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Respondent.

Electronically Filed
Oct 20 2017 01:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Counsel for Respondent

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Case No. 72701

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JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

JAN 28 8 54 AM '16

THE STATE OF NEVADA,

Plaintiff,

-VS-

DONOVINE MATHEWS, aka,
Donovian Mathews #5910369,

Defendant.

JUSTICE COURT
LAS VEGAS, NEVADA
BY SG
DEPUTY

CASE NO.: 16F01295X

DEPT NO.: 5

CRIMINAL COMPLAINT

The Defendant above named having committed the crime of CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222), in the manner following, to-wit: That the said Defendant, on or about the 5th day of January, 2016, at and within the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: C.J, being approximately 1 year(s) of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature, and/or cause C.J to be placed in a situation where he might have suffered unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature, by burning the said C.J.'S hands with hot water, resulting in substantial bodily harm or mental harm to C.J.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

01/27/16

16F01295X/tjd
LVMPD EV# 1601051552
(TKS)

16F01295X
CRM
Criminal Complaint
6069917



W:\2016F01295\16F01295-COMP-001.DOCX

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

Court Minutes



L006070360

16F01295X State of Nevada vs. MATHEWS, DONOVINE

1/28/2016 7:28:00 AM 48 Hour Probable Cause

Result: Signing Completed

Review

PARTIES

PRESENT:

Judge: Pro Tempore, Judge

Pro Tempore: Hua, Jeannie

PROCEEDINGS

Hearings: 1/29/2016 7:30:00 AM: Initial Appearance

Added

Events: Probable Cause Found

Bail Stands - Cash or Surety

Amount: \$20,000.00

Counts: 001 - \$20,000.00/\$20,000.00 Total Bail

Probable Cause Arrest Documents

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes



L006074815

16F01295X State of Nevada vs. MATHEWS, DONOVINE

Lead Atty: Public Defender

1/29/2016 7:30:00 AM Initial Appearance (In
Custody)

Result: Matter Heard

PARTIES
PRESENT: Attorney Paddock, Rebecca Elizabeth
Defendant MATHEWS, DONOVINE
Judge: Cruz, Cynthia
Prosecutor: Killer, Sarah J.
Court Reporter: Nelson, Bill
Court Clerk: Breland, Jourisha

PROCEEDINGS

Attorneys:	Paddock, Rebecca Elizabeth	MATHEWS, DONOVINE	Added
	Public Defender	MATHEWS, DONOVINE	Added
Hearings:	2/16/2016 9:00:00 AM: Preliminary Hearing		Added
Events:	Initial Appearance Completed <i>Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i> Public Defender Appointed Bail Stands - Cash or Surety Amount: \$20,000.00 <i>Counts: 001 - \$20,000.00/\$20,000.00 Total Bail</i>		

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes



L006147134

16F01295X State of Nevada vs. MATHEWS, DONOVINE

Lead Atty: Damian Sheets

2/16/2016 9:00:00 AM Preliminary Hearing (In custody)

Result: Matter Heard

PARTIES PRESENT:
Attorney Lippmann, Daniel
Attorney Clark, Kristy
Defendant MATHEWS, DONOVINE

Judge: Cruz, Cynthia
Prosecutor: Hamner, Christopher
Court Reporter: Camgemi, Robert
Court Clerk: Breland, Jourisha

PROCEEDINGS

Attorneys:	Clark, Kristy	MATHEWS, DONOVINE	Substitution
	Lippmann, Daniel	MATHEWS, DONOVINE	Added
	Sheets, Damian	MATHEWS, DONOVINE	Added
Hearings:	3/1/2016 9:00:00 AM: Preliminary Hearing		Added
Events:	Counsel Substitutes in as Attorney of Record		
	Discovery Given to Counsel in Open Court		
	Preliminary Hearing Date Reset		
	Bail Stands - Cash or Surety	Amount: \$20,000.00	
	Counts: 001 - \$20,000.00/\$20,000.00 Total Bail		



ORIGINAL

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

MAR 03 2016

BY Kory Schlitz
KORY SCHLITZ, DEPUTY

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE JOBE
Chief Deputy District Attorney
Nevada Bar #10575
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 3/3/16
10:00 AM
D. LIPPMAN

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

Defendant.

CASE NO: C-16-313047-1

DEPT NO: XII

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

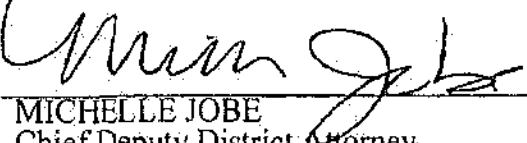
STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DONOVINE MATHEWS, aka, Donovan Mathews, the Defendant(s) above named, having committed the crime of **CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222)**, on or about the 5th day of January, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit: C.J., being approximately 2 year(s) of age, to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature, and/or cause C.J. to be placed in a situation where he might have suffered unjustifiable physical pain or mental

1 suffering as a result of abuse or neglect, to wit: physical injury of a non accidental nature, by
2 burning the said C.J.'S hands with hot water, resulting in substantial bodily harm or mental
3 harm to C.J.

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

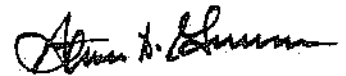
7 BY


8 MICHELLE JOBE
9 Chief Deputy District Attorney
10 Nevada Bar #10575

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

<u>NAME</u>	<u>ADDRESS</u>
13 CATHCART, JASMIN	1029 Lisbon Ave #5 LVN 89119
14 CETL, DR. SANDRA	Sunrise Hospital
15 C.J.	C/O CCDA
16 DAHN, ROBBIE	LVMPD #5947
17 DEPALMA, PHILIP	LVMPD #5297
18 GRIVAS, CHRISTOPHER	LVMPD #8759
19 OLSON, DR.	Sunrise Hospital
20 PELTIAR, PHYLIP	Address Unk
21 SANTAROSSA, BRIAN	LVMPD #6930
22 SZUKIEWICZ, JOSEPH	LVMPD #5411
23 WESTMORELAND, JOANNA	CPS

24
25
26
27 16F01295X /jm/SVU
28 LVMPD EV#1601051552
(TK5)



CLERK OF THE COURT

1 CASE NO. C-16-313047-1

2 DEPT. NO. 5

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 DONOVINE MATHEWS,)

10 Defendant.)

11

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE CYNTHIA CRUZ
14 JUSTICE OF THE PEACE

15 TAKEN ON TUESDAY, MARCH 1, 2016
16 AT 9:00 A.M.

17

18 APPEARANCES:

19

For the State: Michelle Jove, Esq.
Deputy District Attorney

20

For the Defendant: Daniel Lippmann, Esq.
Las Vegas, Nevada

21

22

23

24

25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

I N D E X

WITNESSES:

D C RD RC

PHILLIP DEPALMA

SANDRA CETL

JASMIN CATHTART

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 1,
2 2016

3 * * * * *

4 THE COURT: All right.

5 We need to go on Mathews, because we have a
6 doctor here.

7 This is the time and date set for
8 preliminary hearing on Donovine Mathews, 16F01295X.

9 Get Mr. Lippmann in here. Mr. Lippmann, you
10 are on deck, any preliminary motions?

11 MR. LIPPMANN: The exclusionary rule.

12 THE COURT: The defense has invoked the
13 exclusionary rule. I would that for any and all
14 witnesses, aside from the State's first witness to
15 exit the courtroom at this particular time.

16 I would ask that both the defense and the
17 State both check the courtroom to make sure that I
18 have no potential witnesses in the courtroom.

19 MS. JOVE: Your Honor, I believe that
20 Mr. Mathews family is in the back of the courtroom.

21 They may be witnesses based on the
22 Defendant's statements.

23 THE COURT: I would ask that Mr. Mathews'
24 family exit the courtroom, that way you will still
25 be able to have the opportunity to be witnesses down

1 the road.

2 THE COURT: State call your first witness.

3 MS. JOVE: The State calls Detective
4 DePalma.

5 THE CLERK: Please be seated.

6 State your first and last name, and spell it
7 for the record.

8 THE WITNESS: Detective Phil DePalma,
9 D-e-P-a-l-m-a.

10 MS. JOVE: Your Honor, for the record, I
11 apologize, the offer to the Defendant before
12 proceeding at the preliminary hearing is for the
13 Defendant to plead guilty to one count of child-
14 abuse and neglect, a Category B felony.

15 The range of punishment is 1 to 6 years.

16 The State will retain the full right to
17 argue at sentencing, including the possibility of
18 consecutive time to a home invasion case in which he
19 is on a probation hold.

20 We stipulate to revocation in that case
21 without modification. The State's understanding is
22 that he is rejecting that offer, and that is why we
23 are proceeding.

24 THE COURT: It is his right to make that
25 call.

1
2 DIRECT EXAMINATION
3

4 BY MS. JOVE:

5 Q. What is your occupation, sir?

6 A. I am a detective with the Las Vegas
7 Metropolitan Police Department.

8 Q. And how long have you been so employed?

9 A. 19 and a half years.

10 Q. What unit were you assigned to in January of
11 2016?12 A. The abuse and neglect detail special victims
13 unit.14 Q. Do you have any specialized training or
15 experience associated with being on that unit?

16 A. Yes, I do.

17 Q. What is that?

18 A. Forensic interviewing. Interview
19 interrogation. Search warrant preparation and
20 execution.21 Q. On or about January 5, 2016, were you called
22 to respond to Sunrise Hospital?

23 A. I was.

24 Q. Specifically to the children's portion of
25 the hospital?

1 A. Yes.

2 Q. When you responded to Sunrise Hospital, did
3 you come in contact with the victim who is the
4 subject of your investigation?

5 A. I did.

6 Q. What was that victim's name?

7 A. Chance Jasper.

8 Q. Did you see her at the hospital?

9 A. Yes.

10 Q. And to what extent did you see Chance
11 Jasper?

12 A. He was laying down with his mother in one of
13 the rooms, and his bandages were wrapped on both
14 hands, and he was crying.

15 Q. Did you ever see his hands unwrapped?

16 A. Yes, I did.

17 Q. Was that the same day January 5, 2016 at the
18 hospital?

19 A. Yes.

20 Q. During the course of your investigation, did
21 you identify a suspect?

22 A. I wasn't really sure about a suspect. I
23 just had some family members there, and the child's
24 boyfriend and mother, and that's all I had at the
25 time.

1 Q. To clarify, the child's boyfriend or the
2 mother's boyfriend?

3 A. The mother's boyfriend, yes, and the other
4 of the child.

5 Q. Okay.

6 And during the course of your investigation,
7 did you identify the mother's boyfriend?

8 A. I did.

9 Q. Who did you identify that to be?

10 A. A Donovine Mathews.

11 Q. Did you have an opportunity to interact and
12 speak with Mr. Mathews on January 5, 2016?

13 A. I did.

14 Q. Do you see Mr. Mathews in Court today?

15 A. I do.

16 Q. Can you please identify him and something
17 that he is wearing that sets him apart from anybody
18 else in Court?

19 A. He is the gentleman sitting in front of me,
20 and has a blue jumpsuit.

21 MS. JOVE: For the record, identifying the
22 Defendant.

23 THE COURT: Mr. Lippmann has a blue suit and
24 not a jumpsuit.

25 Q. When you first encountered the Defendant,

1 was that at Sunrise Hospital or somewhere else?

2 A. Sunrise Hospital.

3 Q. Based on your observation of the child at
4 the hospital, and your initial investigation, what
5 types of injuries were you investigating?

6 A. A burn.

7 Q. To what portion of the body?

8 A. There were 2 burns to each back of each
9 hand.

10 Q. And during the course of your investigation,
11 did you identify the adult with whom the child was
12 with at the time the child obtained the injuries?

13 A. Yes.

14 Q. And who did you identify that adult to be?

15 A. Donovine Mathews and the mother.

16 Q. Okay.

17 And did you have an opportunity to conduct
18 an interview with Mr. Mathews?

19 A. Yes, I did.

20 Q. Where did you conduct this interview?

21 A. There is a separate room, a quite room they
22 call it at Sunrise Pediatric.

23 Q. And when you interviewed with Mr. Mathews,
24 was he under arrest?

25 A. No, he was not.

1 Q. Was he in handcuffs?

2 A. No, he was not.

3 Q. Was he told he was free to leave?

4 A. Yes, he was.

5 Q. Was he shown the manner by which he could
6 leave the room?

7 A. Yes.

8 Q. Was there a door?

9 A. Yes.

10 Q. Was the door locked?

11 A. No.

12 Q. Was he made aware that he would be able to
13 leave through that door if he was so inclined?

14 A. Yes.

15 Q. Was he advised that he didn't have to answer
16 any questions if he didn't want to?

17 A. Yes.

18 Q. And when you spoke with Mr. Mathews, was he
19 cooperative at the time?

20 A. Yes, he was.

21 Q. Did he answer the questions you were asking?

22 A. Yes, he did.

23 Q. Did you let Mr. Mathews know at the time
24 that you had not identified whether or not -- strike
25 that.

1 At the time you spoke to Mr. Mathews, did
2 you let him know whether or not there was -- you
3 believed there was a crime that had been committed,
4 or that you were just collecting information?

5 A. I informed him that I was fact finding,
6 trying to find out what occurred to little Chance.

7 Q. And when you spoke with Mr. Mathews, were
8 you able to determine at what point in time this
9 child Chance sustained the burns to his hands?

10 A. Yes.

11 Q. And was that the same day or a different
12 day?

13 A. It was the same day, a little earlier than
14 what the time we were speaking.

15 Q. And what if anything did Mr. Mathews tell
16 you about the events that led to the burns?

17 A. He stated he was watching over Chance, and
18 Chance's little sister, and at the time his
19 girlfriend, Chance's mother was in a meeting at the
20 apartment complex, so he was baby-sitting both
21 children, and that Chance had gotten burned.

22 And he placed a phone call to Chance's
23 mother, Jasmin, informing her that he was burned,
24 and asked when she was coming back.

25 Q. Okay.

1 Is it fair to say, based on your
2 conversation with Mr. Mathews, he identified himself
3 as the only adult in the house at the time of the
4 injuries?

5 A. Yes.

6 Q. And he said he was watching 2 children; is
7 that correct?

8 A. Yes.

9 Q. Did you observe or come in contact with that
10 second child?

11 A. Yes, she was at the month.

12 Q. Okay.

13 A. I won't hold you to the exact number, but
14 what is her rough age?

15 A. Around one years old.

16 Q. So, Mr. Mathews established that there was
17 him, Chance and the one-year-old, correct?

18 A. That's correct.

19 Q. All right.

20 When Mr. Mathews gave you this version of
21 events, did you have the opportunity to go to the
22 place where this burn happened?

23 A. I did.

24 Q. Where was that?

25 A. I believe it was called Lisbon Avenue. It

1 was an apartment.

2 Q. Is it fair to say 1029 Lisbon Avenue, number
3 5 in Las Vegas, Clark County, Nevada?

4 A. That's correct.

5 Q. All right.

6 As far as you know, when you reported to
7 that residence, who was with you when you went
8 there?

9 A. Myself.

10 Sergeant Troyce Prunty.

11 Detective Santarosa.

12 And Detective Gerevis.

13 Q. And before you arrived, was the apartment
14 sealed off by any other Metro officers?

15 A. No, it was locked.

16 Q. Did the door have to be unlocked to gain
17 entry?

18 A. Yes.

19 Q. Who unlocked it?

20 A. Mr. Donovine Mathews did.

21 Q. Did you tell him that going to the apartment
22 was free and voluntary, and at his choice?

23 A. Yes. I asked him if he would did he a
24 re-enactment for me.

25 Q. And did he do that?

1 A. Yes.

2 Q. Did you have the Chance to observe the
3 location where the Defendant stated this burn
4 occurred?

5 A. I did.

6 Q. And was that a within the kitchen area of
7 this residence?

8 A. Yes, it is.

9 Q. Did he also identify the implements where
10 the child may have obtained hot water?

11 A. Yes, he did.

12 MS. JOVE: Court's indulgence.

13 Q. During the course of being at the apartment,
14 were you also able to identify what clothing if any
15 Chance was wearing at the time he sustained the
16 burns?

17 A. Yes, I did.

18 Q. As far as you know were photographs taken
19 inside the residence, and of the clothing Chance had
20 on at the time?

21 A. Yes.

22 Q. According to the Defendant, what was Chance
23 wearing at the time of the burn?

24 A. He was supposedly wearing a diaper, which I
25 found on the bathroom floor.

1 A black super hero T-shirt, which was found
2 in another bedroom, and supposedly wearing some
3 socks, which I did not -- there were many socks
4 around the apartment.

5 Q. You said that the shirt was identified; was
6 that a short sleeve shirt, or a long sleeve long?

7 A. It was a short sleeve black T-shirt.

8 Q. And when you were at the residence, did you
9 or someone who was with you that you had the
10 opportunity to observe measure the height of the
11 kitchen counter?

12 A. Yes.

13 Q. What was that height?

14 A. The counter I believe was 35 inches in
15 height.

16 MS. JOVE: Okay.

17 Your Honor, may I approach the witness with
18 a number of photographs?

19 THE COURT: you may.

20 Q. I show you State's Proposed Exhibits 1
21 through 9, and if you could look through them for me
22 and let me know if you recognize them.

23 A. One as the top one?

24 Q. One is on the top. They are sequential.

25 Just look at them, and then I will ask you specific

1 questions.

2 A. Okay.

3 Q. Do you recognize what is contained in all of
4 those photographs?

5 A. Yes.

6 Q. And as far as those photographs are
7 concerned, do they appear to fairly and accurately
8 depict the child, the clothing and the apartment
9 that you had the chance to observe on January 5,
10 2016?

11 A. Yes.

12 Q. Showing you State's Proposed Exhibit 1, what
13 is that?

14 A. Number one, there is Chance Jasper.

15 Q. Is that the child you indicated had the
16 burns?

17 A. Yes.

18 Q. Where was Chance when that picture was
19 taken?

20 A. At Sunrise Hospital.

21 Q. Showing you State's 2, what do you recognize
22 that to be?

23 A. This was the shirt that I believe that was
24 described to me to be on Chance at the time he was
25 burned.

1 Q. You said I believe; is that based on
2 information you had at the time?

3 A. That's what I got from Mr. Mathews, Yes.

4 Q. All right.

5 And is it fair say that was located within
6 the Lisbon residence?

7 A. It was in the Lisbon residence, Yes.

8 Q. I show you -- you looked at photographs 3
9 through 9, correct?

10 A. Correct.

11 Q. And those appear to be photographs of the
12 residence when you were at the apartment?

13 A. That's correct.

14 Q. Is it fair to say, it is sequential from
15 wide, zooming into certain specific items at the
16 residence related to the Defendant's saying as to
17 what happened?

18 A. Yes.

19 Q. And do those fairly and accurately depict
20 the residence and the specific items at the time?

21 A. Yes, it does.

22 MS. JOVE: move for the admission of State's
23 Exhibits 1 through 9.

24 MR. LIPPMANN: No objection.

25 THE COURT: State's Exhibits 1 through 9

1 will be admitted for purposes preliminary hearing
2 only.

3 Q. 3 through 9, if you will please -- I
4 apologize.

5 When you were at the residence, did the
6 Defendant -- he said that there was some boiling
7 water, correct; that was his version of events?

8 A. That's what he said, yes.

9 Q. Did he indicate what he boiled the water in?

10 A. A silver pot.

11 Q. Is that depicted in 3 through 9?

12 A. Yes.

13 Q. Where was that pot located when you went to
14 the residence?

15 A. On the stove to the back left burner.

16 Q. Did the Defendant identify if there was a
17 cup or something involved in this event?

18 A. He did.

19 Q. Is that cup depicted in those photographs?

20 A. Yes, it is.

21 Q. If you would briefly describe the cup that
22 the Defendant pointed out?

23 A. He identified the dark blue or black cup
24 that was upside down in the sink.

25 Q. And what exhibit are you looking at,

1 detective?

2 The numbers are on the back, I am sorry.

3 A. It was 7, 8 and 9.

4 Q. All right.

5 It is fair to say that that cup appears to
6 have a handle that is broken off; is that correct?

7 A. That's correct.

8 Q. Did the Defendant let you know whether or
9 not the cup was broken prior to the burn, or after
10 the burn, or as a result of the incident?

11 A. I asked him in the interview if the cup had
12 been broken, and he did not know.

13 Then I discovered this cup inside the
14 residence as broken, and asked him if this was the
15 cup, and he said yes.

16 I asked him if it was broken, and he did not
17 know. And I asked where the other piece was. We
18 looked around, and we could not find this broken
19 cup.

20 That's when he assumed that it was already
21 broken.

22 Q. Is it fair to say that during the course of
23 your discussions with the Defendant, he never
24 described picking up a broken cup, or a piece of
25 broken cup that came off during this offense; is

1 that fair?

2 A. Fair.

3 Q. Now, you said you observed the child at
4 Sunrise Hospital, is that correct?

5 A. That's correct.

6 Q. Did you also attend any other medical
7 appointments for this child?

8 A. I did.

9 Q. What medical appointments was that?

10 A. I was at the UMC burn unit on one of his
11 doctor appointments for Chance.

12 Q. It is University Medical Center?

13 A. That's correct.

14 Q. That is the only burn unit in Clark County,
15 Nevada?

16 A. That I know of, yes.

17 Q. What was the purpose of you attending those
18 appointments?

19 A. To look at the status, or to find out what
20 the status was of his burns; the severity of it, and
21 how Chance was doing.

22 Q. Okay.

23 As far as you know, were there photographs
24 taken of Chance's injuries at Sunrise?

25 A. At Sunrise, yes.

1 Q. Were there also photos of Chance's injuries
2 taken at University Medical Center?

3 A. Yes, there was.

4 MS. JOVE: I will give Mr. Lippmann an
5 opportunity to review State's Exhibits 10 through
6 32.

7 May I approach the witness?

8 THE COURT: You may.

9 Q. Just look through these, detective, and I
10 will ask you some questions.

11 A. Okay.

12 Q. Do you recognize what is depicted in those
13 photographs?

14 A. Yes.

15 Q. Briefly as to exhibits 10 to 32, what would
16 you describe those pictures depicting?

17 A. The burns that Chance sustained on both of
18 his hands, 1 through 17.

19 Q. 10 through 17?

20 A. Yes. I am sorry.

21 Q. That's okay.

22 A. 10 through 17 were taken at Sunrise
23 Hospital.

24 Q. That would have been on January 5, 2016?

25 A. Correct.

1 Q. Then 18 through 32, were those taken at
2 University Medical Center?

3 A. I believe they were, yes, at the burn unit.

4 Q. Okay.

5 10 through 17, do those photographs fairly
6 and accurately depict the injuries you observed on
7 Chance on January 5, 2016?

8 A. Yes.

9 Q. On 18 through 32, do those photographs
10 fairly and accurately depict how Chance's hands
11 looked some time after he had been at Sunrise and
12 based on the treatment he had to undergo at the UMC
13 burn unit?

14 A. Yes.

15 MS. JOVE: Move for the admission of 10
16 through 32.

17 MR. LIPPMANN: May I briefly voir dire?

18 THE COURT: You may.

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. LIPPMANN:

23 Q. Did you personally take those photographs?

24 A. No.

25 Q. Were you present when they were taken?

1 A. Yes. The Sunrise Hospital ones I was
2 present for. The UMC pictures I was not.

3 Q. How did you tell those were taken at UMC?

4 A. Because I went to UMC, and I retrieved these
5 pictures the day after. I wasn't there the day
6 after.

7 Q. Okay.

8 How did you know these photos were taken?

9 A. Because I went to UMC Hospital.

10 Q. And they were given to you by whom?

11 A. The UMC medical staff.

12 MR. LIPPMANN: Nothing further.

13 THE COURT: These will be deemed admitted for
14 the purposes of preliminary hearing only.

15 Q. Detective, just for the record, the UMC
16 photos, you have a tag that identifies it as
17 University Medical Center; is that correct?

18 A. That's correct.

19 Q. When you had the chance to observe the
20 injuries to Chance Jasper, you said there were burns
21 on his hands, correct?

22 A. Correct.

23 Q. On one hand or both?

24 A. Both.

25 Q. When you observed the injuries on January 5,

1 2016, what portion of Chance's hands were injured?

2 A. The top part of his hands.

3 Q. Okay.

4 Did you have an opportunity to view the palm
5 of his hands?

6 A. Yes.

7 Q. Did you observe any injuries there?

8 A. No, I did not.

9 Q. Did you have a chance to observe Chance's
10 faces, legs and arms?

11 A. I did.

12 Q. Did you observe any injuries there?

13 A. No.

14 MR. LIPPMANN: Objection. It calls for
15 medical conclusions.

16 THE COURT: Overruled.

17 It is something I think he can make an
18 observation of. I don't think he can give a
19 diagnosis.

20 Q. Is it fair to say you didn't observe any
21 marks or potential burns or anything on his face,
22 his arms, or his legs?

23 A. I did not.

24 Q. Okay.

25 As far as you know, for the treatment that

1 the child obtained at Sunrise Medical Center, was
2 any other area of his body being attended to other
3 than his hands?

4 A. No, not that I am aware of.

5 Q. All right.

6 Now, when you were at the residence with the
7 Defendant, did you do a re-enactment of what
8 Defendant said happened?

9 A. I did.

10 Q. Was that videotaped?

11 A. Yes, it was.

12 Q. All right.

13 When you did the reenactment, if you can
14 briefly walk me through what the Defendant said was
15 going on when Chance sustained the burns?

16 A. Well, I went on tape.

17 I identified myself.

18 The date that I was there.

19 The event number.

20 And that Mr. Mathews was there voluntarily
21 giving a reenactment for us.

22 He agreed to do so.

23 Then he proceeded to let me know how he
24 began boiling water in a pot for coffee. And I
25 asked him to roughly give me an example of how much

1 water he put in the pot.

2 He did so for me. He put it on the stove
3 where he said he boiled it. He said he went into
4 the other room, and walked into another bedroom,
5 where he was changing the one-year-old.

6 He had to change the diaper of the one-year-
7 old. He then stated that he heard some screams, or
8 Chance screaming, and he walked back into the
9 kitchen, where he said he saw a mug on the floor,
10 and Chance shaking his hands and saying hot, hot.

11 Q. Did the Defendant tell you what he was going
12 to do with the boiling water?

13 A. He was going to make coffee.

14 Q. Did you ask him to show you where the
15 coffee was?

16 A. Yes.

17 Q. Was he able to find any cover that he was
18 supposedly making?

19 A. No.

20 Q. As far as the Defendant's version of events,
21 he boiled the water on the stove, correct?

22 A. Correct.

23 Q. Did he ever tell you whether he poured that
24 water into that mug?

25 A. He did say that.

1 Q. Did he leave the mug on the counter when he
2 changed the baby?

3 A. He stated he poured it into a mug, and put
4 it on the counter towards the edge, not all the way,
5 but close to the edge, and that's when he had to go
6 into the other room to change the child's diaper.

7 Q. All right.

8 And as far as the -- did you ever figure out
9 the child's height?

10 A. I was told at the hospital, they measured
11 him at 37 inches.

12 Q. All right.

13 When you were in the residence, did you see
14 any step stools, or chairs that could have been drug
15 over to the counter or anything by someone?

16 A. There was none.

17 MS. JOVE: Court's indulgence.

18 No additional questions.

19 THE COURT: Cross.

20

21 CROSS-EXAMINATION

22

23 BY MR. LIPPMANN:

24 Q. Detective, when you were called to Sunrise
25 hospital on that day, and were you informed of

1 suspicions that there was a possible intentional
2 burn before you got to the hospital?

3 A. No.

4 Q. Okay.

5 Why were you called to the hospital; what
6 information did you have when you got to the
7 hospital?

8 A. Every time -- I worked in child abuse and
9 neglect, and handled elderly as well.

10 Any time there is a major incident that
11 occurs, and it can go anywhere from fractures to
12 burns, to child deaths, accidental deaths, suicide,
13 we get called.

14 We go no matter what.

15 Q. Just based on the severity of the injury,
16 you are automatically called?

17 A. Correct.

18 Q. And you are not informed at this point of
19 any sort of suspicion of any type of abuse at that
20 point?

21 A. Correct.

22 Q. At what point do you are you told about that
23 be suspicions of intentional abuse?

24 A. I am not told much, but our policy is to
25 interview both parents, or any parties that are

1 involved that are there, fact finding.

2 Q. Your policy is to interview parties, being
3 the parents, so you interviewed the parents first;
4 is that what happened here?

5 A. We simultaneously interviewed both parties.

6 Q. Okay.

7 And you interviewed Mr. Mathews, correct?

8 A. Yes, I did.

9 Q. And you did not interview Jasmin, the
10 mother?

11 A. I did not.

12 Q. Who was that?

13 A. Who interviewed Jasmin?

14 Q. Yes.

15 A. Detective Gerevis and Sergeant Pruny.

16 Q. 2 detectives?

17 A. A detective and a sergeant.

18 Q. 2 officers?

19 A. 2 detectives, yes, investigators.

20 Q. And you alone interviewed Mr. Mathews?

21 A. No. I was also in the room with Detective
22 Santarosa.

23 Q. Very good.

24 When you spoke with Mr. Mathew, he did
25 voluntarily speak with you, correct?

1 A. Yes, he did.

2 Q. Even though you advised him that you are
3 trying to figure out what is going on, and obviously
4 you were investigating something?

5 A. I was investigating how this child got
6 burned; yes, I was.

7 Q. And he didn't say I don't want to talk to
8 you, he talked to you?

9 A. Correct.

10 Q. About how many hours after -- first and
11 foremost, what time did you arrive at Sunrise?

12 A. I would say before 11:00 o'clock, or right
13 around 11:00 o'clock in the morning.

14 Q. Were you informed at what time this event
15 happened?

16 A. Somewhere around 9:00 o'clock.

17 Q. In the morning?

18 A. Yes.

19 Q. What time did you go back to the apartment?

20 A. I don't recall the exact time, but it was
21 shortly after, maybe 11:30, 12.

22 Q. In the afternoon?

23 A. Yes. Sometime closer to the afternoon.
24 Maybe a little later.

25 Q. So roughly --

1 A. The time on the reenactment would depict
2 that.

3 Q. Very good.

4 And at the apartment, this is about at least
5 4 to 5 hours after the incident; did you observe any
6 water on the ground?

7 A. No, I did not.

8 Q. In the kitchen area?

9 A. No.

10 Q. Okay.

11 But you did observe a black mug with a
12 broken handle?

13 A. Correct.

14 Q. It was on top of other dishes in the sink?

15 A. Correct.

16 Q. And it looked like it had sort of dried food
17 stuck to it, on the bottom and on the sides?

18 A. Yes.

19 Q. Did you speak with Dr. Cetl at Sunrise
20 Hospital, a pediatrician specialist?

21 A. Very briefly. She was there for a brief
22 moment, and then she left.

23 Q. Okay.

24 Was it suggested by this doctor that the
25 burns were intentional?

1 A. At a later date I discussed this case with
2 her, yes.

3 Q. So not that date?

4 A. Not that particular morning, no.

5 Q. Who is Philip Peltier?

6 A. He is a burn expert.

7 Q. Where does he work?

8 A. He is world renown. He works everywhere.

9 Q. Does he work in Las Vegas?

10 A. Sometimes, when he is needed.

11 Q. Was he in Las Vegas?

12 A. Expert testimony.

13 Q. You spoke to him over the phone?

14 A. Yes, and via email, yes.

15 Q. When was that?

16 A. I would assume a week later, a week and a
17 half, maybe.

18 I don't recall the time. I would have to
19 actually look at my notes.

20 Q. Did you speak to any of the doctors at that
21 time the UMC burn unit?

22 A. Yes.

23 Q. And --

24 A. At the burn unit, or Sunrise Pediatrics?

25 Q. At the actual UMC burn unit.

1 A. At UMC, just briefly. I didn't talk to them
2 about the case.

3 Q. So you didn't ask for the doctors at the
4 burn unit whether or not they thought that the burns
5 were intentional?

6 A. No, I did not.

7 Q. Why is that?

8 A. Excuse me?

9 Q. Why is that?

10 A. I didn't need to.

11 Q. Okay.

12 You had already spoken with Dr. Cetl and
13 Philip Peltier?

14 A. Correct.

15 Q. Were either one of those doctors physicians
16 that took care of Chance?

17 A. Neither of those, no.

18 Q. So the actual doctors that took care of
19 Chance and viewed and treated his injuries, you did
20 not ask for their opinion, correct?

21 A. At UMC Hospital?

22 Q. At the UMC burn unit.

23 A. I just spoke with some of the UMC burn
24 unit -- that were in the burn unit, but not
25 specifically the doctor treating him, no.

1 Q. Let's broaden the scope, any of the nurses?

2 A. Yes.

3 Q. You spoke with them and asked for their
4 opinion?

5 A. I was trying to get the pictures. They
6 offered their opinions, yes.

7 Q. Okay.

8 A. I did not put that in my report, though.

9 Q. What were their opinions, though?

10 A. That this wasn't an accident.

11 Q. Okay.

12 You don't recall any of their names?

13 A. No.

14 Q. All right.

15 But you did speak with the actual doctor
16 that treated Chance?

17 A. Briefly. He was in the room with the
18 mother. I didn't pull him to the side, no.

19 Q. Specifically asking him his opinion?

20 A. No.

21 Q. Very good.

22 You stated that you had a measurement of
23 Chance being 37 inches in height.

24 Did any of the measurement that you got
25 include his reach height?

1 A. No, not that I recall. Just how tall he
2 was.

3 Q. Okay.

4 You stated that in the reenactment you asked
5 Mr. Mathews whether he was able to find the coffee,
6 and he wasn't able to at that point.

7 Did you search the house?

8 A. Not an in-depth search, no.

9 Q. You had a search warrant?

10 A. Yes.

11 Q. Even though you had Mr. Mathews' permission
12 to enter into the house, he voluntarily went with
13 you and unlocked the door?

14 A. That is correct.

15 Q. Did you or any of your colleagues have a
16 chance to speak with Chance?

17 A. Not that I recall, no.

18 Q. Do you know or have any indication that
19 Chance indicated that he was intentionally burned by
20 Mr. Mathews?

21 A. No. Chance every time he saw someone, he
22 cried.

23 Q. Anyone?

24 A. Anyone.

25 MR. LIPPMANN: All right.

1 I pass the witness.

2 MS. JOVE: Just a few questions.

3

4

REDIRECT EXAMINATION

5

6 BY MS. JOVE:

7 Q. Mr. Lippmann asked if you talked to any of
8 Chance's treating physician at UMC, correct?

9 A. Yes.

10 Q. And also asked you about whether or not
11 Dr. Cetl had been the treating physician, and
12 Dr. Peltier, correct?

13 A. Yes.

14 Q. Did you in fact talk to any of Chance's
15 treating physicians at Sunrise Hospital?

16 A. The when we first got there, yes.

17 Q. What doctor was that?

18 A. I believe it was Dr. Olson.

19 Q. As far as you knew from being there and
20 observing in your participation with this
21 investigation, Dr. Olson was Chance's treating
22 physician?

23 A. His treating physician initially, yes.

24 Q. So on January 5, 2016?

25 A. Correct.

1 Q. Without telling me what Dr. Olson said, did
2 you get any opinions from Dr. Olson about Chance's
3 injuries?

4 A. Yes.

5 Q. And did that -- what did you do as a result
6 of that information?

7 A. I investigated it by speaking to all of the
8 parties that were involved, witnesses. I get search
9 warrants.

10 I do whatever I can do to investigate the
11 incident at hand.

12 Q. Okay.

13 Now, switching topics, going back to you
14 being at the residence that day with the Defendant,
15 Mr. Lippmann asked you essentially about your
16 investigation, the depth of your investigation,
17 fair?

18 A. Yes.

19 Q. During the course of you officers, and CSA's
20 being present at the residence, did you all go
21 through all of the cupboards of the kitchen?

22 A. Yes.

23 Q. And were photographs taken of all of the
24 contents of what was in the cupboard?

25 A. Yes.

1 Q. And the refrigerator?

2 A. Yes.

3 Q. And also some pictures of trash that was on
4 the floor, correct?

5 A. Yes.

6 Q. On January 5, 2016, after the interview at
7 Sunrise Hospital or after the reenactment of the
8 residence at the Defendant's, was the Defendant
9 arrested and taken into custody?

10 A. No, he was not.

11 MS. JOVE: No further questions.

12 MR. LIPPMANN: Nothing further.

13 THE COURT: Thank you for your time and
14 testimony.

15 Don't discuss your testimony with anybody
16 during the pendency of the case, unless it is a
17 representative from DA's or Mr. Sheets' office.

18 Thank you for your time.

19 Call your next witness.

20

21 (Matter trailed.)

22

23 THE COURT: We are back on the record with
24 Mr. Mathews.

25 MS. JOVE: The State calls Sandra Cetl.

1
2 SANDRA CETL,

3
4 who, being first duly sworn to tell the truth, the
5 whole truth, and nothing but the truth, was examined
6 and testified as follows:
7

8 THE CLERK: Please be seated.

9 If you state your first and last name and
10 spell it for the record.

11 THE WITNESS: Sandra Cetl, S-a-n-d-r-a
12 C-e-t-l.

13 MS. JOVE: With the Court's permission.

14 THE COURT: Your witness.
15

16 DIRECT EXAMINATION
17

18 BY MS. JOVE:

19 Q. What is your occupation?

20 A. I am a pediatrician. I work at 2 facilities
21 here in Las Vegas, Sunrise Hospital Children's
22 Hospital, as well as the Southern Nevada Children's
23 Assessment Center.

24 My role at both facilities is to evaluate
25 concerns of child abuse, both sexual and physical,

1 as well as neglect.

2 And I work part time pediatric emergency
3 room physician.

4 Q. As far as your evaluation of children for
5 abuse and neglect, how many cases have you handled
6 where you have made that determination?

7 A. I guess I don't understand, determination
8 one way or the other?

9 Q. Yes.

10 A. Probably a few thousand at this point.

11 Q. And generally speaking, when you have cases
12 where you are called into evaluate for abuse or
13 neglect, do you always find that a child has been
14 abused either physically, sexually or otherwise?

15 A. No.

16 Q. In the course of your training and
17 experience, tell me, what is your experience and
18 training with respect to child abuse briefly?

19 A. Well, after medical school, I attended a
20 residency at the University of Nevada, which is a
21 specialty residency in pediatrics, after which I
22 underwent an apprenticeship with a child abuse
23 pediatrician here in down.

24 Additionally working with her as well as
25 with national groups that I continue my medical

1 education through with conferences and with list
2 serves.

3 And I continue to attend those conferences,
4 as well as work with my colleagues around the
5 country on child abuse.

6 Q. Do you have any training and experience with
7 burns to children?

8 A. Yes.

9 Q. What is that?

10 A So, just as with anything, child-abuse, so
11 my training comes from both conferences.

12 Personal experience.

13 Working with colleagues.

14 Working with patients.

15 The medical education.

16 The residency and beyond.

17 Q. Have you ever been called to evaluate or
18 consult on case involving where a child has
19 purportedly spilled something and sustained burns?

20 A. Absolutely, as a consultant on child abuse,
21 as well as an emergency room physician, we see that
22 a lot.

23 Q. When you say a lot, do you have a rough
24 estimate?

25 A. I'd say maybe half of the shifts I work

1 probably have kids that come in with a burn from a
2 spill or something like that.

3 Q. All right.

4 As far as your testimony today, were you
5 asked to consult on a case involving a child by the
6 name of the Chance Jasper?

7 A. Yes.

8 Q. And did you actually see the patient or
9 review photographs of the injury?

10 A. Photographs and the record, yes.

11 Q. The records from Sunrise Hospital?

12 A. Yes.

13 Q. If you can look Exhibits 1 and 2. I am
14 showing you 1 and 2, and then also 10 through 32.

15 Look through 10 through 32 for me.

16 A. Okay.

17 Q. Are you familiar with any of those
18 photographs?

19 A. Yes.

20 Q. Did you review those photographs when being
21 consulted as far as the named victim, Chance Jasper?

22 A. Yes, I did.

23 Q. And were you provided with a series of
24 events that supposedly happened resulting in those
25 injuries?

1 A. Yes, I did.

2 Q. The series of events were that water had
3 been boiled on the stove, poured into a mug, and
4 left on a counter that's 35 inches high, and the top
5 is approximately 37 inches high.

6 The injuries that you see, I believe in 10
7 through 32, is that consistent with or inconsistent
8 with the child grabbing a mug and spilling the
9 water?

10 A. Inconsistent.

11 Q. Why is that?

12 A. When kids reach above -- we see a lot of
13 tea, coffee, hot liquids, water, the injuries that
14 we see from water as it powers down are on the face,
15 chest, torso, abdomen.

16 They also have an irregular pattern to them,
17 so they will physically almost look like an inverted
18 triangle as they come down.

19 Water, when it hits, or any liquid that is
20 hot hits, it initially will burn.

21 The burn severity will become less and less
22 around either edges or as it cools down, the surface
23 of the skin, and the injuries here had none of those
24 features.

25 Q. When you say reach, if the child is 37

1 inches reaching for something on a 35 inch counter,
2 what is your definition of reach; is it straight
3 out; is it kind of like above the shoulders?

4 A. Above the shoulders. Above the child, or
5 even if they are reaching out ahead of them to pick
6 something up, any exploratory kind of motion, the
7 spill that we see typically falls on the front of
8 their body.

9 Q. Directing your attention to what has been
10 admitted as State's Exhibit 1, and I represent to
11 you based on prior testimony, that that's the
12 child-victim, while he had the injuries and was at
13 Sunrise Hospital, what is depicted at least in
14 State's Exhibit 1; is there any evidence that you
15 see consistent with a spill injury?

16 A. No.hypothesis

17 As far as showing you what's become admitted
18 as State's Exhibit 2, if you were told that that is
19 the shirt that the child was wearing, that the child
20 had that in fact on, a short sleeve shirt, diapers
21 and socks, would you expect to see any additional
22 injuries on the child's body if it were in fact a
23 spill inconsistent with the hypothesis I gave you?

24 A. Yes.

25 Q. Where would you expect to see injuries?

1 A. Initially on the chest, the face, the chin,
2 the areas that are exploring the environment in the
3 forefront.

4 Q. Going back to State's Exhibits 10 through
5 17, you have reviewed those.

6 Doctor, it appears that the injuries are
7 only on the top portion of the child's hand, is that
8 fair?

9 A. Yes.

10 Q. And based on -- does there appear to be a
11 spot on the child's hands or arm where the injuries
12 stop, or a demarcation line?

13 A. Yes. The dorsal surface, or the top of the
14 hand, there is sparing to the bottom of the hands or
15 the palmar surface.

16 It appears to be limited to the dorsal area.

17 Q. Do you see any burns beyond the wrist area
18 on either arm of the child?

19 A. No. I think on the left hand it involves a
20 little of the wrist, but not beyond that.

21 Q. Is it fair to say on the right and the left
22 hand there appears to be a clear I guess place or
23 stoppage of where the injury occurred; is that fair?

24 A. That is fair.

25 Q. Is there anything significant about the

1 sparing of the under portion of the child's fingers?

2 A. Typical burns, accidental ones that happen
3 in households that we see, they typically under the
4 age of 4, and the palmar surface, or the other side
5 of the hand as they reach or touch, that is the area
6 of the explore environment when touching things.

7 It was significant. That area did not have
8 any burns at all.

9 Q. Now, the totality of what you can see in the
10 photographs, and the information provided to you,
11 did you make any determinations in your medical
12 opinion as an expert as to whether or not these
13 injuries were accidental or something else?

14 A. I felt that they were something else, that
15 it was more likely an inflicted injury, and it was
16 not consistent with the explanation that I was
17 provided.

18 Q. When you say an inflicted injury, what does
19 that mean?

20 A. Abuse.

21 Q. Can you tell anything or make
22 determination from the pictures and the injuries as
23 to the type of abusive injury, or the method of the
24 injury?

25 A. It did appear to be consistent with a hot

1 liquid burn.

2 Q. Would that be something -- would it be fair
3 to say that that would be over the top of the
4 child's hands, or come down from the top, onto the
5 top of the child's hands?

6 A. Yes.

7 Q. And the fact that the palms or the under
8 portions of the child's hands are spared, is that
9 consistent with non-accidental injuries, is that
10 consistent with where the burns are on the child's
11 hands?

12 A. Yes. So, the burns just on the top of both
13 hands, it is unusual or any kind of accident at
14 injury the really unusual.

15 And the fact that it spared suggests that
16 either the hands were in a curled position, or on a
17 surface that was cooler, that wouldn't allow the hot
18 liquid to get though that palmar surface.

19 Q. What about the fact of where the injuries
20 stop on the wrist, and the fact that he was wearing
21 a short sleeve shirt?

22 A. There is very few splash marks. There
23 aren't any lines of gravitational pulling where
24 liquids tend to spill as someone is moving away from
25 the hot water or anything that is causing pain.

1 So, all of that put together is what made my
2 determination.

3 Q. In your training and experience, what is the
4 treatment for those type of burns?

5 A. In first degree burns, or a partial in an
6 initial kind of superficial burn, like a sunburn, so
7 not much is done for that.

8 He had second degree or partial thickness
9 from the layer of the skin that was off.

10 This seems to be a more painful one, so pain
11 control, stopping of the burning process, so usually
12 some kind of gauze, loose gauze, wrapping, and pain
13 medication may be part of the treatment.

14 Additionally some kind of antibiotics,
15 ointments or cream in order to prevent any kind of
16 bacterial infection.

17 In addition to that, it would be serial
18 monitoring or management of the burn, to see how it
19 is healing, to help prevent scar tissue from forming
20 and infection, of course.

21 Q. You said the use of gauze to stop the
22 burning process; how long does the burning process
23 last?

24 A. So, the gauze usually just stops the air
25 from touching the burn, which is very pain.

1 Q. And your specific title at Sunrise is just
2 merely as a consultant, or an evaluator?

3 A. No, I am child abuse pediatrician.

4 My title at Sunrise -- it is tough in
5 Nevada, because doctors can't be employees of a
6 hospital.

7 We have to be employees of a secondary
8 group. So through my secondary group, I am employed
9 as an emergency room physician, and as a child-abuse
10 pediatrician consultant.

11 Q. What is your secondary group?

12 A. Medmax.

13 Q. So you are basically employed through them,
14 and they have positions where you can work at a
15 hospital, correct?

16 A. Correct.

17 Q. All right.

18 And your chosen hospital or the hospital
19 that they place you at is Sunrise, correct?

20 A. That's where they supply physicians, yes.

21 Q. As far as this case, doctor, you were not
22 treating physician, correct?

23 A. Correct. Dr. Olson was.

24 Q. And you were brought in, or you just are
25 always appearing on cases where there are

1 substantial injuries?

2 A. So, if there is a substantial injuries,
3 regardless of the hospital, sometimes I am brought
4 in by my colleagues.

5 Sometimes a physician may call me if a child
6 remains in the hospital as consultant.

7 On other instances like this, when law
8 enforcement, CPS may call and ask for me to kind of
9 explain the medical concerns.

10 Q. In this instance Metro reached out to you?

11 A. I don't recall if it was Child Protective
12 Services or Metro. I believe they reached out to
13 me.

14 Q. You had not been notified of this by any of
15 the treating physicians prior to you getting there,
16 correct?

17 A. Yes, that's correct.

18 Q. So did you arrive on the day of incident?

19 A. Arrive where?

20 Q. At the hospital, Sunrise?

21 A. No, I did not see the patient at the
22 hospital.

23 Q. At what point did you see the patient?

24 A. I did not see the patient. I only used
25 pictures and the medical records.

1 Q. So you never observed Chance, is that
2 correct?

3 A. That's correct.

4 Q. You stated that you have worked on thousands
5 of these cases, correct?

6 A. Yes, I have.

7 That would be an estimation.

8 Q. A lot?

9 A. A lot.

10 Q. You work closely with Metro on many of those
11 cases?

12 A. On the majority of cases, one of the
13 jurisdictions or outside agencies may ask me to
14 staff, to indicate any medical questions, or to
15 translate some of the medical records.

16 Yes, so I do get called into staff, yes.

17 Q. Are you paid for your opinions?

18 A. I have never been paid for an opinion. I
19 don't get paid for my time here either, no.

20 Q. My question is; when they bring you in to
21 get your advise on a specific case, do you receive
22 payment of any form?

23 A. No, sir.

24 Q. You are just paid through your group?

25 A. I am a salaried employee, yes.

1 Q. Do they get paid?

2 A. No.

3 Q. Based off of that cooperation with law
4 enforcement?

5 A. Yes, sir.

6 Q. So you are basing your opinion off of some
7 pictures, various pictures, and some I imagine
8 doctors' reports, correct?

9 A. Yes.

10 Q. And did any of those doctors voice their
11 opinion on what they thought happened here, any of
12 the doctors that treated Chance?

13 A. Dr. Olson also considered this an abusive
14 incident.

15 Q. And he is not specialized in child-abuse or
16 anything like that, like you are?

17 A. He works there, and he is specialized in
18 emergency medicine, and I know that about 20 years
19 ago he did start the child-abuse program in Sunrise
20 Hospital.

21 So I know that he has some extra training;
22 but, no, he doesn't currently work in that field.

23 Q. It is kind of your specialty, correct, as
24 opposed to his?

25 A. Yes.

1 Q. All right.

2 Is it fair to say that when you are
3 receiving training on -- you stated that you had
4 some training on burns on children specifically?

5 A. Yes.

6 Q. Is it fair to say that you are not
7 recreating scenarios where children are being burnt?

8 A. Part of the training that I attended through
9 the Coroner's office is, I don't recall his name,
10 but he is an investigator who has actually had some
11 amazing techniques and using died water to try to
12 recreate a scenario without actually burning a
13 person.

14 I do sometimes employ that technique to try
15 to understand maybe a mechanism better. I don't
16 recreate any burns on children themselves, no.

17 Q. I assumed that. I just wanted to make sure
18 that that's the case, that you are dealing with in
19 training, at least, and specifically for burns, and
20 that you are not recreating scenarios where you can
21 create all types of different scenarios, you are
22 basing it off of assumptions that injuries in fact
23 were accidental or intentional, correct?

24 A. I won't call it assumptions. There's a huge
25 literature database on accidental injuries, and I am

1 also an experienced ER physician.

2 Q. I guess my question is; there are not
3 doctors who are recreating scenarios where children
4 are being burned, and then reporting how it burned
5 their hands?

6 A. That would be impossible scenario.

7 Q. That doesn't exist?

8 A. Correct.

9 Q. It based on hypotheticals and studies, not
10 actual recreations of actual incidents, correct?

11 A. It is not based on recreations.

12 Q. So you had, when the State was asking about
13 the actual method that was used in this instance,
14 anything that you are supposing is based off of what
15 you are observing, but not because you were there,
16 correct?

17 A. That's correct.

18 Q. You are basing your conclusion or opinion
19 based off of pictures, correct?

20 A. Pictures, medical records, scenarios, yes.

21 Q. And you are basing it off of solely pictures
22 and medical records that state that he has burns on
23 just the back side of his hands, both hands, right?

24 A. Yes.

25 Q. Correct me if I am wrong, because I think I

1 heard you state that you think that the way that
2 this was accomplished was by placing the palm on
3 something cooler, and then pouring something hot
4 over the hand slowly, correct?

5 A. Possibly. Not necessarily slowly.

6 Q. And that would be to both hands?

7 A. Yes.

8 Q. So it is possibly the method that was used,
9 but you have no realistic way of knowing for sure
10 what happened, correct?

11 A. Not 100 percent, no.

12 Q. So you are supposing that because there is
13 no splashing, that it could not have been
14 accidental?

15 A. With accidental burns, we typically see
16 splash marks and such, so that is one feature of it
17 that is missing.

18 Q. Typically. So is your testimony that in not
19 every instance where it is supposed that there is a
20 intentional abuse, that there is not always
21 splattering?

22 A. I guess that's correct.

23 Q. Let me make sure I understand it.

24 THE COURT: I think I got your gist.

25 Q. Here is my gist, so if there is no

1 splattering, is it always intentional?

2 A. No, it is not.

3 Q. So, there are instances where no splattering
4 occurs, and you could see he or foresee an instance
5 of many that it could be accidental?

6 A. Possibly, yes.

7 Q. So in this case specifically it is your
8 opinion that it could not have been accidental?

9 A. Yes.

10 Q. Okay.

11 A. That's correct.

12 Q. And that is based off of the pictures and
13 the medical reports that it was on the back sides of
14 the hands only?

15 A. That's one feature of it, yes.

16 Q. What is the other feature?

17 A. So, the back sides of the hands, and the
18 fact that we have demarcation, and we have very few
19 splash marks, no gravitational pulling. It is
20 inverted. It is on front of the body.

21 Q. By gravitational pulling, you are talking
22 about the position of the hands, and where the burns
23 went to, correct?

24 A. And where the water would have -- the flow
25 of the water.

1 Q. Okay.

2 So it is your opinion, based off of these
3 pictures, and your reports, that there was no way
4 that the hands were facing down, that they had to be
5 horizontal; is that your opinion?

6 A The burns don't reach to the tip of the
7 fingers either, so it is very unlikely and unusual
8 that physics would have changed the way and the
9 works in this situation.

10 Q. So if a person is holding down on the
11 person's hand on something cool, like you are
12 supposing happened here, and they are pouring
13 something hot over the hand; is it now impossible
14 for that person to not get burns on the tips of
15 their fingers?

16 A. No, it is not impossible. The concern here
17 is that when a burn occurs, the way our
18 neurotransmitters work, the burn injury makes us
19 move away reflexively because of the pain, and due
20 to those features is how we see burns manifest with
21 accidental scenarios.

22 Q. Did you observe any marks on the wrists or
23 the arms of this child indicating that the person
24 was forcefully held down?

25 A. No, sir.

1 Q. You did not observe him personally, so you
2 don't know?

3 A. I rely on my colleagues not finding any
4 other marks, and the photographs.

5 Q. The photographs and the doctors' reports?

6 A. That's correct.

7 MR. LIPPMANN: I will pass.

8 THE COURT: Any redirect?

9 MS. JOVE: No.

10 THE COURT: Doctor, thank you very much for
11 your time and your testimony today.

12 You are excused.

13 Please don't discuss your testimony with
14 anybody during the course of the case, unless it is
15 a representative from the District Attorneys office
16 or from Mr. Sheets' office.

17 They will identify themselves
18 appropriately. Thank you for your time and
19 testimony.

20 State, your next witness.

21 MS. JOVE: Briefly I wanted to let the Court
22 know that I am amending the criminal nature, and I
23 will submit that he is approximately 1 year of age
24 at the time of the injuries.

25 The child's date of birth was January 30 of

1 2014, as so established. Dr. Cetl testified that he
2 is one, closer to 2.

3 I wanted to leave it a little less technical
4 than approximately 1.

5 THE COURT: Any Objection to amending the
6 age on this?

7 MR. LIPPMANN: That was some specific
8 question to the other child, so I don't think there
9 is any relevance to it.

10 MS. JOVE: I asked Dr. Cetl about Chance
11 Jasper's date of birth, so I am going to put the
12 child's date of birth in, not the age.

13 THE COURT: The sister was not quite a
14 year.

15 Do you have any objection about the date?

16 MR. LIPPMANN: Not at all. The kid's age is
17 what it is.

18 No objection to that, Your Honor.

19 MS. JOVE: With that, the State rests.

20 THE COURT: All right.

21 Mr. Lippmann, have you had a discussion with
22 your client, or are you offering any witnesses or
23 evidence at this particular juncture?

24 MR. LIPPMANN: Yes. The defense will call
25 Jasmin Cathtart.

1 MS. JOVE: She's outside, Your Honor.

2 THE COURT: All right.

3

4 JASMIN CATHTART,

5

6 who, being first duly sworn to tell the truth, the
7 whole truth, and nothing but the truth, was examined
8 and testified as follows:

9

10 THE CLERK: Please be seated.

11 And if you can state your first and last
12 name and spell it for the record.

13 THE WITNESS: Jasmin Cathart, J-a-s-m-i-n
14 C-a-t-h-t-a-r-t.

15 THE COURT: Your witness, Mr. Lippmann.

16 MR. LIPPMANN: Thank you.

17

18 DIRECT EXAMINATION

19

20 BY MR. LIPPMANN:

21 Q. Jasmin, on January 5, 2016 in the morning
22 hours, do you remember where you were?

23 A. What time?

24 Q. In the morning hours. Describe your
25 morning.

1 A. I was at home.

2 Q. Okay.

3 And is there a point in time where you left
4 your home?

5 A. Yes.

6 Q. What time?

7 A. 8:59.

8 Q. All right.

9 And where did you go to?

10 A. The office.

11 Q. Of what?

12 A. My apartments.

13 Q. And do you have any children?

14 A. Yes.

15 Q. What are their names?

16 A. Chance and Jordan.

17 Q. Did you leave your children with someone?

18 A. Yes.

19 Q. Did you leave them with Mr. Mathews?

20 A. Yes.

21 Q. At some point did you get notification from
22 Mr. Mathews that anything was going on?

23 A. Yes.

24 Q. What did you learn?

25 A. He told me that Chance got burned and to

1 finish with my appointment.

2 MS. JOVE: Objection, hearsay.

3 THE COURT: Sustained.

4 Q. Jasmin, what time did Mr. Mathews call?

5 A. I don't remember.

6 Q. If you can estimate a time when he called
7 you.

8 A. Probably around 9:30, 9:45. I don't
9 remember.

10 Q. You left about 9:00 o'clock in the morning?

11 A. Yes.

12 Q. What did you do upon talking with
13 Mr. Mathews; what did you do?

14 A. Finished my appointment and went home.

15 Q. How quickly did you get home?

16 A. Within 2, 3 minutes.

17 Q. The same apartment complex where you have
18 lived?

19 A. Yes.

20 Q. And what did you see when you got there, to
21 the, house apartment?

22 A. He was holding my son on the couch.

23 Q. Who is he?

24 A. Donovine.

25 Q. Donovine is holding Jasper?

1 A. Chance, yes.

2 Q. And you were informed that Chance had got
3 burned, correct?

4 A. Yes.

5 Q. Had Mr. Mathews explained to you anything
6 they had done to try to help him?

7 MS. JOVE: Objection, hearsay.

8 THE COURT: It is a statement, Yes or no.

9 THE WITNESS: Yes.

10 Q. He did explain?

11 A. Yes.

12 Q. Was it your understanding that he placed his
13 hands under cold water?

14 MS. JOVE: Objection, hearsay.

15 THE COURT: That is hearsay. You are not
16 going there.

17 Q. What if anything did you do to help out your
18 son?

19 A I got him dressed and took him to the
20 hospital.

21 Q. Was that quickly?

22 A. Yes.

23 Q. How quickly?

24 A Right when I got there.

25 Q. Give me some time frame.

1 A. It took like 2 minutes to get dressed.

2 Q. And you decided to go to which hospital?

3 A. Sunrise.

4 Q. Why?

5 A. That's the closest hospital to me.

6 Q. How close?

7 A. 5 minutes away.

8 Q. Is that why you decided not to call an
9 ambulance?

10 A. Because minors can't ride in an ambulance.

11 Q. That was your understanding?

12 A. Yes.

13 Q. So you walked to the hospital?

14 A. Yes.

15 Q. It took you how much time to get there?

16 A. Probably 5 minutes. 5, 6 minutes.

17 Q. When you went to the hospital, what was the
18 first thing you did?

19 A. I went to the front desk.

20 Q. And checked in?

21 A. Yes.

22 Q. And what did you observe the doctors doing
23 to Chance?

24 A. Putting cold saline on his hands.

25 Q. Immediately upon getting there?

1 A. Yes.

2 Q. Has Mr. Mathews ever been abusive towards
3 your children?

4 A. No.

5 Q. Ever seen it did?

6 A. No.

7 Q. Ever heard about it from your children?

8 A. No.

9 Q. Ever heard about it from other people?

10 A. No.

11 Q. Has Chance ever told you since this incident
12 that Mr. Mathews burned him?

13 A. No.

14 MS. JOVE: Objection, hearsay.

15 THE COURT: Sustained.

16 MS. JOVE: Move to strike.

17 THE COURT: Stricken.

18 MR. LIPPMANN: I pass the witness.

19 THE COURT: Cross.

20

21 CROSS-EXAMINATION

22

23 BY MS. JOVE:

24 Q. When is it Chance's birthday?

25 A. 1-30-13.

1 Q. And you left for an appointment around -- a
2 little before 9:00 o'clock in the morning on January
3 5, 2016, is that correct?

4 A. Yes.

5 Q. When you left, did Chance have any injuries
6 to his hands?

7 A. No.

8 Q. When you got back, did you have the chance
9 to observe Chance's hands?

10 A. Yes.

11 Q. Is it fair to say they looked different than
12 when you left?

13 A. Yes.

14 Q. Do you see the Mr. Mathews you have been
15 talking about in Court?

16 A. Yes.

17 Q. Okay.

18 Where is he; identify him, please.

19 A. Right there.

20 MR. LIPPMANN: I will stipulate to
21 identification; can I do that?

22 I will do that.

23 THE COURT: Sure.

24 MS. JOVE: For the record, he is stipulating
25 to the identification of the Defendant.

1 THE COURT: The record so reflects.

2 Q. As far as your relationship with
3 Mr. Mathews, on January 5, 2016 how long had you
4 been dating him?

5 A. We have been on and off for 6 years.

6 Q. Let's go back to the details, then; how long
7 had you been dating him that time?

8 A. Since May.

9 Q. What year?

10 A. 2015.

11 Q. All right.

12 And was Chance in your home in May of 2015?

13 A. Yes.

14 Q. Is it fair to say Chance left your home; in
15 fact, his dad took him to California for some period
16 of time, correct?

17 A. Yes.

18 Q. And Chance was actually gone until
19 approximately December 28 of 2015, correct?

20 A. Yes.

21 Q. The Defendant had never watched Chance
22 before the January 5, 2016, correct?

23 A. Yes.

24 Q. And when Chance had been home, from December
25 28, 2015 to January 5, 2016, correct?

1 A. Yes.

2 Q. Approximately a week or so?

3 A. Yes.

4 Q. Up until that time the Defendant had not
5 been left alone with Chance; is that fair to say?

6 A. Yes, but he has been --

7 Q. It is yes or no.

8 A. Yes.

9 MS. JOVE: Your Honor, for the record she
10 was rolling her eyes at me.

11 THE COURT: I can't control that.

12 MS. JOVE: I am just making a record, Your
13 Honor.

14 Q. You went to the hospital with the Defendant,
15 Chance and your daughter, is that correct?

16 A. Yes.

17 Q. And you walked there, is that correct?

18 A. Yes.

19 Q. You said you didn't call the paramedics
20 because children can't ride in the ambulance; is
21 that referring to your daughter?

22 A. Yes.

23 Q. You didn't want to leave her behind?

24 A. Yes.

25 Q. You said got home after the Defendant called

1 you, correct?

2 A. Um-hum.

3 Q. Is that yes?

4 A. Yes.

5 Q. Did you cleanup anything in the house before
6 you left for the hospital?

7 A. No.

8 Q. As far as when you get to the hospital, did
9 you go back to your apartment with the detectives?

10 A. No.

11 Q. Is it fair to say Donovine left the hospital
12 and went back to your residence, correct, you
13 weren't with him?

14 A. Yes. He went with detectives.

15 Q. And you consented to the search of your
16 apartment, is that correct?

17 A. Yes.

18 Q. As far as when you went back to your
19 apartment, did you leave the hospital with Chance
20 that day on January 5?

21 A. Go back to my house?

22 Q. Yes.

23 A. No.

24 Q. Did you leave the hospital with Chance that
25 day?

1 A. Yes.

2 Q. You went back to someone else's residence,
3 fair?

4 A. Yes.

5 Q. You didn't go back to the apartment,
6 correct?

7 A. Yes.

8 Q. And that's the apartment at 1029 Lisbon
9 Avenue, number 5?

10 A. Yes.

11 Q. As far as Chance's injuries are concerned,
12 you went to, and he is received care since from
13 Sunrise Hospital, is that correct?

14 A. Yes.

15 Q. Approximately how many medical appointments
16 were there?

17 A. I don't know.

18 Q. More than one?

19 A. Yes.

20 MS. JOVE: No questions.

21 THE COURT: Redirect?

22

23 REDIRECT EXAMINATION

24

25 BY MR. LIPPMANN:

1 Q. Based off of that last question about
2 whether or not Chance received treatment, where did
3 he receive treatment since Sunrise?

4 A. UMC burn unit.

5 Q. And did you inquire at that UMC burn unit as
6 to whether or not the doctors said; I thought it was
7 an intentional act?

8 MS. JOVE: Objection, hearsay.

9 A. Yes.

10 THE COURT: Hold on.

11 I will let her talk about the information.
12 Go ahead.

13 MS. JOVE: She said yes, Your Honor.

14 MR. LIPPMANN: I asked whether or not she
15 inquired.

16 THE COURT: Right. I mean going into what
17 information she received, and whether she inquired.

18 Q. You did inquire, correct?

19 A. Yes.

20 Q. Based on that information, do you have any
21 reason to believe that this was intentional?

22 MS. JOVE: Objection, Your Honor, it calls
23 for --

24 THE COURT: Don't answer.

25 MS. JOVE: An incorrect conclusion on her

1 part as a lay witness, and it also relies on
2 hearsay.

3 THE COURT: Go on.

4 MR. LIPPMANN: That's fine.

5 I will pass.

6 THE COURT: Thank you for your time and
7 testimony.

8 You may step down.

9 Don't discuss your testimony with anybody
10 during the course of the case unless it is a
11 representative from the State's or Mr. Sheets'
12 office.

13 Mr. Lippmann.

14 MR. LIPPMANN: The defense rests.

15 I have advised my client of his right to
16 testify, and he chooses not to.

17 THE COURT: You do have right to testify at
18 this particular juncture, and you are choosing to
19 follow your attorneys advice at this particular
20 phase?

21 THE DEFENDANT: Yes.

22 THE COURT: It is not meaning that if you
23 decide to give up your right to testify, that that
24 stays permanent, but if I do bind this case over,
25 you still would have the right to testify at a

1 future date, if you so choose.

2 At this point are you following your
3 attorney's advice?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 The defense rests?

7 MR. LIPPMANN: Yes.

8 THE COURT: State.

9 MS. JOVE: I have a brief motion to conform
10 have the complaint conform to the evidence.

11 The mother said his birthday is 1-30-2013,
12 not 14. He was approximately 2 years of age at the
13 time.

14 THE COURT: I don't think there has been and
15 objection to conforming to the child's age.

16 Mr. Lippmann, any objection to conforming to
17 the child's age?

18 MR. LIPPMANN: None at all.

19 THE COURT: Reserve?

20 MS. JOVE: Reserve for rebuttal.

21 THE COURT: Mr. Lippmann.

22 MR. LIPPMANN: We are basing this case
23 solely off of doctors, experts that did not
24 personally observe Chance. That's tough to take.

25 We have a doctor perhaps that did have an

1 opinion, and that doctor didn't testify today.

2 We have essentially Dr. Cetl that has
3 observed photos and doctors' report. It is her
4 opinion that it could not have been that.

5 But again she hasn't personally observed
6 him. She didn't speak with Donovine. She didn't
7 speak with Chance.

8 She didn't speak with Jasmin. She spoke
9 with basically a detective, okay. I understand why
10 they go through this when there are substantial
11 injuries, or what appears to be, but we don't have
12 anything that is substantiated.

13 We don't have the actual burn unit doctors
14 coming in and testifying, and that is concerning to
15 me, even at the preliminary hearing, that the actual
16 physicians who are designated and the only ones in
17 the valley that are designated to treat burns aren't
18 even here to testify as to whether it is their
19 opinion as to whether or not this was intentional or
20 not.

21 Your Honor, I think minimally perhaps there
22 is a burden that's met, but it is the slightest of
23 margins that this is a willful contact, willful
24 abuse that caused substantial.

25 Also, I don't think I heard any testimony

1 stating that the injuries themselves were
2 substantial.

3 We have photos, but I don't know how long
4 the injuries would result. These are burns, but I
5 don't believe the doctor testified as to the
6 substantialness of those injuries.

7 Based on that, I submit it.

8 THE COURT: State.

9 MS. JOVE: As far as the substantial bodily
10 harm is concerned, Dr. Cetl did testify that these
11 injuries would take 2 to 3 weeks.

12 She testified as to type of pain and the
13 severity of the pain, and the type of treatment that
14 would be given, and it is clearly temporary or
15 permanent disfigurement, at least temporary, there
16 is evidence to support that, which is required for
17 the substantial body harm.

18 In addition, the testimony from Detective
19 DePalma, as far as the photos admitted today for
20 purposes of preliminary hearing, the photos on the
21 date of the injury, and then the photos of the
22 child's hands the day after, clearly there is
23 temporary disfigurement that is apparent from those
24 photographs.

25 As far as the testimony that is presented,

1 Your Honor, it is sufficient to meet the standard
2 for slight or marginal evidence.

3 Moreover, based on the Defendant's version
4 of the events, he gave Detective DePalma, the
5 injuries which are accurately reflected in the
6 photographs, I believe it is exhibits 7 through 32,
7 that DePalma saw them, that Dr. Cetl reviewed, and
8 she did describe in detail as to why it is, in her
9 opinion, an inflicted and an abusive injury, and not
10 merely an accident.

11 And Cetl did testify at the defense's
12 request, that she spoke to Dr. Olson, who was the
13 treating physician for the child at the time, and
14 she said Dr. Olson believed the injuries to be
15 non-accidental as well.

16 There has been no testimony here to today
17 that these injuries were anything other than abusive
18 or inflicted.

19 THE COURT: Mr. Mathews, the standard at
20 this particular juncture is slight or marginal
21 evidence that a crime may have been committed.

22 I will hold to you answer in the Eighth
23 Judicial District Court on the charges of child
24 abuse, negligent or endangerment with substantial
25 bodily harm.

1 You will need to appear with your attorney
2 in the lower level District Court Arraignment on the
3 following date.

4 THE CLERK: March 3, 10:00 a.m. lower level
5 District Court Arraignment.

6

7 (Proceedings concluded.)

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1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)

4) ss.

5 CLARK COUNTY)
6
7

8 I, Robert A. Cangemi, a certified court
9 reporter in and for the State of Nevada, hereby
10 certify that pursuant to NRS 239B.030 I have not
11 included the Social Security number of any person
12 within this document.

13 I further certify that I am not a relative
14 or employee of any party involved in said action,
15 nor a person financially interested in said action.
16
17

18 (signed) /s/ Robert A. Cangemi

19 _____
20 ROBERT A. CANGEMI, CCR NO. 888
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Robert A. Cangemi, CCR 888, do hereby
certify that I reported the foregoing proceedings,
and that the same is true and accurate as reflected
by my original machine shorthand notes taken at said
time and place.

(signed) /s/ Robert A. Cangemi

Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

/s/

based

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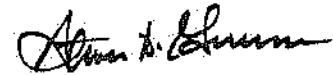
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CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

Defendant.

CASE NO: C313047

DEPT NO: XII

NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: DONOVINE MATHEWS, aka, Donovan Mathews, Defendant; and

TO: DEPUTY PUBLIC DEFENDER, Counsel of Record:

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

BETHARD, JOHN; LVMPD #13928

C.J; C/O CCDA

CATHCART, JASMIN; 717 E Caballo Hills Ave NLV 89081

CETL, DR. SANDRA; Sunrise Hospital; Is a medical doctor and is expected to provide
testimony as a medical expert as to her opinions and findings including, but not limited to: her
review and analysis of the medical records, reports and radiographic films, as well as the
observations, diagnosis and treatment rendered to victim in this case, SCAN exams in general
and directly related to the instant case. In addition, she will provide testimony as to her direct

1 involvement, if any, in this case and the possible mechanisms of injury and causes of injury to
2 the said victim.

3 COR; CCDC

4 COR; LVMPD DISPATCH

5 COR; LVMPD RECORDS

6 DAHN, ROBBIE; LVMPD #5947; Is a Senior Crime Scene Analyst with the Las Vegas
7 Metropolitan Police Department. He is an expert in the area of identification, documentation,
8 collection and preservation of evidence and will give opinions related thereto. He is expected
9 to testify regarding the identification, documentation, collection and preservation of evidence
10 in this case.

11 DEPALMA, PHILIP; LVMPD #5297

12 GRIVAS, CHRISTOPHER; LVMPD #8759

13 KRUMNE, TROYCE; LVMPD #7176

14 OLSON, DR. ELIS; Sunrise Hospital; Will testify regarding the examination,
15 treatment, observation and diagnosis in general of the named victim in the instant case.

16 PELTIAR, DR. PHYLIP; Burn medicine expert witness may testify and advise on
17 matters regarding burn injury, including heat burns, chemical burns, electrical burns, radiation
18 burns, superficial burns, toxic exposure, and scalding. Experts in burn injury can also provide
19 reports and testimony on various causes of burns; degrees of burns, burn accidents, burn
20 statistics, and related issues.

21 SANTAROSSA, BRIAN; LVMPD #6930

22 SZUKIEWICZ, JOSEPH; LVMPD #5411; Is a Senior Crime Scene Analyst with the
23 Las Vegas Metropolitan Police Department. He is an expert in the area of identification,
24 documentation, collection and preservation of evidence and will give opinions related thereto.
25 He is expected to testify regarding the identification, documentation, collection and
26 preservation of evidence in this case.

27 WESTMORELAND, JOANNA; CPS

28 ///

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

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

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

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

10
11 BY /s/ CHRISTOPHER S. HAMNER
12 CHRISTOPHER S. HAMNER
13 Deputy District Attorney
Nevada Bar #11390

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of the above was made this 24th day of March, 2016, by
16 facsimile transmission to:

17 Public Defender's Office
FAX #455-5112

18 By: /s/ J. MOTL
19 Employee of the District Attorney's Office
20
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Sandra Cetl, MD, FAAP

Sunrise Children's Hospital
Pediatric Administration
3186 Maryland Parkway
Las Vegas, Nevada 89109
702-784-1933

Education:

University of Nevada, School of Medicine
Las Vegas, Nevada
Residency in Pediatrics
July 2007 – June 2010

University of Vermont, College of Medicine
Burlington, Vermont
M.D.
August 2002 – May 2007

University of California, Los Angeles
Los Angeles, California
B.S. in Neuroscience, cum laude
September 1997 – May 2001

Current Attending Responsibilities: September 2010 to current

- Sunrise Children's Hospital Child Abuse Pediatrician
 - Medical evaluations of patients with suspected physical abuse, sexual abuse and/ or neglect. Patients are seen in the ER setting as well as on the pediatric ward and PICU.
- Sunrise Children's Hospital SCAN call
 - Sole M.D. provider taking night call for suspected child sexual abuse medical evaluations in the ER. (2010 – 2012)
- Sunrise Children's Hospital ER
 - 2-5 shifts per month in the pediatric ER, managing and treating patient levels 2-5.
- South Nevada Children's Assessment Center
 - Sole M.D. provider of medical evaluations of patients with concerns of child sexual abuse.
- Assistant Clinical Professor at the University of Nevada, School of Medicine (October 2012 – present)

Additional Work Experience:

Juvenile Diabetes Camp Physician August 2010

Job Title: Physician

Primary Responsibilities: Observation and management of insulin use during the 3 day camp. Children were aged 12- 17.

Planned Parenthood, Los Angeles August 2001 – May 2002

Job Title: Senior Program Manager

Primary Responsibilities: I was in charge of the all volunteers, teachers and coordinators. Duties ranged from the management of staff to reviewing and editing the curriculum as well as ensuring the program's educators were properly trained and prepared for the situations they would encounter.

Planned Parenthood, Los Angeles August 2000 – August 2001

Job Title: Reproductive Health Educator

Primary Responsibilities: I was responsible for educating inner city teens and young adults on topics including reproductive health, sexually transmitted diseases, the use contraceptives and the possible social, economic and health consequences of various sexual choices.

University of California, Los Angeles 1997 – 2001

Title: Research Associate

Responsibilities: rodent husbandry, surgery, data collection, perfusions, histology and result analysis over the course of four consecutive years; the data from my efforts resulted in two publications in the Journal of Neuroscience.

Laura H. Corbit, Janice L. Muir, and Bernard W. Balleine. *The Role of the Nucleus Accumbens in Instrumental Conditioning: Evidence of a Functional Dissociation between Accumbens Core and Shell.* J. Neurosci., May 2001; 21: 3251 - 3260.

Laura H. Corbit and Bernard W. Balleine. *The Role of the Hippocampus in Instrumental Conditioning.* J. Neurosci., Jun 2000; 20: 4233 - 4239.

I was awarded 1st place in the annual UCLA Neuroscience Poster Session with a presentation titled *The Effects of Lesions in the Nucleus Accumbens on Instrumental Conditioning.* Additionally, I was responsible for teaching presentations for undergraduate and graduate students regarding both the research completed and other topics in neuroscience.

Private Math and Science Tutor 1999 – 2003

I conducted weekly sessions for several junior high and high school students in subjects ranging from Algebra to Calculus and Life Sciences to Physics.

Care Extenders at UCLA – Santa Monica Hospital 1997 – 1999

I transported patients and aided in the care of patients in obstetrics, medical-surgical wards, and the emergency department.

Rockwell Aerospace and Defense and The California Museum of Science and Industry - Summer 1996

I was the primary instructor for an inner city program to promote the benefits of mathematics and science to fourth and fifth grade disadvantaged children.

Licensure and Certification:

Fellow of the American Academy of Pediatrics 2012 – present

Assistant Clinical Professor at the University of Nevada, School of Medicine

Oct. 2012 - present

Board Certified in Specialty of Pediatrics by the American Board of Pediatrics

current to 2018

PALS Current to May 2015

BLS Current to May 2015

Nevada State Board of Medical Examiners Current to June 2015

Nevada State Board of Pharmacy current to 2015

Drug Enforcement Agency License current to 2015

Current Outreach and Committees:

Clark County Child Fatality Review, Chair

January 2013 – January 2014

Nevada Alliance for Drug Endangered Children, Member

2012 – present

Prevent Child Abuse Nevada, Member

2012 – present

Clark County Child Fatality Review, Vice Chair

June 2011 – December 2012

Clark County Child Fatality Review Team, Member and Core Voting Member

September 2010 – current

Clark County Child Fatality Task Force, Member

October 2010 – current

CARES Committee (Child Abuse Case Review and Education Service)

September 2010 – current

•Facilitator of a multidisciplinary team where cases are presented by medical staff, CPS, Law Enforcement and District Attorneys when there are concerns of child physical abuse

Children's Assessment Center Case Review Team

September 2010 – present

- Member of a multidisciplinary team where cases are presented by medical staff, CPS, Law Enforcement, and District Attorneys where there are concerns of child sexual or physical abuse at the Southern Nevada Children's Assessment Center
-

Current Research Participation:

Currently approved for IRB participation in for a Multi-Center Prospective Research Project. Topic: the yield of medical screening of pediatric contacts- siblings and other children- in the home of an abused child. Finishing mid 2013.

Currently approved for IRB participation in a second Multi-Center Prospective Research Project. Topic: Risk perception of physically abused children and how to use a child's social history when evaluating injuries that may be due to physical abuse. Currently concluded.

Presentations:

April 2014: Child Sexual Abuse

- Power point presentation given to foster parents and foster program staff via DFS about child sexual abuse including signs and symptoms, examination, risk factors and forensic findings.

March 2014: Overdose and Accidental Poisonings

- Power point presentation given to foster parents and foster program staff via DFS about accidental deaths of children and adolescents from accidental overdose or poison ingestion.

January 2014: Cutaneous Injuries and Physical child abuse

- Power point presentation for CPS and DFS workers and investigators, and students of forensic investigators of CSI law enforcement on the external findings of child physical abuse. Discussion of mimics of abuse and accidental injuries.

December 2013: Female Genital Evaluation

- Power point presentation for residents and attendings of UNSOM Emergency Medicine Residency Program about the female genital exam, pathology, and child sexual abuse.

December 2013: Abusive Head Trauma and Fractures in Child Abuse

- Power point presentation for residents and attendings of UNSOM Emergency Medicine Residency Program about findings with abusive head trauma, fractures

and abdominal trauma, including mimics of abuse and proper complete evaluation in the ED setting.

December 2013: Drug Exposed Babies

- Power point presentation given to foster parents and foster program staff via DFS, both live and through webinar about normal embryology, how specific legal, illicit and prescription drugs effect in utero development of a fetus, and the life long consequence of drug exposures.

November 2013: Female Genital Evaluation

- Power point presentation for medical students and residents of UNSOM. Discussion about genital exam, normal anatomy, findings, pathology, and sexual abuse.

October 2013: Child Maltreatment Overview

- Power point presentation for Positively Kids Clinic staff, consisting of physicians, nurses, and nursing assistants. Discussion of cutaneous findings of abuse, abusive head trauma, abdominal trauma, mimics, sexual abuse and genital examinations.

August 2013: Cutaneous Finding in Child Physical Abuse: Bruises

- Power point presentation to University of Nevada, School of Medicine Emergency Department residents for grand rounds. Discussed skin findings associated with child physical abuse and accidental injury.

April 2013 Visual Diagnosis

- Power point presentation regarding a visual diagnosis of a patient at the Ray E. Helfer Society Annual Meeting, which is attended by Pediatricians and Child Abuse Pediatricians practicing nationally and internationally.

March 2013: Grand Rounds "The Long Term Effects of Child Abuse"

- One hour power point presentation for Grand Rounds at the University of Nevada, School of Medicine. Discussion on Adverse Childhood Events and the studies stemming from the CDC data collection in response to adverse childhood events in the community through the life time.

March 2013: Sexual Abuse Nurse Examiner

- Guest speaker at the SANE class at Sunrise Children's Hospital on mandated reporting and description of the Southern Nevada Children's Assessment Center.

February 2013: Child Physical Abuse

- Two hour power point presentation to Pediatric Residents at the UNSOM residency program about all medical aspects of evaluating and recognizing physical child abuse.

September 2012: Sexual Child Abuse

- Two 3 hour power point presentations on child sexual abuse examinations and Sexual Assault Nurse Examiner (SANE) program given to pediatric emergency department nurses at Sunrise Children's Hospital.

April 2012: Overdose and Accidental Poisoning Deaths

- Power point presentation given to members of the Southern Nevada Child Fatality Review Team about accidental deaths of children and adolescents from accidental overdose or poison ingestion.

January 2012: Sex Trafficking Among Adolescents

- Modified Power point presentation on sex trafficking among adolescent males and females in the U.S. as well as locally in Las Vegas, NV. Presentation given to hospital clergy members in Clark County, NV at Sunrise Children's Hospital.

June 2011: Child Abuse Signs and Symptoms

- Power point presentation given to University of Nevada School of Medicine medical students transitioning from classroom learning to clinical practice.

May 2011: Sexually Transmitted Infections and Testing in Child Sexual Abuse

- Power point presentation given at Sunrise Children's Hospital for ER nurses training to become pediatric sexual abuse nurse examiners

March 2011: Adolescent Drug Overdose

- Regional conference in Las Vegas and Reno, Nevada on accidental overdose in the adolescent population
- Two 7 hour trainings on aspects of adolescent drug use and overdose

February 2011: Child Physical Abuse

- Power point presentation on skin manifestations of child physical abuse
- Attendees included hospital social workers and case managers

October 2010: Child Abuse and Neglect Prevention Conference

- Regional for South Western United States
- Provided a conference session on Adolescent Accidental Overdose
- Attendees included teachers, school nurses, social workers, attorneys, and psychology care workers

October 2010 Sexually Transmitted Infections in Child Sexual Abuse

- Power point presentation at the Southern Nevada Children's Assessment Center on sexually transmitted infections in sexually abused children.
- Attendees included law enforcement, CPS and DFS workers and staff

January 2010 University Medical Center Ward Teaching Senior

- Morning Report for residents and faculty including subjects such as burn management and seizure evaluation

- Morbidity and Mortality power point presentation for residents and faculty about evaluation and management of extravasation injuries
- Resident Lecture Power Points on variety of topics including Newborn screening, Non Accidental Trauma, Pediatric Brain Tumors, and Apparent Life Threatening Events

December 2010 Lied Clinic, Senior Resident

- Morbidity and Mortality power point presentation on consequences of RSV mismanagement

October 2009 University Medical Center NICU

- Power point presentation for residents and faculty in Glucose Metabolism of Neonates

September 2009 Endocrinology

- Power point presentation for residents and faculty on Short Stature

August 2009 Adolescent Medicine

- Noon Conference power point for residents and faculty on Chronic Pain Management

July 2009 Sunrise Hospital Ward Teaching Senior

- Morning Report presentations for residents and faculty on subjects including Abdominal Pain, Peritonsillar abscesses, and Kawasaki's Disease
- Resident Lecture Power Points on a variety of topics including Diabetes Management, Neonatal Fever, and Substance Overdose

January 2009 CPS, DFS, Child Haven Staff

- Presentation to staff on Medical Neglect and Newborn Screening

January 2009 Noon Conference

- Journal Club on Office Based Treatment and Outcomes for Febrile Infants With Clinically Diagnosed Bronchiolitis

August 2007 Noon Conference

- Journal Club on the Early Intervention and Outcome of Children with Failure to Thrive

Memberships:

- American Professional Society on the Abuse of Children – May 2014 - current
- American Academy of Pediatrics Member 2007-2010, 2012 – current
- American Academy of Pediatrics Section on Child Abuse and Neglect (SOCAN) 2012 – current
- Helfer Society Member June 2011- current

- ACGME Resident Forum Representative, 2008– 2010
- Created curriculum for Child Development resident rotation, August 2007

Professional Development:

- AAP Conference Nevada Chapter (Las Vegas, NV) August 2009
- Clark County School District Nursing Conference on many aspects of school nursing, including Child Maltreatment, August 2009
- Clark County School District Nursing Conference on various Genetic Disorders and Behavior Disorders, November 2009
- SANE P Training, June 2010
- International Association of Coroners and Medical Examiners Conference, June 2010
- Western States Child Sexual Abuse Conference (Las Vegas, NV) September 2010
- Shaken Baby Conference (Atlanta, GA) September 2010
- Child Abuse and Neglect Prevent Conference (Reno, NV) October 2010
- San Diego International Conference on Child and Family Maltreatment, January, 2011
- Ray E. Helfer Society Annual Meeting; (Amelia Island, FL) April 2011
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2011
- San Diego International Conference on Child and Family Maltreatment, January, 2012
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2012
- Basic High School Lecture Series about Sex Trafficking, Henderson, Nevada October, 2012
- Valley High School Lecture Series about Sex Trafficking, Las Vegas, Nevada October 2012
- San Diego International Conference on Child and Family Maltreatment, January, 2013
- Ray E. Helfer Society Annual Meeting; (Sonoma, CA) April 2013
- International Association of Coroners and Medical Examiners Conference (Las Vegas, NV) June, 2013

Languages:

- Fluent in Serbo-Croatian
- Conversant in Medical Spanish

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Robbie Dahn

P# 5947

Date: 8-28-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
UNLV	Criminal Justice	Bachelors Degree

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	1997

DAHN, ROBBIE
P# 5947
CRIMINALISTICS BUREAU - FIELD
SENIOR CSA
DOH: 07-13-97

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
08-15-97	Bachelor of Arts - Criminal Justice	UNLV	
07-28-98	New Civilian Employee Orientation	LVMPD	14
08-10-98	Stress Management	LVMPD	4
08-10-98	Capston for Civilians	LVMPD	1.50
07-13 to 08-14-98	Crime Scene Analyst Academy - Criminalistics Bureau	LVMPD	175
08-12-98	Civilian Use of Force & Firearms Training	LVMPD	21
08-12-98	Duty Weapon Qualification	LVMPD	2
08-13-98	Combat Shooting Simulator - FATS	LVMPD	1
10-20-98	Criminalistics Bureau - Field Training	LVMPD	400
11-01-98	Nevada State Division of the International Assoc. for Identification (NSDIAI) - Active Charter Member # 00055	NSDIAI	
12-10-98	WordPerfect 8.0	LVMPD	4
01-07-99	Class II - Driver Training	LVMPD	8
02-17-99	Understanding Death and Grief Issues	LVMPD	4
01-12-99	Training - Motor Home Driving	LVMPD	4
03-15-99	International Assoc. for Identification (IAI) - Active Member # 16926	IAI	
03-16-99	Award Presentation and PR Photography	LVMPD	2
03-23 to 03-26-99	Clandestine Laboratory Safety Certification Course	LVMPD	40
04-07-99	Certificate of Achievement, graduated course in Forensic Science and Investigation (AIAS)	American Institute of Applied Science, Inc.	260
04-07-00	Winning Courtroom Confrontations Seminar		4
04-28 to 04-30-99	First Annual Educational Conference Opening Ceremonies (2) Banquet (3)	NSDIAI	
"	Fingerprint Classification	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Death Investigations	NSDIAI	2
"	Traffic Photography	NSDIAI	2

"	Footwear/Tire Tracks	NSDIAI	2
"	Superglue	NSDIAI	2
05-07-99	Critical Procedures Test	LVMPD	2
09-13 to 09-17-99	Crime Scene Technology 2	Northwestern University, Traffic Institute	40
10-25 to 10-29-99	Basic Fingerprint Classification	FBI	40
05-03 to 05-05-00	Second Annual Educational Conference Shoebox Labeling (Also see items below)	NSDIAI	1
"	Gadgets and Gizmos	NSDIAI	2
"	Handwriting	NSDIAI	2
"	Polly Klass	NSDIAI	3
"	WIN-AFIS	NSDIAI	2
"	Galaxy Air Crash	NSDIAI	2
"	Photo FP Tech	NSDIAI	2
"	Child Abuse	NSDIAI	2
"	Arson Investigations	NSDIAI	2
09-13-00	Trial Testimony for Law Enforcement		
12-23-00	Crime Scene Certification Board - Completed all requirements and tests for - Crime Scene Technician	IAI	
03-19 to 03-21-01	Practical Homicide Investigation	P.H.I. Investigative Consultants, Inc.	24
04-11 to 04-13-01	NSDIAI - 3 rd Annual Educational Conference Florazine	NSDIAI	2
"	Officer Involved Shootings	NSDIAI	3
"	Child Exploitation	NSDIAI	2
06-04 to 06-08-01	Bloodstain Evidence Workshop I	Northwestern University Center for Public Safety	40
03-25 to 03-26-02	Medical Death Investigation	Public Agency Training Council - National Crime Justice	16
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-01-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD Criminalistics Bureau	1
04-02-02	Objective Approach to the Crime Scene	LVMPD	1
04-02-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1

04-02-02	Major Case Prints	LVMPD	3
04-16-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
07-01-02	Successfully completed all requirements and tests - Qualified as Crime Scene Analyst (Level 2)	International Assoc. for Identification (IAI)	
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	W-57: Examination of Bloodstained Clothing	"	4
"	W-39: Intermediate Dye Staining Workshop	"	2
"	W-60: Impact Pattern Reconstruction	"	2
"	W-75: Techniques of Electrostatic Lifting at Crime Scenes	"	2
12-18-02	Civilian Use of Force & Firearms Training	LVMPD	24
01-20 to 01-24-03	Advanced Ridgeology Science Workshop	Forensic Identification Training Seminars	40
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24
02-06 to 02-08-03	Advanced Shooting Incident Reconstruction (for LVMPD)	Forensic Identification Training Seminars	24
06-04-03	Evidence Impounding - Areas of Concern	LVMPD	3

Curriculum Vitae

Phylip J. Peltier

24330 Rutherford Rd.
Ramona, California
95969

withay.peltier@gmail.com
(530) 521-8044

SUMMARY:

Phylip Peltier entered the San Diego Police Department on August 23, 1974. He was assigned to patrol duties and promoted to the rank of Agent in 1979. He was assigned to Investigations in 1980. He worked Child Abuse, Robbery and Juvenile assignments while in Investigations.

Mr. Peltier was hired by the San Diego District Attorney's Office in January 1987. He was assigned to Criminal Investigations, Technical Services and other specialized investigative assignments. He was hired by the Butte County District Attorney's Office in October 2000, where he retired as a Criminal Investigator in March 2003. Mr. Peltier continues to teach, consult and testify in cases regarding suspicious burn injuries, Child Abuse Investigations and interview / interrogation. Mr. Peltier was certified Bi-lingual Spanish in 2001.

EXPERTISE IN: *SUSPICIOUS BURN INJURIES*

- X Developed the Immersion Burn Evidence Worksheet in 1981. This worksheet has been distributed for use in all 50 United States and as many as 35 foreign countries.
- X Pioneered the technique of recreating liquid burn injuries using blue dye. This technique is used to determine, among other issues, accidental vs. non-accidental injury.

PUBLICATIONS:

- X Published in the APSAC Advisor and for the American Bar Association. Co- authored a booklet for the Juvenile Justice Resource Center and the United States Department of Justice, entitled, BURN INJURIES IN CHILD ABUSE.

The Re-Creation of Suspicious Burn Injuries / The Field and the Classroom. Submitted to; The International Association of Directors of Law Enforcement Standards (Quarterly) Editor: Patrick Judge.
Published: April 2005.

INSTRUCTION:

- X Instructing in the investigation of suspicious injuries since 1981.
- X Taught on numerous local, state, national and international levels. Audiences include persons from many disciplines such as law enforcement, medical, judicial, legal, social work, education, private business and others.
- X Presented for the American Prosecutors Research Institute, Children's Hospital in San Diego (The Response to Child Maltreatment), Emmanuel Hospital in Oregon, The Jaycee Burn Center in North Carolina, Child Help USA in Phoenix, Arizona, CASA in Corpus Christi, Texas, Children's Hospital, Austin, Texas, The Robert Presley Institute of Criminal Investigation, B.D.S.S.T of Oregon, Canadian Child Abuse Conference (Niagara Falls, Canada 2001), BASPCAN conference York, England, Leicester, England Child Abuse Investigations Training, The International Association of Coroners and Medical Examiners, The International Association of Forensic Nurses and many other law enforcement, social service, public and medical associations.
- X Instructor in Cognitive Interview and Confrontational Interrogation, Interrogation Law and associated Behavioral Analysis. (Since 1996)
- X Instructor in the Robert Presley Institute of Criminal Investigation (ICI), Instructor Development Course, Core Course San Diego (classes: Interview and Interrogation, Interrogation Law, Sources of Information, Media Relations, Case and Time Management, and Child Abuse Investigations.
- X Administrator of the ICI Core Investigations Course (ten day course), and the Advanced Child Physical Abuse Investigations course (three days) San Diego Regional Training Center.
- X Three time presenter as "Best Practices Presenter" at the Annual Institute of Criminal Investigation Conference.

KEYNOTE SPEAKER

- X Keynote speaker at the plenary session: Arkansas Conference on Child Abuse and Neglect, March 2006. (presented follow up workshops)

- X Keynote speaker and trainer: International Association of Forensic Nurses, Montreal Canada, Fall 2011. (presented follow up workshops)
- X Keynote and featured speaker; International Coroners and Medical Examiner Conference, Las Vegas Nevada, 2009, 2010, 2011 (scheduled 2013)
- X Keynote and featured speaker, Rochester New York Child Abuse Conference 2013

INVESTIGATION & TESTIMONY

- X Consulted and assisted in the investigation of suspicious burn injuries with local state and foreign agencies on numerous occasions.
- X Testified in California as an expert in the areas of Child Abuse, Burn Injuries, and Fingerprint Comparison.
- X Qualified in the state of Iowa as a burn expert and testified in a case involving the death of a three-year-old child.
- X Subpoenaed on three occasions as an expert on suspicious burn injuries regarding specific cases I investigated in the state of Arizona.
- X Conducted burn investigation at the request of Dr. Michael Ryan, New Children's Hospital, Sydney Australia and was qualified as a court expert and subpoenaed for court appearance.
- X Currently investigating numerous suspicious burn injury cases from California and other states and assisting in the recreation of those burn incidents.
- X Research in the area of suspicious burn injuries involving children and adults, is continuing on a daily basis.
- X Subpoenaed and testified in Austin, Texas, Superior Court, September 2005 infant death resulting from burns.
- X Numerous other consultations and expert assignments to date.

AWARDS:

- X Recipient of the Robert Presley Institute of Criminal Investigation 1999-2000 Excellence in Instruction Award.

- X 1998 Recipient of the San Diego County "I Love A Cop" Officer of the year for the San Diego County District Attorney's Office
- X 1999 Recipient of the San Diego County Deputy District Attorney's Association, "Investigator of the Year".
- X Recipient of the Robert Presley Institute of Criminal Investigation 2005-2006 Excellence in Instruction Award.

EDUCATION:

Associate of Sciences Degree in Criminal Justice
Mesa College San Diego, California 1974

Supplemental Courses:

San Jose State University
Chapman College
University of California San Diego

SPECIAL CERTIFICATION AND TRAINING

- X P.O.S.T. CERTIFICATES (California)
Basic, Intermediate and Advanced
- X Certified NRA & FBI Firearms Instructor since 1976.
- X Graduate of FBI Basic and Advanced Fingerprint Identification and Comparison courses in 1988 and 1989
- X Superior Court Expert in Fingerprint Identification and Comparison since 1988.
- X Certified operator of the Gaschromatograph (Breathalyzer) 1978
- X *Numerous Certificates of training related to Law Enforcement spanning 28 years. (Available upon request)*

ONGOING TRAINING AND EDUCATION:

Graduate of the P.O.S.T. Master Instructor Development Program, September 30, 2005. This one year long Master's equivalent, involved Instructional Systems Design Models, Adult Learning Concepts, Emerging Instructional Technology and Research and Publication. Thesis equivalent: the design and presentation of a new 24 hour training course for California Law Enforcement: *ADVANCED CHILD PHYSICAL ABUSE INVESTIGATION*.

Curriculum Vitae

Las Vegas Criminalistics Bureau Statement of Qualifications

Name: Joseph Szukiewicz

P# 5411

Date: 10-1-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
UNLV	Criminal Justice	Bachelors Degree-1989

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	1-27-97

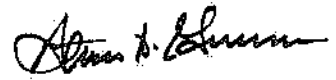
DOH: 01-27-97

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
1989	Criminal Justice	UNLV	Degree
01-27 to 02-28-97	Crime Scene Analyst Academy	LVMPD	175
02-03-97	Hazard Communication Training Certificate - Video	LVMPD	
02-06-97	Ethics & Leadership	LVMPD	7
02-10-97	Stress Management	LVMPD	4
02-12, 13, & 02-19-97	Civilian Use of Force & Firearm Training	LVMPD	21
02-17-97	Civil & Criminal Law	LVMPD	5
02-18-97	CAPSTUN for Civilians	LVMPD	2
03-17-97	Combat Shooting Simulator/FATS	LVMPD	1
03-27-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-03 to 05-02-97	Criminalistics Bureau - Field Training	LVMPD	360
03-30-97	Duty Weapon Qualification	LVMPD	2
04-03-97	Driver Training - Level 2	LVMPD	8
05-20 to 05-22-97	Top Gun Class	LVMPD	21
06-13-97	NCIC - Phase I - Video	LVMPD	20 Min
07-02-97	Duty Weapon Qualification	LVMPD	2
07-21-97	Critical Procedures Test	LVMPD	
09-30-97	Duty Weapon Qualification	LVMPD	2
10-13-97	Forensic Science - American Institute of Applied Science	American Institute of Applied Science	260
11-03 to 11-07-97	Courtroom Presentation of Evidence: Effective Expert Witness Testimony Workshop	CAT/NWAFS/SWAFS/SAT Joint Meeting	7
12-31-97	Duty Weapon Qualification	LVMPD	2
11-03 to 11-07-97	Crime Scene Investigation Workshop	CAT/NWAFS/SWAFS/SAT Joint Meeting	7
01-27-98	Domestic Violence	LVMPD	1
02-25-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-06-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2

06-12-98	Duty Weapon Qualification	LVMPD	2
06-22-98	Trauma Shooting - Video	LVMPD	30 Min.
07-15-98	Critical Procedures Test	LVMPD	2
09-14 to 09-18-98	Crime Scene Technology II	Northwestern University, Traffic Institute	40
12-03-98	WordPerfect 8.0 - Basic	LVMPD	4
12-08-98	Duty Weapon Qualification	LVMPD	2
12-30-98	Training - Motor Home Driving	LVMPD	4
02-23 to 02-25-99	Latent Print Identification	Law Enforcement Officers Training School	24
03-02-99	Optional Weapon	LVMPD	
03-30-99	Duty Weapon Qualification	LVMPD	2
04-30-99	Critical Procedures Test	LVMPD	2
06-08-99	Duty Weapon Qualification	LVMPD	2
08-16 to 08-20-99	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-24-99	Duty Weapon Qualification	LVMPD	2
12-08-99	Combat Shooting Simulator/FATS	LVMPD	1
01-19-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
04-10 to 04-12-00	LVMPD Clandestine Laboratory Safety Certification Course	LVMPD	24
05-22 to 05-24-00	Practical Homicide Investigation (Advanced Course of Instruction)	P.H.I., Investigative Consultants, Inc.	24
12-23-00	International Association for Identification - Crime Scene Cer- tification Board - Qualified/Certified as a Crime Scene Analyst	IAI	
10-03-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate # 07	LVMPD - Criminalistics Bureau	3
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD - Criminalistics Bureau	1
03-30-02	Forensic Anthropology	LVMPD - Criminalistics Bureau	1.5
04-18-02	Objective Approach to the Crime Scene	LVMPD - Criminalistics Bureau	1
04-25-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
04-25-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD - Criminalistics Bureau	1
08-04 to 08-10-02	87 th International Educational Conference - See below	IAI	
"	Advanced Documentation for Bloodstain Evidence Using Mapping Techniques, Diagrams, and Measurements	"	3
"	Forensic Evidence in the Courts, Expert Testimony, Lab	"	30 Min.

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	Assurance and Credibility		
"	Fingerprints for the 21 st Century: How Digital Imaging Can Help Us Solve Crime	"	30 Min.
"	The Effect of Un-du on Latent Print Developments	"	1
"	Investigating Cult and Occult Crime	"	2
"	Suicide....Or is it?	"	1
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24


CLERK OF THE COURT

EXMT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER HAMNER
Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C313047

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

DEPT NO. XII

Defendant.

**EX PARTE MOTION and ORDER
FOR RELEASE OF MEDICAL RECORDS**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER HAMNER, Deputy District Attorney, and moves this Honorable Court for an Order Releasing evidence which includes protected health information being held by SUNRISE HOSPITAL consisting of any and all medical records for patient: CHANCE JACKSPER, DOB: 01/03/2013, concerning diagnosis, prognosis and/or treatment given or provided on or about 01/05/2016, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case charging the crime of CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.508(1) - NOC 55222),

///

///

1 Pursuant to 45CFR164.512(f), Movant represents that the information sought is
2 relevant and material to a legitimate law enforcement inquiry; that the request is specific and
3 limited in scope to the extent reasonably practicable in light of the purpose for which the
4 information is sought; and that de-identified information could not reasonably be used.

5 NOW THEREFORE, pursuant to 45CFR164.512(f), and GOOD CAUSE
6 APPEARING, SUNRISE HOSPITAL, shall release to a representative of the DISTRICT
7 ATTORNEY'S OFFICE, any and all medical records concerning diagnosis, prognosis, and/or
8 treatment of CHANCE JACKSPER, whose date of birth is 01/03/2013, for the time period
9 01/05/2016.


10 IT IS HEREBY ORDERED,

11 DATED this 28 day of March, 2016.

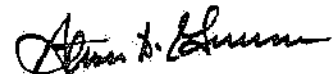
12
13 
14 DISTRICT JUDGE
15

16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 NEVADA BAR #001565

19 BY


20 CHRISTOPHER HAMNER
21 Deputy District Attorney
22 Nevada Bar #11390
23
24
25
26
27

28 jm/SVU


CLERK OF THE COURT

1 EXMT
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER S. HAMNER
6 Deputy District Attorney
7 Nevada Bar #11390
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 DONOVINE MATHEWS, aka,
16 Donovian Mathews, #5910369

17 Defendant.

CASE NO. C313047

DEPT NO. XII

EX PARTE MOTION and ORDER
FOR RELEASE OF MEDICAL RECORDS

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHRISTOPHER S. HAMNER, Deputy District Attorney, and
20 moves this Honorable Court for an Order Releasing evidence which includes protected health
21 information being held by UNIVERSITY MEDICAL CENTER consisting of any and all
22 medical records for patient: CHANCE JACKSPER, DOB: 01/03/2013, concerning diagnosis,
23 prognosis and/or treatment given or provided on or about 01/05/2016, to be released to a
24 representative of the DISTRICT ATTORNEY'S OFFICE for the purpose of prosecuting the
25 above referenced case charging the crime of CHILD ABUSE, NEGLECT, OR
26 ENDANGERMENT WITH SUBSTANTIAL BODILY HARM (Category B Felony - NRS
27 200.508(1) - NOC 55222).

28 ///

RECEIVED

28 2016

DEPT. 12

1 Pursuant to 45CFR164.512(f), Movant represents that the information sought is
2 relevant and material to a legitimate law enforcement inquiry; that the request is specific and
3 limited in scope to the extent reasonably practicable in light of the purpose for which the
4 information is sought; and that de-identified information could not reasonably be used.

5 NOW THEREFORE, pursuant to 45CFR164.512(f), and GOOD CAUSE
6 APPEARING, UNIVERSITY MEDICAL CENTER, shall release to a representative of the
7 DISTRICT ATTORNEY'S OFFICE, any and all medical records concerning diagnosis,
8 prognosis, and/or treatment of CHANCE JACKSPER, whose date of birth is 01/03/2013, for
9 the time period 01/05/2016.


10 IT IS HEREBY ORDERED.

11 DATED this 29 day of March, 2016.

12 
13 _____
14 DISTRICT JUDGE

15
16 STEVEN B. WOLFSON
17 Clark County District Attorney
18 NEVADA BAR #001565

19 BY

20 
21 CHRISTOPHER S. HAMNER
22 Deputy District Attorney
23 Nevada Bar #11390
24
25
26
27
28

jm/SVU

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER S. HAMNER
6 Deputy District Attorney
7 Nevada Bar #11390
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C313047

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

DEPT NO: XII

Defendant.

SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: DONOVINE MATHEWS, aka, Donovan Mathews, Defendant; and

TO: DEPUTY PUBLIC DEFENDER, Counsel of Record:

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

***Indicates additional witnesses and/or modifications**

BETHARD, JOHN; LVMPD #13928

*BOROZ, STACEY; Physical Therapist, University Medical Center

C.J.; C/O CCDA

CATHCART, JASMIN; 717 E Caballo Hills Ave NLV 89081

CETL, DR. SANDRA; Sunrise Hospital; Is a medical doctor and is expected to provide
testimony as a medical expert as to her opinions and findings including, but not limited to: her
review and analysis of the medical records, reports and radiographic films, as well as the

1 observations, diagnosis and treatment rendered to victim in this case, SCAN exams in general
2 and directly related to the instant case. In addition, she will provide testimony as to her direct
3 involvement, if any, in this case and the possible mechanisms of injury and causes of injury to
4 the said victim.

5 *COATES, DR. JAY ELLSWORTH; University Medical Center, Will testify
6 regarding the examination, treatment, observation and diagnosis in general of the named
7 victim in the instant case.

8 COR; CCDC

9 COR; LVMPD DISPATCH

10 COR; LVMPD RECORDS

11 DAHN, ROBBIE; LVMPD #5947; Is a Senior Crime Scene Analyst with the Las Vegas
12 Metropolitan Police Department. He is an expert in the area of identification, documentation,
13 collection and preservation of evidence and will give opinions related thereto. He is expected
14 to testify regarding the identification, documentation, collection and preservation of evidence
15 in this case.

16 *DANSCUK, DR. NICHOLAS; University Medical Center, Will testify regarding the
17 examination, treatment, observation and diagnosis in general of the named victim in the instant
18 case.

19 DEPALMA, PHILIP; LVMPD #5297

20 *GAMBOA, LLOYD; Registered Nurse, University Medical Center, Will testify
21 regarding the examination, treatment, observation and diagnosis in general of the named
22 victim in the instant case.

23 GRIVAS, CHRISTOPHER; LVMPD #8759

24 *GUNDACKER, RHEMA; Registered Nurse, University Medical Center, Will testify
25 regarding the examination, treatment, observation and diagnosis in general of the named
26 victim in the instant case.

27 ///

28 ///

1 *KOVALCHECK, ANDREA; Registered Nurse, University Medical Center, Will
2 testify regarding the examination, treatment, observation and diagnosis in general of the named
3 victim in the instant case.

4 KRUMNE, TROYCE; LVMPD #7176

5 OLSON, DR. ELIS; Sunrise Hospital; Will testify regarding the examination,
6 treatment, observation and diagnosis in general of the named victim in the instant case.

7 PELTAR, DR. PHYLIP; Burn medicine expert witness may testify and advise on
8 matters regarding burn injury, including heat burns, chemical burns, electrical burns, radiation
9 burns, superficial burns, toxic exposure, and scalding. Experts in burn injury can also provide
10 reports and testimony on various causes of burns, degrees of burns, burn accidents, burn
11 statistics, and related issues

12 SANTAROSSA, BRIAN; LVMPD #6930

13 *SOUCHON-SANCHEZ, DR. PATRICIA; University Medical Center, Will testify
14 regarding the examination, treatment, observation and diagnosis in general of the named
15 victim in the instant case.

16 SZUKIEWICZ, JOSEPH; LVMPD #5411; Is a Senior Crime Scene Analyst with the
17 Las Vegas Metropolitan Police Department. He is an expert in the area of identification,
18 documentation, collection and preservation of evidence and will give opinions related thereto.
19 He is expected to testify regarding the identification, documentation, collection and
20 preservation of evidence in this case.

21 *VELONZA, BLENMERLE; Registered Nurse, University Medical Center, Will
22 testify regarding the examination, treatment, observation and diagnosis in general of the named
23 victim in the instant case.

24 WESTMORELAND, JOANNA; CPS

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

28 ///

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

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
4

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

8 BY /s/ CHRISTOPHER S. HAMNER
9 CHRISTOPHER S. HAMNER
10 Deputy District Attorney
11 Nevada Bar #11390

12 CERTIFICATE OF FACSIMILE TRANSMISSION

13 I hereby certify that service of the above was made this 16th day of March, 2016, by
14 facsimile transmission to:

15 Public Defender's Office
16 FAX #455-5112

17 By: /s/ J. MOTL
18 Employee of the District Attorney's Office
19
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Curriculum Vitae

J.E. Coates Jr., D.O., FACOS

Title:

Assistant Professor of Surgery
Program Director, Acute Care Surgery/Surgical Critical Care Fellowship
Vice Chairman, Trauma Department, UMC
Director Visiting Resident Program

Business:

UNSON Department of Surgery/Division of Trauma & Critical Care
UMC Trauma Center
2040 West Charleston
Suite 302 Las Vegas, NV 89102
702-671-2201
Email jay@JayCoates.com

Education:

Aug. 1991 – June 1995	University of Osteopathic Medicine and Health Sciences, Des Moines, IA Degree Received: Doctor of Osteopathic Medicine
Aug. 1983 – June 1990	University of Nevada Las Vegas, Las Vegas, NV Degree Received: Bachelor of Science – Biological Sciences Minors: Music, Chemistry
Nov. 1981 – May 1983	Chaparral High School, Las Vegas, NV

Post Graduate Training:

July 2001 – June 2002	The Trauma Center at Penn University of Pennsylvania Trauma/Critical Care Fellowship
July 2000 – June 2001	University of Nevada School of Medicine UMC Trauma Center Las Vegas, NV Trauma Fellowship
July 1996 – June 2000	Michigan State University Affiliated Surgical Residency Garden City Osteopathic Hospital PGY – 2, 3, 4 PGY – 5 Chief Surgical Resident
July 1995 – June 1996	Michigan State University Affiliated Internship Garden City Osteopathic Hospital, PGY 1

Faculty Appointments:

Assistant Professor of Surgery	University of Nevada School of Medicine, Department of Surgery July 2002 – Present
Vice Chairman	Department of Trauma/Critical Care, University Medical Center July 2003 – Present
Program Director	Trauma/Critical Care Fellowship, University of Nevada School of Medicine July 2003 – Present
Visiting Resident Co-coordinator	University of Nevada School of Medicine July 2003 – Present
Clinical Instructor of Surgery	University of Nevada School of Medicine, Department of Surgery July 2000 – June 2001
Clinical Associate Professor	Michigan State University, Department of Surgery July 1996 – June 2004

Professional Activities:

Oral Examiner, General Surgery Boards, American Osteopathic Board of Surgery, 2008
Consultant to the American Osteopathic Board of Surgery, Critical Care Examination
Program Chair Committee, ACOS, 2005 – 2008
Nevada Athletic Commission, 2008 – Present
Building Committee, Clark County Medical Society, 2006
FDM sub-committee, Society of Critical Care Medicine
Practice Guideline Committee, Stress Ulcer Prophylaxis, EAST 2005
Advanced Trauma Life Support®, Course Director, 2004
Nevada Department of Transportation, Office of Traffic Safety, 2004
Board of Trustees Nevada Donor Network, 2003 – Present
Committee for Disaster Preparedness, Society of Critical Care Medicine, 2003 – 2004
Medical Education Committee, University Medical Center, 2003 – Present

Presentations:

1. MacIntyre AD, Spinale R, Coates JE, Kuhls DA, Fildes JJ: Evacuation of venous congestion from traumatic hand-injured patients on warfarin with the use of hirudo medicinalis. Poster Presentation at the 55th Annual Meeting of the Southwestern Surgical Congress, April 2003. Included on Top Ten Resident Posters.
2. Persons B, Kuhls DA, MacIntyre AD, Scalea TM, Coates JE, Fildes JJ: Abdominal Wall Hernias Following Blunt Trauma. Accepted for presentation at the 56th Annual Meeting of the Southwestern Surgical Congress, April 2004.

3. Davis AK, Kuhls DA, Wulff R, Fildes J, MacIntyre A, Coates JE, Zamboni WA: Heterotopic Ossification Following Blunt Abdominal Trauma. Poster presentation at the 57th Annual Meeting of the Southwestern Surgical Congress, 2005.

4. Kuhls DA, Rathmacher JA, MacIntyre AD, Coates JE, Fildes JJ: B-hydroxy-B-methylbutyrate improves nitrogen balance in critically injured adult trauma patients. Accepted for paper presentation, American Association for the Surgery of Trauma, September 2005.

5. MacIntyre AD, Coates JE, Kuhls DA, Fildes JJ: Emergent Surgical Airway. Submitted to American College of Surgeons for October 2005 meeting.

Abstracts/Articles/Research:

1. Principal-Investigator: Hypopituitarism after Moderate and Severe Head Injury NIH Grant # R01 NS 40777.

2. Kuhls DA, Rathmacher JA, Musngi MD, Frisch D, Barber A, MacIntyre AD, Coates JE, Browder TD, Eubanks P, Fildes JJ. B-hydroxy-B-methylbutyrate improves nitrogen balance in critically injured adult trauma patients. *J Trauma* 59(2): 522, 2005.

3. Smith J, Kuhls DA, Browder L, Larson J, Frisch D, Greenberg A, Leslie V, Ayoub A, MacIntyre A, Coates JE, Fildes J. Six years of antibiotic rotation (AR) and de-escalation (DE) for pneumonia in a trauma intensive care unit (TICU): lessons learned and implications. *Critical Care Medicine* 33(12)S: 189T, 2005.

4. Shapiro AM, Kuhls DA, Coates JE, MacIntyre AD, Fildes JJ: Development of rare post-traumatic post-embolization splenic pseudocyst: etiology and management. Proceedings of the 55th Annual Meeting of The Southwestern Surgical Congress, 2003.

5. Casey MJ, Kuhls DA, Coates JE, MacIntyre AD, Fildes JJ: Continuous rotation of trauma patients with adult respiratory distress syndrome (ARDS): Results of a case series. *Critical Care Medicine*, December 2003, 31(12):A97.

6. Shapiro AM, Kuhls DA, Coates JE, MacIntyre D, Fildes JJ: Development of rare post-traumatic post-embolization splenic pseudocyst: etiology and management. Proceedings of the 55th Annual Meeting of The Southwestern Surgical Congress, 2003.

7. Casey MJ, Kuhls DA, Coates JE, MacIntyre AD, Fildes JJ: Continuous rotation of trauma patients with adult respiratory distress syndrome (ARDS): Results of a case series. *Critical Care Medicine*, December 2003, 31(12):A97.

8. Davis AK, Kuhls DA, Wulff R, Fildes JJ, MacIntyre AD, Coates JE, Zamboni WA: Heterotopic ossification following blunt abdominal trauma. Proceedings of the 57th Annual Meeting of The Southwestern Surgical Congress, 2005.

9. "Limitations of Computer Order Entry Systems in Intensive Care Medicine", presented 11/2001 PACOT (Pennsylvania Committee on Trauma).

10. "Esophageal Doppler vs. PA Catheter in Resuscitation of Critical Ill", publication pending.

Original Reports:

1. Kuhls DA, Rathmacher JA, Musngi MD, Frisch D, Barber A, MacIntyre AD, Coates JE, Browder TD, Eubanks P, Fildes JJ. B-hydroxy-B-methylbutyrate improves nitrogen balance in critically injured adult trauma patients. *J Trauma* 59(2): 522, 2005.
2. Smith J, Kuhls DA, Browder L, Larson J, Frisch D, Greenberg A, Leslie V, Ayoub A, MacIntyre A, Coates J, Fildes J. Six years of antibiotic rotation (AR) and de-escalation (DE) for pneumonia in a trauma intensive care unit (TICU): lessons learned and implications. *Critical Care Medicine* 33(12)S: 189T, 2005.
3. Nielson J, Kuhls DA, Shapiro AM, Coates J, MacIntyre AD, Fildes J. Development of rare post-traumatic, post-embolization splenic pseudocyst: Etiology and management. Paper in progress.

FUNDED CLINICAL STUDIES:

Principal Investigator

1. Prospective Study on efficacy of oral contrast in abdominal CT Scans of Adult Trauma Patients, 2002-3.
2. Adjuvant nutrition for critically ill trauma patients. Grant from Metabolic Technologies, Inc. with subsidiary NIH funding. Prospective, randomized, blinded study to evaluate immune-enhanced additives to standard tube feedings and the impact on infection, inflammation and outcome variables, 2002-4.
3. Phase II Study entitled Comparative Pharmacokinetic and Pharmacodynamic Study of Epoetin Alfa (Procrit) in Anemic Critically Ill Patients Randomized to One of Six Dose Regimens for 15 Days. June 1, 2004 to May 31, 2004.

Invited Lectures:

Topic: Crush Injuries, Natural Disaster and Mass Casualty

Location: FDM course @ SCCM meeting, February 2007

Topic: DVT prophylaxis in the Abdominal Surgical Patient

Location: University of Utah, Salt Lake City, UT Sanofi Aventis sponsored program

Topic: Difficult Abdominal Closures

Annual Clinical Assembly of Osteopathic Specialists, New Orleans, LA, September 2006

In Depth Review Conference, ACOS, Scottsdale, AZ, January 2005

Topic: New Ventilator Strategies

Location: In Depth Review Conference, ACOS, Scottsdale, AZ, January 2005

Topic: Pantera tigris induced cervical vascular trauma in humans: a case study

Location: University of Pennsylvania, June 2005

Topic: Difficult Abdominal Closure

Location: Michigan State University, May 2005

Topic: Biological Weapons and Warfare

Location: University of Pennsylvania, June 2002

Topic: Percutaneous Tracheostomy

Location: Michigan State University Educational Center, Troy, MI, August 2001

Topic: Abdominal Compartment Syndrome

Location: Michigan State University Educational Center, Troy, MI, August 2001

Topic: Pediatric Trauma

Location: UMC Trauma Center, Las Vegas, NV, October 2000

Topic: Blunt and Penetrating Thoracic Trauma

Location: UMC Trauma Center, Las Vegas, NV, August 1999

Topic: Abdominal Trauma in the Gestational Patient

Location: Garden City Osteopathic, October 1999

Topic: Penetrating Abdominal Trauma

Location: Garden City Osteopathic, February 1999

Topic: Recurrent Pancreatic Pseudocyst

Location: Garden City Osteopathic, April 1997

Topic: Early Detection of Colon Cancer

Location: "Health Quest" locally produced public television series, taped originally 11/14/96

Board Certification:

General Surgery Certificate # 1871

CAQ Surgical Critical Care # 1871

Licenses:

NV – Certificate 981, Issued August 2000

PA

Memberships/Awards:

EAST (Eastern Association for the Surgery of Trauma)

American College of Osteopathic Surgeons

Michigan Osteopathic Medical Association

Wayne County Osteopathic Association

American Osteopathic Association

American Medical Association

South West Surgical Congress

Shock Society

SCCM (Society of Critical Care Medicine)

Pennsylvania Medical Society

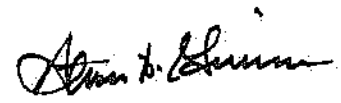
Tau Kappa Epsilon Fraternity

Professional History:

Surgical Assistant, Addison Community Hospital
Dates: April 1999 – July 2000
Position: Surgical Assistant at Bariatric Surgical Center
Location: Addison Community Hospital
421 North Steer Street
Addison, Michigan 49220
Director: Bob Brown

E.R. Physician Coverage, Madison Community Hospital
Dates: November 1997 – July 2000
Position: Emergency Room Physician
Location: Madison Community Hospital
30671 Stephenson Highway
Madison Heights, Michigan 48071
Coordinator: Thomas Pinson, D.O.

General Surgery Residency
Dates: July 1996 – July 2000
Chief Resident
Dates: July 1999 – July 2000
Location: Garden City Osteopathic Hospital
6245 North Inkster
Garden City, Michigan 48135
Director: R.C. Spinal, D.O., FACOS


CLERK OF THE COURT

MOT
PHILIP J. KOHN, Nevada State Bar No. 556
Public Defender
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 384-1969
Counsel for Defendant

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DONOVINE MATHEWS,

Defendant.

Case No.: C-16-313047-1
Dept. No.: XII

DATE: May 31, 2016

TIME: 8:30 a.m.

RECEIVED
CLERK OF COURT
5:31 PM
8:30 AM

DEFENDANT'S MOTION FOR DISCOVERY

Defendant DONOVINE MATHEWS ("Mathews"), by and through his counsel of record, KRISTY S. CLARK, Deputy Public Defender, moves this Honorable Court to grant his Motion for Discovery and order the State of Nevada to produce the discovery discussed herein reasonably soon thereafter, pursuant to NRS 174.235; NRS 174.285; *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83 (1963) (and their progeny). This Motion is made and based upon all the papers and pleadings on file herein, the memorandum of points and authorities attached hereto, the attached Declaration of Counsel, and any oral argument this Honorable Court may allow.

DATED this 20th day of May, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Kristy Clark
Kristy S Clark, Nevada Bar No. 13519
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On January 5th, 2016, 2 year old C.J. suffered second degree burns to both his hands. C.J.'s mother, Jasmin Cathcart, was attending a meeting and left her two children, C.J. and J.J., at home and under the care of Mr. Mathews. Mr. Mathews is Ms. Cathcart's long-term boyfriend, a father figure to Ms. Cathcart's children, and the biological father of Ms. Cathcart's unborn child.

Mr. Mathews told Detectives that shortly after Ms. Cathcart left to attend her meeting, Mr. Mathews began boiling water to make a cup of instant coffee. Voluntary Statement of Donovan Mathews, p. 12. After pouring the boiled water into a coffee mug on the counter to cool, Mr. Mathews went into the bedroom to change J.J.'s diaper. *Id.* While tending to J.J., Mr. Mathews heard C.J. screaming. *Id.* at 12. When he walked back into the kitchen, Mr. Mathews's coffee cup was on the floor and the backs of C.J.'s hands were burned. *Id.* at 15.

Mr. Mathews placed C.J. in a cold bath, instructed him to hold his hands under the water, and called Ms. Cathcart, telling her to come home. *Id.* at 16, 18. Mr. Mathews also put Neosporin on C.J.'s hands. When Ms. Cathcart returned home, she and Mr. Mathews decided to take the short walk to Sunrise Hospital, with J.J. in a stroller, and Mr. Mathews carrying C.J. *Id.* at 22.

Detectives later arrived at the hospital. Continuation Report, p. 3. Mr. Mathews and Ms. Cathcart both issued recorded voluntary statements to these investigators at the hospital. *Id.* at 2-3. Mr. Mathews also volunteered to conduct, and actually did conduct, a video re-enactment of what he thought must have happened to C.J. *Id.* at 3.

Detectives met with Dr. Cetl, a Sunrise hospital pediatrician specialist, who "observed the injuries [C.J.] sustained," and gave her opinion that the burns resulted from an intention act. *Id.* at 4. At the preliminary hearing, Dr. Cetl testified that she did not treat C.J., nor did she ever meet him in person, but that she reviewed "photographs and the record." Preliminary Hearing Transcript, at 41. Detectives also spoke with an "additional expert" named Phylip Peltier, who gave his opinion that the injuries were consistent with a "slow pour with a small amount of water being very hot." Continuation Report, p. 3.

1 Mr. Mathews was arrested on January 26th, 2016. Declaration of Arrest. Justice Court
2 Department 5 held a preliminary hearing, and the case was bound over to District Court. A trial
3 date was set for April 26, 2016, but ultimately Mr. Mathews waived his right to a trial within 60
4 days, and trial was reset for June 6, 2016 in District Court Department XII.

5 II.

6 LEGAL ARGUMENT

7 A. UNDER THE UNITED STATES CONSTITUTION, NEVADA'S CONSTITUTION, AND NEVADA 8 STATUTORY LAW THE STATE IS REQUIRED TO PROVIDE FLEMING WITH DISCOVERY.

9 1. NRS 174.235 Imposes Evidentiary Disclosure Requirements on The State 10 Regarding Inculpatory And Exculpatory Information.

11 Under NRS 174.235, the State is required to disclose evidence relating to the prosecution
12 of a defendant that is within the possession, custody or control of the State, including:

- 13 1) written or recorded statements or confessions made by the defendant;
- 14 2) written or recorded statements made by a witness the prosecuting attorney intends to call
15 during the case in chief of the State;
- 16 3) results or reports of physical or mental examinations, scientific tests or scientific
17 experiments made in connection with the particular case; and
- 18 4) books, papers, documents, tangible objects, or copies thereof, which the prosecuting
19 attorney intends to introduce during the case in chief of the State.

20 NRS 174.235(1)(a)-(c).

21 The District Court has authority to order the production of any non-privileged materials in
22 the possession, control, or custody of the State¹ under NRS 174.235 if the evidence sought is
23 "material to the preparation of the defense." *Riddle v. State*, 96 Nev. 589, 590, 613 P.2d 1031
(1980).

24 Based on the statutory mandates of NRS 174.235, Fleming requests that the State turn over
25 all such information in the State's custody or control whether exculpatory or inculpatory in nature.

26
27 ¹ The State must turn over any documents, papers, or books related to the case that are in the
28 possession, control, and custody of any government agent or agency. *See Kyles v. Whitley*, 514
U.S. 419, 437-38 (1995) (stating that exculpatory evidence "cannot be kept out of the hands of the
defense just because the prosecutor does not have it").

1 2. **Both The United States Constitution And Nevada's Constitution Impose**
2 **Evidentiary Disclosure Requirements on The State to Provide Fleming With**
3 **All Favorable Evidence in Its Actual or Constructive Possession.**

4 The United States and Nevada constitutions require the State to provide the defense with all
5 favorable evidence in its actual or constructive possession prior to trial. *See Kyles v. Whitley*, 514
6 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83, 86 (1963); *Jimenez v. State*, 112 Nev. 610, 618
7 (1996). Failure by the State to provide a defendant with discovery is a violation of the Due
8 Process clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and
9 Article I, Section 8 of the Nevada Constitution. The State's discovery obligation applies
10 regardless of how the State has chosen to structure its overall discovery process. *See Strickler v.*
11 *Greene*, 527 U.S. 263 (1999); *Kyles*, 514 U.S. 419; *Brady*, 373 U.S. at 86; *Jimenez*, 112 Nev. at
12 618. The withholding of exculpatory evidence constitutes a due process violation regardless of the
13 prosecutor's motive for withholding the evidence. *Jimenez*, 112 Nev. at 618. ("It is a violation of
14 due process for the prosecutor to withhold exculpatory evidence, and his motive for doing so is
15 immaterial . . . The prosecutor represents the state and has a duty to see that justice is done in
16 criminal prosecution."); *See also Wallace v. State*, 88 Nev. 549, 551-52, 501 P.2d 1036 (1972).

17 The Constitution requires the State to turn over all evidence that is: (1) favorable to the
18 accused, in that it is exculpatory or impeachment evidence, and (2) within the actual or
19 constructive possession of anyone acting on behalf of the State. *See Banks v. Dretke*, 540 U.S.
20 668, 691 (2004). Material evidence is evidence that is logically connected with the facts of
21 consequence or the issues in the case. *Wyman v. State*, 125 Nev. 592, 608 (2009).

22 **B. THE STATE MUST DISCLOSE BOTH INCULPATORY AND EXCULPATORY INFORMATION**
23 **PRIOR TO TRIAL.**

24 1. **The State Must Disclose All Inculpatory Evidence, Regardless of Whether The**
25 **Material is Intended For Use in The Government's Case in Chief.**

26 Prosecutors may not lawfully withhold inculpatory material and information from the
27 defense simply because they do not intend to present the material or information during the
28 government's case in chief. *State v. Harrington*, 9 Nev. 91, 94 (1873); *People v. Bunyard*, 756
P.2d 795, 809 (Cal. 1988); *People v. Carter*, 312 P.2d 665, 675 (Cal. 1957). Any holding to the

1 contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material
2 from the government's case in chief, only to surprise the defense by using it in rebuttal.

3 **2. The State Must Disclose All Statements Made by a Defendant, Regardless of**
4 **Whether The Statement(s) Are Reduced to Writing.**

5 NRS 174.235 creates an affirmative duty for the State to disclose *any* statement allegedly
6 made by the defendant, or for which the defendant can be held vicariously liable. Courts have
7 recognized that there is a fundamental fairness involved in "granting the accused equal access to
8 his own words, no matter how the Government came by them." *See, e.g., U.S. v. Caldwell*, 543
9 F.2d 1333, 1353 (D.D.C. 1974). This "fairness" should extend not only to written or recorded
10 statements, but unrecorded oral statements as well as statements for which a defendant can be held
11 vicariously liable. Under NRS 51.035(3)(a)-(e),² a defendant can be vicariously liable for a
12 statement made by a third party. *See also Fields v. State*, 125 Nev. 785 (2009) (finding evidence
13 of defendant's silence admissible following his wife's complaint that she was in jail because his
14 conduct constituted an adoptive admission). As a result, this Court should construe NRS 174.235
15 to include within the definition of a defendant's "statement," both the words actually uttered by the
16 defendant and any statements for which the defendant may be held vicariously liable.

17 **C. THE STATE MUST DISCLOSE ANY/ALL ROUGH NOTES PREPARED IN CONNECTION WITH**
18 **THE INVESTIGATION OF THE INSTANT MATTER.**

19 Raw notes made by any law enforcement officer or other prosecution agent in connection
20 with the investigation of instant matter must be disclosed to the defense. Notably, this does not
21 include information amounting to work product. In *Hickman v. Taylor*, 329 U.S. 495, 508-11
22 (1947), the United States Supreme Court recognized the privileged nature of discussions relating to
23 the preparation of a case of trial.³ The "work product doctrine" announced in *Hickman* shelters
24 not only material generated by an attorney in preparation for trial, but by his/her agent, as well:

25 ² NRS 51.035(3)(b) excepts from the definition of hearsay a "statement offered against a party" that is "[a]
26 statement of which [the party against whom it is offered] has manifested his adoption or believe in its
27 truth."

28 ³ "In performing his various duties, however, it is essential that a lawyer work with a certain degree of
 privacy, free from unnecessary intrusion by opposing parties and their counsel . . . Proper preparation of a
 client's case demands that he assemble information, sift what he considers to be the relevant from the
 irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference . . .

1 At its core, the work product doctrine shelters the mental processes of the
2 attorney, providing a privileged area within which he can analyze and
3 prepare his client's case. But the doctrine is an intensely practical one,
4 grounded in the realities of litigation in our adversary system. One of
5 those realities is that attorneys often must rely on the assistance of
6 investigators and other agents in preparation for trial. It is therefore
7 necessary that the doctrine protect material prepared by agents for the
8 attorney as well as those prepared by the attorney as well as those
9 prepared by the attorney himself. Moreover, the concerns reflected in the
10 work-product doctrine do not disappear once trial has begun

11 *U.S. v. Nobles*, 422 U.S. 225, 238-39 (1975).

12 Codifying this, NRS 174.235(2) exempts from discovery by a criminal defendant:

- 13 (a) An internal report, document, or memorandum that is prepared by or on
14 behalf of the prosecuting attorney in connection with the investigation or
15 prosecution of the case.
- 16 (b) A statement, report, book, paper, document, tangible object or any other
17 type of item or information that is privileged or protected from disclosure
18 or inspection pursuant to the constitution or laws of this state or the
19 Constitution of the United States.

20 Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted
21 from disclosure. Any other raw note(s) compiled during the investigation of this matter must be
22 turned over pursuant to the disclosure obligation conferred by NRS 174.235 or, in the case of
23 exculpatory material. *Brady v. Maryland*, 373 U.S. 83 (1963).

24 **D. THE STATE MUST TURN OVER ALL INFORMATION THAT IS FAVORABLE TO MATHEWS,**
25 **WHETHER OR NOT IT IS THE SUBJECT OF A SPECIFIC DISCOVERY REQUEST.**

26 The State's constitutional obligation to produce material evidence exists whether or not the
27 defendant has filed a discovery motion or made specific discovery requests. *See, e.g., See, e.g.,*
28 U.S. CONSTITUTION AMEND. V, VI, XIV; NEV. CONST. Art. 1, § 8; *Kyles v. Whitley*, 514 U.S. 419,

29 This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental
30 impressions, personal beliefs, and countless other tangible and intangible ways – aptly . . . termed . . . as the
31 ‘work product of the lawyer.’ Were such materials open to opposing counsel on mere demand, much of
32 what is now put down in writing would remain unwritten. An attorney’s thoughts, heretofore inviolate,
33 would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving
34 of legal advice and in the preparation of cases for trial. The effect on the legal profession would be
35 demoralizing. And the interests of clients and the cause of justice would be poorly served.” *Hickman v.*
36 *Taylor*, 329 U.S. 495, 508-11 (1947).

1 434-35 (1995); *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1986); *United States v. Bagley*, 473 U.S.
2 at 667, 682, 685 (1985); *State v. Bennett*, 119 Nev. 589 (2003); *Jimenez*, 112 Nev. at 618; *Roberts*
3 *v. State*, 110 Nev. 1121 (1994).

4 Given the important rights involved and the strong potential for reversal if those rights are
5 violated, the United States Supreme Court has long counseled that “the prudent prosecutor will
6 resolve doubtful questions in favor of disclosure.” *U.S. v. Agurs*, 427 U.S. 97, 108 (1976).
7 Ultimately, prosecutors are tasked with a “broad duty of disclosure.” *Strickler*, 527 U.S. at 281.
8 Accordingly, any question as to whether certain material, information, and/or evidence falls within
9 the purview of *Brady* should be resolved in favor of disclosure. *Agurs*, 427 U.S. at 108; *See also*
10 *Kyles*, 514 U.S. at 434 (“[A] prosecutor anxious about tacking too close to the wind will disclose a
11 favorable piece of evidence.”).

12 The State’s constitutionally mandated *Brady* obligation arises regardless of whether a
13 Defendant specifically requests certain favorable evidence. *See Kyles*, 514 U.S. at 433 (stating that
14 “regardless of request, favorable evidence is material. . .”); *Bagley*, 473 U.S. at 680-82 (finding the
15 prosecution’s constitutional duty to disclose favorable evidence is governed by the materiality
16 standard and not limited to situations where a defendant requests favorable evidence). However, a
17 specific *Brady* request will result in reversal “if there exists a reasonable possibility that the
18 claimed evidence would have affected the judgment of the trier of fact.” *Roberts v. State*, 110
19 Nev. 1121 (Nev. 1994); *See also Jimenez*, 112 Nev. at 619; *State v. Bennett*, 119 Nev. 589 (Nev.
20 2003). Absent a specific request, reversal is warranted, “if there exists a reasonable probability
21 that, had the evidence been disclosed, the result of the proceeding would have been different.”
22 *Bagley*, 473 U.S. at 667, 682, 685; *Ritchie*, 480 U.S. at 57. A “reasonable probability” is a
23 probability sufficient to undermine confidence in the outcome. *Bagley*, 473 U.S. at 678, 685;
24 *Ritchie*, 480 U.S. at 57; *Roberts*, 110 Nev. at 1129. The State must disclose all material evidence
25 favorable to the defense, regardless of the nature of the instant request. Additionally, as more fully
26 addressed below, the prosecutor must meet with detectives, crime scene analysts, investigators,
27 and any other State actors and potential witnesses prior to trial to determine whether they possess
28 evidence favorable to the accused. *See, e.g., Strickler*, 527 U.S. at 281.

1 **1. The State's Duty To Turn Over Evidence "Favorable to the Accused"**
2 **Mandates That The State Disclose Exculpatory Evidence.**

3 Exculpatory evidence is that which tends to favor the accused. *Brady*, 373 U.S. at 87. The
4 Due Process Clause of the Fifth and Fourteenth Amendments require that the State disclose "any
5 information about its witnesses that could cast doubt on their credibility." *U.S. v. Jennings*, 960
6 F.2d 1488, 1490 (9th Cir. 1992); *See also Bagley*, 473 U.S. 667. Impeachment evidence,
7 therefore, is exculpatory evidence within the meaning of *Brady*. *See Giglio v. United States*, 405
8 U.S. 150, 154 (1972); *see also Youngblood v. West Virginia*, 547 U.S. 867 (2006); *Bagley*, 473
9 U.S. at 676 (requiring disclosure of all impeachment evidence). In other words, the State's duty to
10 disclose extends to evidence bearing on the credibility of its witnesses. The Nevada Supreme
11 Court has interpreted the meaning of evidence "favorable to the accused" as evidence that
12 "provides grounds for the defense to attack the reliability, thoroughness, and good faith of the
13 police investigation, to impeach the credibility of the state's witnesses" or evidence that may
14 "bolster the defense case against prosecutorial attacks." *Mazzan*, 116 Nev. at 67.

15 To be clear, exculpatory material includes all information that would tend to affect the
16 reliability and credibility of a witness. Thus, information within government control, which shows
17 that a witness gave inconsistent statements, had motive to lie, tried to recant, expressed reluctance
18 to testify against the accused, received benefits as a result of his or her accusation, or other types of
19 information affecting credibility and reliability, is *Brady* material and must be disclosed.

20 Prosecutors must disclose the identity of witnesses possessing exculpatory information
21 because no legitimate interest is served by precluding the defense from calling such witnesses for
22 trial. *United States v. Eley*, 335 F.Supp. 353 (N.D. Ga. 1972); *United States v. Houston*, 339
23 F.Supp. 762 (N.D. Ga. 1972).

24 Additionally, the U.S. Constitution guarantees a criminal defendant the right to present
25 evidence of third-party guilt. *See Holmes v. South Carolina*, 547 U.S. 319 (2006) (holding that
26 refusal to allow defendant to present evidence of third party guilt deprives him of a meaningful
27 right to present a complete defense under the 14th and 6th Amendments of the U.S. Constitution).
28 Thus, prosecutors must disclose any/all evidence that another perpetrator committed the charged
 crime(s). *Lay v. State*, 116 Nev. 1185, 1195-96 (2000) (finding that State's failure to disclose

1 evidence of another perpetrator violated *Brady*). This includes evidence that another individual
2 was arrested in connection with the charged crime. *Banks v. Reynolds*, 54 F.3d 1508, 1518 n.21
3 (10th Cir. 1995). It also includes evidence of investigative leads pointing to other suspects.
4 *Jimenez*, 112 Nev. at 622-23 (withholding evidence of investigative leads to other suspects,
5 regardless of admissibility, constitutes a *Brady* violation).

6 Finally, prosecutors must disclose the identity of witnesses possessing exculpatory
7 information, as no legitimate interest is served by precluding the defense from calling such
8 witnesses for trial. *U.S. v. Eley*, 335 F.Supp. 353 (N.D. Ga. 1972); *U.S. v. Houston*, 339 F.Supp.
9 762 (N.D. GA 1972).

10 **2. The State's Duty To Turn Over Evidence "Favorable to the Accused"**
11 **Mandates That The State Disclose Impeachment Evidence,**

12 The Due Process Clause of the Fifth and Fourteenth Amendments require that the State
13 disclose "any information about its witnesses that could cast doubt on their credibility." *U.S. v.*
14 *Jennings*, 960 F.2d 1488, 1490 (9th Cir. 1992); *see also U.S. v. Bagley*, 473 U.S. 667 (1985).
15 Accordingly, 'favorable evidence' includes impeachment information pertaining to any/all
16 government witnesses. *Youngblood v. West Virginia*, 547 U.S. 867 (U.S. 2006); *U.S. v. Bagley*,
17 473 U.S. at 676 (requiring disclosure of all impeachment evidence); *Giglio v. U.S.*, 405 U.S. 150,
18 154 (1972).

19 The Nevada Supreme Court has directly addressed what is considered "favorable to the
20 accused." In *Mazzan v. Warden*, the Court stated:

21 Due process does not require simply the disclosure of "exculpatory"
22 evidence. Evidence also must be disclosed if it provides grounds for the
23 defense to attack the reliability, thoroughness, and good faith of the police
24 investigation, to impeach the credibility of the state's witnesses, or to
25 bolster the defense case against prosecutorial attacks. Furthermore,
26 "discovery in a criminal case is not limited to investigative leads or reports
27 that are admissible in evidence." Evidence "need not have been
28 independently admissible to have been material."

116 Nev. 48, 67 (2000) (citations omitted).

See also, *Strickler*, 527 U.S. at 281-82 (stating that a *Brady* violation occurs when (1)
evidence is favorable to the accused because it is exculpatory or impeaching; (2) evidence was

1 suppressed by the State, either willfully or inadvertently, and (3) prejudice ensued); *Bloodworth v.*
2 *State*, 512 A.2d 1056, 1059-60 (Md. 1986) (finding that the prosecution committed a *Brady*
3 violation when it failed to disclose a detective's statement suggesting another possible suspect). In
4 *Mazzan*, the Supreme Court provided a non-exclusive list of the type of evidence that the State
5 must turn over:

- 6 1) Forensic testing which was ordered but not completed, or which was
7 completed but did not inculcate the defendant (e.g., fingerprint analysis
8 that returned as "inconclusive");
- 9 2) Criminal records or other evidence concerning State's witnesses which
10 might show bias, motive to lie, or otherwise impeach credibility (e.g., civil
11 litigation);
- 12 3) Evidence that the alleged victim in the instant case has claimed to be a
13 victim in other cases;
- 14 4) Leads, evidence, or investigations that law enforcement discounted or
15 failed to pursue;
- 16 5) Evidence that suggests an alternate suspect, or calls into question whether
17 a crime actually occurred;
- 18 6) Anything that is inconsistent with prior or present statements of a State's
19 witness, including the initial failure to make a statement that is later made
20 or testified to.

21 In addition to the specific types of evidence listed above and discussed in *Mazzan*, the State is
22 obligated to turn over to Defendant any exculpatory or mitigation evidence.

23 **a. Impeachment evidence includes evidence of cooperation agreements**
24 **and benefits between a government witness and prosecutors.**

25 Impeachment evidence includes any/all cooperation agreement(s) between a government
26 witness and prosecutors. *Giglio*, 405 U.S. at 154 (requiring disclosure of cooperation agreement
27 between government witness and prosecutors). It also includes benefits provided to a state
28 witness, regardless of whether an explicit deal is outlined. *Browning v. State*, 120 Nev. 347, 369
(2004). It is the witness' own anticipation of reward, not the intent of the prosecutor, which gives
rise to the required disclosure. *Moore v. Kemp*, 809 F.2d 702, 726, 729-30 (11th Cir. 1987), *cert.*
denied, 481 U.S. 1054 (1987); *Duggan v. State*, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989)

1 (holding that agreements need not be express or formal arrangements, and understanding merely
2 implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper
3 material for impeachment). 'Benefits' are not limited to agreement made in relation to the specific
4 case at issue. *Jimenez*, 112 Nev. at 622-23. For example, prosecutors must disclose evidence that
5 a witness acted as a paid informant on one or more occasions. *Bennett*, 119 Nev. at 603.

6 Finally, 'benefits' can include, but are not necessarily limited to, travel and/or lodging
7 benefits, as well as counseling, treatment, or other assistance, including immigration assistance of
8 any kind, whether actual or anticipatory. This is relevant to issues regarding possible bias,
9 credibility, and motive to lie, all of which constitute impeachment evidence. See *Davis v. Alaska*,
10 415 U.S. 308 (1974).

11 **b. Impeachment evidence includes evidence relating to a witness' criminal
12 history.**

13 Impeachment material includes evidence relating to a witness' criminal history. *Briggs v.*
14 *Raines*, 652 F.2d 862, 865-66 (9th Cir. 1981) (under *Brady*, any rap sheets useful to prove a
15 witness' history or propensity for a relevant character trait should be produced). This encompasses
16 information that is more than ten (10) years old. See *Moore*, 809 F.2d 702 (entire criminal record
17 should be disclosed). It further includes criminal history information maintained by law
18 enforcement agencies other than the Las Vegas Metropolitan Police Department,⁴ such as the
19 federal government's National Crime Information Center ("NCIC") database.⁵

20 ⁴ See *Odle v. U.S.*, 65 F. Supp. 2d 1065 (N.D. Cal. 1999), *rev'd on other grounds by Odle v. Woodford*, 238
21 F.3d 1084 (9th Cir. 2001) (holding that "... knowledge may be imputed to the prosecutor, or a duty to
22 search may be imposed, in cases where a search for readily available background information is routinely
23 performed, such as routine criminal background checks of witnesses." *Id.* at 1072 (citations omitted)
24 (emphasis added); *United States v. Perdomo*, 929 F.2d 967 (3d Cir. 1991) (adopting Fifth Circuit's rationale
25 in requiring government to obtain complete criminal history on prosecution witness(es)); *U.S. v. Thornton*,
26 1 F.3d 149 (3d Cir. 1993) (prosecutor charged with producing impeachment evidence actually or
27 constructively in his possession as "prosecutors have an obligation to make a thorough inquiry of all
28 enforcement agencies that had a potential connection with the witnesses . . ."); *Martinez v. Wainwright*,
621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-government witnesses,
including data obtainable from the FBI; prosecutor's lack of awareness of alleged victim's criminal history
does not excuse duty to obtain and produce rap sheet). But cf. *United States v. Blood*, 435 F.3d 612, 627
(6th Cir. 2006) (no *Brady* violation where prosecutor did not produce to the defense the printout of the
NCIC check but disclosed that the witness in question had no criminal history; "the Government is only
required to disclose its informant's criminal history if he has one").

⁵ Federal law permits disclosure of NCIC information under circumstances such as that here. 28 C.F.R.
Chapter 1 addresses the U.S. Dept. of Justice and Criminal Justice Information Systems. 28 C.F.R. Sec.

1 **c. Impeachment evidence includes evidence relating to a witness'**
2 **contradictory statements.**

3 Impeachment evidence encompasses prior statements and/or other evidence that contradicts
4 government witnesses. Accordingly, prosecutors must disclose prior inconsistent statements by
5 key government witnesses. *Lay*, 116 Nev. at 1199. Prosecutors must also disclose statements
6 and/or evidence that contradict(s) the testimony of other government witness(es). *Rudin v. State*,
7 120 Nev. 121, 139 (2004).

8 **d. Impeachment evidence must be disclosed even if it arises from**
9 **privileged or confidential material.**

10 A witness can be attacked by "revealing possible biases, prejudices, or ulterior motives of
11 the witnesses as they may relate directly to the issues or personalities on the case at hand. The
12 partiality of a witness is . . . always relevant as discrediting the witness and affecting the weight of
13 his testimony." *Davis*, 415 U.S. at 354; *See also Lobato v. State*, 120 Nev. 512 (Nev. 2004)
14 (discussing the "nine basic modes of impeachment.") Accordingly, impeachment evidence can
15 derive from otherwise privileged and/or confidential material. When this occurs, the privileged
16 and/or confidential nature of the material at issue must yield to a defendant's constitutionally
17 secured right to confront and cross-examine those who testify against him. *Davis*, 415 U.S. at 356
18 (state's interest in maintaining confidentiality of juvenile records must yield to defendant's right to
19 cross-examine as to bias); *See also United States v. Nixon*, 418 U.S. 683, 713 (1974) (generalized
20 assertion of privilege must yield to demonstrated, specific need for evidence in a pending criminal
21 case). Thus, prosecutors must obtain and disclose privileged/confidential records pertaining to
22 government witnesses when the records contain information bearing on witness credibility.

23 This includes mental health records. *See United States v. Lindstrom*, 698 F.2d 1154, 1166-
24 67 (11th Cir. 1983) (requiring disclosure of government witness' mental health records); *United*

25 20.33 sets forth the instances in which NCIC information may be disclosed. It provides for NCIC
26 disclosure "...1) To criminal justice agencies for criminal justice purposes..." 28 C.F.R. Sec. 20.3(g) defines
27 criminal justice agencies as: "... (1) Courts; and [other entities set forth in that section]." Additionally, 28
28 C.F.R. Sec. 20.3 defines the "[a]dministration of criminal justice" to include the "performance of any of the
following activities . . . adjudication . . ." Therefore, the C.F.R. authorizes prosecutors to access and
disclose NCIC data pursuant to court order as part of a criminal case adjudication.

1 *States v. Robinson*, 583 F.3d 1265, 1271-74 (10th Cir. 2009) (requiring disclosure of material
2 portions of confidential informant's mental health records); *Wyman v. State*, 125 Nev. 592, 607-08
3 (2009) (trial court abused discretion by denying defendant's request for certificate of materiality to
4 obtain accuser's out-of-state mental health records); *Burns v. State*, 968 A.2d 1012, 1024-25 (Del.
5 2009) (defendant entitled to therapy records). It also includes Child Protective Services (or the
6 functional equivalent) and school records. *See Ritchie*, 480 U.S. at 60 (defendant entitled to in
7 camera review of Child and Youth Services records); *State v. Cardall*, 982 P.3d 79, 86 (Utah
8 1999) (defendant entitled to complainant's school psychological records indicating she had
9 propensity to lie and had fabricated prior rape allegations). It further includes parole/probation
10 records, as well as jail/prison records. *See United States v. Strifler*, 851 F.2d 1197, 1201 (9th Cir.
11 1988), *cert. denied*, 489 U.S. 1032 (1989); *Carriger v. Stewart*, 132 F.3d 463, 479-82 (9th Cir.
12 1997) (requiring production of Department of Corrections file on principle government witness).
13 And it includes juvenile records. *Davis*, 415 U.S. at 356. *See also Bennett*, 119 Nev. at 603
14 (failure to disclose co-conspirator's juvenile records in penalty hearing amounted to *Brady*
15 violation). Accordingly, prosecutors cannot lawfully refuse disclosure of impeachment
16 information on the basis that the information is privileged and/or confidential.

17 e. **Impeachment evidence *must* be disclosed even if it arises from**
18 **law enforcement personnel files.**

19 Under *United States v. Henthorn*, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must
20 examine law enforcement personnel files when a defendant makes such a request. *See also United*
21 *States v. Cadet*, 727 F.2d 1453 (9th Cir. 1984). A defendant is not required to make an initial
22 showing of materiality before prosecutors must examine the files — the examination obligation
23 arises solely from the defendant's request. *Henthorn*, 931 F.2d at 31. "Absent such an
24 examination, [the State] cannot ordinarily determine whether it is obligated to turn over the files."
25 *Id.* at 31. Once examined, prosecutors must "disclose information favorable to the defense that
26 meets the appropriate standard of materiality . . . If the prosecution is uncertain about the
27 materiality of the information within its possession, it may submit the information to the trial court
28

1 for an in camera inspection and evaluation” *Henthorn*, at 30-31 (quoting *Cadet*, 727 F.2d at
2 1467-68).

3 **3. The State’s Duty To Turn Over Evidence “Favorable to the Accused”**
4 **Mandates That The State Disclose Mitigation Evidence.**

5 *Brady* material applies not only to evidence regarding the defendant’s innocence or guilt,
6 but also to *mitigation* evidence. For example: the victim of a robbery identifies a defendant as one
7 of two people who robbed her. The victim also tells police that this defendant actively prevented
8 his co-defendant from hitting her during the robbery. Although the victim’s statement would
9 clearly go to establishing the defendant’s guilt, it would *also* constitute *Brady* material because if
10 he is ultimately convicted, the defendant’s effort to aid the victim might justify the mitigation of
11 his sentence. Anything which could convince the court to impose less than a maximum sentence
12 or rebut alleged aggravating circumstances is relevant to punishment and, therefore, *must* be
13 produced by the State. *See Jimenez*, 112 Nev. at 619.

14 **4. The State’s Duty To Turn Over Evidence “Favorable to the Accused”**
15 **Mandates That The State Disclose Evidence of Third-Party Guilt.**

16 The U.S. Constitution guarantees a criminal defendant the right to present evidence of
17 third-party guilt. *See Holmes v. South Carolina*, 547 U.S. 319 (2006) (holding that refusal to allow
18 defendant to present evidence of third party guilt deprives him of a meaningful right to present a
19 complete defense under the 14th and 6th Amendment of the US Constitution). Thus, prosecutors
20 must disclose any/all evidence that another perpetrator committed the charged crime(s). *Lay v.*
21 *State*, 116 Nev. 1185, 1195-96 (2000) (State’s failure to disclose evidence of another perpetrator
22 violated *Brady*). This includes evidence that another individual was arrested in connection with
23 the charged crime. *Banks v. Reynolds*, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995). It also includes
24 evidence of investigative leads pointing to other suspects. *Jimenez v. State*, 112 Nev. 610, 622-23
25 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility,
26 constitutes *Brady* violation). Finally, prosecutors must provide the actual documents, evidence,
27 and/or reports pertaining to evidence of third-party guilt; it is not enough for prosecutors to
28 provide the defense with a summary of the information relating to other suspects. *Mazzan v.*
Warden, 116 Nev. 48, 69 (2000) (summary of prosecutor’s perspective on written reports relating

1 to potential suspects were constitutionally inadequate and reports should have been disclosed
2 pursuant to *Brady*); *Bloodworth v. State*, 512 A.2d 1056, 1059-60 (1986).

3 **E. ANY QUESTIONS AS TO WHAT AMOUNTS TO *BRADY* MATERIAL SHOULD BE RESOLVED IN**
4 **FAVOR OF DISCLOSURE.**

5 Ultimately, prosecutors are tasked with a "broad duty of disclosure." *Strickler v. Greene*,
6 527 U.S. 263, 281 (1999); cf. *U.S. v. Agurs*, 427 U.S. 97, 108 (1976) (finding that "the prudent
7 prosecutor will resolve doubtful questions in favor of disclosure"). As the Nevada Supreme Court
8 has explained:

9 Due process does not require simply the disclosure of "exculpatory"
10 evidence. Evidence also must be disclosed if it provides grounds for the
11 defense to attack the reliability, thoroughness, and good faith of the police
12 investigation, to impeach the credibility of the state's witnesses, or to
13 bolster the defense case against prosecutorial attacks. Furthermore,
14 "discovery in a criminal case is not limited to investigative leads or reports
15 that are admissible in evidence." Evidence "need not have been
16 independently admissible to have been material."

17 *Mazzan v. Warden*, 116 Nev. 48, 67 (2000) (internal citations omitted). Significantly, the
18 government's disclosure obligation exists even "when the defendant does not make a *Brady*
19 request."⁶ *Bagley*, supra at 680-82. Accordingly, any question as to whether certain material,
20 information, and/or evidence falls within the purview of *Brady* should be resolved in favor of
21 disclosure. *U.S. v. Agurs*, 427 U.S. 97, 108 (1976) ("[T]he prudent prosecutor will resolve
22 doubtful questions in favor of disclosure."); See also *Kyles v. Whitley*, 514 U.S. 419, 439 (1995)
23 ("[A] prosecutor anxious about tacking too close to the wind will disclose a favorable piece of
24 evidence.").

25 ///

26 ///

27 ///

28 ⁶ However, a specific *Brady* request will result in reversal "if there exists a reasonable possibility that the
claimed evidence would have affected the judgment of the trier of fact." *Roberts v. State*, 110 Nev. 1121
(1994); See also *Jimenez v. State*; *State v. Bennett*, 119 Nev. 589 (2003). Absent a specific request, reversal
is warranted, "if there exists a reasonable probability that, had the evidence been disclosed, the result of the
proceeding would have been different." *U.S. v. Bagley*, 473 U.S. at 667, 682, 685 (1985); *Pennsylvania v.*
Ritchie, 480 U.S. 39, 57 (1986). A 'reasonable probability' is a probability sufficient to undermine
confidence in the outcome. *Bagley*, 473 U.S. at 678, 685; *Ritchie*, 480 U.S. at 57." *Roberts*, 110 Nev. at
1129.

1 **F. THE STATE IS RESPONSIBLE FOR ALL EVIDENCE IN ITS ACTUAL OR CONSTRUCTIVE**
2 **POSSESSION, AND THE STATE HAS AN AFFIRMATIVE DUTY TO OBTAIN SUCH EVIDENCE.**

3 In *Kyles*, the United States Supreme Court held that prosecutors have an **affirmative**
4 **obligation** to obtain Brady material and provide it to the defense, even if the prosecutor is initially
5 unaware of its existence. 514 U.S. at 433 (emphasis added). The Supreme Court noted that the
6 affirmative duty “to disclose evidence favorable to a defendant can trace its origins to early 20th
7 century strictures against misrepresentation and is of course most prominently associated with this
8 Court’s decision in *Brady v. Maryland*. . .” *Id.* at 432. As the Supreme Court made clear, this
9 obligation exists even where the defense does not make a request for such evidence. *Id.*

10 In finding that the State had breached its duty to *Kyles*, the Court discussed the prosecutor’s
11 “affirmative duty” in detail:

12 This in turn means that the individual prosecutor has a **duty to learn** of any
13 favorable evidence known to the others acting on the government’s behalf in the
14 case, **including the police** . . . Since then, the prosecutor has the means to
15 discharge the government’s *Brady* responsibility if he will, any argument for
16 excusing a prosecutor from disclosing what he does not happen to know about
17 boils down to a plea to substitute the police for the prosecutor, and even for the
18 courts themselves, as the final arbiter’s of the government’s obligation to ensure
19 fair trials,

20 *Kyles*, 514 U.S. at 437-38 (citations and footnotes omitted) (emphasis added). *See also Carriger*,
21 132 F.3d at 479-82 (holding that “. . . the prosecution has a duty to learn of any exculpatory
22 evidence known to others acting on the government’s behalf.”) (citations omitted).

23 The Nevada Supreme Court addressed the prosecutor’s affirmative duty in *State v. Jimenez*,
24 stating that, “It is a violation of due process for the prosecutor to withhold exculpatory evidence,
25 and his **motive for doing so is immaterial.**” 112 Nev. at 618 (emphasis added). Furthermore, the
26 affirmative obligation exists even if law enforcement personnel withhold “their reports without the
27 prosecutor’s knowledge,” because “the state attorney is charged with **constructive knowledge**
28 **and possession** of evidence withheld by other state agents, such as law enforcement officers.” *Id.*
at 620. (emphasis added). This existence of an “affirmative duty” means that individual
prosecutors cannot use ignorance as an excuse for failing to meet discovery obligations. A lack of
subjective knowledge on the part of a particular prosecutor does not excuse or assuage a discovery

1 violation because the individual prosecutor is legally *responsible* for contacting all State agents to
2 determine if they are in possession of *Brady* material.

3 The constructive knowledge imputed to a prosecutor applies even if the evidence is being
4 held by an out-of-jurisdiction agent that is cooperating with local law enforcement. For example,
5 in *State v. Bennett*, the Nevada Supreme Court ruled, “[i]n this case, a Utah police detective was
6 aware of the evidence. We conclude that it is appropriate to charge the State with constructive
7 knowledge of the evidence because the Utah police assisted in the investigation of this crime. . . .”
8 119 Nev. at 603. Thus, out-of-state police agencies, probation officers, welfare workers,
9 employees of Child Protective Services, jail personnel, and similarly situated state actors are *all*
10 potential State agents from whom the prosecution must affirmatively collect *Brady* material.
11 “Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor
12 does not have it, where an investigative agency does.” *U.S. v. Zuno-Acre*, 44 F.3d 1420, 1427 (9th
13 Cir. 1995).

14 Accordingly, when prosecutors fail to uphold this affirmative obligation, they violate
15 constitutional due process. See U.S. CONST. AMEND. V, XIV; NEV. CONST. Art. I, § 8. Therefore,
16 the disclosure obligations outlined above extend not only to material directly in the possession of
17 prosecutors, but material of which prosecutors are in constructive possession, as well.

18 **G. THE STATE CANNOT RELY ON AN “OPEN FILE” POLICY TO SATISFY ITS**
19 **CONSTITUTIONAL DUTY TO OBTAIN AND TURN OVER DISCOVERY.**

20 Prosecutors often respond to discovery motions by referencing their “open file policy” and
21 stating that the requested material is not in their file. The prosecutor’s affirmative duty to turn
22 over *Brady* material, however, extends to all exculpatory and mitigation evidence in the possession
23 of any state agent or agency even if the evidence does not exist in the prosecutor’s file. See
24 *Strickler v. Greene*, 527 U.S. 263 (1999); *Bennett*, 119 Nev. at 603. In *Strickler v. Greene*, the
25 United States Supreme Court explicitly held that a prosecutor’s open file policy **does not** substitute
26 for or diminish the State’s affirmative obligation to seek out and produce *Brady* material. 527 U.S.
27 at 283. Accordingly, “If a prosecutor asserts that he complies with *Brady* through an open file
28 policy, defense counsel may reasonably rely on that file to contain all materials the State is

1 constitutionally obligated to disclose under *Brady*.” *Id.* at 283, n.23. *See also Amado v. Gonzalez*,
2 11-56420, 2014 WL 3377340 at 12 (9th Cir. July 11, 2014) (finding that defense counsel may rely
3 on the prosecutor’s obligation to produce that which *Brady* and *Giglio* require him to produce.”);
4 *Furbay v. State*, 116 Nev. 481 (2000) (discussing prosecution’s duty to provide all evidence in its
5 possession where it has promised to do so); *McKee v. State*, 112 Nev. 642, 644 (1996) (reversing a
6 judgment of conviction based on prosecutorial misconduct where the prosecutor did not make
7 available all relevant inculpatory and exculpatory evidence consistent with the county district
8 attorney’s open file policy). Accordingly, if the defense relies on the government’s assurance of
9 an “open file” policy, the defense is not required to hunt down information otherwise obtained and
10 maintained pursuant to that policy.

11 Thus, despite its “open file policy,” the prosecution must actively work to discover, obtain,
12 and produce *Brady* material, whether it is in the actual possession of the prosecutor, the police
13 department, or any other entity acting on behalf of the State.

14 H. MATHEWS’ SPECIFIC DISCOVERY REQUESTS.

15 The following specific requests are meant to help assist the State in its duty to find and turn
16 over the required material. The requests are not in any way intended to be a limit on, or a
17 substitute for, the generalized duties described above. Based on the foregoing legal authority,
18 Defendant requests that this Honorable Court enter an order directing prosecutors to disclose the
19 following⁷:

20 1. Statements of the Defendant and Any Potential Co-Defendant(s)

21 All statements made by the defendant and any co-defendants, in any form, written
22 or recorded, including but not limited to:

- 23 a) Statements made at the time of arrest or during transport to the detention
24 center;
- 25 b) Any conversations, telephonic or otherwise, intercepted by any/all law
26 enforcement agencies, including federal authorities.
- 27 c) The substance of any statements made by the defendant and any co-
28 defendants which the prosecution intends to use as evidence at trial,

⁷ Significantly, this request is not in any way intended to be a substitute for the generalized duties described above.

1 including but not limited to any conversations or correspondence overheard
2 or intercepted by any jail personnel or other inmates which have not been
recorded or memorialized.

- 3 d) Any notes made by State actors that contain details of statements by the
4 defendant or co-defendant.
- 5 e) If an audio or video recording exists of said statements, the recording must
be provided to the defense along with any associated notes and transcripts.
- 6 f) If a recording was made, but later lost, edited or destroyed, that fact must be
7 revealed, along with the circumstances surrounding the spoliation of
evidence.

8
9 **2. Statements of Potential Witnesses**

10 **All statements** of witnesses and potential witnesses, in any form, written or
recorded, including but not limited to:

- 11 a) Any **audio or video recording** collected by prosecutors, investigating
12 officers or any other law enforcement agent as part of the investigation of
13 this matter and any related matters. If a recording was made, but later lost,
14 edited or destroyed, that fact must be revealed, along with the circumstances
surrounding the spoliation of evidence.
- 15 b) Any **notes** of interviews that were not later recorded, such as notes of patrol
16 officers, or notes of phone calls made to potential witnesses, or attempts to
17 contact such witnesses. This also includes any police reports, notes, or other
documents that contain information pertaining to this case or any witnesses
18 in this case, no matter what the form or title of the report, including:
- 19 1) Case Monitoring Forms;
 - 20 2) 311/911 recordings;
 - 21 3) Relevant dispatch logs; and
 - 22 4) Any report of information related to the case given by anyone to any
police department or crime tip organization such as Crime Stoppers,
and any reward or benefit received for such tip.

23 The aforementioned request includes, but is not limited to:

- 24 • All calls for service pertaining to Sunrise Hospital, 1029 Lisbon
25 Avenue, and the UMC burn unit involving Mr. Mathews, the alleged
26 victim, or the alleged victim's mother, in or around the time this
27 investigation was initiated.
28

1 **3. Crime Scene Analysis, Evidence Collection, and Forensic Testing**

2 The State must produce all requests, results, reports, and/or notes of any and all
3 **crime scene analysis, evidence collection and/or forensic testing** performed in
4 this case.⁸ This includes, but is not limited to:

- 5 a) All photographs, videos, or audio recordings related to the collection and
6 testing of evidence.
- 7 b) All documents recording what physical evidence was taken in the case,
8 where it was stored, and any related chain of custody documents.
- 9 c) Any reports and/or results from any medical, pathological, toxicological,
10 chemical, biochemical, laboratory, forensic or scientific examinations,
11 investigations or analyses.
- 12 d) **Fingerprints:** Photographs, reports, recordings and fingerprint exemplars
13 resulting from any attempts to collect fingerprints from the crime scene,
14 whether or not conclusive results were obtained.
- 15 e) **Testing Results:** The State must provide the results of any and all:
- 16 1) Fingerprint collection and comparison;
- 17 2) AFIS (Automated Fingerprint Identification System) searches and/or
18 results;
- 19 3) DNA testing;
- 20 4) CODIS (Combined DNA Index System) searches and/or results;
- 21 5) Toxicological analyses;
- 22 6) Footwear impressions;
- 23 7) Trace evidence analyses;
- 24 8) Any forensic analysis of cellular telephones;
- 25 9) Any requests for forensic analysis regardless of the outcome of such
26 request;
- 27 10) Neuropathological, toxicological, or other medical evaluations of the
28 named victim or percipient witnesses performed through this
 investigation. This includes the complete case file for any testing
 done, including, raw data, photographs, rough notes, draft reports,
 recorded or otherwise memorialized notes relied upon by experts in
 rendering an opinion in this case.
- 11) In this case, the above request encompasses, but it not limited to, any
 work performed or reviewed by: all CSA officers that processed the
 scene, and conducted testing related to this case.
- 12) Without limiting the request, Defendant specifically requests the
 following information:

⁸ This is required under NRS 171.1965 1(b) and NRS 174.235 1(b).

1 **4. Preservation of, and Access to, Raw Evidence**

2 Access to and preservation of any and all material collected in the investigation of
3 this case, included but not limited to:

- 4 a) Forensic material;
5 b) Raw data;
6 c) Video surveillance;
7 d) Photographic negatives;
8 e) Un-edited digital files;
9 f) Biological samples; and
10 g) Toxicological samples.

11 **5. Electronic Communications and Associated Warrants**

- 12 a) Any and all intercepted electronic and/or oral communications and/or any
13 and all communications sent to and from handset and/or telephone and/or
14 computers pursuant to the investigation of this case or any related matters.
15 b) This requests includes, but is not limited to: Audio, Push to Talk, Data,
16 Packet Data, electronic messaging encompassing Global System for Mobile
17 Communications (GMS), Short Message Service (SMS), Multimedia
18 Messaging Service (MMS), and Internet Relay Chat, File Transfer Protocol
19 (FTP), Internet Protocol (IP), Voice Over Internet Protocol (VOIP),
20 Transmission Control Protocol (TCP) and electronic mail or other internet
21 based communications, obtained by any State actors, including federal
22 authorities, via subpoena, interception or other means.

23 **6. Alternate Suspect and Other Exculpatory Evidence**

24 Any and all information which shows that the defendant did not commit the
25 crime(s) alleged, or which shows the possibility of another perpetrator, co-
26 conspirator, aider and abettor, or accessory after the fact, including the name(s) of
27 those individual(s).

28 This includes, but is not limited to, any information concerning an arrest of any
other individual for the charged crime and any information suggesting a possible
perpetrator other than the defendant.

7. Monitoring, Tracking, and Associated Warrants

Any and all data, recordings, reports and documentation of voice monitoring
devices and/or geographic tracking devices and/or pen register and/or trap and trace
device installed pursuant to interception, warrant or other means, as obtained by any
law enforcement agency, including federal authorities, pertaining to the instant
matter or any related matter.

1 **8. Chain of Custody**

2 All relevant reports of chain of custody, including reports of any destruction of any
3 evidence in the case.⁹

4 **9. Documents, Notes, and Reports Used by Witnesses to Prepare for Testimony**

5 Any documents used to prepare State's witnesses for preliminary hearing or trial,
6 including any and all notes and reports of any expert in the case, to include mental
7 health workers.

8 This includes any preliminary reports or notes, not included in a final report.

9 **10. Witness Contact Information**

10 All updated witness contact information, to include last known address and phone
11 numbers. This includes the names/contact information for witnesses who may have
12 information tending to exculpate the instant defendant.

13 **11. Notes and Reports Related to Police Investigation**

14 Any and all records of the Las Vegas Metropolitan Police Department and any
15 other law enforcement agencies involved in the investigation of this or any related
16 matter, including photocopies or other reproduction(s) of any and all handwritten or
17 other notes.

18 This also includes, but is not limited to, any notes documenting alternate suspects,
19 investigative leads that were not followed up on, or any other matter bearing on the
20 credibility of any State witness.

21 **12. Use of Police Informants**

22 The State must disclose whether any information obtained in this case came from a
23 "confidential" informant, or was developed based on leads provided by an
24 informant. This includes, but is not limited to, informants who purportedly
25 obtained information about this case while incarcerated, whether the information
26 came from the Defendant or another source, regardless of whether prosecutors
27 intend to use the informant-related information at the upcoming trial of this matter.

28 **13. Identity of Police Informants**

 The defense requests any information that a witness was or is a police informant.¹⁰

 This includes information that the witness or alleged victim acted as a police
 informant from the time of the incident in this case up to and including the day(s) of

⁹ Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is
presumed favorable to the accused. *Crockett v. State*, 95 Nev. 859, 865 (1979); *Sparks v. State*, 104 Nev.
316, 319 (1988); *Sanborn v. State*, 107 Nev. 399, 409 (1991).

¹⁰ NRS 174.235; *Kyles*, 514 U.S. 419, *Brady*, 373 U.S. 83 (and their progeny).

trial. If any witness is, or has been, an informant, then Defendant requests disclosure of:

- a) The length and extent of the witness' informant status;
- b) The nature and assistance provided by the informant in the past, including the number of occasions and the form of help;
- c) The monetary amounts paid to the informant;
- d) Any non-monetary assistance provided to the informant, including, but not limited to, assistance in avoiding or minimizing harm from pending charges against the informant;
- e) All benefits or promises of benefits,¹¹ or statements that benefits would not be provided without cooperation, which were made to the informant in connection with the case, whether or not fulfilled;

This request also includes all information obtained by the use of confidential informants for any aspect of the investigation of this case., including informants who purportedly obtained information about this case while incarcerated, whether the information came from the Defendant or another source, regardless of whether prosecutors intend to use the informant-related information at the upcoming trial of this matter.

14. Audio, Video, and Photographs

Any and all photographs, video recordings, and/or audio recordings related to the case within the possession or control of the State or any State actors.¹²

Without limiting the above request, Defendant specifically requests:

- Any and all surveillance footage captured from lapel-mounted body cameras carried by officers of the Metropolitan Police Department, should it exist.¹³

15. Witness Compensation

Disclosure of any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses may of have received in exchange for their cooperation with this or any related prosecution.

¹¹ "Benefits" refers to any monetary compensation or assistance of the police, the prosecutor, or the court concerning pending charges against the informant, or any other sort of consideration of value.

¹² *Id.*

¹³ NRS 174.235; *Kyles*, 514 U.S. 419, *Brady*, 373 U.S. 83 (and their progeny); See Barbara Ortutay, *Ferguson Fallout: A Call for Police 'Body Cams*, LAS VEGAS SUN (Aug. 22, 2014), <http://www.lasvegassun.com/news/2014/aug/22/ferguson-fallout-call-police-body-cams/>.

This includes but is not limited to:

- a) Any and all records and notes from the victim witness office of the District Attorney, including any/all records of any expectation of any benefit or assistance to be received, or already received by any witness in this case;
- b) Any monetary benefits received as well as any express or implied promises made to any witness to provide counseling and/or treatment and/or provide immigration assistance (including, but not limited to, U-Visa documentation) as a result of the witness' participation in this case;
- c) The names of any and all agencies and workers or other referrals that were given to any witness and/or his/her family member, relative or guardian in connection with this case or any related matter;
- d) An estimate of future benefits to be received by any witness during or after the trial, including travel expenses.

16. Prior Statements

To the extent that it is not covered by prior discovery requests, defense requests disclosure of any and all statements, tangible or intangible, recorded or unrecorded, made by any witness that are in any manner consistent or inconsistent with the written and/or recorded statements previously provided to the defense

This includes, but is not limited to, any oral statements made to any employee or representative of the District Attorney's office or any other government employee, local or federal, during pre-trial conferences or other investigative meetings

17. Impeachment Information

Any and all impeachment information located in the personnel files of any police witness called to testify at trial or any pretrial hearing in this matter.

This includes, but is not limited to, any Statement of Complaint regarding the witness or this investigation, any Employee Notice of Internal Investigation, any Internal Affairs Investigative Report of Complaint, any witness statement, any Bureau Investigation Supervisory Intervention, and any other document maintained or generated by the Office of Internal Affairs, Critical Incident Review Panel, or other investigative agency.

18. Criminal Histories

Criminal history information on any witness, actual or potential, relating to specific instances of misconduct or from untruthfulness may be inferred and/or which could lead to admissible evidence, impeachment or otherwise.

This includes, but is not limited to, NCIC data, juvenile records, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency, and any other information that would go to the issue(s) of credibility and/or bias, or lead to

1 the discovery of information bearing on credibility/bias, whether or the information
2 is directly admissible by the rules of evidence.¹⁴

3 In addition to any other requirements imposed by *Brady*, the defense requests that
4 the District Attorney be required to run the aforementioned witnesses, in addition to
5 any other lay witnesses prosecutors intend to call or upon whose testimony or
6 statements the State will rely during either the guilt or penalty phases of trial,
7 through an NCIC check and allow defense counsel to review the NCIC reports on
8 those witnesses. The defense requests that the NCIC information be provided to
9 defense counsel as soon as possible. If there is no NCIC record for a particular
10 witness, the State can make that representation. While the defense is not insisting
11 that prosecutors run NCICs expert or law enforcement witnesses, the defense
12 requests that the State be ordered to comply with any *Brady* obligations with
13 respect to these witnesses.

14 **19. Any and all books, papers, documents, and tangible objects related to the
15 case not covered by the previous requests¹⁵**

16 **20. All 911 and 311 Calls, Including Recordings, Reports & Transcripts**

17 This request includes, but is not limited to, car-to-car audio communications, car-to-
18 dispatch radio communications, and the Unit Log/Cad Log incident print out related
19 to the instant event.

20 **21. Medical Records**

21 Any and all medical records related to this case. This includes, but is not limited to,
22 all records from Sunrise Hospital and the UMC Burn Unit. Also requested are all medical
23 records where C.J., or J.J.'s names appear.

24 **22. Child Protective Services Records**

25 Any and all Child Protective Services Records where the following names appear in
26 any context:

- 27 a) C.J.
28 b) J.J.
c) Jasmin Cathtart

23 ¹⁴ The State usually is under the mistaken impression that they only must disclose felony conviction s from
24 the last 10 years that can be used as impeachment under NRS 50.095. However, in *Davis v. Alaska, supra*,
25 the US Supreme Court found that a witness can be attacked by "revealing possible biases, prejudices, or
26 ulterior motives of the witnesses as they may relate directly to the issues or personalities on the case at
27 hand. The partiality of a witness is...always relevant as discrediting the witness and affecting the weight of
28 his testimony." *Id.* at 354. The court found that the State's policy interest in protecting the confidentiality
of a juvenile offender's record must yield to the defendant's right to cross-examine as to bias. *Id.* at 356.
See also Lobato v. State, 120 Nev. 512 (2004), discussing the "nine basic modes of impeachment."
Therefore, juvenile records, misdemeanors and older criminal records may yield information relevant to
many forms of impeachment other than that outlined in NRS 50.095.

¹⁵ NRS 174.235; *Kyles*, 514 U.S. 419, *Brady*, 373 U.S. 83 (and their progeny).

- d) Donovine Mathews
- e) Tyreese Jackson

23. Expert Material

Any and all material produced by experts in this case. This includes, but is not limited to, any and all expert opinions and reports communicated in any fashion and through any media.

24. E-Mail Communications

Any and all electronic communications between experts and the State, and any and all electronic communications between experts and detectives.

Any and all electronic communications between Child Protective Services and the State.

25. General Correspondence

Any and all correspondence between Child Protective Services and the Las Vegas Metropolitan Police Department. Any and all correspondence between Child Protective Services and the State. Any and all jail calls where Donovine Mathews is present and recorded. Any and all CAD logs regarding this case.

III.

CONCLUSION

NRS 174.285(1) requires that any discovery request pursuant to NRS 174.235 be made "... within 30 days after arraignment or at such reasonable later time as the court may permit..." NRS 174.285(2) mandates that "A party shall comply with a request made pursuant to NRS 174.235... not less than 30 days before trial or at such reasonable later time as the court may permit. Accordingly, Fleming requests that this Honorable Court enter an order directing prosecutors to provide the discovery sought herein within a reasonable time in advance of trial so as to enable counsel to effectively prepare. Further, Fleming requests that this Court order that the State be precluded from admitting at trial any discovery/evidence not timely produced. See NRS 174.295 ("If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of NRS 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or *prohibit the party from introducing in evidence the material not disclosed*, or it may enter such other order as it deems just under the circumstances.") (emphasis added).

1 Based on the foregoing, Fleming, respectfully requests that this Honorable Court grant the
2 instant motion, and order the timely disclosure of the material sought herein pursuant to the
3 mandates contained in NRS 174.235; Brady v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI,
4 XIV; and Nev. Const. Art. 1 § 8.

5 DATED this 20th day of May, 2016.

6
7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: /s/ Kristy Clark
11 Kristy S. Clark, Nevada State Bar No. 13519
12 Deputy Public Defender
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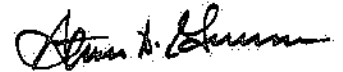
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YOU AND EACH OF YOU will please take notice that on the 31st day of May 2016, at the hour of 8:30 a.m. of said day, the above motion will be heard in Department No. XII.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER.

CERTIFICATE OF ELECTRONIC SERVICE

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



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar # 11390
MICHELLE JOBE
Chief Deputy District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

Defendant.

CASE NO: C-16-313047-1

DEPT NO: XII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY

DATE OF HEARING: July 26, 2016
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER S. HAMNER, Deputy District Attorney and MICHELLE JOBE, Chief Deputy District Attorney, and hereby submit the attached Points and Authorities in State's Opposition to Defendant's Motion for Discovery.

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.

///

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Defendant, DONOVINE MATHEWS, is charged by way of Criminal Information with
4 the crime of CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH SUBSTANTIAL
5 BODILY HARM (Category B Felony - NRS 200.508(1)). The victim is C.J., the son of the
6 Defendant's then girlfriend. The crime occurred on or about January 5, 2016, while Defendant
7 was babysitting C.J. and his sibling.

8 On May 23, 2016, Defendant filed a Motion for Discovery. The State's Opposition
9 follows.

10 LEGAL ARGUMENT

11 I.

12 GENERAL LAW RELATED TO DISCOVERY

13 A. THE COURT CAN ONLY COMPEL "DISCOVERY" UNDER THE
14 NEVADA REVISED STATUTES

15 Under Common Law, a defendant has no right of discovery. State v. Wallace, 399 P.2d
16 909, 97 Ariz. 296 (1965). This, of course, can be superseded by statutory enactment and that
17 is the case in Nevada. Regarding the law of discovery in the State of Nevada, NRS 174.235,
18 *et. seq.* controls. The Nevada Supreme Court has held that even an accused's statement is not
19 constitutionally compelled through pre-trial discovery. Mears v. State, 83 Nev. 3, 7, 422 P.2d
20 230, 232 (1967), Thompson v. State, 93 Nev. 342, 565 P.2d 1011 (1977).

21 In Franklin v. Eighth Judicial District Court, 85 Nev. 401, 455 P.2d 919 (1969), the
22 Nevada Supreme Court held that the lower court erred in granting defendant's motion to
23 discover, inspect and copy statements of all persons to be called by the prosecution as
24 witnesses at trial, since NRS 174.245 does not authorize discovery of inspection of statements
25 made by State witnesses or prospective State witnesses to agents of the State. Nor does the
26 defendant enjoy a constitutional right to discover them. With regard to the discovery statutes
27 previously alluded to, the Court stated that:

28 ///

1 "Those provisions (NRS 174.235-174.295) represent the legislative intent with
2 respect to the scope of allowable pre-trial discovery and are not lightly to be
3 disregarded."

4 Id.

5 From the aforementioned, it is clear that Nevada's discovery statutes are to be strictly
6 construed and adhered to since no Common Law right of discovery existed. It should,
7 therefore, also be clear that the defendant's motion, so far as it exceeds the requirements of
8 NRS 174.235, *et. seq.*, must be denied.

9 NRS 174.235 outlines what discovery is to be provided by the State of Nevada. It
10 includes:

- 11 1. Written or recorded statements or confessions made by the
12 defendant or any witness the State intends to call during the case
13 in chief of the State, within the custody of the State or which the
14 State can obtain by an exercise of due diligence. (1)(a).
- 15 2. Results or reports of physical or mental examinations,
16 scientific tests or scientific experiments made in connection to the
17 case, within the control of the State, or which the State may
learn of by an exercise of due diligence. (1)(b).
- 18 3. Books, papers, documents, tangible objects which the State
19 intends to introduce during its case in chief, within the possession
20 of the State, or which the State may find by an exercise of due
21 diligence. (1)(c).

22 The statute makes clear the defense is not entitled to any internal report, document or
23 memorandum prepared by the State in connection with the investigation or prosecution of the
24 case. Nor is the defense entitled to any report or document that is privileged.

25 **II.**

26 **BRADY MATERIAL AND ITS PROGENY**

27 **A. BRADY AND ITS PROGENY DOES NOT AUTHORIZE THE COURT TO
28 ORDER DISCOVERY. THEY ARE REMEDIES IF THE STATE FAILS TO
DISCLOSE AN ITEM WHICH IS FOUND TO HAVE BEEN REQUIRED TO
BE DISCLOSED POST TRIAL.**

The State has an obligation to disclose exculpatory evidence pursuant to Brady v.
Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). Giglio v. United States, 405 U.S. 150, 92 S. Ct.
763 (1972), requires that certain impeaching material be disclosed as well. The rule of Brady

1 v. Maryland, 373 U.S. 83 (1963), which requires the State to disclose to the defendant
2 exculpatory evidence, is founded on the constitutional requirement of a fair trial. Brady is not
3 a rule of discovery, however. As the Supreme Court held in Weatherford v. Bursy, 429 U.S.
4 545, 559, 97 S. Ct. 837, 846 (1977):

5 There is no general constitutional right to discovery in a criminal case, and Brady
6 did not create one... 'the Due Process Clause has little to say regarding the
7 amount of discovery which the parties must be afforded....' Wardius v. Oregon,
8 412 U.S. 470, 474, 93 S. Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

8 In addition, Brady does not require the State to conduct trial preparation and
9 investigation on behalf of the defense. The obligation is to produce exculpatory information
10 which the defense would not be able to obtain itself through an ordinary exercise of diligence.

11 While defense attorneys routinely claim they need to be provided the information in
12 order to conduct the investigation to determine if there is any exculpatory information; that is
13 simply not the law. In the Ninth Circuit, the obligation for the prosecution to examine
14 information is triggered by a defense request with no requirement that the defense make a
15 showing that the information is likely to contain helpful information. United States v.
16 Henthorn, 931 F.2d 29, 31 (9th Cir. 1990) (holding that the "government is incorrect in its
17 assertion it is the defendant's burden to make an initial showing of materiality," rather the
18 "obligation to examine the files arises by virtue of making a demand for their production");
19 United States v. Santiago, 46 F.3d 885, 895 (9th Cir. 1995) ("[u]nder Henthorn, the
20 government has a duty, upon defendant's request for production, to inspect for material
21 information the personnel records of federal law enforcement officers who will testify at trial,
22 regardless of whether the defense has made a showing of materiality") accord Sonner v. State,
23 112 Nev. 1328, 930 P.2d 707 (1996)(requiring materiality before a review of a police officer's
24 personnel file.).

25 ///

26 ///

27 ///

28 ///

1 **B. THE STATE MAKES THE DETERMINATION AT ITS OWN PERIL IF IT**
2 **WILL DISCLOSE THE INFORMATION, NOT THE DEFENSE OR THE**
3 **COURT**

4 This, of course, does not mean that files are produced for the defense. Henthorn
5 explains that following that examination, "the files need not be furnished to the defendant or
6 the court unless they contain information that is or may be material to the defendant's case."
7 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
8 Brady material. If the prosecutor is unsure, the information should be provided to the court
9 for review. As the court explained:

10 We stated that the government must 'disclose information favorable to the
11 defense that meets the appropriate standard of materiality. . . . If the prosecution
12 is uncertain about the materiality of information within its possession, it may
13 submit the information to the trial court for an in camera inspection and
14 evaluation. . . .' As we noted in Cadet, the government has a duty to examine
15 personnel files upon a defendant's request for their production.

16 Id. at 30-31 (internal citation omitted). Despite this procedure, defendants routinely request
17 the Court to order production of information to them, or to the Court. It is not the Court's
18 responsibility under the Constitution. It is the prosecution's responsibility.

19 Moreover, Brady and its progeny are remedies post-trial for the prosecution's failure
20 to perform its responsibility. Brady does not support the defense's request to conduct an
21 investigation independent of the prosecution, or to ensure the prosecution completes its duty.

22 **III.**

23 **TIMING OF DISCLOSURES**

24 **A. TRUE BRADY MATERIAL**

25 Traditionally, Brady material is information which indicates that Defendant did not
26 commit the crime, or his sentence should be less based upon culpability. The State's duty
27 under Brady is ongoing. When reviewing cases on appeal, however, courts decide allegations
28 of tardy Brady disclosures according to the facts surrounding the disclosure and if the alleged
Brady information was used in the trial. The Ninth Circuit has recognized that "Brady does
not necessarily require that the prosecution turn over exculpatory material before trial. To

1 escape the Brady sanction, disclosure 'must be made at a time when [the] disclosure would be
2 of value to the accused.'" United States v. Gordon, 844 F.2d 1397, 1403 (9th Cir. 1988). With
3 this precedent, the Ninth Circuit has typically found no prejudice when alleged Brady
4 information was disclosed at some point before trial. Notwithstanding, whenever the State is
5 in possession of true Brady material, it is the practice of the undersigned to turn over such
6 information as soon as possible.

7 **B. IMPEACHMENT MATERIAL**

8 From Brady, a line of cases related to the credibility of testifying witnesses, the Court
9 established rules and requirements for impeachment material, or Giglio material. The right to
10 impeach witnesses is based on the Confrontation Clause of the constitution. The United States
11 Supreme Court has held that the Confrontation Clause is not "a constitutionally compelled
12 right of pretrial discovery." Pennsylvania v. Ritchie, 480 U.S. 39, 52, 107 S. Ct. 989, 999
13 (1987). Instead, the right to confrontation is a trial right, "designed to prevent improper
14 restrictions on the types of questions that defense counsel may ask during cross-examination."
15 It "does not include the power to require the pretrial disclosure of any and all information that
16 might be useful in contradicting unfavorable testimony." It guarantees the opportunity for
17 effective cross-examination, "not cross-examination that is effective in whatever way, and to
18 whatever extent the defense might wish." Id. at 53, 107 S. Ct. 999, *citing* Delaware v.
19 Fensterer, 474 U.S. 15, 20, 106 S. Ct. 292, 294 (1985).

20 Almost universally, courts have held that there is no Giglio obligation if the witness
21 does not testify.¹ See United States v. Green, 178 F.3d 1099, 1109 (10th Cir. 1999) (holding
22 that Giglio did not apply when the government "did not ever call" its confidential informant
23 as a witness); United States v. Mullins, 22 F.3d 1365, 1372 (6th Cir. 1994) (finding "no
24 authority that the government must disclose promises of immunity made to individuals the
25 government does not have testify at trial," and holding that a grant of immunity could not be
26

27 ¹ The exception to this rule is where the witness will not testify, but the witness' hearsay statement will be admitted, then
28 the witness' credibility may be in issue. See United States v. Jackson, 345 F.3d 59, 70-71 (2nd Cir. 2003).

1 “‘favorable to the accused’ as impeachment evidence because the government did not call [the
2 witness] and, thus, there was no one to impeach”); see also United States v. Pena, 949 F.2d
3 751, 758-59 (5th Cir. 1991) (impeachment evidence regarding a non-testifying witness is an
4 insufficient basis upon which to grant a new trial); United States v. Storey, 956 F. Supp. 934,
5 942 (D. Kan. 1997) (holding that while impeachment evidence falls within the Brady rule,
6 “[s]uch evidence as it pertains to an informant, however is only discoverable if the informant
7 testifies”); Kowalczyk v. United States, 936 F. Supp. 1127, 1149 (E.D.N.Y. 1996) (holding
8 that “[t]he Government was not obligated to produce the Janis arrest record, assuming the
9 prosecution was in possession of such information, as Janis was not a witness at trial”); United
10 States v. Hill, 799 F. Supp. 86, 90 (D. Kan. 1992), (denying defense request for any
11 information which could be used to impeach non-witnesses); United States v. Villareal, 752
12 F. Supp. 851, 853 (N.D. Ill. 1991) (holding that “[a]s for statements by government witnesses
13 that qualify as impeachment materials, the government is under no obligation to disclose this
14 information before trial,” and that “the government is under no obligation at any time to
15 provide impeachment evidence for non-witnesses”); United States v. Coggs, 752 F. Supp. 848,
16 849, (N.D. Ill. 1990) (holding that the government is not required to produce impeachment
17 evidence impacting non-witnesses, reasoning that “[r]equiring that the government provide
18 impeachment evidence for non-witnesses will not further the interest sought to be served by
19 Giglio-allowing for a meaningful determination of witness credibility”).

20 The State must provide information known to the State about any witness’s felony
21 conviction and/or expiration of parole or probation from a conviction within the last 10 years,
22 excluding juvenile adjudications, and pardons. NRS 50.095. Defendant is also entitled to
23 information about convictions related to truthfulness. Notably, Defendant cites Moore v.
24 Kemp, 809 F.2d 702 (11th Cir., 1987) for the proposition he is entitled to information more
25 than 10 years old, so the State should turn over all criminal history information. However,
26 Moore does not stand for that judicial claim. Moore is far more complicated involving the
27 contents of a witness’s probation file related to a felony adjudication approximately one year
28 prior to his testimony, as well as his probation violations around the time the witness provided

1 investigators with useful information against Moore. The State should not be ordered to
2 provide Defendant with any criminal history information of any testifying witness beyond that
3 which is legally permissible.

4 Finally, evidence of impeachment of a witness need not be disclosed until the witness
5 testifies. United States v. Rinn, 586 F.2d 113 (9th Cir. 1978) ("[S]ince information concerning
6 'favors or deals' merely goes to the credibility of the witness, it need not be disclosed prior to
7 the witness testifying."). Thus, unless the witness is going to testify, there is no basis to disclose
8 any impeachment material.

9 C. PERSONNEL FILES OF LAW ENFORCEMENT

10 Certainly, due process mandates the disclosure of favorable evidence, material for
11 impeachment or exculpatory purposes, to an accused upon request. Brady v. Maryland, 373
12 U.S. 83 (1963). However, the evidence must be material for one of those purposes in order
13 for Brady to apply. United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983).

14 Defendant claims that the State must produce the personnel files of the officers involved
15 in this case, including privileged and confidential records of government witnesses, including
16 mental health records and more, when it contains impeachment material. Defendant cites a
17 number of cases from other jurisdictions in a string cite, as authority for this assertion. The
18 State recognizes in limited circumstances, privilege and confidentiality must take a back seat
19 to production of impeachment material; however, it is only in very limited circumstances that
20 are directly related and material to the defense theory of a case.

21 In Pitt, the defense requested the personnel file for the chief case agent to search for
22 impeachment information, without any showing that evidence material to the defense would
23 be found in that file. The Court there stated:

24 We fail to see how, and the appellant has failed to show us how,
25 the contents of FBI Agent Lewis' personnel file would likely
26 contain anything material to an alleged threat against Pitt,
27 especially when the official records show that the agent was out of
28 town on the day the alleged threat was made.

The request for the agent's personnel file, under the facts of this
case, was frivolous. Pitt was entitled to fish, but not with this thin

1 a pole.

2 Id. at 1339

3 In the Ninth Circuit, the obligation for the prosecution to examine an officer's file is
4 triggered by a defense request with no requirement that the defense make a showing that a file
5 is likely to contain helpful information. United States v. Henthorn, 931 F.2d 29, 31 (9th Cir.
6 1990) (holding that the "government is incorrect in its assertion it is the defendant's burden to
7 make an initial showing of materiality" and that the "obligation to examine the files arises by
8 virtue of making a demand for their production"); United States v. Santiago, 46 F.3d 885, 895
9 (9th Cir. 1995) (Under Henthorn, the government has a duty, upon defendant's request for
10 production, to inspect for material information the personnel records of federal law
11 enforcement officers who will testify at trial, regardless of whether the defense has made a
12 showing of materiality).

13 This, of course, does not mean that files are produced for the defense. Henthorn
14 explains that following that examination, "the files need not be furnished to the defendant or
15 the court unless they contain information that is or may be material to the defendant's case."
16 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
17 Brady material. If the prosecutor is unsure, the information should be provided to the court
18 for review. As the court explained:

19 We stated that the government must 'disclose information
20 favorable to the defense that meets the appropriate standard of
21 materiality If the prosecution is uncertain about the
22 materiality of information within its possession, it may submit the
23 information to the trial court for an in camera inspection and
24 evaluation. . . . As we noted in Cadet, the government has a duty
to examine personnel files upon a defendant's request for their
production.

25 Id. at 30-31.

26 Different than Henthorn, the Nevada Supreme Court issued an opinion that requires
27 some showing of materiality on the part of the defense before it could gain access to a
28 personnel file. The file concerned an officer who was murdered and obviously would not be

1 testifying. Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996). The defense made no
2 showing that there may have been favorable information in the file. Instead, the defense
3 asserted a general right to search the file. The court rejected this assertion of a right to a
4 generalized, unfocused search, but allowed for the possibility that a file could be accessible
5 under some circumstances. The court reasoned, "[i]f Sonner had presented a foundation for
6 believing that [the victim] had a reputation for being an 'aggressive' trooper who, consistent
7 with his reputation, provoked Sonner's action, this might have been sufficient to warrant
8 discovery of corroborating evidence" in the file. Id. at 1341, 930 P.2d at 716. This reasoning
9 suggests that if that type of evidence had been in the file, the State would be required to
10 produce it.

11 Additionally, the LVMPD has serious concerns regarding the disclosure of material
12 from personnel files. Confidentiality is one of the chief requirements in maintaining the
13 effective ability to investigate complaints against officers. Confidentiality ensures that both
14 police officers and citizens will freely contact the department without fear. As one court has
15 stated:

16 It is clear a very real and very important need exists to maintain
17 confidential integrity of the internal investigation in the police
18 division. To do otherwise would seriously inhibit the chief in his
19 control over the members of the division and their wide-ranging
20 duties and responsibilities. This stream of information available
21 to the chief and the persons within and without the division would
22 diminish to a bare trickle if the source or sources of this
23 information were stripped of its confidential character. That such
an event would serve to defeat the general public good is
supported by a logic almost tautological in its persuasiveness --
for the desirability of an efficient well-disciplined police force is
manifest.

24 McMillan v. Ohio Civil Rights Comm'n, 315 N.E.2d 508, 515 (Ohio 1974).

25 Personnel files are confidential. All witnesses, including police officers, are assured
26 that the information provided by them will not be voluntarily disclosed and that all legal means
27 will be employed to protect this confidentiality. Police officers are compelled to cooperate
28 with internal affairs investigations. Failure to cooperate can result in termination. Officers,

1 knowing that their statements were subject to disclosure, would be less likely to completely
2 cooperate. The knowledge that statements compelled from officers could later be disclosed to
3 third parties for other cases would also act as disincentive for the department to fully
4 investigate. As one court noted:

5 The members of a police department must be able to rely on their
6 confidential records and notations being preserved for their
7 internal use ... for if it were otherwise, the knowledge that some of
8 the confidential information recorded might later be exposed to
9 outside parties would have a certain and chilling effect upon the
10 internal use of such record-making.

11 City of Los Angeles v. Superior Court, 109 Cal. Rptr. 365, 369 (Ct. App. 1973).

12 Based on Nevada law, Defendant in the instant case is required to advance a foundation
13 that the Personnel File of the officer is likely to bear information material to the defense.
14 Defendant's Request is simply an attempt to fish for information. As a result, the instant
15 request should be denied. Alternatively, the State requests that if the Court is inclined to grant
16 such a request, that the Court order the State to inquire into any Brady violations, review any
17 such violations, and produce any information it deems discoverable.

18 DEFENDANT'S SPECIFIC DISCOVERY REQUESTS

19 1. Statements of the Defendant and Any Potential Co-Defendant(s)

20 The State objects to this request to the extent it is overbroad, irrelevant, and seeks work
21 product or other material not subject to discovery. There is no Co-Defendant or potential Co-
22 Defendant in this case.

23 As for the Statements of Defendant, NRS 174.235(1)(a) provides:

24 1. Except as otherwise provided in NRS 174.233 to 174.295,
25 inclusive, at the request of a defendant, the prosecuting attorney
26 shall permit the defendant to inspect and to copy or photograph
27 any:

28 (a) Written or recorded statements or confessions made by the
defendant, or any written or recorded statements made by a
witness the prosecuting attorney intends to call during the case in
chief of the State, or copies thereof, within the possession, custody
or control of the State, the existence of which is known, or by the

1 exercise of due diligence may become known, to the prosecuting
2 attorney;

3 Defendant has been provided with all documentation and/or recordings of the
4 Defendant's interactions with law enforcement in this case, to include a videotaped
5 reenactment of the incident.

6 Brady places upon the State an obligation to produce exculpatory evidence. Giglio
7 requires that the State disclose certain impeaching material as well. In other words, even in
8 the absence of a motion the State is obligated to turn over the information requested that falls
9 within the State's obligations under 174.235, Brady and Giglio. For example, non-exculpatory
10 oral statements are not covered by the statutes or Brady and its progeny.

11 Defendant has made many sub-requests within the instant request without providing
12 any indication that the defense has performed any investigation or discovered that the material
13 actually exists and the State has failed to turn it over. The State asks that this request be
14 clarified by the defense to address what specific discovery Defendant believes he is missing.
15 In the absence of such a clarification the State asks that the request be denied as it fails to state
16 a specific request.

17 To the extent Defendant seeks "Any notes made by State actors that contain details of
18 statements by the defendant or co-defendant, the State objects to this request as overbroad,
19 seeking work product by the State, and notes are not subject to discovery when they are
20 reduced to a report or official writing.

21 The State is aware of its obligation to produce evidence of any spoliation or destruction
22 of evidence and will fulfill its obligations under the law. There are no reports of destruction of
23 evidence, or chain of custody issues for the evidence in this case at this time.

24 **2. Statements of Potential Witnesses**

25 *All statements*

26 While the State usually voluntarily provides all written or recorded statements of
27 witnesses, except those protected as confidential, the State's decision to over include discovery
28 does not expand the nature of those items subject to mandatory disclosure by court order based

1 upon statutory or constitutional authority. The State objects to this request as being vague,
2 overbroad, and compound. Additionally, portions of the request fall outside the scope of the
3 State's obligations under NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83 (1963)
4 and Giglio v. United States, 405 U.S. 150 (1972). To the extent that the request and its multiple
5 subparts fall within the State's obligations under 174.235, Brady and Giglio, they are not
6 specific requests.

7 NRS 174.235(1)(a) provides:

8 1. Except as otherwise provided in NRS 174.233 to 174.295,
9 inclusive, at the request of a defendant, the prosecuting attorney
10 shall permit the defendant to inspect and to copy or photograph
11 any:

12 (a) Written or recorded statements or confessions made by the
13 defendant, or any written or recorded statements made by a
14 witness the prosecuting attorney intends to call during the case
15 in chief of the State, or copies thereof, within the possession,
16 custody or control of the State, the existence of which is known,
17 or by the exercise of due diligence may become known, to the
18 prosecuting attorney;

19

20 (Emphasis added).

21 Brady places upon the State an obligation to produce exculpatory evidence. Giglio
22 requires that the State disclose certain impeaching material as well.

23 In other words, even in the absence of a motion the State is obligated to turn over the
24 information requested that falls within the State's obligations under 174.235, Brady and
25 Giglio. Defendant has made many sub-requests within the instant request without providing
26 any indication that the defense has performed any investigation or discovered that the material
27 actually exists and the State has failed to turn it over. It should be noted that any calls for
28 service for Defendant, the victim and/or the victim's mother, unrelated to the injuries at issue
in this case are irrelevant, lacking in materiality, and the request should be denied. Further,
there were no calls to 911 or 311 made by Defendant or the victim's mother, as revealed in all
discovery previously produced.

The State asks that this request be clarified by the defense to address what specific
discovery Defendant believes he is missing. In the absence of such a clarification the State

1 asks that the request be denied as it fails to state a specific request.

2 **a) Any audio or video recording**

3 The State will comply with NRS 174.235 and has provided "any written or recorded
4 statements made by a witness the prosecuting attorney intends to call during the case in chief
5 of the State, or copies thereof, within the possession, custody or control of the State, the
6 existence of which is known, or by the exercise of due diligence may become known, to the
7 prosecuting attorney." Further, Brady does not impose upon the State an obligation "to
8 disclose evidence which is available to the defendant from other sources, including diligent
9 investigation by the defense." Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

10 **b) Any notes of interviews**

- 11 1) **Case Monitoring Forms;**
- 12 2) **311/911 recordings**
- 13 3) **Relevant dispatch logs; and**
- 14 4) **Any reports of information related to the case given by anyone to any
police department or crime tip organization such as Crime Stoppers,
and any reward or benefit received for such tip**

15 Police reports generated as the result of the investigation have been provided to
16 Defendant, to include any case monitoring forms, 311/911 recordings and relevant dispatch
17 logs in the State's possession. No crime tip organization was involved in this case.

18 Defendant also requests the notes of all police officers in the case. This request is not
19 covered by a single line of any discovery statute. If there is exculpatory information, the State
20 obviously must produce it. However, there is no requirement that the notes of all officers be
21 produced and the State requests that this Court not expand the statutory text to include such a
22 requirement.

23 Courts have held that officer notes are not subject to discovery statutes. In State v.
24 Bray, 569 P.2d 688 (Ore. App. 1977), an officer arrested a suspect on a DUI charge. He
25 recorded observations in a booklet. He later prepared a report from his penciled notes and
26 erased the notes. The final report was furnished to the defense. At trial, the court ruled that
27 because the officer had taken notes while speaking to a witness and those notes had been
28 destroyed, the State would be precluded from calling the witness at trial. The issue on appeal

1 was whether the fragmentary notes of the officer constituted a statement within the meaning
2 of the state discovery statutes.

3 The Appellate Court reversed the trial court:

4 We construe the statute to require production of any "statement"
5 which is intended by its maker as an account of an event or a
6 declaration of a fact. The statutory purposes of providing witness
7 statements are to minimize surprise, avoid unnecessary trial,
8 provide adequate information for informed pleas and to promote
9 truthful testimony by allowing examination based on prior
10 inconsistent statements. ... Requiring preservation and availability
11 of fragmentary notes intended only as a touchstone for memory
12 would be more likely to discourage police officers from taking
13 notes, with a consequent reduction in accuracy, than to promote
the statutory goals. Furthermore, it would be unfair and
misleading to allow cross-examination of a witness based upon
fragmentary or cryptic notes which were never intended to express
a complete statement. For these reasons, we hold that fragmentary
notes are not subject to production under discovery statutes.

14 Id. at 690; State v. Wrisley, 909 P.2d 877 (Ore. App. 1995) (noting that police notes are not
15 discoverable when their substance is incorporated into a report disclosed to the defendant); see
16 also State v. Jackson, 571 P.2d 523 (Ore. App. 1978) (holding that a rough draft of a report an
17 officer dictated to a stenographer was not discoverable).

18 3. Crime Scene Analysis, Evidence Collection, and Forensic Testing

19 All reports regarding evidence collection, crime scene analysis or processing of scenes
20 and all reports related to forensic analysis are part of the standard discovery provided in all
21 cases, which actually exceeds the requirements of NRS 174.235, have been provided. The
22 State has also produced all available photos, videos, and audio recordings. If Defendant wants
23 to see the chain of custody documentation, then Defendant needs an order from the Court for
24 an evidence vault review where chain of custody documentation is located with the item(s) of
25 evidence. There has been no forensic analysis requested or done on any items of evidence
26 collected, such that there will be no reports forthcoming because they do not exist.

27 To the extent that Defendant is seeking information broader than that which is
28 contained *supra*, the State objects to this request as being vague, overbroad, compound, and

1 duplicative. Additionally, portions of the request fall outside the scope of the State's
2 obligations under NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83 (1963) and Giglio
3 v. United States, 405 U.S. 150 (1972). To the extent that the request and its multiple subparts
4 fall within the State's obligations under 174.235, Brady and Giglio, they are not specific
5 requests.

6 NRS 174.235 provides:

7 1. Except as otherwise provided in NRS 174.233 to 174.295,
8 inclusive, at the request of a defendant, the prosecuting attorney
9 shall permit the defendant to inspect and to copy or photograph
10 any:

11 (a) Written or recorded statements or confessions made by the
12 defendant, or any written or recorded statements made by a
13 witness the prosecuting attorney intends to call during the case in
14 chief of the State, or copies thereof, within the possession, custody
15 or control of the State, the existence of which is known, or by the
16 exercise of due diligence may become known, to the prosecuting
17 attorney;

18 (b) Results or reports of physical or mental examinations,
19 scientific tests or scientific experiments made in connection with
20 the particular case, or copies thereof, within the possession,
21 custody or control of the State, the existence of which is known,
22 or by the exercise of due diligence may become known, to the
23 prosecuting attorney; and

24 (c) Books, papers, documents, tangible objects, or copies
25 thereof, which the prosecuting attorney intends to introduce during
26 the case in chief of the State and which are within the possession,
27 custody or control of the State, the existence of which is known,
28 or by the exercise of due diligence may become known, to the
prosecuting attorney.

2. The defendant is not entitled, pursuant to the provisions of
this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is
prepared by or on behalf of the prosecuting attorney in connection
with the investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible
object or any other type of item or information that is privileged
or protected from disclosure or inspection pursuant to the
Constitution or laws of this state or the Constitution of the United
States.

3. The provisions of this section are not intended to affect
any obligation placed upon the prosecuting attorney by the
Constitution of this state or the Constitution of the United States
to disclose exculpatory evidence to the defendant.

27 Brady places upon the State an obligation to produce exculpatory evidence. Giglio
28 requires that the State disclose certain impeaching material as well.

1 In other words, even in the absence of a motion (and even if this Court denied this
2 request) the State is obligated to turn over the information requested that falls within the State's
3 obligations under NRS 174.235, Brady and Giglio. Defendant has made many sub-requests
4 within the instant request without providing any indication that the defense has performed any
5 investigation or discovered that the material actually exists and the State has failed to turn it
6 over. The State asks that this request be clarified by the defense to address what specific
7 discovery Defendant believes he is missing. In the absence of such a clarification the State
8 asks that the request be denied as it fails to state a specific request.

9 **4. Preservation of, and Access to, Raw Evidence**

10 The State objects to this request to the extent it requests an order regarding items of
11 evidence that do not exist; e.g. photographic negatives, biological samples, toxicological
12 examples. The State has complied with this request to the extent such evidence exists in this
13 case and is required by law.

14 If Defendant wishes to inspect any items of evidence impounded in this case, then
15 Defendant needs to make arrangements for an evidence vault review.

16 **5. Electronic Communication and Associated Warrants**

17 The State objects to this request as being vague, overbroad, and compound.
18 Additionally, Defendant has requested information regarding warrants that do not exist. There
19 were no telephonic wiretaps, etc., performed in this case. The facts of this case give no
20 indication that electronic surveillance of any kind was conducted, and the State is unaware of
21 any such surveillance being conducted. In the event the State learns such activities were
22 conducted, transcripts of the recordings will be provided as is required by NRS 179.500, et
23 seq. or any other applicable statute. Given this, it is unknown why the instant, presumably
24 boilerplate, request is being made. The State asks that the request be denied.

25 **6. Alternate Suspect and Other Exculpatory Evidence**

26 There is no information or evidence of an alternate suspect, as Defendant was the only
27 adult present at the time these injuries were inflicted on the minor victim. There is no
28 information that shows Defendant did not commit the crimes he is charged with. Brady places

1 upon the State an obligation to produce exculpatory evidence. Giglio requires that the State
2 disclose certain impeaching material as well.

3 In other words, even in the absence of a motion (and even if this Court denied this
4 request) the State is obligated to turn over the information requested that falls within the State's
5 obligations under NRS 174.235, Brady and Giglio.

6 **7. Monitoring, Tracking and Associated Warrants**

7 See Response to Request No. 5. The State objects to this request as redundant,
8 irrelevant, wholly unrelated to the facts in this case, and appears to be boilerplate. NRS
9 174.235 does not cover Trap and Trace, Cellular Site, Pen Registers and GPS Trackers. The
10 State is unaware of any such evidence or investigatory means used in this case since Defendant
11 was arrested on the date of the crime. However, if the State becomes aware of and intends to
12 use any information during the trial which was acquired by way of a court order and/or search
13 warrant, the State will provide a copy to Defendant.

14 **8. Chain of Custody**

15 The requested materials in the State's possession have been provided to the Defendant.
16 See Response to Request No. 1.

17 **9. Documents, Notes, and Reports Used by Witnesses to Prepare for Testimony**

18 NRS 174.235 provides:

19 1. Except as otherwise provided in NRS 174.233 to 174.295,
20 inclusive, at the request of a defendant, the prosecuting attorney
21 shall permit the defendant to inspect and to copy or photograph
22 any:

23 (a) Written or recorded statements or confessions made by the
24 defendant, or any written or recorded statements made by a
25 witness the prosecuting attorney intends to call during the case in
26 chief of the State, or copies thereof, within the possession, custody
27 or control of the State, the existence of which is known, or by the
28 exercise of due diligence may become known, to the prosecuting
attorney;

(b) Results or reports of physical or mental examinations,
scientific tests or scientific experiments made in connection with
the particular case, or copies thereof, within the possession,
custody or control of the State, the existence of which is known,
or by the exercise of due diligence may become known, to the
prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies
thereof, which the prosecuting attorney intends to introduce during

1 the case in chief of the State and which are within the possession,
2 custody or control of the State, the existence of which is known,
or by the exercise of due diligence may become known, to the
prosecuting attorney.

3 2. The defendant is not entitled, pursuant to the provisions of
this section, to the discovery or inspection of:

4 (a) An internal report, document or memorandum that is
prepared by or on behalf of the prosecuting attorney in connection
with the investigation or prosecution of the case.

5 (b) A statement, report, book, paper, document, tangible
6 object or any other type of item or information that is privileged
or protected from disclosure or inspection pursuant to the
7 Constitution or laws of this state or the Constitution of the United
States.

8 3. The provisions of this section are not intended to affect
any obligation placed upon the prosecuting attorney by the
9 Constitution of this state or the Constitution of the United States
to disclose exculpatory evidence to the defendant.

10 NRS 174.235(1)(b) provides:

11 1. Except as otherwise provided in NRS 174.233 to 174.295,
12 inclusive, at the request of a defendant, the prosecuting attorney
shall permit the defendant to inspect and to copy or photograph
13 any:

14

15 (b) Results or reports of physical or mental examinations,
16 scientific tests or scientific experiments made in connection
with the particular case, or copies thereof, within the
possession, custody or control of the State, the existence of
which is known, or by the exercise of due diligence may
become known, to the prosecuting attorney; and

17

18 (Emphasis added). Defendant has been provided with all reports and statements that may be
19 used in preparation of this case. The State intends to comply with requirements of NRS
20 174.235, as necessary.

21 10. Witness Contact Information

22 NRS 174.234 provides the law regarding the notice of witnesses. It provides that both
23 sides must disclose witness names and addresses that it intends to call in its case-in-chief not
24 less than 5 judicial days before trial. See NRS 174.234 (1) (a) (2). Defendant has been
25 provided information to the extent that it conforms to required statutory provisions of NRS
26 174.234.

27 11. Notes and Reports Related to Police Investigation

28 This request should be denied. Defendant requests the notes of all police officers in the

1 case. This request is not covered by a single line of any discovery statute. If there is
2 exculpatory information, the State obviously must produce it. However, there is no
3 requirement that the notes of all officers be produced and the State requests that this Court not
4 expand the statutory text to include such a requirement.

5 Courts have held that officer notes are not subject to discovery statutes. In State v.
6 Bray, 569 P.2d 688 (Ore. App. 1977), an officer arrested a suspect on a DUI charge. He
7 recorded observations in a booklet. He later prepared a report from his penciled notes and
8 erased the notes. The final report was furnished to the defense. At trial, the court ruled that
9 because the officer had taken notes while speaking to a witness and those notes had been
10 destroyed, the State would be precluded from calling the witness at trial. The issue on appeal
11 was whether the fragmentary notes of the officer constituted a statement within the meaning
12 of the state discovery statutes. The Appellate Court reversed the trial court:

13 We construe the statute to require production of any "statement"
14 which is intended by its maker as an account of an event or a
15 declaration of a fact. The statutory purposes of providing witness
16 statements are to minimize surprise, avoid unnecessary trial,
17 provide adequate information for informed pleas and to promote
18 truthful testimony by allowing examination based on prior
19 inconsistent statements. . . Requiring preservation and availability
20 of fragmentary notes intended only as a touchstone for memory
21 would be more likely to discourage police officers from taking
22 notes, with a consequent reduction in accuracy, than to promote
the statutory goals. Furthermore, it would be unfair and
misleading to allow cross-examination of a witness based upon
fragmentary or cryptic notes which were never intended to express
a complete statement. For these reasons, we hold that fragmentary
notes are not subject to production under discovery statutes.

23 Id. at 690; State v. Wrisley, 909 P.2d 877 (Ore. App. 1995) (noting that police notes are not
24 discoverable when their substance is incorporated into a report disclosed to the defendant); see
25 also State v. Jackson, 571 P.2d 523 (Ore. App. 1978) (holding that a rough draft of a report an
26 officer dictated to a stenographer was not discoverable).

27 12. Use of Police Informants

28 No police informants were used in this case. However, if the State becomes aware of

1 or uses any informants, the State will comply with disclosure requirements.

2 **13. Identify Police Informants**

3 See response to Request No. 12.

4 **14. Audio, Video, and Photographs**

5 The State objects to the extent this request is redundant, overbroad and vague. The State
6 will comply and has complied with NRS 174.235 and has provided "any written or recorded
7 statements made by a witness the prosecuting attorney intends to call during the case in chief
8 of the State, or copies thereof, within the possession, custody or control of the State, the
9 existence of which is known, or by the exercise of due diligence may become known, to the
10 prosecuting attorney." Further, Brady does not impose upon the State an obligation "to
11 disclose evidence which is available to the defendant from other sources, including diligent
12 investigation by the defense." Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

13 **15. Witness Compensation**

14 The defendant's specific request for witness compensation and benefits should be
15 denied for two reasons.

16 First, the request exceeds the scope of Giglio. By law, any witness appearing in a
17 criminal case in obedience to a subpoena is entitled to compensation, whether the subpoena is
18 issued by the State or by the defendant. NRS 50.225(1)(a) entitles witnesses "attending the
19 courts of this State in any criminal case... in obedience to a subpoena... [t]o be paid a fee of
20 \$25 for each day's attendance, including Sundays and holidays." Witnesses are also entitled
21 to "mileage reimbursement," NRS 50.225(1)(b) and a per diem allowance, NRS 50.225(2).
22 Additionally, witnesses residing outside the jurisdiction of the Court are "entitled to
23 reimbursement for the actual and necessary expenses for going to and returning from the place
24 where the court is held." NRS 50.225(3).

25 Here, receipts showing that a State witness received statutorily required witness fees,
26 travel expenses, or per diem fees are not "evidence affecting credibility" under Giglio, and
27 consequently, are not discoverable. The fees cannot be favorable to the defendant because a
28 witness's credibility cannot be impeached for receiving compensation to which he or she is

1 legally entitled to receive, and which the county is legally obligated to provide. Lacking
2 impeachment value, the payments are immaterial to both guilt and punishment because their
3 disclosure cannot affect the outcome of the trial. See United States v. Bagley, 473 U.S. 667,
4 675 (1985); Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994) (adopting the
5 "reasonable possibility" materiality test for nondisclosure of evidence favorable to the
6 defendant after a specific request).

7 Second, the request must be denied because the State bears no burden "to disclose
8 evidence which is available to the defendant from other sources, including diligent
9 investigation by the defense." Steese v. State, 114 Nev. 479, 495 (1998); United States v.
10 Davis, 787 F.2d 1501, 1505 (11th Cir. 1986). Here, the requested evidence is maintained as a
11 public record by the Clark County Department of Finance. The defendant may subpoena that
12 office for these records.

13 Finally, it is important to note that the decision of this Court to preclude discovery of
14 the requested evidence in no way limits the defendant's right of cross-examination. The
15 defendant is aware that a witness is entitled to per diem payments and travel reimbursements;
16 he can consequently fully cross-examine any witness whether the witness received such
17 payments or promises of payment. See Davis v. Alaska, 415 U.S. 308, 318 (1974)
18 (Confrontation Clause violated when defendant denied right to cross-examine a prosecution
19 witness regarding the witness's juvenile criminal record) but see Pennsylvania v. Ritchie, 480
20 U.S. 39, 52-53 (1987) (holding that "the right to confrontation is a trial right, designed to
21 prevent improper restrictions on the types of questions that defense counsel may ask during
22 cross-examination... The ability to question adverse witnesses, however, does not include the
23 power to require the pretrial disclosure of any and all information that might be useful in
24 contradicting unfavorable testimony.").

25 **16. Prior Statements**

26 The State objects to this request as redundant, duplicitous, and has already been covered
27 by prior requests. The State further objects to the extent Defendant seeks to obtain work
28 product from the District Attorney's office and/or seeks items of evidence that are impossible

1 to provide, i.e. unrecorded statements. Giglio, governs what impeachment the State must
2 provide. The State asks the Court to hold it to that constitutional standard. Defendant's request
3 is worded in an overbroad manner to encompass immaterial statements about which the State
4 has no knowledge.

5 "Disclosures of any all statements made by any State witness, or any other person, at any
6 time that are in any manner inconsistent with the written and/or recorded statements
7 previously provided..." literally has no bounds and no limits as to materiality nor whether or
8 not the witness will testify. The request for the statements of "any person" are so broad as to
9 defy any possibility of identifying what an order granting such a request would require of the
10 State. The State will comply with NRS 174.235 and has provided "any written or recorded
11 statements made by a witness the prosecuting attorney intends to call during the case in chief
12 of the State, or copies thereof, within the possession, custody or control of the State, the
13 existence of which is known, or by the exercise of due diligence may become known, to the
14 prosecuting attorney." Further, Brady does not impose upon the State an obligation "to
15 disclose evidence which is available to the defendant from other sources, including diligent
16 investigation by the defense." Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).
17 The defense is capable of conducting its own pretrial conferences with witnesses, where the
18 defense can inquire as to any change to the witnesses' expected testimony that differs from
19 the statements given to police. This request should be denied. Also, see Section III B, on page
20 6 of State's opposition.

21 **17. Impeachment Evidence**

22 The State objects to the extent this request is duplicitous of prior requests. Brady places
23 upon the State an obligation to produce exculpatory evidence. Giglio requires that the State
24 disclose certain impeaching material as well. In other words, even in the absence of a motion
25 (and even if this Court denied this request) the State is obligated to turn over the information
26 requested that falls within the State's obligations under NRS 174.235, Brady and Giglio.

27 In the Ninth Circuit, the obligation for the prosecution to examine an officer's file is
28 triggered by a defense request with no requirement that the defense make a showing that a file

1 is likely to contain helpful information. United States v. Henthorn, 931 F.2d 29, 31 (9th Cir.
2 1990) (holding that the “government is incorrect in its assertion it is the defendant’s burden to
3 make an initial showing of materiality” and that the “obligation to examine the files arises by
4 virtue of making a demand for their production”); United States v. Santiago, 46 F.3d 885, 895
5 (9th Cir. 1995) (Under Henthorn, the government has a duty, upon defendant’s request for
6 production, to inspect for material information the personnel records of federal law
7 enforcement officers who will testify at trial, regardless of whether the defense has made a
8 showing of materiality).

9 This, of course, does not mean that files are produced for the defense. Henthorn
10 explains that following that examination, “the files need not be furnished to the defendant or
11 the court unless they contain information that is or may be material to the defendant’s case.”
12 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
13 Brady material. If the prosecutor is unsure, the information should be provided to the court
14 for review. As the court explained:

15 We stated that the government must ‘disclose information favorable to the
16 defense that meets the appropriate standard of materiality If the prosecution
17 is uncertain about the materiality of information within its possession, it may
18 submit the information to the trial court for an in camera inspection and
19 evaluation. . . . As we noted in Cadet, the government has a duty to examine
20 personnel files upon a defendant’s request for their production.

21 Id. at 30-31.

22 Different than Henthorn, the Nevada Supreme Court issued an opinion that requires
23 some showing of materiality on the part of the defense before it could gain access to a
24 personnel file. The file concerned an officer who was murdered and obviously would not be
25 testifying. Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996). The defense made no
26 showing that there may have been favorable information in the file. Instead, the defense
27 asserted a general right to search the file. The court rejected this assertion of a right to a
28 generalized, unfocused search, but allowed for the possibility that a file could be accessible
under some circumstances. The court reasoned, “[i]f Sonner had presented a foundation for

1 believing that [the victim] had a reputation for being an 'aggressive' trooper who, consistent
2 with his reputation, provoked Sonner's action, this might have been sufficient to warrant
3 discovery of corroborating evidence" in the file. *Id.* at 1341, 930 P.2d at 716. This reasoning
4 suggests that if that type of evidence had been in the file, the State would be required to
5 produce it.

6 Additionally, the LVMPD has serious concerns regarding the disclosure of material
7 from personnel files. Confidentiality is one of the chief requirements in maintaining the
8 effective ability to investigate complaints against officers. Confidentiality ensures that both
9 police officers and citizens will freely contact the department without fear. As one court has
10 stated:

11 It is clear a very real and very important need exists to maintain confidential
12 integrity of the internal investigation in the police division. To do otherwise
13 would seriously inhibit the chief in his control over the members of the division
14 and their wide-ranging duties and responsibilities. This stream of information
15 available to the chief and the persons within and without the division would
16 diminish to a bare trickle if the source or sources of this information were
17 stripped of its confidential character. That such an event would serve to defeat
the general public good is supported by a logic almost tautological in its
persuasiveness -- for the desirability of an efficient well disciplined police force
is manifest.

18 McMillan v. Ohio Civil Rights Comm'n, 315 N.E.2d 508, 515 (Ohio 1974).

19 Personnel files are confidential. All witnesses, including police officers, are assured
20 that the information provided by them will not be voluntarily disclosed and that all legal means
21 will be employed to protect this confidentiality. Police officers are compelled to cooperate
22 with internal affairs investigations. Failure to cooperate can result in termination. Officers,
23 knowing that their statements were subject to disclosure, would be less likely to completely
24 cooperate. The knowledge that statements compelled from officers could later be disclosed to
25 third parties for other cases would also act as disincentive for the department to fully
26 investigate. As one court noted:

27 ///

28 ///

1 The members of a police department must be able to rely on their confidential
2 records and notations being preserved for their internal use ... for if it were
3 otherwise, the knowledge that some of the confidential information recorded
4 might later be exposed to outside parties would have a certain and chilling effect
5 upon the internal use of such record-making.

6 City of Los Angeles v. Superior Court, 109 Cal. Rptr. 365, 369 (Ct. App. 1973).

7 Based on Nevada law, Defendant in the instant case is required to advance a foundation
8 that the Personnel File of the officer is likely to bear information material to the defense.
9 Defendant's motion is simply an attempt to fish for information. As a result, the instant motion
10 should be denied. Alternatively, the State asks the Court to order the State to review the file
11 and produce any information it deems discoverable.

12 **18. Criminal Histories**

13 Although a witnesses' criminal record may be material under some circumstances, it is
14 not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d 1353 (1974). In Hill
15 the defense sought production of a witness's felony conviction record. Because the witness
16 was the only eyewitness other than the defendants, and the corroboration of his report was not
17 strong, the court found the requisite materiality and granted the defense motion. However, the
18 court concluded, "[w]e do not hold that good cause exists in every case in which a defendant
19 charged with a felony seeks discovery of any felony convictions any "rap sheet" of prosecution
20 witnesses." Id. at 1358.

21 In the present case, Defendant has essentially requested that the State perform a
22 National Crime Information Center (NCIC) inquiry on all possible State witnesses and provide
23 that inquiry to the Defendant. The State has no legitimate reason to make such an inquiry for
24 every witness and strenuously objects to defense requests that the State provide this
25 information.

26 Although Defendant liberally touts Brady v. Maryland, 373 U.S. 83 (1963) as the basis
27 for his NCIC request, the defense has failed to establish that the requested NCIC information
28 falls within the scope of Brady, that is, that it might in some way be exculpatory or that it
might somehow constitute impeachment evidence. Moreover, Defendant has not shown how
such information might be "material." In other words, the defense has failed to show that the

1 lack of any State witnesses' NCIC information will somehow result in an unfair trial or will
2 produce a verdict that is not worthy of confidence. See Kyles v. Whitley, 514 U.S. 419, 434
3 (1995).

4 The Supreme Court has stated that information is considered material if there is a
5 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
6 proceeding would have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985). The
7 Supreme Court defined reasonable probability as probability sufficient to "undermine
8 confidence in the outcome" of the trial. Id. In addition, the Court in Bagley, stated that
9 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." Id.
10 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
11 that, if disclosed and used effectively, it may make the difference between conviction and
12 acquittal." Id. (internal quotes omitted).

13 In the present case, Defendant has failed to articulate even an arguable use of the
14 witnesses' NCIC information that would comport with the requirements as outlined by the
15 Supreme Court in Brady, Kyles and Bagley. Defendant is simply looking for any information
16 that he can use to cloud the facts of the case at bar and to cast aspersions on those witnesses.

17 Pursuant to 28 C.F.R. §20.33(b) as codified under 28 U.S.C.A. § 534 (2002), criminal
18 history information may only be disseminated to law enforcement agencies, those hired by
19 law enforcement agencies and to those who have entered into signed agreements for the
20 specific and authorized use of criminal background information. Pursuant to 28 C.F.R. §20.25,

21 Any agency or individual violating subpart B of these regulations
22 shall be subject to a civil penalty not to exceed \$10,000 for a
23 violation occurring before September 29, 1999, and not to exceed
\$11,000 for a violation occurring on after September 29, 1999.
24 In addition, pursuant to 28 C.F.R. §20.38,

25 Access to systems managed or maintained by the FBI is subject to cancellation in regard
26 to any agency or entity that fails to comply with the provisions of subpart C of this part.

27 If the State is forced to disseminate such information to the defense in this matter, the
28 State and/or the individual who actually provides the NCIC information runs the risk of civil
penalties and loss of future access to the NCIC system. In addition, the Multi-System Guide

1 4 (MSG4) published by the Las Vegas Metropolitan Police Department (LVMPD) states that
2 "[d]ata stored in each of our criminal justice systems . . . must be protected to ensure correct,
3 legal and efficient dissemination and use." P. 21. The MSG4 further states that
4 "[d]issemination of CHI [Criminal History Information] that does not belong to the LVMPD
5 or is obtained through NCIC, NCJIS or NLETS is prohibited." Id.

6 As a user of the National Crime Information Center (NCIC) database, the State is
7 prohibited from disseminating criminal history information to non-criminal justice agencies
8 as defined by Title 28 Code of Federal Regulations (CFR)§ 20.33, which describes a criminal
9 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which
10 performs the administration of criminal justice pursuant to a statute or executive order, and
11 which allocates a substantial part of its annual budget to the administration of criminal justice.
12 Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice
13 purposes is prohibited.

14 A 1989 United States Supreme Court case looked at this issue from the standpoint of
15 an invasion of privacy and ruled accordingly:

16 Accordingly, we hold as a categorical matter that a third party's request for law
17 enforcement records or information about a private citizen can reasonably be
18 expected to invade that citizen's privacy, and that when the request seeks no
19 "official information" about a Government agency, but merely records that the
20 Government happens to be storing, the invasion of privacy is "unwarranted."

21 United States Department of Justice v. the Reporters Committee for Freedom of the Press, 109
22 S.Ct. 1468, 1485 (1989).

23 Criminal defense attorneys, public or private, are not within the definition of "criminal
24 justice agency," nor is the criminal defense function considered a "criminal justice purpose."
25 Therefore, Defendant is not entitled to the criminal history information he seeks.

26 If the District Attorney runs an NCIC inquiry on a witness and that NCIC inquiry is in
27 our file, the FBI has NO policy prohibiting us from disclosing that NCIC inquiry. If, on the
28 other hand, we have not run the NCIC report already, it is a violation of FBI regulations to run
it on request of defense counsel, or court order.

1 In short, if the State already has it, the State will decide--pursuant to our obligations
2 under Brady and Giglio – whether or not to divulge any information contained in the NCIC
3 report. If the State doesn't have the NCIC report in our file, the defense has to follow FBI-
4 outlined procedures to get it.

5 Defense must obtain an order from the judge directed to the FBI requested describing
6 specifically what they need. The FBI then reviews the judge's order and almost always
7 complies with it, but the FBI sends the NCIC report to the judge, who then reviews the
8 information and decides on its admissibility before turning anything over to the defense.

9 Juvenile records, misdemeanor convictions, arrests, and warrants regarding witnesses
10 are not appropriate impeachment material, unless the misdemeanor conviction involves a
11 crime of dishonesty. *See* NRS 50.095. As such, the request should be denied in part.

12 **19. Any and all books, papers, documents, and tangible objects related to the case not**
13 **covered by the previous request.**

14 See response to prior requests. This request should be denied.

15 **20. All 911 and 311 Calls, Including Recordings, Reports, Transcripts**

16 See State's Response to Request #2(b).

17
18 **21. Medical Records**

19 Defendant has been provided with the medical records relating to the child abuse
20 examination and treatment of the victim in this case. The State is not in possession of any
21 medical records of other witnesses in this case, nor is the State under any obligation to acquire
22 them under statutory or constitutional authority. NRS 174.235(2)(b) precludes this
23 information from being the subject of discovery without a court order and notice to the subject
24 of the request:

25 **2. The defendant is not entitled, pursuant to the provisions of this**
26 **section, to the discovery or inspection of:**

27 **(a) An internal report, document or memorandum that is prepared**
28 **by or on behalf of the prosecuting attorney in connection with the**
investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible object or

1 any other type of item or information that is privileged or
2 protected from disclosure or inspection pursuant to the
3 constitution or laws of this state or the Constitution of the
4 United States.

5 (Emphasis added).

6 Also, NRS 49.225 provides as follows:

7 A patient has a privilege to refuse to disclose and to prevent any
8 other person from disclosing confidential communications among
9 himself, his *doctor* or persons who are participating in the
10 diagnosis or treatment under the direction of the doctor, including
11 members of the patient's family.

12 Thus, should Defendant seek this information which is not in the possession of the
13 State, they should file a motion with the Court with notice to the subject so they can interpose
14 their objections, if any.

15 22. CPS Records

16 Defendant requests privileged or confidential information as it relates to child
17 protective services records. Beyond the fact that such a request far exceeds the statutory
18 requirements under NRS 174.235, such a request also violates the privacy rights of said
19 individuals and the relevant statutes that would protect against the release of said information
20 if it existed. Defendant has not provided any authority to support such a broad discovery
21 request and therefore, the discovery request violates Nevada law under NRS 174.235 and
22 should be denied. By law the State is precluded from obtaining and disseminating any such
23 records, so if the Court is going to grant this request, the State asks that the Court issue an
24 order to obtain the records specifically related to the facts underlying this case for an in-camera
25 review by the Court.

26 23. Expert Material

27 NRS 174.235(1)(b) provides:

28 1. Except as otherwise provided in NRS 174.233 to 174.295,
 inclusive, at the request of a defendant, the prosecuting attorney
 shall permit the defendant to inspect and to copy or photograph
 any:

 (b) Results or reports of physical or mental examinations,
 scientific tests or scientific experiments made in connection

1 with the particular case, or copies thereof, within the
2 possession, custody or control of the State, the existence of
3 which is known, or by the exercise of due diligence may
4 become known, to the prosecuting attorney; and

5 (Emphasis added). The State intends to comply with requirements of NRS 174.234, as
6 necessary based on the evidence in this case.

7 **24. E-Mail Communications between Experts and the State and Experts and
8 Detectives**

9 This request is vague and overbroad. The State will provide discovery to the Defendant
10 as provided in NRS 174.235 and any exculpatory evidence contained in any electronic
11 communications.

12 **25. General Correspondence between CPS and Metro**

13 This request is vague and overbroad. The State will provide discovery to the Defendant
14 as provided in NRS 174.235 as stated above.

15 **RECIPROCAL DISCOVERY REQUEST BY THE STATE**

16 NRS 174.245 states in pertinent part that:

- 17 1. Except as otherwise provided in NRS 174.233 to 174.295
18 inclusive, at the request of the prosecuting attorney, the
19 defendant shall permit the prosecuting attorney to inspect and
20 to copy or photograph any

21 (a) Written or recorded statements made by a witness the
22 defendant intends to call during the case in chief of the
23 defendant, or copies thereof, within the possession,
24 custody or control of the defendant, the existence of
25 which is known, or by the exercise of due diligence
26 may become known, to the defendant;

27 (b) Results or reports of physical or mental examinations,
28 scientific tests or scientific experiments that the
defendant intends to introduce in evidence during the
case in chief of the defendant, or copies thereof, within
the possession, custody or control of the defendant, the
existence of which is known, or by the exercise of due
diligence may become known, to the defendant; and

(c) Books, papers, documents or tangible objects that the
defendant intends to introduce in evidence during the
case in chief of the defendant, or copies thereof, within
the possession, custody or control of the defendant, the
existence of which is known, or by the exercise of due
diligence may become known, to the defendant.

1 The State formally requests that the defense provide all discovery consistent with the
2 requirements of NRS 174.245 in a timely manner and well before the trial in the instant case.
3 This request includes copies of all reports, tests, videos, photographs or any other item or
4 items prepared by or produced from any noticed defense expert witnesses pursuant to NRS
5 174.234.

6 CONCLUSION

7 In general the defense request for discovery is vague, overbroad and is completely
8 outside the scope of what required by the State under Brady and its progeny. Not only is the
9 defense fully within its ability and power to independently request and/or subpoena the
10 evidence they seek without the intervention of the State, the requests the defense makes are
11 without focus or direct relationship to this case.

12 The defense has not even attempted to articulate the materiality or exculpatory nature
13 of the evidence they seek. The defense has filed a generalized discovery motion and/or is
14 simply on a fishing expedition hoping to find something on which they may build a defense.
15 Furthermore, while it may be possible in some cases to introduce a witness's criminal
16 background information to reasonably aid in the defense of the accused, this is not one of those
17 cases. Allowing the defense access to every witness's NCIC information would be an
18 abomination and a clear violation of their privacy rights. The State cannot be forced to provide
19 a witness's background information without some justifiable and legitimate reason for doing
20 so. The defense has access to its own investigators and is free to conduct any legitimate inquiry
21 it sees fit. It does not have the right, however, to use State time and resources to further
22 victimize the very person for whom the State is seeking justice and especially those who are
23 simply general fact witnesses.

24 In addition, the State cannot produce evidence that it does not reasonably have or, based
25 on a diligent inquiry, does not appear to exist despite the defense allegations. As such the
26 State respectfully requests that the defense motion to compel be denied in its entirety,
27 especially in light of the fact that the State has provided significant discovery already and no
28 request has been made of the State for any additional discovery or to review its file.

1 Based upon the above and foregoing Points and Authorities, Defendant's Motion for
2 Discovery should be denied to the extent any of the requested information does not comply
3 with the discovery statutes and/or is privileged or irrelevant as to the guilt or punishment of
4 Defendant.

5 DATED this 14th day of July, 2016.

6 Respectfully submitted,

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

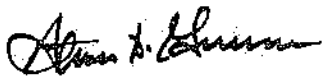
10 BY /s/ MICHELLE JOBE
11 MICHELLE JOBE
12 Chief Deputy District Attorney
13 Nevada Bar #10575

14 CERTIFICATE OF FACSIMILE TRANSMISSION

15 I hereby certify that service of the above was made this 14th day of July, 2016, by
16 facsimile transmission to:

17 Public Defender's Office
18 FAX #455-5112

19 By: /s/ J. MOTL
20 Employee of the District Attorney's Office
21
22
23
24
25
26
27
28


CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER S. HAMNER
6 Deputy District Attorney
7 Nevada Bar #11390
8 MICHELLE JOBE
9 Chief Deputy District Attorney
10 Nevada Bar #10575
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DONOVINE MATHEWS, aka,
14 Donovan Mathews, #5910369

15 Defendant.

CASE NO. C313047

DEPT NO. XII

16 **ORDER FOR RELEASE OF CPS/DFS RECORDS**

17 DATE OF HEARING: July 26, 2016
18 TIME OF HEARING: 08:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 26th day of July, 2016, the Defendant DONOVINE MATHEWS present, represented by
21 counsel KRISTY CLARK, ESQ., Deputy Public Defender, the State being represented by
22 STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER HAMNER and
23 MICHELLE JOBE, Deputies District Attorney, and the Court having heard argument of
24 counsel, based on the pleadings and good cause appearing therefor,

25 THE COURT FINDS that there was an investigation done by Child Protective Services
26 resulting in an ongoing case in Family Court, which arose out of the underlying events in the
27 instant matter;

28 ///

RECEIVED
JUL 29 2016
DEPT. 12

1 THE COURT FURTHER FINDS there may be Brady material contained in the
2 DFS/CPS records;

3 FOR THOSE REASONS:

4 IT IS HEREBY ORDERED that the Department of Family Services release evidence
5 which includes protected health information being held by CPS/DFS consisting of any and all
6 records from January 5, 2016, to present for SUBJECT MINOR: CHANCE JACKSPER,
7 DOB: 01/30/2013 and/or NATURAL MOTHER: JASMINE CATHCART, DOB:
8 10/14/1995, to be released to a representative of the DISTRICT ATTORNEY'S OFFICE,
9 UNDER SEAL, and submitted to the court for in camera inspection.


10 DATED this 1st day of July, 2016,

August

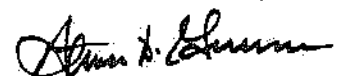

DISTRICT JUDGE

14 STEVEN B. WOLFSON
15 Clark County District Attorney
16 NEVADA BAR #001565

17 BY


18 CHRISTOPHER S. HAMNER
19 Deputy District Attorney
20 Nevada Bar #11390

21
22
23
24
25
26
27 jm/SVU



CLERK OF THE COURT

1 NOTC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 309 South Third Street, Suite #226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 DONOVINE MATHEWS,
14 ID#5910369

15 Defendant.

CASE NO. C-16-313047-1

DEPT. NO. XII

16 DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)
17 TO: CLARK COUNTY DISTRICT ATTORNEY:

18 You, and each of you, will please take notice that the Defendant, DONOVINE
19 MATHEWS, intends to call the following expert witness in his case in chief:

20 NAME

ADDRESS

21 Dutch Johnson, Ph.D,
22 Forensic and Biomechanics Expert

19801 N. 59th Ave., #11526, Glendale, AZ 85318
(602) 819-6444

23 Dr. Johnson is an expert in the biomechanics of human injury. He is expected to testify regarding
24 the mechanics of water spilling from a mug onto a child, and to provide analysis of the biomechanics
25 involved in the instant case.

26 CV Attached

27 DATED this 3rd of October, 2016.

28 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kristy S. Holiday
KRISTY S. HOLIDAY, #13519
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A copy of the above and foregoing NOTICE was served via electronic e-filing to the District Attorney's Office at Motions@clarkcountyda.com on this 3rd day of October, 2016.

By: /s/Cheryl Misuraca
Secretary, Clark County Public Defender

Case Name: Donovan Mathews
Case No.: C-16-313047-1
Dept. No.: XII

WILTSHIRE
FORENSIC
BIOMECHANICS, LLC

19801 N. 59th Ave., #11526
Glendale, AZ 85318
telephone: 602-819-6444
dutch@wiltshireforbio.com

Lindsay Dutch Johnson, PhD
Principal Engineer

Professional Profile

Dr. Dutch Johnson is the Principal Engineer at Wiltshire Forensic Biomechanics. Dr. Johnson specializes in the biomechanics of human injury, focusing solely on injuries resulting from physical assaults and violent crime incidents for the past 5 years. Overall, he has more than 15 years of forensic reconstruction experience, as well as 8 years of scientific research in the areas of human soft tissue mechanics and human impact force mechanics. Dr. Johnson combines his experience and expertise in injury biomechanics, human kinematics, injury tolerance, failure analysis, and mechanical engineering to investigate, analyze, and reconstruct injuries and deaths associated with stabbings, beatings (e.g., via fists, feet, blunt impact objects, etc.), shootings, people throwing objects at other people causing severe injury, and people pushing other people resulting in injury. He also has experience evaluating surveillance video to analyze the gait and other movement mechanics of individuals involved in crimes, and comparing these characteristics with those suspected of committing the crimes.

Prior to focusing solely on injuries resulting from physical assaults and violent crime incidents, Dr. Johnson spent 10 years investigating, analyzing, and conducting tests associated with mechanical failures and injuries related to motor vehicle accidents, structural collapses, industrial accidents, and accidents occurring in construction environments; falls on stairs, uneven surfaces, and falls resulting from failed walkway structures; human collisions in recreational and sporting activities; and head and neck impact injuries resulting from failed equipment projectiles, automated equipment, and weapons used in physical assaults.

In addition to investigation and analysis, Dr. Johnson also has significant experience in mechanical testing and analyzing data from test instrumentation. He has managed, developed detailed procedures for, and conducted numerous reconstruction tests including full-scale automotive crash tests, structural failure tests, and other (non-vehicular-related) reconstruction tests, both with and without instrumented test dummies. He has also been a test driver for various vehicle failure investigation projects associated with tire and other mechanical component failures. Additionally, he has evaluated, designed containment enclosures for, and implemented various explosives for use in vehicle and mechanical testing, and has been responsible for explosives handling and ATF compliance.

Dr. Johnson's research activities have included a number of experimental investigations requiring mechanical testing of various human soft tissues and human volunteers. These research activities have included mechanical property characterization of human soft tissues; analyzing impact forces on athletes; and analyzing injuries in combat training and field environments.

Prior to forming Wiltshire Forensic Biomechanics, Dr. Johnson worked as a Manager in Exponent's Biomechanics Practice (Injury Causation), working for Exponent for a total of 6 years. Prior to Exponent, Dr. Johnson worked as a consultant for 7 years with Wiltshire Analysis, Inc., where he performed mechanical failure and human injury investigations and analyses.

07/16

Academic Credentials

Ph.D., Mechanical Engineering (Biomechanics), Georgia Institute of Technology, 1998.
M.S., Mechanical Engineering (Biomechanics), Oregon State University, 1992.
B.S., Mechanical Engineering, Oregon State University, 1990.

Current Licenses and Certificates

Private Investigator License (Arizona); Fundamentals of Engineering (EIT) Certificate.

San Bernardino County Sheriff's Department POST Certified Courses: Bloodstain Pattern Analysis (40 hours), 2011; First Responder Shooting Reconstruction (8-hour), 2013.

Military

U.S. Marine Corps: NCO, field radio operator; Camp Guard, basic law enforcement training.

Languages

Spanish: Advanced speaking proficiency (ACTFL-based).

Selected Presentations & Publications

Johnson LD. Injury Biomechanics and the Criminal Case. Presentation, NACDL's 7th Annual Forensic Sciences and the Law Conference: Making Sense of Science, Las Vegas, NV, May 2014.

Johnson LD. Injury and Lethal Force Options. Presentation, Asesor de Seguridad Nacional del CEN, Presidente de Empresarios/Ciudades Hermanas, Seguridad Pública Municipal Nezahualcóyotl, Mexico City, Mexico, March 2014.

Johnson LD. Biomechanical Reconstruction of Criminal Assault and Stabbing Injuries. Presentation, InSciTech, San Francisco, CA, April 2012.

Hill TR, Johnson LD, Ghironzi, G. The Sites of Injuries and their Effects. Presentation, U.S. Customs and Border Protection, Federal Law Enforcement Training Center, Artesia, NM, Dec. 2009.

Johnson LD. Practical Injuries: Sites, Mechanisms, and Results. 145 pages. Wiltshire Analysis: LE/Mil Publishing, Phoenix, AZ, 2009.

Leonard MM, Tuskan SM, Johnson LD. Minimizing Driver Demands and Data Acquisition Errors. SAE Special Publications, SAE Technical Paper No. 2001-01-0049, March 2001.

Johnson LW. The Mechanical and Microstructural Analysis of the Human Cornea. PhD Thesis. George W. Woodruff School of Mechanical Engineering, Georgia Tech. June 1998.

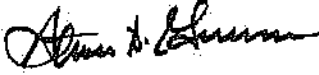
Shin TJ, Vito RP, Johnson LW, McCarey BE. The Distribution of Strain in the Human Cornea. J Biomech 1997; 30(5):497-503.

Patent

Zucker SA, Hantke SJ, Johnson LW, Bergh C. Device for Emergency Transport of Pediatric Patients. United States Patent No. 6,898,811.

Professional Affiliations

American Academy of Forensic Sciences; American Society of Biomechanics.


CLERK OF THE COURT

1. NOTC
2. PHILIP J. KOHN, PUBLIC DEFENDER
3. NEVADA BAR NO. 0556
4. 309 South Third Street, Suite #226
5. Las Vegas, Nevada 89155
6. (702) 455-4685
7. Attorney for Defendant

8. DISTRICT COURT
9. CLARK COUNTY, NEVADA

10. THE STATE OF NEVADA,)
11.)
12. Plaintiff,)
13.)
14. v.) CASE NO. C-16-313047-1
15.) DEPT. NO. XII
16. DONOVINE MATHEWS,)
17. ID#5910369)
18. Defendant.)

19. DEFENDANT'S NOTICE OF WITNESS, PURSUANT TO NRS 174.234
20. TO: CLARK COUNTY DISTRICT ATTORNEY:

21. You, and each of you, will please take notice that the Defendant, DONOVINE
22. MATHEWS, intends to call, in addition to those witnesses previously endorsed by the State, and in
23. addition to the expert previously noticed, the following witness in his case in chief:

24. 1. Kevin Gene, Investigator
25. Clark County Public Defender Office

26. DATED this 17th of October, 2016:

27. PHILIP J. KOHN
28. CLARK COUNTY PUBLIC DEFENDER

By: /s/Kristy S. Holiday
KRISTY S HOLIDAY, #13519
Deputy Public Defender

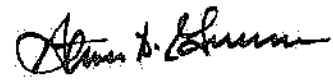
CERTIFICATE OF ELECTRONIC SERVICE

A copy of the above and foregoing NOTICE was served via electronic e-filing to the District Attorney's Office at Motions@clarkcountyda.com on this 17th day of October, 2016.

CLARK COUNTY PUBLIC DEFENDER

By: /s/Carolynn Gray, Legal Assistant
Clark County Public Defender

Case Name: Donovan Mathews
Case No.: C-16-313047-1
Dept. No.: XII



CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: C313047

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

DEPT NO: XII

Defendant.

SECOND SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: DONOVINE MATHEWS, aka, Donovan Mathews, Defendant; and

TO: DEPUTY PUBLIC DEFENDER, Counsel of Record:

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

***Indicates additional witnesses and/or modifications**

BETHARD, JOHN; LVMPD #13928

BOROZ, STACEY; Physical Therapist, University Medical Center

C.J; C/O CCDA

CATHCART, JASMIN; 717 E Caballo Hills Ave NLV 89081

CETL, DR. SANDRA; Sunrise Hospital; Is a medical doctor and is expected to provide
testimony as a medical expert as to her opinions and findings including, but not limited to: her
review and analysis of the medical records, reports and radiographic films, as well as the

1 observations, diagnosis and treatment rendered to victim in this case, SCAN exams in general
2 and directly related to the instant case. In addition, she will provide testimony as to her direct
3 involvement, if any, in this case and the possible mechanisms of injury and causes of injury to
4 the said victim.

5 COATES, DR. JAY ELLSWORTH; University Medical Center, Will testify regarding
6 the examination, treatment, observation and diagnosis in general of the named victim in the
7 instant case.

8 COR; CCDC

9 COR; LVMPD DISPATCH

10 COR; LVMPD RECORDS

11 DAHN, ROBBIE; LVMPD #5947; Is a Senior Crime Scene Analyst with the Las Vegas
12 Metropolitan Police Department. He is an expert in the area of identification, documentation,
13 collection and preservation of evidence and will give opinions related thereto. He is expected
14 to testify regarding the identification, documentation, collection and preservation of evidence
15 in this case.

16 DANSCUK, DR. NICHOLAS; University Medical Center, Will testify regarding the
17 examination, treatment, observation and diagnosis in general of the named victim in the instant
18 case.

19 DEPALMA, PHILIP; LVMPD #5297

20 *EBNETER, JERE; LVMPD #6298

21 GAMBOA, LLOYD; Registered Nurse, University Medical Center, Will testify
22 regarding the examination, treatment, observation and diagnosis in general of the named
23 victim in the instant case.

24 GRIVAS, CHRISTOPHER; LVMPD #8759

25 GUNDACKER, RHEMA; Registered Nurse, University Medical Center, Will testify
26 regarding the examination, treatment, observation and diagnosis in general of the named
27 victim in the instant case.

28 ///

1 KOVALCHECK, ANDREA; Registered Nurse, University Medical Center, Will
2 testify regarding the examination, treatment, observation and diagnosis in general of the named
3 victim in the instant case.

4 KRUMNE, TROYCE; LVMPD #7176

5 OLSON, DR. ELIS; Sunrise Hospital; Will testify regarding the examination,
6 treatment, observation and diagnosis in general of the named victim in the instant case.

7 PELTIAR, DR. PHYLIP; Burn medicine expert witness may testify and advise on
8 matters regarding burn injury, including heat burns, chemical burns, electrical burns, radiation
9 burns, superficial burns, toxic exposure, and scalding. Experts in burn injury can also provide
10 reports and testimony on various causes of burns, degrees of burns, burn accidents, burn
11 statistics, and related issues

12 SANTAROSSA, BRIAN; LVMPD #6930

13 SOUCHON-SANCHEZ, DR. PATRICIA; University Medical Center, Will testify
14 regarding the examination, treatment, observation and diagnosis in general of the named
15 victim in the instant case.

16 SZUKIEWICZ, JOSEPH; LVMPD #5411; Is a Senior Crime Scene Analyst with the
17 Las Vegas Metropolitan Police Department. He is an expert in the area of identification,
18 documentation, collection and preservation of evidence and will give opinions related thereto.
19 He is expected to testify regarding the identification, documentation, collection and
20 preservation of evidence in this case.

21 *TRAMMELL, MATTHEW; C/O CCDA's Office

22 VELONZA, BLENMERLE; Registered Nurse, University Medical Center, Will testify
23 regarding the examination, treatment, observation and diagnosis in general of the named
24 victim in the instant case.

25 WESTMORELAND, JOANNA; CPS

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

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

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.
4

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

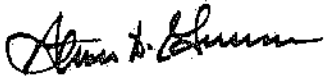
8 BY /s/ CHRISTOPHER S. HAMNER
9 CHRISTOPHER S. HAMNER
10 Deputy District Attorney
Nevada Bar #11390

11 CERTIFICATE OF FACSIMILE TRANSMISSION

12 I hereby certify that service of the above was made this 18th day of October, 2016, by
13 facsimile transmission to:

14 Public Defender's Office
FAX #455-5112

15 By: /s/ J. MOSLEY
16 Employee of the District Attorney's Office
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CLERK OF THE COURT

MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

Defendant.

CASE NO: C-16-313047-1

DEPT NO: XII

DEPARTMENT XII

NOTICE OF HEARING

DATE 10-20-16 TIME 8:30AM

APPROVED BY pl

**NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL BASED ON
OUTSTANDING EXPERT DISCOVERY**

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

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER S. HAMNER, Deputy District Attorney, and files this Notice of Motion and Motion to Continue Trial Based on Outstanding Expert Discovery.

This Motion 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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DATED this 19th day of October, 2016.

BY Christopher S. Hamner for
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #11390

TIMELINE OF RELEVANT DISCOVERY ORDERS, THE DEFENSE DISCLOSURE OF DISCOVERY MATERIALS AND REPRESENTATIONS AT CALENDAR CALL

The State formally requests that the defense provide all discovery consistent with the requirements of NRS 174.245 in a timely manner and well before the trial in the instant case. This request includes copies of all reports, tests, videos, photographs or any other item or items prepared by or produced from any noticed defense expert witnesses pursuant to NRS 174.234.

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1 (State Disc. Opp. at 32).

2 On July 26, 2016, the Court considered the motion and granted the Defendant's motion
3 in part and denied the motion in part. However, with respect to the State's reciprocal discovery
4 request, the Court granted the State's motion for reciprocal discovery in its entirety. (See
5 7/26/16 Court Minutes).

6 On October 3, 2016, the Defendant filed its first notice of witness in this case, an expert
7 witness notice. The expert notice identified Dr. Lindsay Dutch Johnson, out of Glendale,
8 Arizona, as a forensic and biomechanics expert. The defense notice stated that Dr. Johnson
9 was "an expert in the biomechanics of human injury. He is expected to testify regarding the
10 mechanics of water spilling from a mug onto a child, and to provide analysis of the
11 biomechanics involved in the instant case." (Def. Not. Of Expert Wit. at 1). The attached
12 Curriculum Vitae indicated that Dr. Johnson has "15 years of forensic reconstruction
13 experience" and "has managed, developed detailed procedures for, and conducted numerous
14 reconstructions tests..." (Id. at 3).

15 On October 8, 2016, the defense sent an email to the State entitled "Expert Materials."
16 The defense expressly stated the following: "We noticed an expert yesterday, and he *has not*
17 *prepared any reports, but he has taken some pictures.* I have attached them." (See State Ex.
18 1). A mere seventeen photographs were attached for this email, some including what appeared
19 to be timing intervals. (Id.). Some photographs included pictures of a child that were not the
20 instant victim in this case. Some photographs included photographs of spilled coffee mug
21 outside or in locations that were not where the crime in the case occurred. (Id.). At no point,
22 in the email does the defense inform the State of any video reenactments or notes taken by this
23 expert. The defendant solely represented to the State that only some pictures were taken. (Id.
24 at 1).

25 Prior to calendar call, the State contacted the defense over the telephone. Specifically,
26 the State inquired about the existence of any notes, reports and the sources of the photographs.
27 The defendant informed the State that no report had been conducted, represented that the
28 photos were taken by its expert rather than derived from any video reenactment and stated that

1 it was not in possession of any notes from its expert at this time. Again, the defense did not
2 indicate to the State that any testing was ever conducted and video recorded by its expert
3 witness.

4 On October 18, 2016, calendar call was held before this Court. Both parties announced
5 ready, but the State specifically raised concern about the amount of discovery that had been
6 turned over by the defense. Given the fact that based on the scant materials provided by the
7 defense, the State was left with the impression that Dr. Johnson would act essentially as an
8 accident reconstructionist and wondered about the existence of an expert report as would be
9 common if not standard should an accident reconstructionist testify. The Court agreed with
10 this assessment and specifically asked the defense if a report existed.

11 The defense represented that it explicitly instructed Dr. Johnson *not* to prepare a report
12 due to its prohibitive cost to the defense. This is curious given the fact that the Defendant is
13 indigent and has the advantage of seeking county funds for such an endeavor. Moreover, when
14 the topic of turned over photographs with statistical numbers included in the photos came up,
15 the defense again represented to the court that there were photos merely taken by its expert
16 and not expressly cut and pulled from an accident reconstruction video. At no point, did the
17 defense inform the Court or the State about the existence of a video taken by its expert. With
18 respect to the existence of notes, rather than agreeing to provide them to the State, the defense
19 simply encouraged the State to call and discuss with its expert about his findings and whether
20 or not any notes existed. The State acknowledged that it was ready, but also acknowledged
21 that its agreement to be ready was predicated on the fact there was not any further outstanding
22 discovery relating to the defense's expert witness. At the instruction of the Court and
23 recommendation by the defense, the State indicated that it would contact Dr. Johnson that day
24 to inquire about his findings and any other outstanding materials he prepared.

25 ///

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27 ///

28 ///

1 **THE STATE'S DISCOVERY OF OUTSTANDING MATERIAL EVIDENCE NOT**
2 **PROVIDED TO THE STATE IN REGARD TO DEFENSE "REENACTMENT"**
3 **EXPERT DR. DUTCH JOHNSON**

4 On October 18, 2016, the same day as calendar call, the State contacted the Defense
5 expert witness, Dr. Dutch Johnson, via telephone. Dr. Johnson informed the State that he relied
6 upon the following six items in preparing his work and formulating his opinions.

7 Five items were provided to the defense by the State under its discovery obligations
8 pursuant to Nevada's discovery statutes. Those five items were 1) a LVMPD re-enactment
9 video in which the Defendant attempted to explain what occurred to the two-year-old burn
10 victim, 2) measurements taken by LVMPD of a kitchen counter in the residence where the
11 crime occurred, 3) LVMPD photographs of the victim's burned hands, 4) LVMPD photograph
12 of a coffee mug that Defendant purportedly claims contained the coffee that burned the
13 victim's hands and 5) the victim's medical records from Sunrise Hospital and UMC hospital.

14 The sixth item were measurements and photographs taken within the residence by the
15 Defense's investigator, which were never provided to the State.

16 Dr. Johnson explained to the State that he reviewed what the Defendant said in the
17 LVMPD re-enactment video and essentially tried to recreate what Defendant said occurred in
18 the videos that he filmed. Dr. Johnson acknowledged to the State that he played around with
19 different variables for a long time and then would revisit and re-review the reenactment video
20 involving the Defendant. Dr. Johnson acknowledged to the State that he tried to figure out
21 what scenarios "worked," which scenarios "didn't work," which scenarios made sense and
22 then decided to film his own video of a "reenactment."

23 Dr. Johnson reported that the reenactment videos that he recorded did not use the actual
24 victim. Additionally, for the videos that he recorded, Dr. Johnson used two different test
25 subjects. One subject was the victim's relative size, based on the information available in the
26 medical records, specifically the victim's height and knowing the child was neither obese nor
27 skinny. The second subject, was four years old, *two years* older than the victim at the time this
28 crime occurred. Dr. Johnson told the State that he made the decision to use a four-year-old

1 rather than a two-year-old, like the victim's actual age, because of the difficulties getting a
2 younger child to stand still and perform the reenactment as he desired.

3 Additionally, Dr. Johnson stated that he did not use the actual mug that the Defendant
4 claims contained the coffee that burned the victim, but a different mug that Dr. Johnson
5 approximated to be similar in measurements and size based, in part, on the measurements and
6 photos prepared by the defense investigator and provided by the defense for his review.

7 In total, Dr. Johnson informed the State that he recorded twenty videos during his re-
8 enactment process. None were ever provided to the State to review prior to yesterday's
9 calendar call and none have been provided to the State to date.

10 Dr. Johnson also acknowledged that he used a specific computer program to calculate
11 the time and distance during his numerous reenactments. However, the name of this program
12 and how it functions were likewise never provided to the State prior to yesterday's
13 calendar call and none has been provided to date.

14 Dr. Johnson explained that he took still photographs from one of the twenty video
15 recordings and provided those still photographs to the Defense. It should be noted that those
16 still photographs were turned over to the State by the Defense. However, Dr. Johnson did not
17 specify to the State from which of the *twenty separate video reenactments* these still
18 photographs were pulled from.

19 In addition to the twenty video reenactments he filmed, Dr. Johnson acknowledged to
20 the State that he also took notes of the calculations down on paper.

21 Dr. Johnson admitted that he got rid of some of the notes that he already incorporated
22 into his presentation that intends to use during his trial testimony. However, Dr. Johnson also
23 admitted to the State that he is still in the midst of preparing his trial presentation for next
24 week and it is not completed.

25 It should also be noted that no report has ever been prepared in this case and the defense
26 readily admitted at calendar call that it instructed Dr. Johnson not to do so due to the expense
27 of preparing such a report.

28 ///

1 The State expressly requested that Dr. Johnson provide all videos and materials he
2 received from the defense, as well as any notes he created during his work on the case. Dr.
3 Johnson informed that State that after this telephone conversation on October 18, 2016
4 between him and the State, he would provide all of these materials to the defense. Dr. Johnson
5 did not want to turn over these materials directly to the State, but rather wanted the defense to
6 turn these items over to the State. Dr. Johnson stated that he would put these materials on a
7 jump drive and then mail them to the defense. Once the defense received the items and
8 reviewed them, Dr. Johnson stated it could then be provided to the State for its review.

9 The State asked Dr. Johnson that upon receipt of these videos, notes and other materials
10 if we could call him back to discuss his conclusions and reasoning for those conclusions. Dr.
11 Johnson stated "I don't see why not." The State and Dr. Johnson agreed that the State would
12 call him back once the State was in receipt of these materials and set up a mutually convenient
13 time to discuss the case.

14 ARGUMENT

15 **I. The Defendant Was Obligated Under Nevada's Discovery Statutes to Disclose** 16 **Material Discoverable Information Pertaining to Their Expert Dr. Johnson**

17
18 The Nevada Revised Statutes lay out very clear obligations for a defendant to comply with
19 in terms of disclosing discovery in relation to an expert witness. First, under NRS 174.234,
20 the Defendant is under a continuing obligation to provide all reports prepared by and expert
21 witness and provided the punishments and sanctions associated with a defendant's failure to
22 comply with its discovery obligations. Nevada Revised Statute 174.234 states in pertinent part:

23 NRS 174.234 Reciprocal disclosure of lists of witnesses and
24 information relating to expert testimony; continuing duty to
25 disclose; protective orders; sanctions.

26 2. If the defendant will be tried for one or more offenses that
27 are punishable as a gross misdemeanor or felony and a witness that
28 a party intends to call during the case in chief of the State or during
the case in chief of the defendant is expected to offer testimony as
an expert witness, the party who intends to call that witness shall

1 file and serve upon the opposing party, not less than 21 days before
2 trial or at such other time as the court directs, a written notice
containing:

3 (a) A brief statement regarding the subject matter on which
4 the expert witness is expected to testify and the substance of the
testimony;

5 (b) A copy of the curriculum vitae of the expert witness; and

6 (c) A copy of all reports made by or at the direction of the
7 expert witness.

8 3. After complying with the provisions of subsections 1 and
9 2, each party has a continuing duty to file and serve upon the
opposing party:

10 (a) Written notice of the names and last known addresses of
11 any additional witnesses that the party intends to call during the
12 case in chief of the State or during the case in chief of the
13 defendant. A party shall file and serve written notice pursuant to
14 this paragraph as soon as practicable after the party determines that
15 the party intends to call an additional witness during the case in
16 chief of the State or during the case in chief of the defendant. The
17 court shall prohibit an additional witness from testifying if the
18 court determines that the party acted in bad faith by not including
19 the witness on the written notice required pursuant to subsection
20 1.

21 (b) Any information relating to an expert witness that is
22 required to be disclosed pursuant to subsection 2. A party shall
23 provide information pursuant to this paragraph as soon as
24 practicable after the party obtains that information. The court shall
25 prohibit the party from introducing that information in evidence or
26 shall prohibit the expert witness from testifying if the court
27 determines that the party acted in bad faith by not timely
28 disclosing that information pursuant to subsection 2.

6. In addition to the sanctions and protective orders
otherwise provided in subsections 3 and 5, the court may upon the
request of a party:

(a) Order that disclosure pursuant to this section be denied,
restricted or deferred pursuant to the provisions of NRS 174.275;
or

(b) Impose sanctions pursuant to subsection 2 of NRS
174.295 for the failure to comply with the provisions of this
section.

7. A party is not entitled, pursuant to the provisions of this
section, to the disclosure of the name or address of a witness or
any other type of item or information that is privileged or protected

1 from disclosure or inspection pursuant to the Constitution or laws
2 of this state or the Constitution of the United States.

3 Second, under NRS 174.245(1)(a) and (b), at the request of the State, the Defendant
4 shall permit the State to inspect, copy or photograph: 1) all written or recorded statements of
5 a defense witness and 2) all results and reports of scientific tests or experiments. Nevada
6 Revised Statute 174.245 states:

7 NRS 174.245 Disclosure by defendant of evidence relating to defense; limitations.

8
9 1. Except as otherwise provided in NRS 174.233 to 174.295,
10 inclusive, at the request of the prosecuting attorney, the defendant
11 shall permit the prosecuting attorney to inspect and to copy or
12 photograph any:

13 (a) Written or recorded statements made by a witness the
14 defendant intends to call during the case in chief of the defendant,
15 or copies thereof, within the possession, custody or control of the
16 defendant, the existence of which is known, or by the exercise of
17 due diligence may become known, to the defendant;

18 (b) Results or reports of physical or mental examinations,
19 scientific tests or scientific experiments that the defendant intends
20 to introduce in evidence during the case in chief of the defendant,
21 or copies thereof, within the possession, custody or control of the
22 defendant, the existence of which is known, or by the exercise of
23 due diligence may become known, to the defendant; and

24 (c) Books, papers, documents or tangible objects that the
25 defendant intends to introduce in evidence during the case in chief
26 of the defendant, or copies thereof, within the possession, custody
27 or control of the defendant, the existence of which is known, or by
28 the exercise of due diligence may become known, to the
defendant.

2. The prosecuting attorney is not entitled, pursuant to the
provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is
prepared by or on behalf of the defendant or the defendant's
attorney in connection with the investigation or defense of the
case.

(b) A statement, report, book, paper, document, tangible
object or any other type of item or information that is privileged
or protected from disclosure or inspection pursuant to the
Constitution or laws of this state or the Constitution of the United
States.

1 Third, pursuant to NRS 174.295, the defendant is under a clear and continuing duty disclose
2 discoverable material pursuant to Nevada's discovery statutes. Furthermore, this statute
3 further provides a failure to disclose such material may result in relief in the form of a
4 continuance or even more severe – an exclusion of such evidence at trial. Nevada Revised
5 Statute expressly states:

6 NRS 174.295 Continuing duty to disclose; failure to comply;
7 sanctions.

8
9 1. If, after complying with the provisions of NRS 174.235
10 to 174.295, inclusive, and before or during trial, a party discovers
11 additional material previously requested which is subject to
discovery or inspection under those sections, the party shall
promptly notify the other party or the other party's attorney or the
court of the existence of the additional material.

12 2. If at any time during the course of the proceedings it is
13 brought to the attention of the court that a party has failed to
14 comply with the provisions of NRS 174.234 to 174.295, inclusive,
15 the court may order the party to permit the discovery or inspection
16 of materials not previously disclosed, grant a continuance, or
prohibit the party from introducing in evidence the material not
disclosed, or it may enter such other order as it deems just under
the circumstances.

17 **II. The Defendant at Best Failed to Disclose and at Worst Withheld Material**
18 **Discoverable Information From the State Relating to Their Expert Dr.**
19 **Johnson**

20 As described above in the State's statement of facts, the scope and extent of discoverable
21 material produced by Dr. Johnson that has been withheld from the State is astonishing. Dr.
22 Johnson apparently recorded *twenty different video reenactments* and none were provided to
23 the State. Furthermore, based on their expert's own admission, the various recorded videos
24 were recorded and re-recorded in an effort to find a scenario that best "worked" for the
25 Defendant's version of events. In short, it appears this expert continually conducted
26 reenactments until he finally produced one that fit the narrative of the Defendant. There is
27 simply no excuse that videos have yet to be provided to the State let alone after the Defendant
28

1 has announced ready to go to trial as each video goes to the veracity, credibility and weight of
2 the final opinion rendered by this expert witness.

3 While the State anticipates that the Defendant may argue that it did not provide these videos
4 because it never intended to use each video in their case-in-chief and/or that the plethora of
5 videos created by Dr. Johnson are not reports, these arguments are inconsistent with the fact
6 that Dr. Johnson will solely rely upon the reenactments that he believed "worked" to fit the
7 Defendant's narrative. It is highly relevant and probative to the strength and weight of this
8 expert's opinions if there were a litany of reenactments that were conducted by the defense's
9 expert that did not work and essentially disproved the Defendant's narrative of what occurred.

10 All of these reenactment videos are the result of tests, as clearly delineated in NRS
11 174.245(b), accordingly these videos are material and unquestionably discoverable under
12 Nevada's discovery statutes. However, prior to calendar call yesterday, the Defendant never
13 provided these videos pursuant to the State's request or this Court's discovery order months
14 ago requiring reciprocal discovery be turned over. Moreover, it appears if the State had not
15 had this conversation with the Defendant's expert on October 18, 2016, it likely would never
16 have known of the existence of this myriad of failed reenactments.

17 Nevada Revised Statute 174.245(b) is quite clear that these materials were required by law
18 to be turned over because they either were "known" by the defense or at worst through an
19 exercise of "due diligence may [have] become known." NRS 174.245. The Defendant's willful
20 failure to obtain the evidence, when known by the defense shouldn't eviscerate their statutory
21 obligations. Nevada Revised Statute 174.295 is the continuing duty to disclose and the
22 Defendant should have to uphold its obligations under the law.

23 The State would also point out that the defense readily admitted to the Court yesterday
24 during that calendar call that it instructed Dr. Johnson not to prepare an expert report. An
25 expert report that may very well revealed the extent and scope of his numerous failed
26 reenactment and supposedly lone successful reenactment. However, the defense indicated to
27 the Court that it elected not to do so due to its prohibitive cost. The State is troubled about this
28

1 decision to not have a report prepared in light of its recent discovery the vast scope of the
2 "failed reenactments" conducted by Dr. Johnson.

3 It is unquestionably clear that the Defendant failed its clear continuing duty to disclose
4 material evidence to the State and the Court should hold them accountable for its failure to do
5 so pursuant to NRS 174.245 and 174.295.

6 **III. The Defendant's Egregious Violation of its Discovery Obligations Warrants**
7 **the Immediate Disclosure of These Expert Materials and a Continuance of**
8 **this Trial**

9 While it appears that Dr. Johnson is willing to provide such information to the State
10 provided the defense gives its permission, the State is seeking a Court order providing the
11 immediate disclosure of this information. The State specifically seeks the disclosure of the
12 following information:

- 13
14 - All videos recorded by Dr. Johnson during the course of his work on this case
15 - All notes, written documents, reports or presentations prepared by Dr. Johnson in
16 relation to this case
17 - All photographs and measurements taken by the Defendant's investigator that Dr.
18 Johnson acknowledged he relied upon during his work on this case.

19 Second, the State is seeking a Court order instructing Dr. Johnson to immediately cease
20 and desist from further destroying any more written notes that he has prepared in connection
21 with this case as he readily admitted that he has been destroying them as he prepared his trial
22 testimony presentation.

23 Third, to the extent that Dr. Johnson is preparing to present some form of power point or
24 video presentation to the jury during trial, the State requests that any such video presentation
25 be provided to the State prior to the beginning of trial.

26 Finally, in light of the fact that it is Wednesday, October 19, 2016 and to date none of the
27 videos, notes or investigator photographs or measurement have been provided to the State in
28 lieu of a trial set to begin in five days, the State is requesting that the Court vacate the trial and
order a continuance of this case. In the event that all of this information could even be provided

1 to the State by the 19th buy an out-of-state witness, which in all likelihood it will not, five days
2 is woefully insufficient to expect the State to review and prepare its own witnesses, including
3 its own out-of-state expert witness, for all of the information contained in this extensive
4 amount of discovery.

5 A fair and reasonable remedy under these circumstances would be to order the Defendant
6 to turn over this information and provide the State with an appropriate amount of time to
7 review and analyze highly material discoverable information. If the Court determines that trial
8 must go forward, pursuant to the remedies under these discovery statutes the only fair
9 resolution at this juncture would be to strike the expert testimony of Dr. Johnson. However, in
10 the interest of avoiding potential post-conviction issues related to ineffective assistance of
11 counsel and impinging of the Defendant's theory of defense, the State believes the more
12 reasonable remedy would be to vacate Monday's trial date and reset the trial in the ordinary
13 course. Accordingly, a continuance of the trial is clearly permissible under NRS 174.245 and
14 174.295 as well as warranted under the circumstances.

15 DATED this 19th day of October, 2016.

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

18 BY Chris J. Hamner #10575
19 CHRISTOPHER S. HAMNER
20 Deputy District Attorney
Nevada Bar #11390
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of Notice of Motion to Continue Trial Based on Outstanding Expert Discovery was made this 19th day of October, 2016, by facsimile transmission to:

DEPUTY PUBLIC DEFENDER
FAX #455-5112

BY: *J. Moseley*
Secretary for the District Attorney's Office

CSH/jm/SVU

EXHIBIT "1"

ORIGINAL

OPI
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

OCT 20 2016

BY: 
SUSAN JOVANOVIICH, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369
Defendant.

CASE NO: C313047

DEPT NO: XII

**ORDER FOR PRODUCTION OF INMATE
DONOVINE MICHAEL MATHEWS, BAC #1161064**

DATE OF HEARING: October 21, 2016

TIME OF HEARING: 10:00 A.M.

TO: BRIAN WILLIAMS, Warden of the High Desert State Prison;

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER S. HAMNER, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that BRIAN WILLIAMS, Warden of the High Desert State Prison shall be, and is, hereby directed to produce DONOVINE MICHAEL MATHEWS, in Case Number C313047, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said DONOVINE MICHAEL MATHEWS is currently incarcerated in the High Desert State Prison located in Indian Springs, Nevada and his presence will be required in Las Vegas,

C-16-313047-1
OPI
Order for Production of Inmate
4592819



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1 Nevada commencing on October 21, 2016, at the hour of 10:00 o'clock A.M. and continuing
2 until completion of the prosecution's case against the said Defendant.

3 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,
4 Nevada, shall accept and retain custody of the said DONOVINE MICHAEL MATHEWS in
5 the Clark County Detention Center, Las Vegas, Nevada, pending completion of said matter in
6 Clark County, or until the further Order of this Court; or in the alternative shall make all
7 arrangements for the transportation of the said DONOVINE MICHAEL MATHEWS to and
8 from the Nevada State Prison facility which are necessary to insure the DONOVINE
9 MICHAEL MATHEWS's appearance in Clark County pending completion of said matter, or
10 until further Order of this Court.

11 DATED this 20 day of October, 2016.

12 
13 DISTRICT JUDGE

14
15 STEVEN B. WOLFSON
16 Clark County District Attorney
Nevada Bar #001565

17
18 BY 

19 CHRISTOPHER S. HAMNER
20 Deputy District Attorney
Nevada Bar #11390

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27
28 jm/SVU

ORIGINAL

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 KRISTY S. HOLIDAY, DEPUTY PUBLIC DEFENDER
4 NEVADA BAR NO. 13519
5 PUBLIC DEFENDERS OFFICE
6 309 South Third Street, Suite 226
7 Las Vegas, Nevada 89155
8 Telephone: (702) 455-4685
9 Facsimile: (702) 455-5112
10 Kristy.Clark@ClarkCountyNV.gov
11 *Attorneys for Defendant*

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

OCT 21 2016

BY: *Carole D'Aloia*
CAROLE D'ALOIA, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 DONOVINE MATHEWS,

13 Defendant,

CASE NO. C-16-313047-1

DEPT. NO. XII

DATE: October 21, 2016
TIME: 10:00 a.m.

15 DEFENSE OPPOSITION TO STATE'S MOTION TO CONTINUE

16 COMES NOW, the Defendant, DONOVINE MATHEWS, by and through KRISTY
17 S. HOLIDAY, Deputy Public Defender and hereby requests that this Honorable Court deny the
18 State's Motion to Continue Trial.

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

21 DATED this 21st day of October, 2016.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24 By: *KHolan*
25 KRISTY S. HOLIDAY, #13519
26 Deputy Public Defender

27 C-16-313047-1
28 OPM
Opposition to Motion
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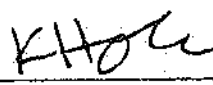
DECLARATION

KRISTY S. HOLIDAY makes the following declaration:

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

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

EXECUTED this 21st day of October, 2016.



KRISTY S. HOLIDAY

STATEMENT OF RELEVANT FACTS

1
2 According to the State's reenactment video and Mr. Mathews' recorded statement, Mr.
3 Mathews told detectives that he poured boiling hot water into a coffee mug in order to make
4 instant coffee. Mr. Mathews' pointed out to the Detective the spot on the counter where he placed
5 the mug. Mr. Mathews then went into another room to change a child's diaper, and when he came
6 back into the kitchen the mug was on the floor and Chance's hands were burned. (*See in general,*
7 *Arrest Report*).

8 According to the State, Dr. Olson of Sunrise Hospital suggested "that chance did not grab a
9 cup of hot water which was above his shoulders and spill it on himself only to receive 2nd degree
10 burns on the back of both hands and not on any other part of Chances' arms, leg and face (being
11 uncovered)," *Arrest Report* at 3. Dr. Cetl of Sunrise Hospital opined that "the explanation given by
12 Donovine would suggest additional burn marks to Chance's arms, legs, and possibly upper torso to
13 include his face." *Id* at 4. Expert Phylip Peltier suggested that "if Chance would have grabbed the
14 cup of water with temperatures 150 degrees Fahrenheit or more from the counter in which he had
15 to reach over his shoulders for and spilled it on himself, he would have had a pattern of burns
16 starting from his fingers moving down towards his wrists splashing onto his arms and possibly
17 legs." *Id* at 4. The Arrest Report's authors summarizes by stating, "a slow deliberate pour would
18 be most plausible, and not an accident spill coming from above his shoulders as that theory would
19 show burns running towards the write and forearms." The Arrest Report concludes, "The story
20 along with the videotaped re-enactment from Donovine was completely inaccurate about how
21 Chance sustained his burns." *Id* at 5.

22 Crime Scene Analyst J. Szukiewicz measured the counter top as being "approximately 35
23 inches." *Id* at 3. Medical Record provided by the State describe Chance as being 35 inches tall. A
24 photo provided by the State indicates that the mug Mr. Mathews identifies in his interview with
25 Detectives is a black Mainstays (Walmart) brand mug with decorative ridges at the top and middle
26 of the cup.

27 Public Defender Investigator Kevin Gene took six photographs of the mug and the counter
28 top inside the apartment in question and provided them to our expert, Dr. Dutch Johnson. I sent an

1 email to Deputy District Attorneys Chris Hamner and Michelle Jobe on October 4, 2016 with 18
2 images attached. Kevin Gene's six photographs were among the attachments to that email,
3 "labeled IMG_03 through IMG_08," along with a duplicate of one of those six photo's labeled
4 "KG Counter Meas." Five of the images provided in my October 4 email to the district attorneys
5 were still frames extracted from videos Mr. Johnson filmed (videos ranging in length from 2-11
6 seconds). Three of the images provided in the email were photos/video previously provided to the
7 defense by the State, and three of those photos were Mr. Johnson's own photos of the exemplar
8 mugs, child, countertop, and a spill. These images I provided in the October 4 email represent all
9 of the images we intend to introduce in evidence during our case in chief and all of the images we
10 had possession of on October 4.

11 In additional to the images provided in the October 4 email, Mr. Johnson took six photos of
12 the exemplar mug, and one additional splash photo. We do not intent, nor did we ever intend, to
13 use any of those photos in our case in chief, and that is why Mr. Johnson did not previously send
14 them to us.

15 Dr. Johnson took videos of cup drops, spills, and a turning/running child, ranging in length
16 from 2 seconds to 11 seconds per video. All the videos put together total 1.95 minutes (117
17 seconds). Dr. Johnson took these videos in order to ultimately create still frame shots to explain the
18 biomechanics behind the action taking place in the video. The defense does not intend, nor did we
19 ever intend, to introduce any of those videos in evidence during our case in chief, and that is why
20 Dr. Johnson did not even send them to the defense, and the defense never watched the videos.
21 From the videos Dr. Johnson took, Dr. Johnson ultimately submitted the still frame shot photos
22 from five of those videos to the defense, and those five still frame shot photos are the same photos
23 that were sent to the district attorneys in the October 4 email.

24 Dr. Johnson also created roughly two to three pages of notes throughout the course of his
25 testing. Dr. Johnson represents that those notes included roughly half a page of conversion
26 calculations used to determine how many fractions of a second were represented in each still frame
27 shot photo he created; and possibly other reminder notes regarding which type of spill was
28 performed in each video. For example, Dr. Johnson represents that he may have jotted down

1 something to the effect of "61 gravity spill" to remind himself as he was creating the videos that he
2 had already performed a gravity spill in video number 61. Dr. Johnson represents that he would
3 have discarded those notes because he no longer needed them as a reminder once he created the
4 videos as he could clearly see which type of spill each video represented, and those notes would be
5 incorporated into his trial presentation. These jotted-down reminders would not have been notes
6 Dr. Johnson relied in reaching his conclusions. Dr. Johnson recreated the time-conversion
7 calculations, along with pictures and an explanation of the calculations in a three-page document
8 emailed to defense on October 19, and defense hand-delivered that document to the district
9 attorneys in court on October 20. Dr. Johnson further represents that he made no other calculations
10 for this case beyond those included in that three-page document.

11 12 ARGUMENT

13 As the State pointed out, NRS 174.234 requires the Defendant provide all expert witness
14 reports to the State, and there is no expert report in this case.

15 NRS 174.245 requires the defense to provide the State with: "Results or reports of physical
16 or mental examination, scientific tests, or scientific experiments that the defendant intends to
17 introduce in evidence during the case in chief of the defendant..." (emphasis added). There is no
18 statute or case to my knowledge that requires defense to provide an expert's videos, photos, or
19 notes that the defense does not intend to introduce in evidence, and that would "essentially
20 disprove the Defendant's narrative of what occurred." (*State's Motion* at 11). In fact, I would argue
21 that such a requirement would run afoul of the defendant's Constitutional right against self-
22 incrimination.

23 However, in this case, the defense has no problem with providing the State the items that
24 we do not intend to introduce in evidence during our case in chief, even though we are not required
25 to under the statute. Because we have already disclosed everything we are required to disclose
26 under the statute, and everything we intend to introduce during our case in chief, we request that
27 this Honorable Court deny the State's Motion to Continue. We also request that this Honorable
28 Court deny the State's Motion to Continue because it is reasonable to expect that the State could

1 review the two minutes of video, six additional pictures, and half-page of time conversion
2 calculations before trial commences on Monday.

3 The defense's position is that exclusion of items not previously disclosed would be an
4 appropriate remedy over a continuance. In fact, this is usually the defense's position when we
5 argue that the State has not turned over discovery in a timely manner. In this case, the defense
6 does not intend to use anything at trial that the defense did not disclose prior to Calendar Call, and
7 so we would again request that this Honorable Court exclude specific items that we not disclosed
8 prior to calendar call as opposed to continuing Mr. Mathews' trial.

9 Finally, to date, Dr. Johnson has not completed the presentation that he would request to
10 use during his direct examination, but he intends to complete it by Friday, October 21, 2016. In
11 the State's Motion, the State requested that defense provide a copy prior to the beginning of trial,
12 and the defense would be more than happy to comply with that request. In fact, we can commit to
13 delivering the presentation to the State by 5:00pm Friday. However, the defense has not yet
14 determined if we will request that Dr. Johnson be allowed to use the presentation during his direct
15 examination.

16
17 DATED this 21st day of October, 2016.

18 PHILIP J. KOHN
19 CLARK COUNTY PUBLIC DEFENDER

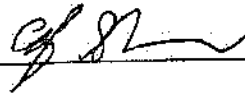
20 By: 

21 KRISTY S. HOLIDAY, #13519
22 Deputy Public Defender
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing OPPOSITION is hereby
acknowledged this 21 day of October, 2016.

CLARK COUNTY DISTRICT ATTORNEY

By: 


CLERK OF THE COURT

1 ORDR
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 KRISTY S. HOLIDAY, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 13519
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10 Facsimile: (702) 455-5112
11 Kristy.Clark@ClarkCountyNV.gov
12 Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

DONOVINE MATHEWS,

Defendant,

CASE NO. C-16-313047-1

DEPT. NO. XII

ORDER FOR DISCOVERY

THIS MATTER having come before the Court on July 26, 2016, the Defendant being present, represented by KRISTY HOLIDAY, Deputy Public Defender, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHELLE JOBE, Deputy District Attorney, and the Court having heard the arguments of counsel, based on the pleadings and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant's Motion for Discovery shall be, and is hereby GRANTED and/or DENIED, as follows:

1. Request 1: Motion GRANTED pursuant to NRS 174.235.
2. Request 2: Motion GRANTED pursuant to NRS 174.235.
3. Request 3: Motion GRANTED as required by statute.
4. Request 4: Motion DENIED WITHOUT PREJUDICE.
5. Request 5: Motion DENIED as overbroad.

- 1 6. Request 6: Motion GRANTED pursuant to Brady v. Maryland, 373 U.S. 83 (1963).
- 2 7. Request 7: Motion DISMISSED.
- 3 8. Request 8: Motion GRANTED.
- 4 9. Request 9: Motion GRANTED as to photographs and medical records.
- 5 10. Request 10: Motion GRANTED as required by NRS 174.234 (4)(11).
- 6 11. Request 11: Motion DENIED as overbroad.
- 7 12. Request 12: Motion DISMISSED.
- 8 13. Request 13: Motion DISMISSED.
- 9 14. Request 14: Motion GRANTED as to audio, video, and photographs taken.
- 10 15. Request 15: Motion DISMISSED.
- 11 16. Request 16: Motion GRANTED as required by statute.
- 12 17. Request 17: Motion DENIED.
- 13 18. Request 18: Motion GRANTED as to prior felonies and crimes of dishonesty.
- 14 19. Request 19: Motion DENIED.
- 15 20. Request 20: Motion GRANTED.
- 16 21. Request 21: Motion GRANTED as to medical records related to specific instance of
17 this case.
- 18 22. Request 22: Motion GRANTED. State ORDERED to submit sealed records related to
19 this case to the Court for in camera review and determination as to whether included
20 information is relevant pursuant to Brady v. Maryland.
- 21 23. Request 23: Motion GRANTED as to information expert relied upon when forming
22 opinion.
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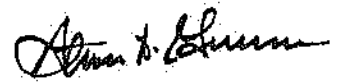
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By: Cheryl Trautman
An employee of the
Clark County Public Defender's Office

4.



CLERK OF THE COURT

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Chief Deputy District Attorney
Nevada Bar #11390
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DONOVINE MATHEWS, aka,
Donovian Mathews, #5910369

Defendant.

CASE NO: C-16-313047-1

DEPT NO: XII

**NOTICE OF MOTION AND MOTION IN LIMINE TO STRIKE OR LIMIT THE
TESTIMONY OF DEFENDANT'S EXPERT DR. LINDSEY "DUTCH" JOHNSON
OR IN THE ALTERNATIVE A REQUEST FOR AN EVIDENTIARY HEARING**

DATE OF HEARING:
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER S. HAMNER, Chief Deputy District Attorney, and files this Notice of Motion and Motion in Limine to Strike or Limit the Testimony of Defendant's Expert Dr. Lindsey "Dutch" Johnson or in the Alternative a Request for an Evidentiary Hearing.

This Motion 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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DATED this 16th day of December, 2016.

BY /s/ CHRISTOPHER S. HAMNER
CHRISTOPHER S. HAMNER
Chief Deputy District Attorney
Nevada Bar #11390

STATEMENT OF FACTS PERTAINING TO THE CRIME

On January 5, 2016, Detective Phillip DePalma responded to Sunrise Hospital, specifically with respect to a two-year-old child named C.J. Preliminary Hearing Transcript "PHT" at 5-6, 66. When the detective saw C.J. he was laying down in the hospital with bandages wrapped around both hands and he was crying. Id. at 6, C.J. was being treated for second-degree burns on his hands. Id. at 8. C.J. was at the hospital with his mother, Jasmine Cathcart, and the mother's boyfriend, Donovine Mathews, the Defendant. Id. at 6-7.

Detective DePalma had the opportunity to see C.J. injured hands without the bandages. Id. at 8. DePalma noted two burns one on the back of each of J.C.'s hands. Id. DePalma conducted an interview the Defendant at the hospital. Id. At this time, the Defendant was not in custody and was free to leave and not answer any questions if he wished. Id. The Defendant told Detective DePalma that C.J. had burned his hands on the same day he was taken to the hospital January 5, 2016. Id. at 10.

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1 Defendant told police he boiled water in a silver pot on the stove to make coffee. Id. at
2 17, 24. Defendant also identified during the re-enactment the cup that he supposedly poured
3 the boiling water into. Id. at 17. The handle of the cup was broken off. Id. at 18. It was also
4 covered in dried bits of food. Id. at 30. During the re-enactment, Defendant filled the pot of
5 water he said he boiled to demonstrate how he made his coffee. Id. at 25. Defendant then said
6 he left the kitchen and ultimately went into two different bedrooms where he ended up
7 changing the diaper of the victim's one-year old sister. Id. at 25. As he changed the diaper
8 of the victim's sister in a bedroom, he heard the victim screaming. Id. According to the
9 Defendant, he did not see what happened to C.J. or how anything unfolded with C.J. Id.
10 Instead he claimed he walked back into the kitchen to see C.J. screaming and he saw a mug
11 on the floor. Id. Defendant claims the victim was saying "hot, hot." Id.

12 DePalma also asked Defendant to show police where the coffee was located for the
13 coffee he made in the kitchen. Id. However, on the videotaped reenactment, the Defendant
14 was unable to locate any coffee whatsoever in the kitchen, let alone the residence. Id. at 25;
15 (Ex. 1). Defendant claimed he left the coffee cup on the counter towards the edge. PHI at 25.
16 Police did not locate any step stools near the kitchen. Id. Nor was there any water or coffee
17 spills found on the kitchen floor. Id. at 30.

18 Detective DePalma also went to the UMC Burn unit where C.J. had a doctor's
19 appointment. Id. at 19. J.C.'s burn were only localized at the back of his two hands. Id. C.J.
20 had no burns to his palms, face, arms or legs. Id. at 23.

21 **III. The Medical Determination that J.C.'s Was Not Accidentally Burned**

22 Dr. Sandra Cetl, a pediatrician who works for Sunrise Hospital Children's Hospital and
23 the Southern Nevada Children's Assessment Center examined the victim's photographs as
24 well as the ER records related to his admission for these burn injuries. Id. at 41. She is a part-
25 time pediatric emergency room physician as well as physician who evaluates concerns of
26 child abuse, both physical and sexual in nature. Id. at 38-39. Dr. Cetl explained that during
27 over half the shifts she works at the ER probably half the children come in with a burn from a
28 spill or something of that nature. Id. at 40-41.

In examining the medical records and photographs documenting the extent of the burns to C.J.'s hands, she was also informed that the Defendant claimed that the victim, who is 37 inches tall, purportedly grabbed a mug of boiling water on a counter that was 35 inches tall and caused these injuries. *Id.* at 42. Dr. Cetl testified at the preliminary hearing that based on her review of the injuries that version of events was inconsistent with the injuries that she saw on C.J.'s hands. *Id.* at 42.

Dr. Cetl explained that it is quite common at the hospital to see burns that come from a child who pulls down a hot liquid onto themselves. Id. at 42. However, Dr. Cetl pointed out in those cases, the spilled liquid pours not only onto just the backs of their hands, but also their face, chest, torso and abdomen. Id. Additionally, Dr. Cetl noted in actual hot liquid spills, the spills have an irregular burn pattern on the skin of the child, looking like an inverted triangle as they come down. Id. Dr. Cetl noted that was not present in C.J.'s case. Id. Nor did C.J.'s burns have the features of lessening burn severity around the edges, which is to be expected in accidental liquid burn cases. Id.

Additionally, Dr. Cetl noted that based on the height of C.J. and the height of the counter, the spill likely would have fallen on the front of his body rather than being isolated solely on the back portions of his hands. Id. at 43. Dr. Cetl's expert opinion was that based on the pattern of the injuries to his hands it was inconsistent with a spill injury. Id. Dr. Cetl also opined that if C.J. had merely been wearing a short-sleeved t-shirt, socks and a diaper, she would have expected to see additional injuries on C.J.'s body. Id. at 43. Specifically, she testified that she would have expected to see injuries to C.J.'s chest, face and chin. Id. at 44.

Upon reviewing the extent of the burn to C.J.'s hands she noted that the burns were only localized on the dorsal, or top, portion of his hands and limited only to those areas. Id. at 44. This localized area was "significant" to Dr. Cetl, because she stated that in a typical household burn situation, one would expect to also find burns on the palms of the child's hand, but in this case there were none. Id. at 45. Ultimately, after reviewing all of the medical records and photographs, Dr. Cetl's medical opinion was that this injury was an abusive inflicted injury rather than accidental. Id. at 45.

Dr. Cetl testified that rather than an accidental spill, the injury was consistent with someone pouring water on top of C.J.'s hands and it was likely that the child curled his fingers inwards and made fists, thus explaining why the child had no burns to his fingers or the palms of his hands. Id. at 45-46. Dr. Cetl also noted it was significant given the child wore a short-sleeve t-shirt that there were no splash marks on the child's forearms. Id. at 46. Dr. Cetl noted C.J. suffered second degree burns to the top portions of his hands. Id. at 47.

STATEMENT OF FACTS PERTAINING TO DR. LINDSEY "DUTCH" JOHNSON

I. The Filing of the Expert Notice and Dr. Johnson's Qualifications

On October 3, 2016, the Defendant filed an expert notice that identified Dr. Lindsay "Dutch" Johnson, out of Glendale, Arizona, as a forensic and biomechanics expert. The defense notice stated that Dr. Johnson was "an expert in the biomechanics of human injury. He is expected to testify regarding the *mechanics of water spilling* from a mug onto a child, and to provide analysis of the biomechanics involved in the instant case." (Ex. 2 - Def. Exp. Not. at 1)(emphasis). The attached Curriculum Vitae indicated that Dr. Johnson that he has a B.S., M.S. and Ph.D. in Mechanical Engineering. (Id. at 4). According the attached CV, Dr. Johnson has not been to medical school, is not a physician, nor is he a physician that specialized in treating burns on adults or children. (Id. at 4). According to his CV, Dr. Johnson has also never held any position in which he practiced in the medical field, assisted in treating children medically, or assisted in treating or helping children who suffered burns be it from liquids or any other substance. (Id.).

Instead, his CV indicated that he has "15 years of forensic reconstruction experience" and "has managed, developed detailed procedures for, and conducted numerous reconstructions tests...." (Id. at 3). Specifically, Dr. Johnson's reconstruction expertise revolved around recreating "stabblings, beatings..., shootings, people throwing objects... and people pushing other people...." (Id.). However, the CV reveals that Dr. Johnson has no experience in there very thing the Defense has indicated he would offer expert testimony on --

reconstructing accidental liquid spills, regardless of whether children or adults are involved.
(Id.).

Moreover, all eight presentations and/or published articles by Dr. Johnson noted in his CV involve biomechanics relating to criminal assault, stabbings, driving related issues or the human cornea. (Id., at 4). Again, Dr. Johnson has not made any presentations or been published in any area dealing with what he has been noticed by the Defense to testify regarding -- hot liquid spills let alone the reconstruction of accidental liquid spills. (Id.). Notably, at the time the Defense filed this expert notice, the notice contained no expert report, notes or power point presentation prepared by Dr. Johnson.

II. The Defense's Initial Production of Expert Materials

On October 8, 2016, the defense sent an email to the State entitled "Expert Materials." The defense expressly stated the following: "We noticed an expert yesterday, and he *has not prepared any reports, but he has taken some pictures.* I have attached them." (See State Ex. 3). A mere seventeen photographs were attached for this email, some including what appeared to be timing intervals. (*Id.*). Some photographs included pictures of a child that were not the instant victim in this case. Some photographs included photographs of spilled coffee mug outside or in locations that were not where the crime in the case occurred. (*Id.*). At no point, in the email does the defense inform the State of any video reenactments or notes taken by this expert. The defendant solely represented to the State that only some pictures were taken. (*Id.* at 1).

Prior to calendar call, the State contacted the defense over the telephone. Specifically, the State inquired about the existence of any notes, reports and the sources of the photographs. The defendant informed the State that no report had been conducted, represented that the photos were taken by its expert rather than derived from any video reenactment and stated that it was not in possession of any notes from its expert at this time. Again, the defense did not indicate to the State that any testing was ever conducted and video recorded by its expert witness.

11

1 On October 18, 2016, calendar call was held before this Court. Both parties announced
2 ready, but the State specifically raised concern about the amount of discovery that had been
3 turned over by the defense. Given the fact that based on the scant materials provided by the
4 defense, the State was left with the impression that Dr. Johnson would act essentially as an
5 accident reconstructionist and wondered about the existence of an expert report as would be
6 common if not standard should an accident reconstructionist testify. The Court agreed with
7 this assessment and specifically asked the defense if a report existed.

8 The defense represented that it explicitly instructed Dr. Johnson *not* to prepare a report
9 due to its prohibitive cost to the defense. This is curious given the fact that the Defendant is
10 indigent and has the advantage of seeking county funds for such an endeavor. Moreover, when
11 the topic of turned over photographs with statistical numbers included in the photos came up,
12 the defense again represented to the court that there were photos merely taken by its expert
13 and not expressly cut and pulled from an accident reconstruction video. At no point, did the
14 defense inform the Court or the State about the existence of a video taken by its expert. With
15 respect to the existence of notes, rather than agreeing to provide them to the State, the defense
16 simply encouraged the State to call and discuss with its expert about his findings and whether
17 or not any notes existed. The State acknowledged that it was ready, but also acknowledged
18 that its agreement to be ready was predicated on the fact there was not any further outstanding
19 discovery relating to the defense's expert witness. At the instruction of the Court and
20 recommendation by the defense, the State indicated that it would contact Dr. Johnson that day
21 to inquire about his findings and any other outstanding materials he prepared.

22 **III. The State's Discovery of Outstanding Material Evidence and Dr. Johnson's**
23 **Explanation of How He Conducted His "Experiments"**

24 On October 18, 2016, the same day as calendar call, the State contacted the Defense
25 expert witness, Dr. Dutch Johnson, via telephone. Dr. Johnson informed the State that he relied
26 upon the following six items in preparing his work and formulating his opinions.

27 Five items were provided to the defense by the State under its discovery obligations
28 pursuant to Nevada's discovery statutes. Those five items were 1) a LVMPD re-enactment

1 video in which the Defendant attempted to explain what occurred to the two-year-old burn
2 victim, 2) measurements taken by LVMPD of a kitchen counter in the residence where the
3 crime occurred, 3) LVMPD photographs of the victim's burned hands, 4) LVMPD photograph
4 of a coffee mug that Defendant purportedly claims contained the coffee that burned the
5 victim's hands and 5) the victim's medical records from Sunrise Hospital and UMC hospital.

6 The sixth item were measurements and photographs taken within the residence by the
7 Defense's investigator, which were never provided to the State.

8 Dr. Johnson explained to the State that he reviewed what the Defendant said in the
9 LVMPD re-enactment video and essentially tried to recreate what Defendant said occurred in
10 the videos that he filmed. Dr. Johnson acknowledged to the State that he played around with
11 different variables for a long time and then would revisit and re-review the reenactment video
12 involving the Defendant. Dr. Johnson acknowledged to the State that he tried to figure out
13 what scenarios "worked," which scenarios "didn't work," which scenarios made sense and
14 then decided to film his own video of a "reenactment."

15 Dr. Johnson reported that the reenactment videos that he recorded did not use the actual
16 victim. Additionally, for the videos that he recorded, Dr. Johnson used two different test
17 subjects. One subject was the victim's relative size, based on the information available in the
18 medical records, specifically the victim's height and knowing the child was neither obese nor
19 skinny. The second subject, was four years old, *two years* older than the victim at the time this
20 crime occurred, Dr. Johnson told the State that he made the decision to use a four-year-old
21 rather than a two-year-old, like the victim's actual age, because of the difficulties getting a
22 younger child to stand still and perform the reenactment as he desired.¹

23 Additionally, Dr. Johnson stated that he did not use the actual mug that the Defendant
24 claims contained the coffee that burned the victim, but a different mug that Dr. Johnson
25 approximated to be similar in measurements and size based, in part, on the measurements and
26 photos prepared by the defense investigator and provided by the defense for his review.

27
28 ¹ Upon review of the videos it appears that three not two different children were used for his "reenactments."

In total, Dr. Johnson informed the State that he recorded twenty videos during his re-enactment process. None were ever provided to the State to review prior to the calendar call.

Dr. Johnson also acknowledged that he used a specific computer program to calculate the time and distance during his numerous reenactments. However, the name of this program and how it functions were likewise never provided to the State.

Dr. Johnson explained that he took still photographs from one of the twenty video recordings and provided those still photographs to the Defense. It should be noted that those still photographs were turned over to the State by the Defense. However, Dr. Johnson did not specify to the State from which of the *twenty separate video reenactments* these still photographs were pulled from.

In addition to the twenty video reenactments he filmed, Dr. Johnson acknowledged to the State that he also took notes of the calculations down on paper. Dr. Johnson admitted that he got rid of some of the notes that he already incorporated into his presentation that intends to use during his trial testimony.

Ultimately, this Court granted the State a continuance based on the extensive outstanding discovery relating to Dr. Johnson. The Defendant subsequently provided the videos to the State as well as Dr. Johnson's power point presentation.

IV. The Content of Dr. Johnson's Videos and PowerPoint Presentation

The Defense ultimately turned over a CD with 35 videos as well as a power point presentation. (Ex. 4). These videos appear to be repeated attempts to recreate a spill on a child's hands but there are clear and stark differences as well as problems between what Dr. Johnson's did and what the Defendant represented to police supposedly occurred.

First, C.J., the 2 year-old victim, was never used in any of these reenactments. Instead, it appears that as many as three or as little as two different children of varying ages from the victim were used in these thirty-five videos.² (Id.). A comparison of three videos entitled

² Dr. Johnson in his PowerPoint presentation admitted that he used 3 different children, but settled for the purposes of his presentation on only one child. No explanation is provided as to how or why the results of the other children were excluded from the PowerPoint presentation.

1 "Emmanuel Spill 091116", "VIDEO0032 Opp Side 1" and "VIDEO0034 CorrSide 2" reveal
2 the three different children who are not C.J. (See Ex. 4).

3 Second, despite the Defendant's claim that C.J. pulled the cup of boiling liquid upon
4 himself, shockingly not a single video of the *thirty-five* that were recorded by Dr. Johnson
5 actually depicts a child pulling a cup of liquid onto himself. (Compare Ex. 1 to Ex. 4). Instead,
6 all the videos depict children laying their forearms completely flat on a counter with a cup
7 either to the right or left of their hands. (Id.). In these so-called "reenactments," a cord was
8 tied to the handle of a mug which is then pulled, presumably by Dr. Johnson, causing water to
9 spill onto the children's hands and forearms. (Id.). In none of the videos do the children ever
10 attempt to touch or handle the cup, despite the Defendant representations to the police that is
11 exactly what C.J. did. (Id.).

12 Third, despite the Defendant claiming that C.J. approached the counter and pulled the
13 water down onto himself, none of the video reenactments ever placed the cup in front of the
14 children's hands and fingers. (Id.). Common sense would dictate that would be the most likely
15 place to place the cup if one was trying to recreate a spill as explained by the Defendant, but
16 Dr. Johnson's reenactments inexplicably never put the cup at that angle.

17 Fourth, none of videos depict a child of 37 inches attempting to even reach for a cup on
18 a counter that was 35 inches in height. (Compare Ex. 4 with PHT 14, 25-26). Thus, the videos
19 never demonstrate if it is even possible for a child to reach a cup on a counter that high and
20 more importantly see how a cup with liquid would spill onto a child.

21 Fifth, a review "VIDEO0034 CorrSide 2" reveals that Dr. Johnson was having the
22 children clearly standing on a step stool so they could actually get their hands on the counter.
23 (Ex. 4). At no point did the Defendant indicate that C.J. used a step stool, nor was one even
24 found in the apartment. PHT at 25-26.

25 Sixth, during all of the theses, Dr. Johnson had the children keep their hands completely
26 still with their palms totally flat on the surface while the water is poured onto them. (Ex. 4).
27 This position is problematic for several reasons. First, the Defendant never said C.J. held his
28 hands in that manner. PHT at 25-26. Second, common sense would dictate that a child having

1 boiling water poured upon their hands would never continue to hold their hands prone and flat
2 as they are being burned. Dr. Johnson, at the very least, should have had the children pull back
3 and recoil their hands to simulate a child's, or any person's, response to being burned with
4 scalding liquid. Third, this hand position presupposes the child's hand were flat to the counter,
5 which makes no sense since a child would have their hands turned upwards or at least
6 perpendicular to the surface in order to reach the mug. The positioning of the hands is a critical
7 factor in accurately understanding the pattern of the burns and what portions of the hands the
8 boiling liquid could have made contact with. Dr. Johnson's reenactment failed to take any of
9 these different positions into account.

10 Similarly, the PowerPoint presentation provided by the defense also is highly
11 problematic. First, the PowerPoint failed to provide to the jury that Dr. Johnson has any
12 expertise in recreating liquid spills or has been published regarding liquid burns on children
13 or adults. (See Ex. 5). Second, the PowerPoint failed to provide and to present evidence that
14 biomechanics was within a recognized field of expertise. (*Id.*). Third, the PowerPoint failed to
15 illustrate how his opinion was capable of being tested or that it had been tested. (*Id.*). Fourth,
16 the PowerPoint fails to provide any evidence that Dr. Johnson has been published or subject
17 to peer review regarding the reenactment of liquid spill burns of a child. (*Id.*). Fifth, the
18 PowerPoint does not provide any evidence that Dr. Johnson has been published on this topic
19 of liquid spills on children, let alone adults. (*Id.*). Sixth, the PowerPoint failed to provide
20 evidence that these types of opinions were generally accepted in the scientific community.
21 (*Id.*).

22 Moreover, throughout the PowerPoint there are a series of opinions from Dr. Johnson
23 that suggest from his perspective the presumption that the Defendant claimed C.J. pulled down
24 the mug and caused the injuries to himself is incorrect because in Dr. Johnson's opinion the
25 Defendant never uttered those specific words. (See Ex. 5 at 44-49). Thus, it appears under Dr.
26 Johnson's analysis the manner in which the cup fell from the counter is a complete unknown.
27 (*Id.*). This is problematic when reviewing the rest of his "experiments" as Dr. Johnson failed
28 to conduct a series of reenactments involving 1) a child causing the cup to fall, 2) an object

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

2 _____

3 DONOVINE MATHEWS,) No. 72701

4 Appellant,)

5 vi.)

6)

7 THE STATE OF NEVADA,)

8 Respondent.)

9 _____)

10 **APPELLANT'S APPENDIX VOLUME I PAGES 001-250**

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26 **CERTIFICATE OF SERVICE**

27 I hereby certify that this document was filed electronically with the Nevada
28 Supreme Court on the 20th day of Oct, 2017. Electronic Service of the
29 foregoing document shall be made in accordance with the Master Service List as follows:

30 ADAM LAXALT
31 STEVEN S. OWENS

32 DEBORAH WESTBROOK
33 HOWARD S. BROOKS

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

36 DONOVINE MATHEWS
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41 BY _____
42 Employee, Clark County Public Defender's Office