENT - 05-11-16 - Transaction 5517930 - Approved By: NOREVIEW : 05-17-2016:08:55:52
5/17/2016	NEF	Proof of Electronic Service	Transaction 5517934 - Approved By: NOREVIEW : 05-17-2016:08:56:52
5/19/2016	3892	Return of Service B/W	WARRANT FILED: 2-24-16 SERVED: 5-19-16
5/26/2016	MIN	***Minutes	ARRAIGNMENT - 05-18-16 - Transaction 5535526 - Approved By: NOREVIEW : 05-26-2016:16:26:50
5/26/2016	NEF	Proof of Electronic Service	Transaction 5535531 - Approved By: NOREVIEW : 05-26-2016:16:27:50
6/2/2016	NEF	Proof of Electronic Service	Transaction 5544658 - Approved By: NOREVIEW : 06-02-2016:16:19:36
6/2/2016	NEF	Proof of Electronic Service	Transaction 5544533 - Approved By: NOREVIEW : 06-02-2016:15:54:41
6/2/2016	3744	Ord Revoking Pretrial Release	Transaction 5544650 - Approved By: NOREVIEW : 06-02-2016:16:18:37
6/2/2016	3691	Pretrl Services Recommendation	Transaction 5544526 - Approved By: NOREVIEW : 06-02-2016:15:53:41
6/3/2016	1250E	Application for Setting eFile	[STATUS HEARING SET FOR 06.08.16 - 9:00 A.M. - ks] - Transaction 5546411 - Approved By: NOREVIEW : 0
6/3/2016	NEF	Proof of Electronic Service	Transaction 5546419 - Approved By: NOREVIEW : 06-03-2016:14:29:58
6/27/2016	NEF	Proof of Electronic Service	Transaction 5580462 - Approved By: NOREVIEW : 06-27-2016:11:03:57
6/27/2016	MIN	***Minutes	6/8/16 STATUS HEARING - Transaction 5580458 - Approved By: NOREVIEW : 06-27-2016:11:03:06

Case Description: STATE VS. JOHN THOMAS KEPHART (D7)				
Case ID:	CR16-0298	Case Type:	CRIMINAL	Initial Filing Date: 2/24/2016
6/28/2016	NEF	Proof of Electronic Service	Transaction 5583514 - Approved By: NOREVIEW : 06-28-2016:14:05:59	
6/28/2016	MIN	***Minutes	ENTRY OF PLEA - 06-22-16 - Transaction 5583509 - Approved By: NOREVIEW : 06-28-2016:14:04:56	
7/27/2016	3735	Receipt	RECEIPT OF GRAND JURY TRANSCRIPT - PD'S OFFICE - Transaction 5629028 - Approved By: MFERNAND	
7/27/2016	NEF	Proof of Electronic Service	Transaction 5629041 - Approved By: NOREVIEW : 07-27-2016:09:53:13	
8/16/2016	4185	Transcript	ENTRY OF PLEA - JUNE 22, 2016 - Transaction 5660595 - Approved By: NOREVIEW : 08-16-2016:11:29:34	
8/16/2016	NEF	Proof of Electronic Service	Transaction 5660615 - Approved By: NOREVIEW : 08-16-2016:11:31:14	
1/6/2017	2592	Notice of Witnesses	Transaction 5888854 - Approved By: PMSEWELL : 01-06-2017:16:47:16	
1/6/2017	NEF	Proof of Electronic Service	Transaction 5888878 - Approved By: NOREVIEW : 01-06-2017:16:48:17	
1/10/2017	MIN	***Minutes	MOTION TO CONFIRM TRIAL - 01-04-17 - Transaction 5890402 - Approved By: NOREVIEW : 01-10-2017:13:4	
1/10/2017	NEF	Proof of Electronic Service	Transaction 5890229 - Approved By: NOREVIEW : 01-10-2017:13:08:36	
1/10/2017	2592	Notice of Witnesses	NOTICE OF WITNESS PURSUANT TO NRS 174.234 - Transaction 5889588 - Approved By: TBRITTON : 01-10	
1/10/2017	NEF	Proof of Electronic Service	Transaction 5890407 - Approved By: NOREVIEW : 01-10-2017:13:43:30	
1/11/2017	1800	Information	Transaction 5893632 - Approved By: RRODRIGU : 01-11-2017:15:34:58	
1/11/2017	NEF	Proof of Electronic Service	Transaction 5893668 - Approved By: NOREVIEW : 01-11-2017:15:35:54	
1/12/2017	2245	Mtn in Limine	DEFENDANT'S MOTIONS IN LIMINE - Transaction 5895291 - Approved By: YVILORIA : 01-12-2017:14:02:20	
1/12/2017	2245	Mtn in Limine	MOTION IN LIMINE TO PRECLUDE CHARACTERIZATION OF THE COMPLAINING WITNESS AS THE "VIC"	
1/12/2017	2630	Objection to ...	OBJECTION TO ADMISSION OF PRIOR CONVICTIONS AS A FELONY ENHANCEMENT AND MOTION TO C	
1/12/2017	2490	Motion ...	MOTION FOR EQUAL ACCESS TO JUROR INFORMATION OR ALTERNATIVELY FOR THE COURT TO ORD	
1/12/2017	2490	Motion ...	MOTION TO RECORD ALL BENCH CONFERENCES AND CONFERENCES CONDUCTED IN CHAMBERS - 1	
1/12/2017	NEF	Proof of Electronic Service	Transaction 5895414 - Approved By: NOREVIEW : 01-12-2017:14:03:20	
1/12/2017	NEF	Proof of Electronic Service	Transaction 5895530 - Approved By: NOREVIEW : 01-12-2017:14:32:32	
1/12/2017	NEF	Proof of Electronic Service	Transaction 5896267 - Approved By: NOREVIEW : 01-12-2017:16:49:37	
1/18/2017	1885	Jury Instructions	Transaction 5904138 - Approved By: NOREVIEW : 01-18-2017:17:10:08	
1/18/2017	NEF	Proof of Electronic Service	Transaction 5904141 - Approved By: NOREVIEW : 01-18-2017:17:11:07	
1/18/2017	1695	** Exhibit(s) ...	STATES EXHIBITS 1-31; DEFENSE EXHIBIT 32	
1/18/2017	3755	Refused Instructions-Deft	Transaction 5904138 - Approved By: NOREVIEW : 01-18-2017:17:10:08	
1/18/2017	4245	Verdict(s)...	Transaction 5904138 - Approved By: NOREVIEW : 01-18-2017:17:10:08	
1/18/2017	4235	Unused Verdict Form(s)...	Transaction 5904138 - Approved By: NOREVIEW : 01-18-2017:17:10:08	
1/19/2017	1890	Jury Question, Court Response	COURT RESPONSE TO VERBAL JURY QUESTION DURING DELIBERATIONS - Transaction 5905174 - Appr	
1/19/2017	NEF	Proof of Electronic Service	Transaction 5905182 - Approved By: NOREVIEW : 01-19-2017:11:12:42	
1/25/2017	3880	Response...	RESPONSE TO OBJECTION TO ADMISSION OF PRIOR CONVICTIONS AS A FELONY ENHANCEMENT AN	
1/25/2017	NEF	Proof of Electronic Service	Transaction 5917333 - Approved By: NOREVIEW : 01-25-2017:17:01:43	
2/8/2017	3795	Reply...	REPLY IN SUPPORT OF OBJECTION TO ADMISSION OF PRIOR CONVICTION AS A FELONY ENHANCEMI	
2/8/2017	3860	Request for Submission	Transaction 5940050 - Approved By: YVILORIA : 02-08-2017:09:39:06	
2/8/2017	NEF	Proof of Electronic Service	Transaction 5940196 - Approved By: NOREVIEW : 02-08-2017:09:40:07	
2/9/2017	MIN	***Minutes	1/17/17 - 1/18/17 JURY TRIAL MINS - Transaction 5942931 - Approved By: NOREVIEW : 02-09-2017:10:40:00	
2/9/2017	NEF	Proof of Electronic Service	Transaction 5942937 - Approved By: NOREVIEW : 02-09-2017:10:40:56	
2/13/2017	1695	** Exhibit(s) ...	EXHIBITS 1-2 MARKED FOR IDENTIFICATION	
2/13/2017	S200	Request for Submission Complet	02.13.17 - OBJ TO ADMISSION OF PRIOR CONVICT RULED ON IN OPEN COURT BY JUDGE MADDUX; MS	

Case Description: STATE VS. JOHN THOMAS KEPHART (D7)				
Case ID:	CR16-0298	Case Type:	CRIMINAL	Initial Filing Date: 2/24/2016
2/21/2017	NEF	Proof of Electronic Service	Transaction 5958883 - Approved By: NOREVIEW : 02-21-2017:11:54:15	
2/21/2017	MIN	***Minutes	02/13/2017 MOTION TO SUPPRESS - Transaction 5958874 - Approved By: NOREVIEW : 02-21-2017:11:53:08	
2/28/2017	NEF	Proof of Electronic Service	Transaction 5970668 - Approved By: NOREVIEW : 02-28-2017:09:39:50	
2/28/2017	3060	Ord Granting Mtn ...	TO SUPPRESS - Transaction 5970663 - Approved By: NOREVIEW : 02-28-2017:09:38:55	
3/1/2017	2515	Notice of Appeal Supreme Court	Transaction 5974999 - Approved By: YVILORIA : 03-01-2017:15:11:54	
3/1/2017	NEF	Proof of Electronic Service	Transaction 5975039 - Approved By: NOREVIEW : 03-01-2017:15:13:03	
3/1/2017	NEF	Proof of Electronic Service	Transaction 5975040 - Approved By: NOREVIEW : 03-01-2017:15:13:14	
3/1/2017	3868	Req to Crt Rptr - Rough Draft	Transaction 5975004 - Approved By: YVILORIA : 03-01-2017:15:12:15	
3/1/2017	1310	Case Appeal Statement	Transaction 5975001 - Approved By: YVILORIA : 03-01-2017:15:12:04	
3/1/2017	NEF	Proof of Electronic Service	Transaction 5975038 - Approved By: NOREVIEW : 03-01-2017:15:12:53	
3/2/2017	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5975813 - Approved By: I	

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF  
7 THE STATE OF NEVADA,IN AND FOR THE COUNTY OF WASHOE.

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-0298

11 v.

Dept. No. 7

12 JOHN THOMAS KEPHART,

13 Defendant.  
14 \_\_\_\_\_/

15 **[PROPOSED] ORDER GRANTING MOTION TO SUPPRESS**

16 This matter came before the Court on February 13, 2017. The Court has  
17 considered the record, the Defendant's *Objection to Admission of Prior Convictions*  
18 *as a Felony Enhancement and Motion to Dismiss*, filed January 12, 2017, the  
19 State's written response thereto, and all subsequent replies, responses, and oral  
20 arguments from both parties at the hearing.  
21

22 ///

23 ///

24 ///

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26

1           **Background**

2           Mr. Kephart was convicted of a misdemeanor First Domestic Battery on  
3 May 19, 2010 for an offense that occurred on or about November 28, 2009 in  
4 Humboldt County, Nevada, pursuant to negotiations. Mr. Kephart was  
5 represented by counsel and signed an *Admonishment of Rights*.  
6

7           Mr. Kephart was convicted of another misdemeanor First Domestic Battery  
8 on July 29, 2010 also in Humboldt County, Nevada, pursuant to negotiations for  
9 an offense that occurred on or about June 3, 2010. During the proceedings in this  
10 case, Mr. Kephart represented himself in proper person, negotiated directly with  
11 the State and entered his plea and was sentenced as a proper person without  
12 counsel. The available record relating to the July 29, 2017 conviction includes the  
13 Complaint, a Judgment of Conviction and minutes which are not a verbatim  
14 account of what was said, but instead briefly summarize the various proceedings  
15 and actions held throughout the case.  
16

17           The instant case was first brought against Mr. Kephart in Sparks Justice  
18 Court by way of a Complaint filed on September 30, 2015 alleging one count of  
19 Domestic Battery by Strangulation. Mr. Kephart was represented by private  
20 counsel. An Amended Criminal Complaint was filed in Sparks Justice Court on  
21 December 2, 2015, adding a second count of Domestic Battery, a felony, for having  
22 been previously convicted of two other Domestic Battery offenses within seven (7)  
23 years. A Preliminary Hearing was set for February 3, 2016 and was dismissed by  
24 the State without prejudice on February 3, 2016 due to the absence of witnesses.  
25  
26



1       The State then sought prosecution via a Grand Jury Indictment. The  
2 Grand Jury indicted Mr. Kephart on Count I: Domestic Battery by Strangulation  
3 and Count II: Third Domestic Battery. On May 11, 2016, the Court appointed the  
4 Washoe County Public Defender's Office to represent Mr. Kephart, after he  
5 previously appeared in court without counsel. Negotiations in the case were  
6 unsuccessful and a jury trial was set for January 17, 2017.

8       On January 11, 2017, the State filed an Information Superseding  
9 Indictment, charging Mr. Kephart with the one count of Domestic Battery, a  
10 violation of NRS 33.018, NRS 200.485, and NRS 200.481, dropping the element of  
11 strangulation and now prosecuting as a felony solely due to the two prior  
12 Humboldt County Domestic Battery convictions mentioned above.

14       On January 12, 2017, Mr. Kephart, by and through counsel, filed an  
15 *Objection to Admission of Prior Convictions as a Felony Enhancement and Motion*  
16 *to Dismiss*. Mr. Kephart requested the Court deny the admission of the prior  
17 domestic battery convictions from Union Justice Court, Humboldt County,  
18 Nevada, for felony enhancement purposes.

20       On January 17, 2017, before the jury was seated, the Court orally addressed  
21 the Defendant's objection to the prior Humboldt County convictions. The Court  
22 found it had jurisdiction to preside over the case regardless of whether a guilty  
23 verdict would ultimately result in a misdemeanor or a felony conviction. This  
24 Court did not dismiss the case and further held the issue of enhancement based on  
25 prior convictions is a sentencing issue and may be moot if Mr. Kephart is  
26

1 acquitted. As such, this Court gave the State leave to respond to the Defendant's  
2 motion in the event of a guilty verdict.

3 The trial concluded on or about January 19, 2017, wherein a jury found Mr.  
4 Kephart guilty of Domestic Battery.

5 On January 25, 2017, the State filed its *Response to Objection to Admission*  
6 *of Prior Convictions as a Felony Enhancement and Motion to Dismiss*. The Mr.  
7 Kephart filed his *Reply* and the matter was submitted for consideration on  
8 February 8, 2017. A hearing on the matter was held on February 13, 2017.

#### 9 Discussion

10 It is the finding of this Court that to admit Mr. Kephart's prior 2010  
11 Domestic Battery convictions from Humboldt County, Nevada to enhance his  
12 instant conviction to felony would offend the spirit of constitutional principles of  
13 Due Process and Notice in accordance with Nevada Supreme Court precedence in  
14 the line of cases relating to *State v. Smith*, 105 Nev. 293, 298, 774 P.2d 1037, 1040  
15 (1989) and *Speer v. State*, 116 Nev. 677, 5 P.3d 1063 (2000).

16 The records demonstrate Mr. Kephart was convicted for two prior Domestic  
17 Battery offenses in 2010. Both Judgments clearly show that each of those  
18 convictions is within three months of each other and both are entered as "First  
19 Domestic Battery" convictions. The record also establishes both 2010 Domestic  
20 Battery convictions were for offenses that occurred within seven years of the  
21 instant offense. The question in dispute is whether the second Domestic Battery  
22 conviction in 2010 was specifically negotiated by the parties as a misdemeanor  
23  
24  
25  
26



1 "First Domestic Battery" for enhancement purposes; meaning there was an  
2 agreement that a subsequent Domestic Battery within seven years would only be  
3 enhanced to a misdemeanor Second Domestic Battery rather than a felony.  
4

5 In his motion, Mr. Kephart argued that, under *Smith v. State*, a conviction  
6 is not admissible as an enhancement if the conviction was the result of  
7 negotiations. Mr. Kephart asserted that his prior Domestic Batter convictions may  
8 not be used to enhance a the current conviction "to a felony where the second conviction was  
9 obtained pursuant to a guilty plea agreement specifically permitting the defendant to enter a  
10 plea of guilty to first offense... and limiting the use of the conviction for enhancement  
11 purposes." *Speer v. State*, 116 Nev. 677, 680, 5 P.3d 1063, 1065 (2000).  
12

13 Moreover, at the hearing on February 13, 2017, Mr. Kephart testified under  
14 oath that he was not on notice that the next Domestic Battery conviction would  
15 result in a felony, with mandatory prison time. In this way, he further asserts,  
16 that a felony enhancement contradicts his understanding of the prior plea  
17 negotiations.  
18

19 The State responded in opposition that the above rule does not apply where  
20 there is no plea agreement explicitly limiting the use of the prior conviction for  
21 enhancement purposes. *Id.* at 679-80. State argues Mr. Kephart signed an  
22 *Admonishment of Rights* as part of his July 29, 2010 plea, which put him on notice  
23 that his July 29, 2010 conviction would be used for enhancement purposes. For  
24 the reasons stated below and because Mr. Kephart was representing himself in  
25 proper person when he signed the *Admonishment of Rights* for his July 29, 2010  
26

1 plea, this Court rejects the State's argument that Mr. Kephart was sufficiently put  
2 on notice that his July 29, 2010 conviction would be used for felony enhancement  
3 purposes.

4  
5 This Court recognizes the rule created by the *Smith* and *Speer* line of cases is not  
6 applicable in the absence of a plea agreement limiting the use of the prior as an  
7 enhancement. The Nevada Supreme Court opined, "Our decisions in *Crist*, *Perry*  
8 and *Smith* were based solely on the necessity of upholding the integrity of plea bargains and  
9 the reasonable expectations of the parties relating thereto." *Speer v. State*, 116 Nev. 677, 680,  
10 5 P.3d 1063, 1065 (2000). Also, this Court's understanding of the Nevada Supreme  
11 Court's decisions are that, once the State demonstrates evidence regarding the  
12 parties' specific negotiations for future enhancements, the burden shifts to the  
13 defendant to show it wasn't going to be used for the purposes of a felony  
14 enhancement. The purpose behind this is to ensure the State complies with  
15 negotiated agreements not to use a specific prior for a felony enhancement.

16 In Kephart's case, there is not a record to indicate one way or the other.  
17 We don't have a transcript, which is not the defendant's fault. Both the Deputy  
18 District Attorney for Washoe County and the Deputy Public Defender for  
19 Washoe County in the instant case contacted the court in Humboldt County,  
20 Nevada in an attempt to obtain a transcript and/or a recording of the hearing  
21 related to the July 29, 2010 Domestic Battery conviction. Humboldt County  
22 informed both parties that there were neither transcripts nor recordings.

23  
24 What we have are two prior 2010 misdemeanor judgments within a few  
25 months of each other that clearly indicate "First Domestic Battery." We also have  
26 the June 4, 2010 *Criminal Complaint*, which serves as the basis for the July 29,



1 2010 conviction. In that *Criminal Complaint*, the prior conviction is notably  
2 crossed out in both the title and body of the document. The court record  
3 sufficiently provides enough evidence suggesting the parties were fully aware of  
4 the prior May 19, 2010 conviction prior to allowing Mr. Kephart to plead to a First  
5 Domestic Battery on July 29, 2010.  
6

7 As previously noted, Mr. Kephart was not represented by counsel on July  
8 29, 2010, and there was no written plea agreement prepared. Had there been a  
9 written plea agreement, this decision would have been an easy call, but there  
10 wasn't one. This Court observes that proper person Defendants do not typically  
11 prepare plea agreements. What tends to happen is that the Defendant shows up,  
12 the State negotiates with him and says something to the effect of, "Look, we'll let  
13 you plead to a first. You'll get the first punishment, not the second punishment."  
14 Then, the Clerk puts something in front of the Defendant to sign, he signs it.  
15 However, the Defendant is not represented by counsel, so nobody's really telling  
16 him what any of it means. This is where this Court has a hard time with using the  
17 July 29, 2010 conviction for felony enhancement purposes.  
18  
19

20 Based upon the foregoing reasons, the Court hereby GRANTS Defendant's motion to  
21 exclude the prior First Domestic Battery convictions for felony enhancement purposes.

22 IT IS SO ORDERED

23  
24 Dated this 27<sup>th</sup> day of February, 2017.

25  
26   
DISTRICT JUDGE

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

---

02/24/16  
HONORABLE  
PATRICK  
FLANAGAN  
Dept. No. 7  
K. Oates  
(Clerk)  
R. Walker  
(Reporter)

REPORT OF THE GRAND JURY

Deputy District Attorney Mike Bolenbaker presented an Indictment, which endorsed "A TRUE BILL", to wit:

CR16-0298                      STATE OF NEVADA VS. JOHN THOMAS KEPHART

COUNT I – DOMESTIC BATTERY BY STRANGULATION  
COUNT II – DOMESTIC BATTERY

Deputy District Attorney Bolenbaker presented argument regarding bail.

**COURT ORDERED** bench warrant issued and set bail at \$20,000.00 bondable.

**EXHIBITS 1 - 16** lodged with the Court Clerk, with exception of Exhibit 4 which was withdrawn by counsel Bolenbaker.

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

05/11/16

HONORABLE

PATRICK

FLANAGAN

DEPT. NO. 7

K. Oates

(Clerk)

S. Koetting

(Reporter)

ARRAIGNMENT

Deputy District Attorney Zelalem Bogale represented the State.

Defendant was present without counsel. Probation Officer Carlos

Perez was also present.

The Defendant addressed the Court on his own behalf and advised  
he does not have counsel.

COURT ORDERED: The Public Defender, with counsel Maizie  
Pusich being present in Court, is hereby appointed to represent the  
Defendant in this matter. Further, Pretrial Services is ordered to  
interview the Defendant as to his indigent status, and the Defendant  
will supervised by Pretrial Services while out-of-custody on bail.  
Defendant is continued on bail/bond status with Pretrial Services  
supervision.

05/18/16

9:00 a.m.

Arraignment

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

05/18/16

ARRAIGNMENT

HONORABLE

Chief Deputy District Attorney Kristin Erickson represented the State.

06/22/16

PATRICK

Defendant was present with counsel, Deputy Public Defender

9:00 a.m.

FLANAGAN

Christine Brady. Probation Officer Thomas Wilson was also present.

Entry of Plea

DEPT. NO. 7

TRUE NAME: **JOHN THOMAS KEPHART**. Defendant handed a

K. Oates

copy of the Indictment; waived reading.

(Clerk)

Counsel for the Defendant addressed the Court moved for a

S. Koetting

continuance for entry of plea.

(Reporter)

Counsel for the State addressed the Court and had no objection.

COURT ORDERED: Entry of Plea CONTINUED.

Defendant is continued on bail/bond status.



CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/08/2016  
HONORABLE  
PATRICK  
FLANAGAN  
DEPT. NO. 8  
A. DeGayner  
(Clerk)  
S. Koetting  
(Reporter)

**STATUS HEARING**

Deputy District Attorney Zelalem Bogale represented the State. Defendant was present, represented by Deputy Public Defender Christine Brady. Officer Deborah Brown was present on behalf of the Division of Parole and Probation.

Court Services Officer Michelle Stankovich addressed the Court from behind the bar and advised that the Defendant was checking in, he was put on breathalyzer, was reporting as he was supposed to until May 21 and then he had no communication with Pre Trial Services. The Defendant advised Pre Trial Services that he did not know why he had to report if he had posted bail. Pre Trial Services then advised the Defendant to contact his counsel.

Counsel Brady advised the Court that the Defendant was confused per the Court order and thought that Pre Trial Services was voluntary. Counsel Brady further moved to have the supervised portion of the bail removed and advised that the Defendant has posted two bails totaling \$6,000.00. The bail in Justice Court has been exonerated.

Defendant addressed the Court on his own behalf and confirmed that he understands now.

**Court** addressed the Defendant, explained why the bail is supervised.

**COURT ORDERED:** Defendant shall remain on supervised bail; the Defendant shall keep on track; Defendant shall report as directed; if the Defendant has any issues with the conditions of supervised bail, Counsel Brady shall file a motion with the Court. Matter CONTINUED for Entry of Plea.

Defendant remained on supervised bail/bond status.

06/22/2016  
9:00 a.m.  
Entry of Plea

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

06/22/16

HONORABLE

PATRICK

FLANAGAN

DEPT. NO. 7

K. Oates

A. Poma

(Clerk)

S. Koetting

(Reporter)

ENTRY OF PLEA

Deputy District Attorney Matt Lee represented the State. Defendant was present with counsel, Deputy Public Defender Christine Brady. Probation Officer Tomasa Kizer was also present.

TRUE NAME: **JOHN THOMAS KEPHART**. Defendant was handed a copy of the Indictment; waived formal reading.

Defendant entered pleas of **Not Guilty** to **Count I** – Domestic Battery by Strangulation, a violation of NRS 33.018, NRS 200.481(h), and NRS 200.485.2, a Category C felony; and **Count II** – Domestic Battery, a violation of NRS 33.018, NRS 200.485, and NRS 200.481, a Category C felony; both as contained within the Information.

Defendant **Waived** the 60-day rule. Matter continued for trial by jury. Defendant is continued on bail/bond status.

Motion to  
Confirm Trial –  
January 4, 2017  
at 9:00 a.m.

Jury Trial – Four  
Days – January  
17, 2017 at 9:30  
a.m.

CASE NO. CR16-0298

STATE VS. JOHN THOMAS KEPHART

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

01/04/17

HONORABLE

PATRICK

FLANAGAN

DEPT. NO. 7

K. Oates

(Clerk)

S. Koetting

(Reporter)

MOTION TO CONFIRM TRIAL

Deputy District Attorney Mike Bolenbaker represented the State.

Defendant was present with counsel, Deputy Public Defender Christine Brady. Probation Officer Michele Grochocki was also present.

Counsel for the Defendant addressed the Court and confirmed trial proceeding as scheduled.

Counsel for the State addressed the Court, concurred with opposing counsel, and further advised he will be filing an Amended Information as the State will be proceeding on only one Count as opposed to two Counts. Further, counsel advised he believes this case can be tried in two days.

COURT ORDERED: Exhibit marking will be held on January 12, 2017 at 3:00 p.m. in Department Seven's Jury Room with Court Clerk Kim Oates.

Defendant is continued on bail/bond status.

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

Page One

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

01/17/2017

JURY TRIAL – Day One

HONORABLE

WILLIAM

MADDOX

DEPT. NO. 7

A. DeGayner

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Michael Bolenbaker represented the State. Defendant was present, represented by Deputy Public Defender Christine Brady.

*Prior to the commencement of Court, State's Exhibits 1-31 and Defendant's Exhibit 32 marked for identification. Respective counsel reviewed and approved the form and content of the redacted information to be read by the Court Clerk.*

9:01 a.m. – Court convened with Court, Counsel and Defendant present.

**TRUE NAME: JOHN THOMAS KEPHART.**

Defendant handed a copy of the Information Superseding Indictment; waived reading. Defendant entered a plea of Not Guilty to Count I – Domestic Battery, a violation of NRS 33.018, NRS 200.485 and NRS 200.481, a Category C Felony, as contained in the Information Superseding Indictment.

Counsel Bolenbaker addressed the Court and argued in opposition of the Motion for Equal Access to Juror Information or Alternatively for the Court to Order the Prosecution to Utilize Juror Information Equitably and Consistently.

Counsel Brady addressed the Court and argued in support of the Motion for Equal Access to Juror Information.

**COURT ORDERED:** Motion to Equal Access to Juror Information or Alternatively for the Court to Order the Prosecution to Utilize Juror Information Equitably and Consistently – DENIED. Court cautioned the parties to not refer to Counsel Brady as Court Appointed Counsel during the trial. Court will deal with other motions as they come up during the trial. As to the Motion to Record All Bench Conferences and Conferences Conducted in Chambers, Court advised counsel that the Court will always allow Counsel to make a record of any conferences done off the record. Court will suggest to the jury that the determination of the term "victim" is their decision to make.

Counsel Bolenbaker advised the Court that it is not his practice to use the term "victim" however, he would object to the Motion in Limine to Preclude Characterization of the Complaining Witness as the "Victim" as he has concerns that a witness may use the term and he does not want that to be grounds for a mistrial.

**COURT** advised will give a cautionary note not to use the term "victim" but will not grant a mistrial if the term "victim" is used. Court to wait to hear argument or rule on the Objection to Admission of Prior Convictions as a Felony Enhancement until/if the Defendant is convicted by the Jury. If the Defendant is convicted in this case, Counsel Bolenbaker shall file a response with the Court and a time will be set for the Court to hear arguments.

DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

01/17/2017

HONORABLE  
WILLIAM  
MADDOX

DEPT. NO. 7

A. DeGayner  
(Clerk)

I. Zihn

(Reporter)

JURY TRIAL – Day One

Counsel Brady advised the Court that if the Defendant is convicted she would like to address the Defendant's custody status. Counsel Brady advised that she will argue in support of the Defendant to remain out of custody pending sentencing.

**COURT** advised Counsel that he is inclined to keep the Defendant's custody status "as is" pending sentencing, if he is convicted.

Counsel Bolenbaker advised the Court that his witness, Nevada Sidener, has a prior Felony conviction in Humboldt County and he has advised Counsel Brady of this information for impeachment purposes. Counsel Bolenbaker moved to exclude the Defense witness, currently sitting in gallery, for jury selection.

Counsel Brady argued in opposition of excluding the Defense witness for jury selection.

**COURT ORDERED:** State's oral Motion to Exclude Defense Witness for Jury Selection – DENIED. Court admonished Defense witness, Carlee Kephart, not to speak with any Jurors or Potential Jurors. Rule of Exclusion – **INVOKED**.

10:16 a.m. – Court stood in Recess.

*Prior to Court, roll taken by Court Clerk Amanda DeGayner. Forty-One (41) of Forty-One (41) prospective Jurors were present.*

10:27 a.m. – Court convened with Court, Counsel, Defendant and prospective Jury panel present.

The Court called the case.

Court addressed the prospective Jurors.

Introduction of Court staff, respective Counsel and Defendant was made to the prospective Jurors.

Respective counsel confirmed with the Court that they would NOT be challenging the Jury as a whole.

All prospective Jurors were sworn to answer questions touching upon their qualifications to serve as trial jurors in this case.

*Potential Juror Charles Keiffer was excused by the Court for cause. Potential Juror Brian Bohachef was excused by the Court for cause.*

The Court ordered that Twenty-Three (23) names be drawn, consisting of Twelve (12) Jurors and One (1) Alternate, who were called and seated in the Jury box.

The Court addressed the Jury.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

01/17/2017  
HONORABLE  
WILLIAM  
MADDOX  
DEPT. NO. 7  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)

JURY TRIAL – Day One

The Court conducted general and specific voir dire of the potential Jurors in the box.  
At the Court's request, Counsel Bolenbaker introduced himself, provided a brief statement of the case and read the list of witnesses expected to be called in this case.

At the Court's request, Counsel Brady introduced herself and the Defendant, provided a brief statement of the case and read a list of witnesses expected to be called in this case.

*Sidebar conducted between Court and Counsel.*

Counsel stipulated to excuse Potential Juror Kathleen Stierhoff. Potential Juror Kathleen Stierhoff excused for cause and replaced by Potential Juror Morgan Vanbuskirk-Peterson.

11:44 a.m. - Counsel Bolenbaker, on behalf of the State, conducted general and specific voir dire of the potential Jurors in the box.

Counsel Brady moved to excuse Potential Juror Patricia (Jane) Miller. Potential Juror Patricia (Jane) Miller excused for cause and replaced with Potential Juror Tony Heilman. Potential Juror Donita Wilson excused by the Court for cause and replaced with Potential Juror Eugene Poplin.

Potential Juror Larry Heuer excused by the Court for cause and replaced with Potential Juror Steven Pittinger.

Potential Juror Danielle Balliet excused by the Court for cause and replaced with Potential Juror Jesus Gomez-Medrano.

Potential Juror Steven Pittinger excused by the Court for cause and replaced with Potential Juror Jacobbenjamin Annan.

Counsel Bolenbaker, on behalf of the State, conducted continued general and specific voir dire of the potential Jurors in the box.

Court excused Potential Juror L. Ortencia Rodriguez-Deesquivel for and cause and replaced with Potential Juror Randolph Joseph Lopez.

Counsel Bolenbaker, on behalf of the State, conducted continued general and specific voir dire of the potential Jurors in the box.

Counsel Bolenbaker, on behalf of the State, passed the panel for cause.

12:24 p.m. – Counsel Brady, on behalf of the Defendant, conducted general and specific voir dire of the potential Jurors in the box.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

01/17/2017  
HONORABLE  
WILLIAM  
MADDOX  
DEPT. NO. 7  
A. DeGayner  
(Clerk)  
I. Zihn  
(Reporter)JURY TRIAL – Day One

Counsel Brady, on behalf of the Defendant, passed the panel for cause.

Court admonished the Jury, which was presented prior to every recess.

1:21 p.m. – Recess to conduct challenges.

1:28 p.m. – Court re-convened outside the presence of the Jury where preemptory challenges were exercised, Four (4) per side plus One (1) alternate. The following panel was selected and stipulated to:

Randolph Lopez; Katheryn Cotter; Ricky Savage; Mallory Beals; Jacobbenjamin Annan; Krest Bishop; Guy Gansert; Darrin Munson; Maria Cagney; Barry Brady; Josefina Burgos; Jesus Gomez-Medrano and Alternate Mark Pingle.

1:35 p.m. – Court convened with Court, Counsel, Defendant and prospective Jurors present.

At the direction of the Court, the Court Clerk read the names of the selected Jury and administered the Empaneling of Jury Oath.

Unreached Jurors were thanked and excused by the Court.

Court admonished the Jury, which was presented prior to every recess and ordered them to return at 3:00 p.m.

1:42 p.m. – Jury escorted out of the Courtroom.

*Outside the presence of the Jury, discussion ensued as to Jury Instructions.*

1:45 p.m. – Recess.

2:59 p.m. – Court reconvened with Court, Counsel, Defendant and Jury present.

Court provided preliminary admonishments and instructions to the Jury.

At the direction of the Court, Court Clerk read the Information Superseding Indictment aloud.

3:27 p.m. – Counsel Bolenbaker, on behalf of the State, presented opening statement.

3:41 p.m. – Counsel Brady, on behalf of the Defendant, presented opening statement.

3:49 p.m. – Recess.

4:01 p.m. – Court convened with Court, Counsel, Defendant and Jury present.

4:02 p.m. – Counsel Bolenbaker called **Nevada Lynn Sidener** who was sworn, identified the Defendant and direct examined. **Exhibit 1** offered; no objection; ADMITTED.

Continued direct examination conducted. **Exhibit 2** offered; no objection; ADMITTED.

**Exhibit 3** offered; no objection; ADMITTED. **Exhibit 4** offered; no objection;

ADMITTED. Continued direct examination conducted. **Exhibit 8** offered; no objection;

DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

01/17/2017

JURY TRIAL – Day OneHONORABLE  
WILLIAM  
MADDOX

DEPT. NO. 7

A. DeGayner  
(Clerk)I. Zihn  
(Reporter)

ADMITTED. Continued direct examination conducted. **Exhibit 5** offered; no objection; ADMITTED. **Exhibit 6** offered; no objection; ADMITTED. **Exhibit 7** offered; no objection; ADMITTED. Continued direct examination conducted. **Exhibit 10** offered; no objection; ADMITTED. **Exhibit 12** offered; no objection; ADMITTED. **Exhibit 13** offered; no objection; ADMITTED. Continued direct examination conducted. **Exhibit 9** offered; no objection; ADMITTED. **Exhibit 11** offered; no objection; ADMITTED. Continued direct examination conducted. **Exhibit 14** offered; objection – overruled; ADMITTED. **Exhibit 15** offered; objection – overruled; ADMITTED. **Exhibit 16** offered; objection – overruled; ADMITTED. Continued direct examination conducted. **Exhibit 17** offered; objection – overruled; ADMITTED. **Exhibit 18** offered; objection – overruled; ADMITTED. **Exhibit 19** offered; objection – overruled; ADMITTED. **Exhibit 20** offered; objection – overruled; ADMITTED. **Exhibit 21** offered; objection – overruled; ADMITTED. **Exhibit 22** offered; objection – overruled; ADMITTED. Continued direct examination conducted. **Exhibit 23** offered; objection – overruled; ADMITTED. **Exhibit 24** offered; objection – overruled; ADMITTED. **Exhibit 25** offered; objection – overruled; ADMITTED. **Exhibit 26** offered; objection – overruled; ADMITTED. **Exhibit 27** offered; objection – overruled; ADMITTED. **Exhibit 28** offered; objection – overruled; ADMITTED. **Exhibit 29** offered; objection – overruled; ADMITTED. **Exhibit 32** offered; objection – overruled; ADMITTED.

Court admonished the Jury, which was presented prior to every recess and ordered them to return on January 18, 2017 at 9:00 a.m.

5:03 p.m. – Jury escorted out of the Courtroom.

*Outside the presence of the Jury, discussion ensued as to Jury Instructions.*

5:05 p.m. – Court stood in recess. Counsel ordered to return on January 18, 2017 at 8:30 a.m. to settle Jury Instructions.

Defendant remained out of custody on bail/bond status.



DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

01/18/2017

JURY TRIAL – Day Two

HONORABLE

WILLIAM

MADDOX

DEPT. NO. 7

A. DeGayner  
(Clerk)L. Stubbs  
(Reporter)*Prior to the commencement Court, discussion ensued as to Jury Instructions.*

8:38 a.m. – Court convened with Court, Counsel and Defendant present. **Court** canvassed the Defendant as to his Fifth Amendment right not to testify. The Defendant responded that he understood his rights as explained to him by the Court. Outside the presence of the Jury, Jury Instructions were informally settled. Respective Counsel stated applicable objections, the State advised of one additional Jury Instruction to proffer. **Court** advised Counsel to review the proposed Jury Instruction packet and be prepared to formally settle the Instructions during the noon recess.

*8:50 a.m. – Recess.**9:04 a.m. – Court convened with Court, Counsel, Defendant and Jury present.**Counsel stipulated to the presence of the Jury.*

State's witness **Nevada Sidener** resumed the witness stand, reminded she was still under oath and direct examined by Counsel Bolenbaker; cross examination conducted by Counsel Brady; re-direct examination conducted; witness thanked and excused.

Counsel Brady addressed the Court and requested that the State's witness, **Nevada Sidener**, be subject to recall.

*Sidebar conducted between Court and Counsel.*

Counsel Brady advised the Court that she would not be recalling State's witness, **Nevada Sidener**.

**Court** thanked and excused State's witness **Nevada Sidener**.

Counsel Bolenbaker called **Officer Andrew Lindsey** who was sworn, identified the Defendant and direct examined; cross examination conducted; redirect examination conducted; re-cross examination conducted; witness thanked and excused.

9:53 a.m. – Counsel Bolenbaker, on behalf of the State, advised that he would not be calling additional witnesses and rested the State's case-in-chief.

Counsel Brady called **Carlee Kephart** who was sworn.

*Sidebar conducted between Court and Counsel.*

Direct examination conducted by Counsel Brady; cross examination conducted; witness thanked and excused.

Counsel Brady called **John Kephart** who was sworn and direct examined; cross examination conducted; re-direct examination conducted; witness thanked and excused.

Court admonished the Jury which was presented prior to every recess.

10:40 a.m. – Jury escorted out of the Courtroom.

DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES-HEARING

01/18/2017

HONORABLE

WILLIAM

MADDOX

DEPT. NO. 7

A. DeGayner

(Clerk)

L. Stubbs

(Reporter)

**JURY TRIAL – Day Two**

11:00 a.m. – Court convened with Court, Counsel, Defendant and Jury present.

Counsel stipulated to the presence of the Jury.

Counsel Brady, on behalf of the Defendant, advised that she would not be calling additional witnesses and rested the Defendant's case.

Counsel Bolenbaker advised that he would not be presenting any rebuttal evidence.

Court reminded the Jury of the admonition and ordered they return at 1:00 p.m.

11:03 a.m. – Jury escorted out of the Courtroom.

*Outside the presence of the Jury, Counsel Brady advised that she felt the District Attorney spoke loudly during the first bench conference regarding prior bad acts and moved for a mistrial.*

***COURT ORDERED: Motion for Mistrial – DENIED. Counsel ordered to return at 12:30 p.m. and shall be prepared to settle Jury Instructions.***

11:04 a.m. – Recess.

12:32 p.m. – Court and Counsel met off the record to discuss Jury Instructions.

12:43 p.m. – Court convened with Court, Counsel and Defendant present. Outside the presence of the Jury, Jury Instructions were informally and formally settled, with counsel stipulating to Jury Instructions 1-40 and 2 Verdict forms on the record. Additionally, One offered and rejected Jury Instruction (Defendant) was lodged with the Court Clerk. Respective counsel stated applicable objections and had no additional Jury Instructions to proffer.

12:52 a.m. – Recess.

1:07 p.m. – Court convened with Court, Counsel, Defendant and Jury present.

Court called the case.

Counsel stipulated to the presence of the Jury.

**Court** instructed the Jury with Jury Instructions 1-40.

1:31 p.m. – Counsel Bolenbaker conducted closing argument on behalf of the State.

1:48 p.m. – Counsel Brady conducted closing argument on behalf of the Defendant.

2:14 p.m. – Counsel Bolenbaker conducted rebuttal argument.

Bailiff Natasha Rickey were sworn and charged with the Jury.

Jury was admonished and escorted into the Jury Room. Deliberations commenced.

Alternate Juror Mark Pingle was thanked by the Court, admonished and asked to provide his contact information to Court Clerk Amanda DeGayner.

2:35 p.m. – Recess.

CASE NO. CR16-0298

STATE OF NEVADA VS. JOHN THOMAS KEPHART

Page Three

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

01/18/2017

HONORABLE

WILLIAM

MADDOX

DEPT. NO. 7

A. DeGayner

(Clerk)

L. Stubbs

(Reporter)

JURY TRIAL – Day Two

4:07 p.m. – Deputy Rickey notified the Court of a Jury Question. Conference call conducted between Court and Counsel wherein Counsel Brady waived the Defendant's appearance and a response was agreed upon.

4:27 p.m. – Deputy Rickey notified the Court that a verdict was reached; Counsel and Court Reporter notified.

4:43 p.m. – Court convened with Court, Counsel, Defendant and Jury present.

Respective Counsel stipulated to the presence of the Jury.

Upon direction of the Court, the Court Clerk read the verdict aloud.

VERDICT

We, the jury in the above-entitled matter, find the defendant, JOHN THOMAS KEPHART, GUILTY of COUNT I. DOMESTIC BATTERY.

DATED this 17<sup>th</sup> day of January, 2017.

/s/ Guy Gansert  
FOREPERSON

At the request of Counsel, the jury was polled.

The Jury was thanked by the Court and released.

Counsel Bolenbaker moved to remand the Defendant to the custody of the Sheriff.

**COURT ORDERED:** Motion to remand the Defendant – DENIED.

Counsel Bolenbaker advised that he will file a response to the Objection To Admission of Prior Convictions as a Felony Enhancement and Motion to Dismiss by next week.

**COURT ORDERED:** Matter CONTINUED for Hearing on Defense's Objection to Admission of Prior Convictions as Felony Enhancement and Motion to Dismiss on **February 13, 2017 at 8:00 a.m.** Defendant CONTINUED on Bail/Bond status. Court admonished the Defendant that if he commits another crime pending resolution of the case, his bail bond will be revoked.

4:54 p.m. – Court stood in Recess.

## JURY TRIAL EXHIBITS

**PLTF:** STATE OF NEVADA

**PATY:** Deputy District Attorney Michael Bolenbaker

**DEFT:** JOHN THOMAS KEPHART

**DATY:** Deputy Public Defender Christine Brady

**Case No:** CR16-0298

**Dept. No:** 08

**Clerk:** A. DEGAYNER

**Date:** 01/17/2017

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	Photo-Entry Way	1/13/2017	No Objection	1/17/17
2	State	Photo-Hallway	1/13/2017	No Objection	1/17/17
3	State	Photo-Makeup	1/13/2017	No Objection	1/17/17
4	State	Photo-Makeup	1/13/2017	No Objection	1/17/17
5	State	Photo-Broken Door	1/13/2017	No Objection	1/17/17
6	State	Photo-Broken Door	1/13/2017	No Objection	1/17/17
7	State	Photo-Broken Door	1/13/2017	No Objection	1/17/17
8	State	Photo-Clothes in Bedroom	1/13/2017	No Objection	1/17/17
9	State	Photo-Clothes in Closet	1/13/2017	No Objection	1/17/17
10	State	Photo-Paper Towel	1/13/2017	No Objection	1/17/17
11	State	Photo-Door Handle Hole	1/13/2017	No Objection	1/17/17
12	State	Photo-Victim's Eye	1/13/2017	No Objection	1/17/17
13	State	Photo-Victim's Face	1/13/2017	No Objection	1/17/17
14	State	Photo-Victim's Neck	1/13/2017	Objection – Overruled	1/17/17
15	State	Photo-Victim's Neck	1/13/2017	Objection – Overruled	1/17/17
16	State	Photo-Victim's Neck	1/13/2017	Objection – Overruled	1/17/17
17	State	Photo-Victim's Hands	1/13/2017	Objection – Overruled	1/17/17
18	State	Photo-Victim's Hands	1/13/2017	Objection – Overruled	1/17/17
19	State	Photo- Door Hinge	1/13/2017	Objection – Overruled	1/17/17
20	State	Photo-Door Hinge	1/13/2017	Objection – Overruled	1/17/17
21	State	Photo-Bedroom	1/13/2017	Objection – Overruled	1/17/17
22	State	Photo-Bedroom	1/13/2017	Objection – Overruled	1/17/17

## JURY TRIAL EXHIBITS

**PLTF:** STATE OF NEVADA

**PATY:** Deputy District Attorney Michael Bolenbaker

**DEFT:** JOHN THOMAS KEPHART

**DATY:** Deputy Public Defender Christine Brady

**Case No:** CR16-0298

**Dept. No:** 08

**Clerk:** A. DEGAYNER

**Date:** 01/17/2017

Exhibit No.	Party	Description	Marked	Offered	Admitted
23	State	Photo-Victim Face	1/13/2017	Objection – Overruled	1/17/17
24	State	Photo-Victim Arm	1/13/2017	Objection – Overruled	1/17/17
25	State	Photo-Victim Arm	1/13/2017	Objection – Overruled	1/17/17
26	State	Photo-Victim Wrist	1/13/2017	Objection – Overruled	1/17/17
27	State	Photo-Victim Eye	1/13/2017	Objection – Overruled	1/17/17
28	State	Photo-Defendant	1/13/2017	Stipulated	1/17/17
29	State	Photo-Defendant's Face	1/13/2017	Stipulated	1/17/17
30	State	Certified Prior 1 – Previously marked Grand Jury Exhibit #15	1/13/2017	---	---
31	State	Certified Prior 2 – Previously marked Grand Jury Exhibit #16	1/13/2017	---	---
32	Defendant	Photo – Defendant Face	1/13/2017	Stipulated	1/17/17
33					
34					
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39					
40					
41					

CASE NO. CR16-0298

STATE OF NEVADA  
vs  
JOHN THOMAS KEPHART

02/13/2017  
HONORABLE  
WILLIAM A. MADDOX  
DEPT. NO. 8  
M. Conway (Clerk)  
R. Walker (Reporter)

APPEARANCES-HEARING

CONTINUED TO

**MOTION TO SUPPRESS**

Deputy District Attorney Michael Bolenbaker represented the State.  
Deputy Public Defender Christine Brady was present on behalf of the Defendant.  
Defendant Kephart was present, out of custody.

Counsel Brady addressed the Court and presented a procedural history of the case at bar and reviewed the Information Superseding Indictment charging a third domestic battery. Counsel Brady presented argument in support of a jurisdictional issue as to whether or not this is a third domestic battery. Counsel Brady presented argument that the second domestic battery to which he pled, that actually occurred prior to the first one to which he pled, does not constitute a valid second domestic batter for enhancement purposes pursuant to the negotiations.

Counsel Bolenbaker addressed the Court and presented argument supporting the State's contention that the Defendant signed a waiver (in his prior domestic battery case(s)) that specifically says that this conviction and any other conviction can be used against him to enhance. Counsel argued that the record clearly shows that there was no proof issue necessarily on the charge; it was simply a matter of an inability to actually prove up the prior offense to make it a second. Counsel argued that is why it was reduced down to a first, not for enhancement purposes but merely for penalty purposes. Counsel Bolenbaker marked for identification two unpublished opinions, Ex: 1: *Kapetan v State, 126 Nev. 729* and Ex 2: *Tosh v. State, 385.*

***Copies were provided to all parties.***

Respective counsel advised the Court that they attempted to, but were unable to get, transcripts from the Defendant's prior hearings at the misdemeanor lower court level.

Court and counsel reviewed exhibits 1 and 2, the Criminal Complaint filed June 4, 2010, and the Judgment of Conviction.

Counsel Bolenbaker provided further argument.

Counsel Brady provided further argument.

Counsel Brady called **JOHN THOMAS KEPHART**, who was sworn and testified under direct examination.

Counsel Bolenbaker conducted cross-examination.

The Court questioned Defendant Kephart.

Counsel Brady conducted re-direct examination. Counsel Bolenbaker conducted re-cross examination.

Defendant Kephart was excused.

**COURT ORDERED:** Motion to Suppress Prior Convictions (to be used for enhancement purposes):  
GRANTED.

Court and counsel discussed the timeline for the State to file an appeal from this decision. Counsel Bolenbaker indicated that he is not certain if the State would appeal this decision.

Court and counsel discussed whether sentencing should be remanded to Justice Court, if the matter should be sentenced by the District Court and reviewed potential supervision and alternative sentencing options.

**COURT ORDERED:** Counsel Brady to prepare and email the Order to Court and Counsel Bolenbaker. Upon receipt of the proposed Order, Counsel Bolenbaker will have five days to object to any content/language.

**\*after session note\***

**Remand to Justice Court and/or sentencing date not determined at this time.**

## HEARING

### CR16-0298 STATE OF NEVADA vs. JOHN THOMAS KEPHART

State of Nevada: Deputy District Attorney Michael Bolenbaker

Defendant: Deputy Public Defender Christine Brady

**HEARING:** Motion to Suppress

Heard before the Honorable William A. Maddox

Case No: **CR16-0298** Dept. No: **D7** Clerk: **M. Conway** Date: **02/13/2017**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1	State	Copy of unpublished Disposition <i>Kapetan v. State</i> , <i>126 Nev. 729</i>	02/13/2017		
2	State	Copy of unpublished Disposition <i>Tosh v. State</i> 385 <i>P.3d 607</i>	02/13/2017		



1 **Code 1350**

2  
3  
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **THE STATE OF NEVADA,**

**Case No. CR16-0298**

7  
8 **Plaintiff,**

**Dept. No. 7**

9 **vs.**

10 **JOHN THOMAS KEPHART,**

11 **Defendant.**

12 \_\_\_\_\_ /  
13 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

14 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,  
15 County of Washoe; that on the 2nd day of March, 2017, I electronically filed the Notice of Appeal in  
16 the above entitled matter to the Nevada Supreme Court.

17 I further certify that the transmitted record is a true and correct copy of the original  
18 pleadings on file with the Second Judicial District Court.

19 Dated this 2nd day of March, 2017

20 Jacqueline Bryant  
21 Clerk of the Court

22 By /s/ Yvonne Vilorio  
23 Yvonne Vilorio  
24 Deputy Clerk  
25  
26  
27  
28