

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 73048

Electronically Filed
Dec 13 2017 03:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

HELEN NATKO,

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

District Court Case No. G-13-038863-A

**Appellant's Appendix
Volume I**

Daniel T. Foley, Esq.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 So. 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
mike@foleyoakes.com
Attorneys for Appellant

INDEX TO APPELLANTS APPENDIX
SUPREME COURT CASE NO. 73048

<u>INDEX</u>	<u>VOLUME</u>	<u>PAGES</u>
Amended Judgment of Conviction (Jury Verdict of Guilty)	Volume I	AA00166 – AA00168
Court Minutes	Volume I	AA00157
Court Minutes	Volume I	AA00160 – AA00162
Defendant’s Notice of Appeal	Volume I	AA00158- AA00159
Defendant’s Notice of Hearing of Motion and Motion in Limine to Exclude Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli’s Court Appointed Temporary Guardian, and Mr. Mencarelli’s Court Appointed Guardian, as well as all Financial Expenditures on Behalf of Delford Mencarelli During his Guardianship which began September 16, 2013	Volume I	AA00009- AA00031
Defendant’s Reply to State’s Opposition to Motion in Limine to Exclude Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli’s Court Appointed Temporary Guardian, and Mr. Mencarelli’s Court Appointed Guardian, as well as all Financial Expenditures on Behalf of Delford Mencarelli During his Guardianship which began September 16, 2013	Volume I	AA00054- AA00071
Information	Volume I	AA00001- AA00003
Instructions to the Jury (Instruction No. 1)	Volume I	AA00097- AA00100

Judgment of Conviction (Plea of Guilty)	Volume I	AA00163- AA00165
Motion to Set Aside Verdict and Enter Judgment of Acquittal	Volume I	AA00102- AA00144
Notice of Entry of Order Granting Defendant's Motion in Limine to Exclude Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli's Court Appointed Temporary Guardian, and Mr. Mencarelli's Court Appointed Guardian, as well as all Financial Expenditures on Behalf of Delford Mencarelli During his Guardianship which began September 16, 2013	Volume I	AA00072- AA00076
Opposition to Motion in Limine to Exclude Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli's Court Appointed Temporary Guardian, and Mr. Mencarelli's Court Appointed Guardian, as well as all Financial Expenditures on Behalf of Delford Mencarelli During his Guardianship which began September 16, 2013	Volume I	AA00032- AA00053
Order Denying the State of Nevada's Motion to Remove Daniel T. Foley, Esq. for Conflict	Volume I	AA00004- AA00005
State's Opposition to Defendant's Motion to Set Aside Verdict and Enter Judgment of Acquittal	Volume I	AA00145- AA00149
Stipulations on Pending Motions in Limine as of August 30, 2016	Volume I	AA00006- AA00008
Transcript of Proceedings – April 10, 2017	Volume I	AA00077- AA00096
Transcript of Proceedings – May 3, 2017	Volume I	AA00150- AA00156

Verdict	Volume I	AA00101
Exhibits – States Exhibit No. 9 – Admitted	Volume I	AA00169- AA00194
Exhibits – States Exhibit No. 10 – Admitted	Volume I	AA00195
Exhibits – Natko Exhibits JJ – Admitted	Volume I	AA00196- AA00199
Exhibits – Natko Exhibits KK – Admitted	Volume I	AA00200- AA00204

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an employee of Foley & Oakes, PC, and that on the 13th Day of December, 2017, I served the following document(s):

APPELLANTS APPENDIX – VOLUME I

I served the above-named document(s) by the following means to the person s as listed below:

By Electronic Transmission through the ECF System:

Jay P. Raman
Deputy District Attorney
200 Lewis Ave
Las Vegas, NV 89155

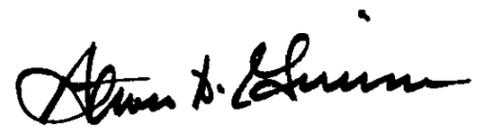
By United States Mail, postage fully prepaid to person(s) and addresses as follows:

By Direct Email:

By Facsimile Transmission:

I declare under the penalty of perjury that the foregoing is true and correct.

/s/ Liz Gould
An employee of FOLEY & OAKES, PC



CLERK OF THE COURT

1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAY RAMAN
6 Chief Deputy District Attorney
7 Nevada Bar #10193
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 3/31/2016
8 10:00 AM
9 Daniel Foley, Esq.

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 HELEN NATKO,
13 #1186757
14 Defendant.

CASE NO: C-16-313574-1
DEPT NO: XIX

I N F O R M A T I O N

15 STATE OF NEVADA)
16 COUNTY OF CLARK) ss.

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

19 That HELEN NATKO, the Defendant(s) above named, having committed the crime of
20 EXPLOITATION OF A VULNERABLE PERSON (Category B Felony - NRS 200.5092,
21 200.5099 - NOC 50304) and THEFT (Category B Felony - NRS 205.0832, 205.0835.4 - NOC
22 55991), on or between August 1, 2011 and August 31, 2013, within the County of Clark, State
23 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
24 and against the peace and dignity of the State of Nevada,

25 COUNT 1 - EXPLOITATION OF A VULNERABLE PERSON

26 did on or about July 5, 2013 willfully, unlawfully and feloniously exploit an vulnerable
27 person, to-wit: DELFORD MENCARELLI, by defendant, having the trust or confidence of
28 DELFORD MENCARELLI or by use of a power of attorney or guardianship, obtain control,

1 through deception, intimidation or undue influence, over DELFORD MENCARELLI's
2 money, assets or property and/or by converting DELFORD MENCARELLI's money, assets
3 or property, defendant intending to permanently deprive DELFORD MENCARELLI, of the
4 ownership, use, benefit or possession of his money, assets or property having an value of more
5 than \$5000.00, by withdrawing and/or converting \$195,000.00 which belonged to DELFORD
6 MENCARELLI, a person having been diagnosed with significant mental impairment due to
7 Alzheimer's Dementia, money from a joint bank account, and depositing the \$195,000.00 in
8 Defendant's personal bank account in which DELFORD MENCARELLI had no possessory
9 or ownership rights.

10 COUNT 2 – THEFT

11 did on or about July 5, 2013 willfully, knowingly, feloniously, and without lawful
12 authority, convert, make an unauthorized transfer of an interest in, or without authorization
13 control property, having a value of \$3,500.00, or more, belonging to DELFORD
14 MENCARELLI, in the following manner, to-wit: by withdrawing and/or converting
15 \$195,000.00 which belonged to DELFORD MENCARELLI, a person having been diagnosed
16 with significant mental impairment due to Alzheimer's Dementia, money from a joint bank
17 account, and depositing the \$195,000.00 in Defendant's personal bank account in which
18 DELFORD MENCARELLI had no possessory or ownership rights.

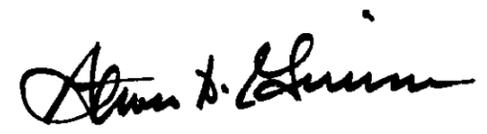
19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

21 BY /s/JAY RAMAN
22 JAY RAMAN
23 Chief Deputy District Attorney
24 Nevada Bar #10193
25
26
27
28

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

3 <u>NAME</u>	<u>ADDRESS</u>
4 ARMENI, PAOLA	3960 HOWARD HUGHES PKWY., LVN
5 BLACK, RICK	c/o CCDA/VWAC, 200 LEWIS AVE., LVN
6 BLACK, TERRI	c/o CCDA/VWAC, 200 LEWIS AVE., LVN
7 BROWN, GREGORY	UNLV/SCHOOL OF MEDICINE, 3663 E. 8 SUNSET RD., LVN
9 CUSTODIAN OF RECORDS	PLUS CREDIT UNION
10 EHRENFELD, HOWARD	4475 S. EASTERN AVE., LVN
11 EMERY, FRANCES	LVMPD P#2782
12 MENCARELLI, DELFORD	c/o CCDA/VWAC, 200 LEWIS AVE., LVN
13 POWELL, DONEISHA	1860 E. SAHARA AVE., LVN
14 THISTLE, SHAUNA	625 CANTON GREENS DR., LVN
15 TYLER, KRISTIN	3960 HOWARD HUGHES PKWY., LVN
16 WINTERS, DOUGLAS	5851 W. CHARLESTON BLVD., LVN
17 WOOLEN, LARRY	1860 E. SAHARA AVE., LVN

18
19
20
21
22
23
24
25 14F11465X/dd-Fraud Unit/EAU
26 LVMPD EV#140417-1239
(TK3)



CLERK OF THE COURT

1 **ORDER**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-2070
8 Facsimile: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Helen Natko*

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

9 THE STATE OF NEVADA,
10
11 Plaintiff,
12 vs.
13 HELEN NATKO #1186757,
14 Defendant.

Case No. C-16-313574-1
Dept. No. XIX

15 **ORDER DENYING THE STATE OF NEVADA'S MOTION TO REMOVE DANIEL T.**
16 **FOLEY, ESQ. FOR CONFLICT**

17 1. The State of Nevada's Motion to Remove Daniel T. Foley, Esq. For Conflict
18 having come on for hearing on May 2, 2016 at 8:30 am and having been continued until June
19 22, 2016 at 8:30 a.m., the Defendant's counsel Daniel T. Foley, Esq. having appeared at both
20 hearings, the State of Nevada being represented by Jay P. Raman, Esq. from the Clark County
21 District Attorney's office having appeared at both hearings, the Court having read the
22 State's Motion, the Defendants' Opposition, and the State's Reply, the Court appointed Abel M.
23 Yanez, Esq. on May 2, 2016 as special counsel to review the file and interview the Defendant
24 for purposes of having a neutral evaluation of the Defendant in order to determine if the
25 Defendant had received the State's offers of settlement made during the preliminary hearing and
26 if the Defendant had voluntarily rejected the State's offers without undue influence from Mr.
27

1 Foley, the Court, having heard oral arguments from counsel, and good cause appearing
2 therefore,

3 The Court Finds and follows:

4 2. Mr. Yanez attended the hearing on June 22, 2016 and reported to the Court that
5 he had reviewed the relevant portions of the file, spoken with counsel for the State and counsel
6 for the Defendant, and interviewed the Defendant in person on June 17, 2016.

7 3. Mr. Yanez reported that he went over with the Defendant, outside the presence
8 of Mr. Foley, the 3 offers made to the Defendant by the State, and that the Defendant
9 understood those offers when they were made and she rejected the offers without improper
10 influence from Mr. Foley.

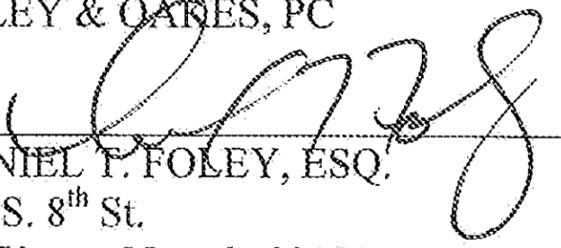
11 4. Mr. Yanez reported that on the afternoon of June 17, 2016, the State relayed a
12 4th offer of settlement to the Defendant through Mr. Yanez without communicating the offer to
13 Mr. Foley. The settlement was to plead guilty to a gross misdemeanor on the two remaining
14 counts with 6 months probation. Mr. Yanez relayed the offer to the Defendant that same day
15 via telephone and without the knowledge or input of Mr. Foley. The Defendant rejected the
16 State's 4th offer.

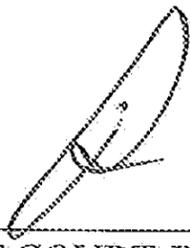
17 Based on the above findings and good cause appearing therefor,

18 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that the State's Motion
19 to Remove Mr. Foley for Conflict is DENIED.

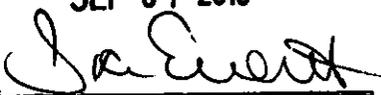
20 DATED: July __ 2016.

21 Submitted by:
22 FOLEY & OAKES, PC

23 
24 DANIEL T. FOLEY, ESQ.
25 626 S. 8th St.
26 Las Vegas, Nevada 89101
27 Attorneys for the Defendant

28 
DISTRICT COURT JUDGE
For Judge William Kephart 

SEP 07 2016

BY: 
TIA EVERETT, DEPUTY

1 **STIP**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAY P. RAMAN
6 Chief Deputy District Attorney
7 Nevada Bar #010193
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-313574-1
STIP
Stipulation
4680838



10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 HELEN NATKO,
14 #1186757)

15 Defendants.)

Case No. C-16-313574-1

Dept No. XIX

16 **STIPULATIONS ON PENDING MOTIONS IN LIMINE AS OF AUGUST 30, 2016**

17 DATE OF HEARING: September 7, 2016

18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
20 through JAY P. RAMAN, Chief Deputy District Attorney, and files this Stipulation on
21 Pending Motions in Limine as of August 30, 2016.

22 **STIPULATIONS**

23 The following stipulations have been reached between the State and Defense
24 regarding the Motions in Limine outstanding as of August 30, 2016. These stipulations
25 dispose of the need to argue on these particular Motions in Limine, but do not foreclose
26 future anticipated Motions in Limine on different evidentiary issues. Additionally, dependent
27 on how parties proceed in the Criminal trial, evidence that has been stipulated to be not
28 relevant may become relevant if the door has been opened, and then only upon Court ruling.
Defendant's Motion in Limine to Exclude Irrelevant Evidence of Any Allegations About

1 Delford's Medical Condition or Helen's Care for Delford After July 31, 2013

- 2 • Parties stipulate that allegations of medical neglect are not relevant, as they would be
3 uncharged bad acts.
4 • Facts of investigations of Helen Natko for medical neglect of Delford Mencarelli will
5 not be admissible at trial.

6 State's Motion in Limine to Preclude Rulings in Guardianship Trial and to Preclude
7 Evidence of Post-Guardianship Budget from Being Heard in the Criminal Trial

- 8 • The State withdraws this motion. The State intends to introduce evidence of how
9 much money Helen Natko sought for caring for Delford Mencarelli, in the form of a
10 budget. This will be addressed in a future Motion in Limine.

11 Defendant's Motion in Limine to Exclude Evidence Related to the \$37,057.53 or Any Part
12 Thereof Which Helen was Previously Charged with Stealing from Delford

- 13 • Parties stipulate that evidence and criminal charges of \$37,057.54 or the amended
14 charged amount of \$25,000.00, that Helen Natko was alleged to have
15 stolen/exploited from Delford Mencarelli will not be relevant evidence in the trial, as
16 Justice of the Peace Janice Marshall declined to bind over on said charges. Evidence
17 presented will only relate and be relevant to the charged allegation that Helen Natko
18 exploited and stole \$195,000.00 from Delford Mencarelli.

19 Defendant's Motion in Limine to Exclude Evidence of Defendant's Personal Expenditures
20 Outside of the Relevant Time Period of July 5, 2013 through July 31, 2013

- 21 • Parties stipulate that Helen Natko's personal expenditures and spending habits related
22 to her personal funds outside of the \$195,000.00 is not relevant, and will be excluded
23 from testimony and presentation. Helen Natko's personal expenditures are relevant
24 between the dates of July 5, 2013 through July 31, 2013. Additionally, parties will
25 not present evidence regarding Helen Natko's purchase of alcohol, tobacco, or
26 amount of money gambled.

27
28 **CONCLUSION**

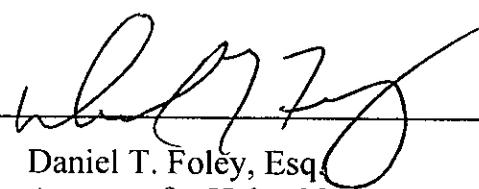
1 The State and Defendant request the Court to acknowledge the above stipulations
2 regarding the Motions in Limine.

3
4 DATED this 31st day of August, 2016.

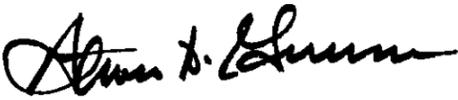
5
6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY 

10 Jay P. Raman
11 Chief Deputy District Attorney
12 Nevada Bar #010193

13 BY 

14 Daniel T. Foley, Esq.
15 Attorney for Helen Natko
16 Nevada Bar #001078


CLERK OF THE COURT

1 **MOT**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-2070
8 Facsimile: (702) 384-2128
9 Email: dan@foleyoakes.com
10 Attorneys for Helen Natko

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

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 HELEN NATKO #1186757,
14 Defendant.

Case No. C-16-313574-1
Dept. No. XIX

15 **DEFENDANT'S NOTICE OF HEARING OF MOTION AND MOTION IN LIMINE TO**
16 **EXCLUDE IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI BLACK,**
17 **MR. MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, AND MR.**
18 **MENCARELLI'S COURT APPOINTED GUARDIAN, AS WELL AS ALL FINANCIAL**
19 **EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS**
20 **GUARDIANSHIP WHICH BEGAN SEPTEMBER 16, 2013**

21 COMES NOW Helen Natko ("Helen"), by and through her attorneys Daniel T. Foley
22 Esq., and hereby submits this Motion in Limine seeking an Order prohibiting any evidence
23 (documents, statements, testimony) or testimony as to all irrelevant evidence of all proposed
24 budgets of Terri Black or Mr. Mencarelli's Court appointed Guardians as well as all financial
25 expenditures on behalf of Mr. Mencarelli during his Guardianship from September 16, 2013
26 through July 5, 2015.

27 This Motion is made based upon the following Memorandum of Points and Authorities,
28 all pleadings and papers on file, and upon the other evidence and oral argument the Court would

1 allow at the time of the hearing.

2 **NOTICE OF HEARING**

3 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
4 bring the foregoing motion on for setting before the above entitled Court, in Department XIX
5 thereof, on the 23 day of JANUARY, 2017, at the hour of 8:30A, or as soon
6 thereafter as counsel may be heard.

7 Dated this 10th day of January 2017

8 Respectfully submitted,

9
10 /s/Daniel T. Foley
11 DANIEL T. FOLEY, ESQ.
12 FOLEY & OAKES, PC
13 626 So. 8th St.
14 Las Vegas, Nevada 89101
15 Attorneys for Defendant

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **Introduction / Argument**

19 The two criminal charges in this case relate to Helen's withdrawal of \$195,000 from her joint
20 bank account with Delford Mencarelli ("Delford") on July 5, 2013. The \$195,000 was redeposited
21 into Helen and Delford's joint account on July 31, 2013, 26 days later.

22 The District Court appointed Ms. Denise Comastro, a professional guardian, as Temporary
23 Guardian for Mr. Mencarelli on September 16, 2013. Ms. Comastro thereafter took control of all of
24 Mr. Mencarelli's finances and took control of the subject joint account owned by Mr. Mencarelli
25 and Ms. Natko and the joint account in Pennsylvania owned by Mr. Mencarelli and his daughter
26 Terri Black. Accordingly, Ms. Comastro took possession of the subject \$195,000 that Ms. Natko
27 is accused of stealing and took possession of \$229,000 that Ms. Black had similarly removed from
28 her joint account with her father.

1 One year later, following a month long trial, the District Court appointed Helen Natko as Mr.
2 Mendarelli's Permanent Guardian over his person and his estate. All funds of Mr. Mencarelli were
3 placed in a Blocked account and funds were only removed therefrom by Court Order.

4 There has never been any accusation against Helen, Ms. Comastro, or Ms. Black that any funds
5 associated with Mr. Mencarelli were mishandled after Ms. Comastro was appointed as Temporary
6 Guardian on September 16, 2013.

7 **HELEN AND DELFORD**

8
9 Helen and Delford began an exclusive relationship with each other in Pennsylvania in 1982
10 after both of their spouses died in 1981. After dating Delford for ten years, in 1992, Helen sold her
11 home in Pennsylvania, moved to Las Vegas, and purchased a home in Las Vegas. Delford
12 remained in Pennsylvania. In 2002, Delford moved from Pennsylvania, where he had lived his
13 entire life, and moved into Helen's home in Las Vegas. Helen and Delford's relationship remained
14 exclusive from 1982 until Delford's death on July 3, 2015, thirty-three years.

15
16 In May 2012, ten years after Delford moved in with Helen in Las Vegas, during a trip to
17 Pennsylvania, Delford fell ill at his nephew's house. Delford had to be hospitalized for two nights
18 due to low blood sugar. Helen was not able to sign Delford in or out of the hospital because they
19 were not married. Helen could not pay Delford's medical bills because they did not have a joint
20 account. Fortunately, Delford's sister was present in Pennsylvania and she was able to sign on his
21 behalf.

22
23 Upon returning to Las Vegas, in July 2012, Delford executed a limited power of attorney for
24 health care purposes so that Helen could assist with medical decisions if needed. A copy of the
25 limited power of attorney is annexed hereto as Exhibit "A". At the same time, Delford added
26 Helen as a joint owner and signatory to his bank account at the IBEW Plus Credit Union (the
27 "Bank") so that Helen would have access to funds needed to care for Delford. The account
28 number XXXX4389 is hereinafter referred to as "Helen and Delford's Joint Account". A copy of the

1 signature page from the Bank where Delford added Helen onto Helen and Delford's Joint Account
2 is annexed hereto as Exhibit "B".

3 Helen never obtained an ATM card for Helen and Delford's Joint Account and did not obtain a
4 check book for the account. Helen never withdrew any funds from that account until
5 approximately one year later on July 5, 2013 when a significant dispute arose between Helen and
6 Delford's daughter Terri Black. Mrs. Black came to Las Vegas to move Delford to her home in
7 North Carolina. Cross Petitions for the appointment of Guardian for Delford were filed by Helen
8 and Mrs. Black.

10 Helen was concerned that Delford's daughter would somehow obtain control of the joint
11 account and leave Helen with no ability to pay for Delford's needs and care. On July 5, 2013,
12 Helen withdrew \$195,000 from Helen and Delford's Joint Account, the balance of the account, and
13 deposited the \$195,000 into her own account. On July 31, 2013, on advice of counsel, Helen
14 returned the \$195,000 to her joint account with Delford. A copy of the Bank statement for Helen
15 and Delford's Joint Account for the month of July 2013 showing the withdrawal and deposit of the
16 \$195,000 is attached hereto as Exhibit "C". A true and correct copy of Helen's sole bank account
17 statement (she banked at IBEW Plus Credit Union) showing the \$195,000 deposit and withdrawal
18 and the maintenance of a balance of over \$195,000 for the entire month is annexed hereto as
19 Exhibit "D".
20

21 During the same month, July 2013, Mrs. Black similarly withdrew approximately \$229,000
22 from a joint account owned by herself and Delford in Pennsylvania in order to ensure that she
23 would have enough money to care for Delford if she was appointed guardian.
24

25 There are only two criminal counts against Helen pending before this Court. Both counts are
26 specifically limited to the above described July 5, 2013 withdrawal by Helen of \$195,000 from
27 Helen and Delford's Joint Account and the deposit of the \$195,000 back into Helen and Delford's
28

1 Joint Account 26 days later on July 31, 2013. A copy of the State's Information filed in this case
2 is annexed hereto as Exhibit "E".
3

4 **THE STATE'S PRIOR MOTION IN LIMINE**

5 On or about April 22, 2016, the State filed a Motion in Limine to Preclude Rulings in
6 Guardianship Trial and to specifically exclude all evidence related to any post Guardianship
7 Budgets presented in the Guardianship Case. Helen consented to that Motion in Limine so long as
8 the State did not introduce evidenced regarding Delford's expenditures itself. For reasons
9 unknown, the State withdrew its Motion in Limine after consenting to Helen's three Motions in
10 Limine.
11

12 **II.**

13 **Motions In Limine Are Favored By The Court**

14
15 Motions in Limine are designed to seek the Court's ruling on the admissibility of
16 arguments, assertions, and evidence in advance of trial. The Motion in Limine is a common
17 vehicle through which litigants bring requests to exclude potentially prejudicial evidence from a
18 jury trial. *Kelly v. New West Fed. Sav.*, 56 Cal Rptr. 2d 803, 808 (1996). "Motions in Limine are
19 a commonly used tool of trial advocacy and management in both criminal and civil cases. Such
20 motions are generally brought at the beginning of trial when evidentiary issues are anticipated by
21 the parties." *Id.*
22

23 The Nevada Supreme Court has approved the use of motions in limine in a number of
24 cases by recognizing the legitimacy of such pre-trial motion practice and the courts' authority to
25 rule on these motions. See, e.g., *Bull v. McCuskey*, 96 Nev. 706, 615 P2d. 961 (1980); *State ex*
26 *rel. Dep't of Highways v. Nevada Aggregates & asphalt Co.*, 92 Nev. 370, 551 P.2d 1095 (1976).
27 Additionally, NRCP 16(c)(3) provides the Nevada courts' authority to rule on motions in limine
28

1 by allowing for “advance rulings from the court on the admissibility of evidence.” NRCPC
2 16(c)(3).

3 Motions in Limine “permit more careful consideration of evidentiary issues that would
4 take place in the heat of battle during trial,” and they promote judicial economy by minimizing
5 “side-bar conferences and disruptions during trial” and by resolving “potentially critical issues at
6 the outset, they enhance the efficiency of trial and promote settlements.” Kelly, 56 Cal. Rptr. 2d.
7 at 808, accord, Edwards v. Centex Real Estate Corp., 61 Cal. Rptr. 2d 518, 524 (1997); People
8 v. Clark, 10 Cal. Rptr. 2d. 554, 594 (1992).

10 **III.**
11 **Evidence And Testimony Regarding Any Events That Transpired After July 31, 2013 Are**
12 **Irrelevant To This Case And Can Only Be Proffered By The State For The Purpose Of**
13 **Prejudicing Helen Before The Jury**

13 In this case, based on the State’s productions of documents on May 4, 2016 and April 26,
14 2016, Helen anticipates that State may attempt to offer evidence regarding events that transpired
15 long after the \$195,000 was withdrawn from and redeposited into Helen and Delford’s Joint
16 Account that have nothing to do with the alleged crime. Helen did not become Delford’s
17 Guardian until August 2014, well over a year after the alleged crime. Helen did not submit a
18 budget until months after her appointment and Terri Black did not submit her own budget until
19 after that.

20
21 NRS 48.015 states:

22 As used in this chapter, “relevant evidence” means evidence having any tendency
23 to make the existence of any fact that is of consequence to the determination of
24 the action more or less probable than it would be without the evidence.

25 NRS 48.025 states:

- 26 2. Evidence which is not relevant is not admissible.

27 NRS 48.035 states:

- 1 1. Although relevant, evidence is not admissible if its probative value is
2 substantially outweighed by the danger of unfair prejudice, of confusion of the
3 issues or of misleading the jury.
- 4 2. Although relevant, evidence may be excluded if its probative value is
5 substantially outweighed by considerations of undue delay, waste of time or
6 needless presentation of cumulative evidence.

7 In this case, Helen is accused of taking \$195,000 out of Helen and Delford's Joint
8 Account for 26 days. Delford's medical condition after those dates is irrelevant. The budgets
9 submitted by Denise Comastro, Helen and Terri Black during Delford's Guardianship from
10 September 16, 2013 through July 5, 2015 have no bearing on or relevance to Helen's actions
11 between July 5, 2013 and July 26, 2013.

12 The State can only hope to confuse the jury with irrelevant financial information that can
13 only prejudice Helen.

14 IV.

15 Conclusion

16 The post July 31, 2013 financial budgets presented in the Guardianship case are irrelevant
17 to the charges before this Court and cannot be admitted. Given the intended prejudicial effect
18 that evidence relating to Delford's guardians and his daughter's budgets can have on a jury, it is
19 imperative that the State not be allowed to introduce such irrelevant evidence that does not
20 pertain to the \$195,000 issue at hand.

21 Dated this 10th day of January 2017.

22 Respectfully submitted,

23
24
25 /s/Daniel T. Foley
26 DANIEL T. FOLEY, ESQ.
27 FOLEY & OAKES, PC
28 626 So. 8th St.
Las Vegas, Nevada 89101
Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 10th day of January, 2017, I served the
4 following document(s):

5 **DEFENDANT'S NOTICE OF HEARIN OF MOTION AND MOTION IN LIMINE TO**
6 **EXCLUDE IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI BLACK,**
7 **MR. MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, AND MR.**
8 **MENCARELLI'S COURT APPOINTED GUARDIAN AS WELL AS ALL FINANCIAL**
9 **EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS**
10 **GUARDIANSHIP WHICH BEGAN SEPTEMBER 16, 2013**

11 I served the above-named document(s) by the following means to the person s as listed
12 below:

13 **By Electronic Transmission through the Wiznet System:**

14 Jay P. Raman
15 Deputy District Attorney
16 200 Lewis Ave
17 Las Vegas, NV 89155

18 **By United States Mail**, postage fully prepaid to person(s) and addresses as

19 follows:

20 **By Direct Email** (as opposed to through the ECF system (list persons and email
21 addresses). Based upon the written agreement of the parties to accept service by email or a court
22 order, I caused the document(s) to be sent to the persons at the email addresses listed below. I
23 did not receive, within a reasonable time after the transmission, any electronic message or other
24 indication that the transmission was unsuccessful.

25 **By Facsimile Transmission** to person(s) and addresses as follows: I faxed the
26 document(s) to the persons at the fax numbers listed herein. No error was reported by the fax
27 machine that I used. A copy of the record of the fax transmission is attached.

28 I declare under the penalty of perjury that the foregoing is true and correct.

/s/Maren Foley
An employee of FOLEY & OAKES, PC

EXHIBIT A

EXHIBIT A

Delford W. Manorelli (insert your name) do hereby and appoint
Name: Helen Yutko
Address: 9536 Lazy River Dr. Las Vegas NV 89119
Telephone Number: 702-262-3585

as my attorney-in-fact to make health care decisions for me as authorized in this document.

(Insert the name and address of the person you wish to designate as your attorney-in-fact to make health care decisions for you. Unless the person is also your spouse, legal guardian or the person most closely related to you by blood, none of the following may be designated as your attorney-in-fact: (1) your treating provider of health care; (2) an employee of your treating provider of health care; (3) an operator of a health care facility; or (4) an employee of an operator of a health care facility.)

Creation of Durable Power of Attorney for Health Care

By this document, I intend to create a Durable Power of Attorney by appointing the person designated above to make health care decisions for me. This power of attorney shall not be affected by my subsequent incapacity.

General Statement of Authority Granted

In the event that I am incapable of giving informed consent with respect to health care decisions, I hereby grant to the attorney-in-fact named above full power, and authority to make health care decisions for me before, or after my death, including: consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat physical or mental condition, subject only to the limitations and special provisions, if any, set forth in paragraph 4 or 6.

Special Provisions and Limitations

(Your attorney-in-fact is not permitted to consent to any of the following: commitment to or placement in a mental health treatment facility; convulsive treatment; psychosurgery; sterilization, or abortion. If there are any other types of treatment or placement that you do not want your attorney-in-fact's authority to give consent for or other restrictions you wish to place on your attorney-in-fact's authority, you should list them in the space below. If you do not write any limitation, your attorney-in-fact will have the broad powers to make health care decisions on your behalf which are set forth in paragraph 3, except to the extent that there are limits provided by law.)

In exercising the authority under this Durable Power of Attorney for Health Care, the authority of my attorney-in-fact is subject to the following special provisions and limitations:

EXHIBIT 12

11/11/11
11/11/11

I understand that this power of attorney will exist indefinitely from the date I execute this document unless establish a shorter time. If I am unable to make health care decision for myself when this Power of Attorney expires, the authority I have granted my attorney-in-fact will continue to exist until the time when I become able to make health care decisions for myself

(If Applicable)

I wish to have the Power of Attorney end on the following date: _____

6. *Statement of Desires*

(With respect to decisions to withhold or withdraw life-sustaining treatment, your attorney-in-fact must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires below. If your desires are unknown, your attorney-in-fact has the duty to act in your best interests and, under some circumstances, a judicial proceeding may be necessary so that a court can determine the health care decisions that are in your best interests. If you wish to indicate your desires, you may INITIAL the statement or statements that reflect your desires and/or write your own statements in the space below.)

(If the statement reflects your desires, initial the box next to the statement.)

- 1. I desire that my life be prolonged to the greatest extent possible, without regard to my condition, the chances I have for recovery or long-term survival, or the cost of the procedures. _____
- 2. If I am in a coma which my doctors have reasonably concluded is irreversible, I desire that life-sustaining or prolonging treatment not be used. (Also should utilize provisions of NRS 449.535 to 449.690, inclusive, if this subparagraph is initialed. 10/16/11)
- 3. If I have an incurable or terminal condition or illness and no reasonable hope of long-term recovery or survival, I desire that life-sustaining or prolonging treatments not be used. (Also should utilize provisions of NRS 449.535 to 449.690, inclusive, and section 2 to 12, inclusive, if this subparagraph is initialed. 10/16/11)
- 4. Withholding or withdrawal of artificial nutrition and hydration may result in death by starvation or dehydration. I want to receive or continue receiving artificial nutrition and hydration by way of the gastrointestinal tract after all other treatment is withheld. 10/16/11
- 5. I do not desire treatment to be provided and/or continue if the burdens of the treatment outweigh the expected benefits. My attorney-in-fact is to consider the relief of suffering, the preservation or restoration of functioning, and the quality as well as the extent of the possible extension of my life. 10/16/11

(If you wish to change your answer, you may do so by drawing an "X" through the answer you do not want, and circling the answer you prefer.)

Other or Additional Statements of Desires: _____

(You are not required to designate any alternative attorney-in-fact but you may do so. Any alternative attorney-in-fact you designate will be able to make the same health care decisions as the attorney-in-fact designated in paragraph 1 to act as your attorney-in-fact. Also, if the attorney-in-fact designated in paragraph 1 is your spouse, his or her designation as your attorney-in-fact is automatically revoked by law if your marriage is dissolved.)

If the person designated in paragraph 1 as my attorney-in-fact is unable to make health care decisions for me, then I designate the following persons to serve as my attorney-in-fact to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternative Attorney-in-Fact

Name: _____
Address: _____

Telephone: _____

B. Second Alternative Attorney-in-Fact

Name: _____
Address: _____

Telephone Number: _____

Prior Designations Revoked

I revoke any prior Durable Power of Attorney for Health Care:

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Durable Power of Attorney for Health Care on July 19, 2012 (date)
at Las Vegas (city), Nevada (state).

Arif M. Watterman
(Signature)

~~IT IS EITHER (1) SIGNED BY AT LEAST TWO QUALIFIED WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE, OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.)~~

IT IS EITHER (1) SIGNED BY AT LEAST TWO QUALIFIED WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE, OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.)

Certificate of Acknowledgment of Notary Public

(You may use acknowledgment before a notary public instead of statement of witnesses.)

State of Nevada)

§§)

County of Clark)

On this 19th day of July, in the year 2012

before me, Cheryl Ross (here insert name of notary public) personally appeared Delford Walter Moncarrelli (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

Cheryl Ross
(Signature of Notary Public)

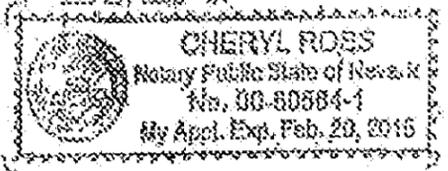
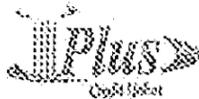


EXHIBIT B

EXHIBIT B



Signature Card

Account # 0012038

ACCOUNT TYPE: N. Owned, M. Plus, SA, T. Int, Subst. X. Other, X. Sec'd, Credit, Vacat, Major/Minor, N. Other

PRIMARY MEMBER INFORMATION: Name, Address, City, State, Zip, Phone, Birth Date, Social Security, etc.

JOINT MEMBER INFORMATION: Name, Address, City, State, Zip, Phone, Birth Date, Social Security, etc.

JOINT MEMBER INFORMATION: Name, Address, City, State, Zip, Phone, Birth Date, Social Security, etc.

ADDITIONAL ADDRESSES: I want to add a new address, I want to delete an address, I want to change an address

IMPORTANT INFORMATION FROM PROPOSER FOR OPENING A NEW ACCOUNT: To help the proposed credit member understand the credit process, the credit member should read the credit member's guide...

TERMS AND CONDITIONS OF CREDIT: The credit member hereby agrees to the terms and conditions of the credit process...

AGREEMENT WITH CREDIT CARDHOLDER: I hereby agree to the terms and conditions of the credit process...

AGREEMENT WITH CREDIT CARDHOLDER: Check box (a) only if you are (a) below. (a) I, by signing below, have agreed to the terms and conditions of the credit process...

ASI logo and text: Your deposits are insured by FDIC up to \$250,000 per account...

Signature section with three lines for signatures and dates, and a box for 'Policy Number'.

TRUST OR SECRETARY OF SIGNATURE: Name, Address, City, State, Zip, Phone

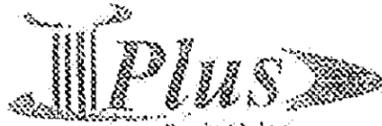
For account owner, jointly or as a co-owner, the credit member agrees to the terms and conditions of the credit process...

CREDIT UNION USE ONLY: Employee, Name, Address, City, State, Zip, Phone, Birth Date, Social Security, etc.

EXHIBIT C

EXHIBIT C

SEND INQUIRIES TO:



1900 South Jones Blvd.
Las Vegas, NV 89146

(702) 871-4746 www.pluscu.org
*****AUTO**SER 3-DIGIT 890
3988 0.5040 AT 0.384 18 1 237
DEL FORD W MENCARELLI
HELEN NATKO
9536 LAZY RIVER DR
LAS VEGAS NV 89117-0676

NOTICE: SEE REVERSE SIDE OF FIRST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR RIGHTS TO DISPUTE BILLING ERRORS.

NOTICE: SEE REVERSE SIDE OF FIRST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR RIGHTS TO DISPUTE REGULATION ERRORS.

SHARE ACCOUNTS ARE NON-TRANSFERABLE EXCEPT ON THE BOOKS OF THIS CREDIT UNION.

0
1
0
1
8
7
5
5

ACCOUNT NUMBER	██████████ 1389
STATEMENT PERIOD	07/01/13 07/31/13
PAGE	1

The FINANCE CHARGE for an open end loan is computed by applying the periodic rate to each unpaid balance for the exact number of days each balance was outstanding. The balance used to compute the FINANCE CHARGE is that balance each day after credits are subtracted and new advances or other charges are added.

**DEBITS: New Loans, Refinanced Loans, Add-ons Or Principal Reversal.

Posting Date	Effective Date	Transaction Description	Payments, Credits or Debits**	FINANCE CHARGE	Fees or Charges	Transaction Amount	BALANCE
							15.00
07/01	ID 00	REGULAR SHARES Beginning Balance					15.00
07/31		Ending Balance					
		Dividends Paid Year to Date			0.00		
<hr/>							
07/01	ID 80	ESSENTIALS CHECKING Beginning Balance					196349.59
07/02		Deposit by Check			928.79		197278.38
07/02		Withdrawal Cash			928.00		196350.38
07/05		Withdrawal Transfer			195000.00		1950.38
		TO NATKO, HELEN 0091242405 Share 80					
07/31		Deposit Transfer			195000.00		196350.38
		From NATKO, HELEN 0091242405 Share 80					
07/31		Ending Balance					196350.38
		Dividends Paid Year to Date			0.00		
<hr/>							
			Total For This Period			Total Year-to-Date	
Total Returned Item Fees			0.00			0.00	
Total Overdraft Fees			0.00			0.00	
<hr/>							
Total Dividends Paid Year to Date						0.00	

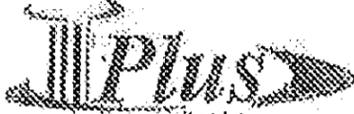
effective September 1st there will be changes that may affect your savings account. If you have any further questions or concerns please contact us at 702-871-4746.

PlusCredit000525

EXHIBIT D

EXHIBIT D

SEND INQUIRIES TO:



Credit Union
1908 South Jones Blvd.
Las Vegas, NV 89146

(702) 871-4746 www.pluscu.org
*****AUTO**SCH 3-DIGIT 890

3987 0.6650 AT 0.384 10 1 236

HELEN NAEKO
9536 LAZY RIVER DR
LAS VEGAS NV 89127-0678

NOTICE: SEE REVERSE SIDE OF FIRST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR RIGHTS TO DISPUTE BILLING ERRORS.

NOTICE: SEE REVERSE SIDE OF FIRST PAGE FOR IMPORTANT INFORMATION REGARDING YOUR RIGHTS TO DISPUTE REGULATION ERRORS.

SHARE ACCOUNTS ARE NON-TRANSFERABLE EXCEPT ON THE BOOKS OF THIS CREDIT UNION.

0
2
0
1
8
9
5
3

ACCOUNT NUMBER	██████████ 2406
STATEMENT PERIOD	07/01/13 07/31/13
PAGE	1

The FINANCE CHARGE is an open-end loan is computed by applying the periodic rate to each unpaid balance for the exact number of days such balance was outstanding. The balances used to compute the FINANCE CHARGE is that balance each day after credits are subtracted and new advances or other charges are added.

*DEBITS: New Loans, Refinanced Loans, Advances Or Principal Reversal

Posting Date	Effective Date	Transaction Description	Payments, Credits or Debits*	FINANCE CHARGE	Fees or Charges	Transaction Amount	BALANCE
07/01	ID 80	REGULAR SHARES Beginning Balance					23.15
07/31		Ending Balance					23.15
		Dividends Paid Year to Date			0.00		
<hr/>							
07/01	ID 80	ESSENTIALS CHECKING Beginning Balance					12715.68
07/03		Deposit by Check			897.67		13613.35
07/02		Withdrawal			50.58		13562.77
		Visa Payment Transfer #027483					
		Payment Amount \$50.58					
07/05		Withdrawal Cash			2080.00		11552.77
07/06		Deposit Transfer			19500.00		20652.77
		From MENCARBLAT, DELFO 0091354339 Share 80					
07/18		Check 002475			4000.00		20252.77
07/24		Deposit ACT XKSOC SEC			1285.00		20381.77
		ID: 9031030260 CD: XKSOC SEC					
07/25		Check 002475			4697.00		19912.77
07/31		Withdrawal Transfer			195000.00		412.77
		To MENCARBLAT, DELFO 0091354339 Share 80					
07/31		Ending Balance					412.77
		Dividends Paid Year to Date			0.00		

	Total For This Period	Total Year-to-Date
Total Returned Item Fees	0.00	0.00
Total Overdraft Fees	0.00	0.00

Number	Amount	Number	Amount	Number	Amount	Number	Amount
002474	4000.00	002475	4697.00				

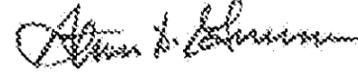
07/01 ID 01 *** ANNUAL PERCENTAGE RATE 14.000% ***
07/31 READY CREDIT (Open End) Beginning Balance 0.00
Ending Balance 0.00
Credit Limit 1,000.00 Credit Available 1,000.00

--- Continued on following page ---

PlusCredit000227

EXHIBIT E

EXHIBIT E


CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAY RAMAN
6 Chief Deputy District Attorney
7 Nevada Bar #10193
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 LA. 3/31/2016
13 10:00 AM
14 Daniel Foley, Esq.

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16
17 Plaintiff,

CASE NO: C-16-313574-1

18 -vs-

DEPT NO: XIX

19 HELEN NATKO,
20 #1186757
21
22 Defendant.

INFORMATION

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

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

27 That HELEN NATKO, the Defendant(s) above named, having committed the crime of
28 EXPLOITATION OF A VULNERABLE PERSON (Category B Felony - NRS 200.5092,
200.5099 - NOC 50304) and THEFT (Category B Felony - NRS 205.0832, 205.0835.4 - NOC
55991), on or between August 1, 2011 and August 31, 2013, 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.

COUNT 1 - EXPLOITATION OF A VULNERABLE PERSON

did on or about July 5, 2013 willfully, unlawfully and feloniously exploit an vulnerable
person, to-wit: DELFORD MENCARELLI, by defendant, having the trust or confidence of
DELFORD MENCARELLI or by use of a power of attorney or guardianship, obtain control,

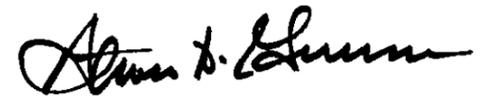
1 through deception, intimidation or undue influence, over DELFORD MENCARELLI's
2 money, assets or property and/or by converting DELFORD MENCARELLI's money, assets
3 or property, defendant intending to permanently deprive DELFORD MENCARELLI, of the
4 ownership, use, benefit or possession of his money, assets or property having an value of more
5 than \$5000.00, by withdrawing and/or converting \$195,000.00 which belonged to DELFORD
6 MENCARELLI, a person having been diagnosed with significant mental impairment due to
7 Alzheimer's Dementia, money from a joint bank account, and depositing the \$195,000.00 in
8 Defendant's personal bank account in which DELFORD MENCARELLI had no possessory
9 or ownership rights.

10 COUNT 2 - THEFT

11 did on or about July 5, 2013 willfully, knowingly, feloniously, and without lawful
12 authority, convert, make an unauthorized transfer of an interest in, or without authorization
13 control property, having a value of \$3,500.00, or more, belonging to DELFORD
14 MENCARELLI, in the following manner, to-wit: by withdrawing and/or converting
15 \$195,000.00 which belonged to DELFORD MENCARELLI, a person having been diagnosed
16 with significant mental impairment due to Alzheimer's Dementia, money from a joint bank
17 account, and depositing the \$195,000.00 in Defendant's personal bank account in which
18 DELFORD MENCARELLI had no possessory or ownership rights.

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

21
22 BY /s/JAY RAMAN
JAY RAMAN
23 Chief Deputy District Attorney
Nevada Bar #10193
24
25
26
27
28



CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAY P. RAMAN
6 Chief Deputy District Attorney
7 Nevada Bar #010193
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 -vs-)

15 HELEN NATKO #1186757)

16 Defendant.)

Case No. C-16-313574-1

Dept No. XIX

**OPPOSITION TO MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
PROPOSED BUDGETS OF TERRI BLACK, MR. MENCARELLI'S COURT
APPOINTED TEMPORARY GUARDIAN, AND MR. MENCARELLI'S COURT
APPOINTED GUARDIAN, AS WELL AS ALL FINANCIAL EXPENDITURES ON
BEHALF OF DELFORD MENCARELLI DURING HIS GUARDIANSHIP WHICH
BEGAN SEPTEMEBR 16, 2013**

DATE OF HEARING: JANUARY 23, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
through JAY P. RAMAN, Chief Deputy District Attorney, and files this Opposition to Motion
in Limine to Exclude Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli's Court
Appointed Temporary Guardian, and Mr. Mencarelli's Court Appointed Guardian, as well as
All Financial Expenditures on Behalf of Delford Mencarelli During His Guardianship Which
Began September 16, 2013.

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

4 **Points and Authorities**

5 **FACTS AND CIRCUMSTANCES**

6 The allegations are that Helen Natko exploited and stole from Delford Mencarelli in
7 the amount of \$195,000.00. The Helen Natko took the money from the Victim on July 5, 2013,
8 and then upon advice of counsel, returned the money on July 25, 2013. The evidence has
9 shown and will show the following circumstances at trial:

- 10 ❖ Delford Mencarelli is the father of Terri Black. Terri Black is Delford Mencarelli's only
11 child. Terri Black is married to Richard Black, and they have a son named Daniel Black.
12 Daniel Black is Delford Mencarelli's grandson.
- 13 ❖ The Delford Mencarelli's wife passed in approximately 1980. Helen Natko's husband
14 similarly passed away in the same general timeframe. Both Delford Mencarelli and
15 Helen Natko lived in Pennsylvania, but in different towns. In that timeframe they began
16 dating each other.
- 17 ❖ Delford Mencarelli and Helen Natko never resided in the same home in Pennsylvania,
18 but they were friends and dated each other between 1982 and 1992.
- 19 ❖ In 1992, Helen Natko moved to Las Vegas, Nevada. She sold her home in Pennsylvania
20 and purchased a home in Las Vegas. Delford Mencarelli remained and continued to
21 live in Pennsylvania.
- 22 ❖ Between 1992 and 2002 Delford Mencarelli travels every other year during the cold
23 months of the year to Las Vegas and stays with Helen Natko. This accounts for 4 to 5
24 trips to Las Vegas during that decade span.
- 25 ❖ In 2000, Delford Mencarelli adds his daughter Terri Black as a joint account holder
26 over his Citizen's bank accounts. The Citizen's bank accounts hold the accumulation
27 of his life savings, which is approximately a half-a-million dollars. This is done as a
28 precautionary measure as her father is advancing in age.

- 1 ❖ In 2002, Delford Mencarelli decides to move to Las Vegas and will reside with Helen
2 Natko. Delford Mencarelli sells his Pennsylvania home, and arranges to pay rent to
3 Helen Natko in the amount of \$700/mo.
- 4 ❖ At the time of the move, Delford Mencarelli is approximately 72 years old. In addition
5 to his savings, he receives a pension from the Power Company, and social security. The
6 pension is approximately \$928.00, the social security payment is approximately
7 \$1211.00.
- 8 ❖ While Delford Mencarelli is living in Las Vegas, Nevada his daughter and family visit
9 him about once a year, normally coinciding with Spring Break due to Terri's son being
10 in school. In addition to the visits, Terri speaks with her father normally once a week,
11 usually on the weekends.
- 12 ❖ In 2008 a Plus Credit Union bank account is opened in Las Vegas by the Delford
13 Mencarelli. From this point forward his pension check is deposited and cashed through
14 this account, and the social security check still goes to Citizens Bank.
- 15 ❖ In April of 2011 Terri and Rick Black fly Delford Mencarelli and Helen Natko to visit
16 them in North Carolina for Easter. Delford Mencarelli at this time was 80 years old,
17 and was noticeably slowing down. Helen Natko claims that Delford Mencarelli needs
18 hearing aids, and tries to make Delford Mencarelli wear them – Delford Mencarelli
19 refuses and denies hearing issues.
- 20 ❖ During time alone with the Delford Mencarelli, Terri reiterates long term planning and
21 care goals. She suggests that they (Rick and Terri) could purchase a condo for Delford
22 Mencarelli and Helen Natko to live in in North Carolina so that they could be closer.
23 Delford Mencarelli refuses the offer, as does Helen Natko when separately proposed to
24 her.
- 25 ❖ During the April 2011 visit, Helen Natko and Delford Mencarelli bicker and argue quite
26 a bit.
- 27 ❖ On July 19, 2011 Dr. Shauna Christiansen-Thistle, Delford's primary care physician,
28 conducts a Mini Mental Status exam on Delford Mencarelli. He scored a 12 out of 30.

1 Dr. Christiansen-Thistle refers Delford Mencarelli to a Neurologist. Dr. Christiansen-
2 Thistle said that Delford Mencarelli was not capable of balancing a checkbook, writing
3 out bills, or being organized in a fashion that it would take to manage his financial
4 condition.

- 5 ❖ On August 4, 2011 \$20,000.00 is transferred from Citizen's bank to plus Credit Union,
6 Terri Black is unaware of the transfer because she does not receive statements for
7 Citizen's bank, and was not otherwise made aware that this has occurred.
- 8 ❖ On October 14, 2011 Delford Mencarelli was seen by Dr. Howard Ehrenfeld, a
9 Neurologist. Delford scored a 12 out of 30 on the Mini Mental Status Exam. Dr.
10 Ehrenfeld notes that Delford Mencarelli has had difficulty with his memory for about
11 three years, and that his significant other handles the finances.
- 12 ❖ In May of 2012 Delford Mencarelli and Helen Natko travel to Pittsburg to visit each
13 other's relatives. Delford Mencarelli is hospitalized during the stay due to
14 complications with medication and his diabetes. Terri Black is only made aware of
15 Delford Mencarelli's hospitalization due to calling her Aunt. After several attempts to
16 call Helen Natko, she finally answers and explains that he was in the hospital.
- 17 ❖ In July 2012 in Las Vegas, Delford Mencarelli is hospitalized in Las Vegas. Terri Black
18 is never notified by Helen Natko that her father was in the hospital.
- 19 ❖ On July 23, 2012 \$150,000.00 is transferred from Citizens Bank to the Plus Credit
20 Union. On the same date, Helen Natko is added as joint account holder with Delford
21 Mencarelli.
- 22 ❖ In March of 2013, Helen Natko calls Terri and says, 'Come get your father – he hasn't
23 paid rent this month'. Terri finds this odd, because Helen Natko is known to bring
24 Delford Mencarelli to the bank to cash his pension check, and he hands over the
25 \$700.00. Terri spoke to Helen Natko the next day, she explained that it was just a bad
26 day – they are ok. Terri expressed that she was more than willing to take her father to
27 live with her in North Carolina.

28

- 1 ❖ On April 26, 2013 \$50,000.00 is transferred from Citizen's Bank to Delford's Plus
2 Credit Union Account (now joint with Helen Natko).
- 3 ❖ On June 4, 2013 a \$500 check is received by Daniel Black allegedly from Delford
4 Mencarelli for graduation from high school. Terri Black immediately recognizes that it
5 is not Delford Mencarelli's handwriting on the check. Terri was also puzzled because
6 Delford always sent a card and cash, not a check.
- 7 ❖ On or around June 15, 2013, Terri Black went to the Pittsburg area to attend a funeral.
8 Because of the geographic location of Citizens bank, she is finally able to go to a branch
9 and request statements. While viewing the statements from Citizens Bank, she
10 discovers disbursements of \$50,000.00 twice (one returned due to non-sufficient
11 funds). Upon reviewing earlier statements she discovers transactions of \$20,000.00 and
12 \$150,000.00. Terri Black discovers that the money went to a Plus Credit Union account
13 in Las Vegas, NV which she was unaware of.
- 14 ❖ On June 22, 2013 Terri Black calls Delford Mencarelli. Terri spoke about the funeral
15 and made other small talk with her father, and then approached the subject of the large
16 money transfers. Terri asks about the \$200,000 leaving Citizen's bank. Delford says
17 emphatically and repeatedly "no, all my money is in Citizen's Bank". Helen Natko is
18 also on the phone, and chimes in first 'we moved the money' suggesting it to Delford.
19 Helen then accuses Terri, stating 'why should you have it all?' Helen Natko says, 'come
20 get your father, I am putting him on a plane'. Terri explained after several calls that she
21 would come get her father the next day.
- 22 ❖ Still on June 22, 2013 Terri calls LVMPD after the events transpire to do a well check
23 on Delford Mencarelli.
- 24 ❖ On June 23, 2013 Terri and Richard Black fly and arrive in Las Vegas with a one-way
25 ticket in-hand for Delford to go to North Carolina with them. Helen Natko refuses to
26 release Delford, and will not even allow Terri to speak in private with her father.
27 Delford looks disheveled. The police are unable or unwilling to assist in the matter.
28

- 1 ❖ On June 27, 2013 Terri and Richard Black file a petition for appointment of guardian
2 based upon the abovementioned conduct. This after waiting
- 3 ❖ On July 5, 2013 Helen Natko transfers \$195,000.00 from Delford Mencarelli's Plus
4 Credit Union Account to an account where the only account holder is Helen Natko.
- 5 ❖ On August 19, 2013 Delford Mencarelli is evaluated again by Dr. Ehrenfeld. He scores
6 a 10 out of 30 on the Mini Mental Status Exam.
- 7 ❖ On September 23, 2013 Delford Mencarelli is evaluated by Dr. Gregory Brown. Dr.
8 Brown scores Delford Mencarelli a 0 out of 30 on the Mini Mental Status Exam.
- 9 ❖ On April 17, 2014 the Las Vegas Metropolitan Police Department begins an
10 investigation into Elderly Exploitation regarding Helen Natko's actions with the
11 Delford Mencarelli's finances.
- 12 ❖ Douglas Winters, CPA will testify that during the relevant years, Helen Natko's
13 gambling, and more importantly gambling losses far outpaced her income.
- 14 ❖ A guardianship trial started on Jun 5, 2014 and took place over the course of 11 non-
15 consecutive days. During the guardianship trial the hearing master, Jon Norheim,
16 allowed hearsay evidence of the Delford Mencarelli's *wishes* to be presented by Helen
17 Natko and Denise Comastro (private professional guardian), but restricted Terri and
18 Richard Black and Delford's other relatives from presenting hearsay of the Delford
19 Mencarelli's wishes.
- 20 ❖ On July 11, 2014 the Guardianship Commissioner Jon Norheim issued a written
21 decision ordering that Helen Natko to have sole guardianship over the person and estate
22 of Delford Mencarelli. The order is finalized on August 5, 2014.
- 23 ❖ On June 1, 2015 Commissioner Norheim is removed from all guardianship matters by
24 the Eighth Judicial District Court. Subsequently, Judge Charles Hoskins is removed
25 from being an alternate or appellate judge over guardianship cases. These changes were
26 due to long standing complaints from the Blacks and others about the way
27 Commissioner Norheim conducted proceedings, decisions, and many alleged frauds
28 being perpetrated against wards by guardians. Guardianship cases were reassigned to

1 Judge Cynthia Dianne Steele. Additionally, Chief Justice Hardesty sets up a
2 commission to make improvements to the guardianship process in Nevada.

- 3 ❖ On June 23, 2015 Judge Steele held her first hearing in Delford Mencarelli guardianship
4 case. Judge Steele reversed and changed the guardianship order to make Helen Natko
5 and Terri Black co-guardians.
- 6 ❖ On July 3, 2015 Delford Mencarelli passed away.
- 7 ❖ The case is now in Probate Court and still in Guardianship Court.

8 ARGUMENT

9 10 I. THE STATE INTENDS TO PRESENT EVIDENCE OF THE PROPOSED 11 GUARDIANSHIP BUDGET AS IT IS RELEVANT TO THE 12 DEFENDANT'S INTENT

13 The State intends to present evidence of what the monthly budget Helen Natko
14 proposed was, as it is relevant as to her criminal intent as it relates to the charged crimes. The
15 most simplistic version of this cases facts, are that Natko took \$195,000.00 from Delford
16 Mencarelli by transferring his money out of a bank account that she had access to, and then
17 26 days later (*upon advice of counsel*) returned the money to his account. In order to convict
18 Natko, in Count 1 the State must prove that Natko intended to permanently deprive the Victim
19 of the money. The Defendant's taking of the money was done in response to having been just
20 served notice that the Victims family was seeking a guardianship, someone other than the
21 Natko, to take care of Delford's person and estate.

22 The standard for what evidence is relevant is codified in NRS 48.015 to 48.035.

23 NRS 48.015 "Relevant evidence" defined. As used in this chapter,
24 "relevant evidence" means evidence having any tendency to make the
25 existence of any fact that is of consequence to the determination of the
26 action more or less probable than it would be without the evidence.
27 (Emphasis added).

1 NRS 48.025 Relevant evidence generally admissible; irrelevant evidence
2 inadmissible.

- 3 1. All relevant evidence is admissible, except:
4 (a) As otherwise provided by this title;
5 (b) As limited by the Constitution of the United States or of
6 the State of Nevada; or
7 (c) Where a statute limits the review of an administrative
8 determination to the record made or evidence offered
9 before that tribunal.
10 2. Evidence which is not relevant is not admissible.

11 NRS 48.035 Exclusion of relevant evidence on grounds of prejudice,
12 confusion or waste of time.

- 13 1. Although relevant, evidence is not admissible if its probative value is
14 substantially outweighed by the danger of unfair prejudice, of confusion of the
15 issues or of misleading the jury.
16 2. Although relevant, evidence may be excluded if its probative value is
17 substantially outweighed by considerations of undue delay, waste of time or
18 needless presentation of cumulative evidence.
19 3. Evidence of another act or crime which is so closely related to an act
20 in controversy or a crime charged that an ordinary witness cannot describe the
21 act in controversy or the crime charged without referring to the other act or
22 crime shall not be excluded, but at the request of an interested party, a
23 cautionary instruction shall be given explaining the reason for its admission.
24 (Emphasis added).

25 A. Evidence of the Original Budget Proposed and Submitted to the Court by Natko is
26 Evidence of Her Intent

27 The intent of whether Natko intended to permanently deprive Delford Mencarelli can
28 be proven in numerous ways. Natko's criminal intent must be proven circumstantially, as she
does not confess to the crime, but rather gives an excuse for her conduct, albeit oddly worded.
There are numerous examples of where evidence outside of the crime's timeframe is allowed
admitted to show motive, intent, or common plan or scheme.

///
///

1 **NRS 48.045 Evidence of other crimes, wrongs or acts is not**
2 **admissible to prove the character of a person in order to show**
3 **that the person acted in conformity therewith. It may,**
4 **however, be admissible for other purposes, such as proof of**
5 **motive, opportunity, intent, preparation, plan, knowledge,**
6 **identity, or absence of mistake or accident.**

7 In this case, Natko was eventually allowed to be guardian over Delford Mencarelli,
8 and thus submitted a budget of expenses for taking care of him. Prior to guardianship, Delford
9 Mencarelli was surviving just fine on his social security, only paying Helen Natko
10 approximately \$700 per month for living with her. Natko files a request for money to be paid
11 on a monthly basis out of Delford's assets – a proposed budget filed with the court (filed
12 November 7, 2014). (See exhibit 1). The proposed budget filed requested a total of at least
13 \$6,860.00, and up to \$8,850.00 per month to be paid out for her care of Delford Mencarelli,
14 without any further need to get pre-authorization from the Court. This was all money that was
15 mostly designated for certain purposes, but as the guardian – it would all go directly to her.
16 This was a massive increase from what it was costing to take care of Delford Mencarelli and
17 support his needs, and ultimately way more than what she and the Court felt it actually cost to
18 take care of Delford. On March 11, 2015 Natko revised the monthly budget downward to
19 \$4,897.00. On March 26, 2015, Hearing Master Norheim ruled that the amount will be
20 \$4,322.00 per month. Ultimately, the last budget approved for Delford was by Judge Steel on
21 June 23, 2015 for \$3,823.00 per month. The provable expenses of Delford's, through
22 itemization was in fact the \$3,823.00 per month. (See exhibit 2).

23 It is highly probative to show that Helen Natko was not merely *safekeeping* the
24 \$195,000.00 for 26 days, only to return it. In the context of her budget, it is clear as a person
25 who would not receive any proceeds upon Delford's passing (not named in the will / not his
26 wife) that she tried to take the money, and when she learned from her attorney that it was a
27 terrible idea which would sabotage her ability to become guardian, as it would have been clear
28 exploitation. Natko returned the money, and opted to try to drain Delford financially through
 guardianship. As someone who was used to only receiving \$700 / month to live with Delford,
 a man who for many years had been suffering from Alzheimer's Dementia and other health

1 ailments, the request for \$8,850.00 is clear intent that she was again trying to unlawfully enrich
2 herself – this time with attempted court approval. In fact, had she been approved for the
3 \$8,850.00 of Delford's money per month, she would have received the \$195,000.00 she
4 originally took in two short years¹. The fact that her request was then revised much lower, and
5 granted by the Court a full \$1,000 less than the revised number is telling that it was a fabricated
6 number to begin with.

7 There was other evidence within the Petition for Approval of Budget which shows that
8 the numbers Natko requested were fictional and arbitrary. The following statements, quoted
9 from the petition make no sense:

10 In the recitation, "That Petitioner further requests that additional disbursements from
11 the unblocked account be made available on a monthly basis up to the amount of \$1,500.00
12 without Court Order to accommodate unexpected expenses not set forth in the budget attached
13 hereto. *Petition for Approval of Budget for Ward's Expenses*, p. 2, ll. 20-23 (See Exhibit 1).

14 In the request for order of the Court. "That the Court grant Petitioner's request that
15 additional disbursements from the unblocked account be made available on a monthly basis
16 up to the amount of \$2,000.00 without Court Order to accommodate unexpected expenses not
17 set forth in the budge attached hereto" *Petition for Approval of Budget for Ward's Expenses*,
18 pp. 3-4, ll. 25-2 (See Exhibit 1).

19 Natko asked for \$1,500 per month for unexpected unspecified expenses, and then
20 \$2,000 per month under the very same reasoning in the same document. This is telling
21 evidence, of *why not \$2000 per month for no reason whatsoever?*

22 The evidence of the sought budget is relevant evidence, as it shows that Natko intent to
23 get Delford Mencarelli's money, even after this incident. There are numerous other pieces of
24 evidence before the instant act which show exactly what Natko's intentions were when she
25 took the money. The State would request the Court to hear all such evidentiary motions on the

26 ///

27
28 ¹ \$8,850.00 - \$700 = \$8,150. \$195,000 / \$8,150 = 23.9 Months

1 same date so that they can all be understood in proper context. In the next few days, the State
2 will file all of its Motions in Limine regarding evidentiary issues.

3 **CONCLUSION**

4 Based on the foregoing, the State respectfully requests that this Honorable Court to
5 DENY Defendant's Motion In Limine To Exclude Evidence Of Proposed Budgets Of Terri
6 Black, Mr. Mencarelli's Court Appointed Temporary Guardian, And Mr. Mencarelli's Court
7 Appointed Guardian, As Well As All Financial Expenditures On Behalf Of Delford Mencarelli
8 During His Guardianship Which Began September 16, 2013 consideration in support of the
9 oral request to exclude evidence of the Guardianship Trial.

10 DATED this 18 day of January, 2017.

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

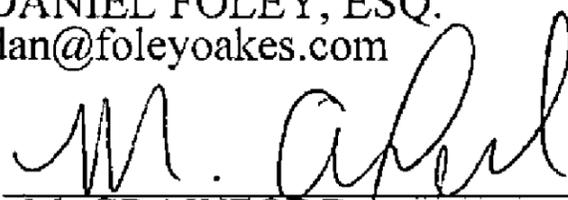
14 BY 

15 JAY P. RAMAN
16 Chief Deputy District Attorney
17 Nevada Bar #010193

18 CERTIFICATE OF ELECTRONIC TRANSMISSION

19 I hereby certify that service of the above and foregoing was made this 18th day of
20 January, 2017, by electronic transmission to:

21 DANIEL FOLEY, ESQ.
22 dan@foleyoakes.com

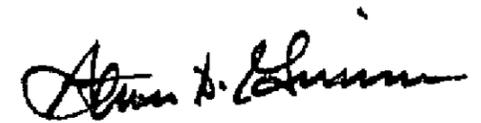
23 BY 

24 M. CRAWFORD
25 Secretary for the District Attorney's Office
26
27
28

14F14465X/JPR/mc/EAU

Exhibit 1

Natko's Petition for Approval of Budget
for Ward's Expenses



CLERK OF THE COURT

1 **PET**
2 NOEL PALMER SIMPSON, ESQ.
3 Nevada Bar No.: 9642
4 Mailing Address:
5 7956 Timber Peak Ln.
6 Las Vegas, NV 89113
7 702.776.7680
8 noel@plgelderlaw.com
9 Attorney for Petitioner
10 And
11 DANIEL T. FOLEY, ESQ.
12 Nevada Bar No. 1078
13 FOLEY & OAKES, PC
14 850 East Bonneville Avenue
15 Las Vegas, Nevada 89101
16 Telephone: (702) 384-2070
17 Facsimile: (702) 384-2128
18 Email: dan@foleyoakes.com

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**

14 In the Matter of the Guardianship of the
15 Person and Estate of

16 **DEL FORD W. MENCARELLI,**
17 **an Adult Ward.**

Case No.: **G-13-038863-A**
Dept. No.: **B**

DATE OF HEARING: 11/26/14
TIME OF HEARING: 10:00 a.m.

19 **PETITION FOR APPROVAL OF BUDGET FOR WARD'S EXPENSES**

20
21 COME NOW, the Petitioner, HELEN NATKO, by and through their Attorneys,
22 DANIEL T. FOLEY, ESQ., and NOEL PALMER SIMPSON, ESQ., of the law firms of Foley
23 & Oakes, and The Palmer Law Group, PLLC, petition this Court for approval of a budget for
24 the Ward's care and expenses, and respectfully represents the following to this Honorable
25 Court:

26
27 1. That Petitioner, HELEN NATKO, was appointed as General Guardian of the
28

1 Person and Estate of DELFORD MENCARELLI on August 5, 2014, with Letters of General
2 Guardianship issued thereafter.

3 2. That Petitioner request's Court approval pursuant to NRS 159.113 establish a
4 monthly budget for the payment of the Ward's monthly expenses.

5
6 3. That NRS 159.113, in pertinent parts, provide the following:

7 NRS 159.113 Guardian required to petition court before taking certain actions;
8 guardian may petition court before taking certain other actions; content of
9 petition.

10 1. Before taking any of the following actions, the guardian shall petition the court
11 for an order authorizing the guardian to:

12 (a) Obtain advice, instructions and approval of any other proposed act of the
13 guardian relating to the ward's property.

14 (b) Take any other action which the guardian deems would be in the best interests
15 of the ward.....

16 4. The Guardian has created a blocked, and unblocked, Guardianship account on
17 behalf of the Ward. The Ward's Guardianship estate has been placed into the blocked account
18 with Wells Fargo. Petitioner requests the authority to have the amounts set forth in the attached
19 Budget, directly deposited (or ACH) into the unblocked account so, that expenses may be paid
20 without further Court Order. See **Exhibit "1."**

21 5. That Petitioner further requests that additional disbursements from the unblocked
22 account be made available on a monthly basis up to the amount of \$1,500.00 without Court
23 Order to accommodate unexpected expenses not set forth in the budget attached hereto.

24 6. In the event that there are expenses that cannot be covered by the budget, nor by
25 the additional disbursement, Petitioners request that this Court grant the Guardian the authority
26 to pay directly to medical providers any medical expenses or make discretionary
27 purchases/payments directly to retailers or service providers for necessary and reasonable

1 expenses on behalf of DELFORD MENCARELLI, including payment of taxes and reasonable
2 travel expenses. All such payments shall be approved by way of annual accounting pursuant to
3 NRS 159.177.

4 7. Petitioner has incurred legal expenses on behalf of the Guardianship, and seeks
5 the Court's approval of same, to be paid from the Guardianship estate.

6 8. DANIEL T. FOLEY, ESQ., of Foley and Oakes, PC, has incurred attorney fees
7 on behalf of the Guardianship in the amount of \$17,229.50 during the post-trial proceedings, and
8 believes this to be a reasonable amount. Petitioner requests approval of this amount, and the
9 authority to pay same from the Guardianship Estate pursuant to NRS 159.183. See **Exhibit "2."**

10 9. NOEL PALMER SIMPSON, ESQ., of the Palmer Law Group, PLLC, has
11 incurred attorney fees on behalf of the Guardianship in the amount of \$3,384.75 during the post-
12 trial proceedings, and the preparation of this Petition, and believes this to be a reasonable
13 amount. Petitioner requests approval of this amount, and the authority to pay same from the
14 Guardianship Estate pursuant to NRS 159.183(3). See **Exhibit "3."**

15 10. That HELEN NATKO, Guardian of the Person and Estate of Delford W.
16 Mencarelli, has incurred fees in the amount of \$2,000.00, at the rate of \$500.00 per month, since
17 her appointment by the Court, August 5, 2014, the date the Court's Report and Recommendation
18 became an Order. See **Exhibit "1."**

19 11. That it is in the best interests of the Ward that the Guardian be given the
20 authority to take the above actions and execute the appropriate documentation to effectuate same.

21 WHEREFORE, Petitioner respectfully requests an Order from this Court authorizing the
22 following:

23 1. That this Court approve the proposed monthly budget for the Ward and authorize
24 the Guardian to pay the monthly expenses of the Ward based on same out of the unblocked
25 Guardianship account as requested;

26 2. That the Court grant Petitioner's request that additional disbursements from the
27 unblocked account be made available on a monthly basis up to the amount of \$2,000.00 without
28

- 1 Court Order to accommodate unexpected expenses not set forth in the budget attached hereto;
- 2 3. That, in the event that there are expenses that cannot be covered by the budget,
- 3 nor by the additional disbursement, the Court authorize the Guardian to pay directly to medical
- 4 providers any medical expenses, or make discretionary purchases/payments directly to retailers
- 5 or service providers for necessary and reasonable expenses on behalf of DELFORD
- 6 MENCARELLI, including payment of taxes and reasonable travel expenses. That the Guardian
- 7 shall obtain Court approval of same by way of Petition on notice for confirmation no later than
- 8 30 days after said payment, and/or by annual accounting pursuant to NRS 159.177; and
- 9 4. Approval of the attorney fees requested herein, and the authority and direction to
- 10 pay same.
- 11 5. Approval of the Guardian fees requested herein, and the authority and direction
- 12 to pay same.
- 13 6. For such further relief as to the Court seems just and proper.

14 DATED this _____ day of November, 2014.

PALMER LAW GROUP, PLLC

17 By /s/ Noel Palmer Simpson
18 NOEL PALMER SIMPSON, ESQ.
19 Nevada Bar No. 9642
20 Attorney for Petitioner

21
22
23
24
25
26
27
28

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

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

HELEN NATKO, being first duly sworn, under penalty of perjury, deposes and says: I am the Petitioner in the above-entitled action; I have read the foregoing Petition For Approval of Budget for Ward's Expenses; and I know the contents thereof; the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.

Helen Natko
Helen Natko, Guardian

SUBSCRIBED and SWORN to before me this 4th day of ~~October~~ November, 2014. *S.O. by Helen Natko.*

[Signature]
NOTARY PUBLIC in and for said County and State

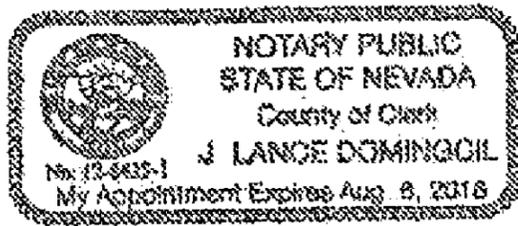


EXHIBIT "1"

Delford Mencarelli Monthly Budget

Description	Frequency	Monthly Budgeted Payment
Room and Board incl.	Monthly	\$1,250.00
Essential Care/Respite 4Hrs/day for 2 Days/week	Monthly	\$800.00
Care Giving Cost (\$15/hr 8Hrs/day for 5 Days/week)	Monthly	\$2,400.00
Guardian Fees	Monthly	\$500.00
Medical Costs/Co-Pay	Monthly	\$300.00
Pharmacy	Monthly	\$300.00
Groceries (Ward's Sha)	Monthly	\$300.00
Personal Care Needs (Grooming and Continenence Supplies)	Monthly	\$400.00
Entertainment	Monthly	\$200.00
Transportation/Gas (V)	Monthly	\$100.00
Professional Fee	Monthly	\$300.00
Total:		\$6,850.00
Less Income:		
(Social Security)		(\$1,273.00)
(Pension)		(\$928.00)
*Total Monthly Budget:		\$4,649.00

*This is an estimated monthly budget

EXHIBIT “2”

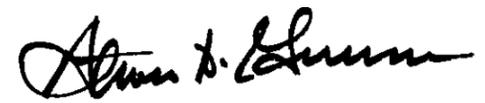
Exhibit 2

Table detailing the
budget history for
Delford Mencarelli

EXHIBIT 1

Delford's Actual Living Expenses vs. Natko Proposed Budgets vs. Steel Award

Item	Delford Mencarelli Actual Living Expenses Sept 2013 Sept 2014	Natko's Initial Proposed Budget Petition 11/7/14	Natko's Amended Budget 3/11/15	Norheim's Discounted Budget RAR 3/26/15	Judge Steel Approved Budget 6/23/15	Judge Steel Ordered Budget Itemization 6/23/15
Room and Board	\$700	\$1,250	\$2,873	\$2,298	\$1,000	\$1,000
3rd Party Caregivers	\$900	\$800	\$1,140	\$1,140	\$1,140	\$1,140
Caregiver Fees (to Natko)		\$2,400	\$0	\$0	\$0	
Guardian Fees (to Natko)		\$500	\$0	\$0	\$500	\$500
Medical	\$50	\$300	\$26	\$26	\$26	\$213
Pharmacy	\$175	\$300	\$187	\$187	\$187	
Groceries (food supplement)	\$100	\$300	\$97	\$97	\$300	\$300
Vitamins		NA	\$44	\$44	\$44	
Clothing	\$25	NA	\$60	\$60	\$60	
Haircut/Pedicure	\$30	NA	\$45	\$45	\$45	
Personal Care	\$71	\$400	\$190	\$190	\$287	\$436
Entertainment	\$100	\$200	\$160	\$160	\$160	\$160
Transportation/Gas	\$50	\$100	\$75	\$75	\$75	\$75
Professional Fee		\$300	\$0	\$0	\$0	
Misc. (Natko discretionary)		\$2,000	\$0	\$0	\$0	
TOTAL Cost	\$2,201	\$8,850	\$4,897	\$4,322	\$3,823	\$3,823



CLERK OF THE COURT

1 **RPLY**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-2070
8 Facsimile: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Helen Natko*

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

10 THE STATE OF NEVADA,
11
12 Plaintiff,
13 vs.
14 HELEN NATKO #1186757,
15 Defendant.

Case No. C-16-313574-1
Dept. No. XIX

Date of Hearing: January 23, 2017
Time of Hearing: 8:30 a.m.

16 **DEFENDANT'S REPLY TO STATE'S OPPOSITION TO MOTION *IN LIMINE* TO**
17 **EXCLUDE IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI BLACK,**
18 **MR. MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, AND MR.**
19 **MENCARELLI'S COURT APPOINTED GUARDIAN, AS WELL AS ALL FINANCIAL**
20 **EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS**
21 **GUARDIANSHIP WHICH BEGAN SEPTEMBER 16, 2013**

22 COMES NOW Helen Natko ("Helen"), by and through her attorneys Daniel T. Foley
23 Esq., and hereby submits this Reply to the State's Opposition to Ms. Natko's Motion *in Limine*
24 seeking an Order prohibiting any evidence (documents, statements, testimony) or testimony as to
25 all irrelevant evidence of all proposed budgets of Terri Black or Mr. Mencarelli's Court appointed
26 Guardians as well as all financial expenditures on behalf of Mr. Mencarelli during his
27 Guardianship from September 16, 2013 through July 5, 2015.

28 The State's attorney in his Motion filed with this Court on April 22, 2016 sought the
identical relief for the State (which Ms. Natko consented to) as Ms. Natko is seeking in the subject

1 Motion in Limine. A courtesy copy of the State's Motion in Limine filed April 22, 2016 is
2 attached hereto as Exhibit "1".

3 In its Opposition to the current Motion in Limine, signed under the strictures NRCR Rule
4 11, the State's Attorney argues that the State "intends to present evidence of what the monthly
5 budget Helen Natko proposed (in November 2015 and February 2015) was, as it is relevant
6 as to her criminal intent as it relates to the charged crimes ... Natko took \$195,000 from
7 Delford Mencarelli (on July 5, 2013) by transferring his money out of a (jointly owned) bank
8 account that she had access to, and then 26 days later (upon advice of counsel) returned the
9 money."
10

11 In the Motion attached as Exhibit "1", also signed by the State's Attorney under the
12 strictures NRCR Rule 11, the State's attorney argued as follows:

13 "The Defense will try to enter evidence of the proposed budget or actual budget that
14 was formulated after guardianship was ordered – just as they did at the Preliminary hearing.
15 The problem with entering said budget into evidence or testimony, is that it was formulated
16 well after the criminal acts in this case, and bears no relevance on whether or not Defendant
17 exploited or committed Theft on the Victim. For example, on July 5, 2013 Helen Natko
18 transfers \$195,000 from Delford Mencarelli's Plus Credit Account to an account where the
19 only account holder is Helen Natko. The budget which was testified to was formulated and is
20 dated years after July 2013. ... Therefore, there is substantial risk of confusion of issues and
21 misleading the jury – problem which the rules of evidence under NRS 48.035 are designed to
22 prevent.
23

24 The trial in this case is already going to be unnecessarily lengthy affair (as was the
25 Preliminary Hearing); the last thing that needs to occur is wading into irrelevant issues that
26 waste time, confuse the issues, are cumulative, and have a substantial probability of
27 impairing a jury's ability to be fair and impartial. Therefore, the Guardianship Trial
28

1 evidence and any budgets developed should be excluded from the Criminal Trial.” See pages
2 11 and 12 of Exhibit “1”.

3 The State’s attorney should be held accountable for his certified filings with this Court.

4 **TRIAL IN THIS CASE WILL BE EXTENDED DRAMATICALLY IF THE STATE IS**
5 **ALLOWED TO PRESENT EVIDENCE OF THE GUARDIANSHIP COURT BUDGETS**

6 Again, as set forth above, the State initially assured this Court that the budgets it now seeks to
7 introduce were irrelevant and time consuming. Ms. Natko agrees with that position and agreed to
8 the States Motion in Limine. If the State is allowed to introduce evidence from the Guardianship
9 case related to budgets, then Ms. Natko will need to introduce evidence of all of the budgets
10 submitted and Court’s ruling on Ms. Natko’s Budget. The Guardianship Court’s approval of Ms.
11 Natko’s budget is extremely relevant to show that the budget submitted was reasonable. Retrying
12 these significant issues from the Guardianship Case could stretch this trial out to 3 weeks.

13
14
15 In this case, Helen is accused of taking \$195,000 out of Helen and Delford’s Joint
16 Account for 26 days in July 2013. The budgets submitted by Helen in November 2014 and
17 February 2015 have nothing to do what occurred 18 months prior. The State’s argument that
18 Helen’s conduct 18 months after the alleged crime, after a 12 day trial, and after having been
19 appointed as Delford’s Guardian somehow shows intent for why she returned the money she had
20 safeguarded in July 2013 is absurd.

21
22 The State can only hope to confuse the jury with irrelevant financial information that can
23 only prejudice Helen.

24 **CONCLUSION**

25
26 The post July 31, 2013 financial budgets presented in the Guardianship case are irrelevant
27 to the charges before this Court and cannot be admitted. Given the intended prejudicial effect
28 that evidence relating to Delford’s guardians and his daughter’s budgets can have on a jury, it is

1 imperative that the State not be allowed to introduce such irrelevant evidence that does not
2 pertain to the \$195,000 issue at hand.

3 Dated this 20th day of January 2017.

4 Respectfully submitted,

5
6 /s/Daniel T. Foley
7 DANIEL T. FOLEY, ESQ.
8 FOLEY & OAKES, PC
9 626 So. 8th St.
10 Las Vegas, Nevada 89101
11 *Attorneys for Defendant*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 20th day of January, 2017, I served the
4 following document(s):

5 DEFENDANT'S REPLY TO THE STATE'S OPPOSITION TO MOTION IN LIMINE TO
6 EXCLUDE IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI BLACK,
7 MR. MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, AND MR.
8 MENCARELLI'S COURT APPOINTED GUARDIAN AS WELL AS ALL FINANCIAL
9 EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS
10 GUARDIANSHIP WHICH BEGAN SEPTEMBER 16, 2013

11 I served the above-named document(s) by the following means to the person s as listed
12 below:

13 By Electronic Transmission through the Wiznet System:

14 Jay P. Raman
15 Deputy District Attorney
16 200 Lewis Ave
17 Las Vegas, NV 89155

18 By United States Mail, postage fully prepaid to person(s) and addresses as

19 follows:

20 By Direct Email (as opposed to through the ECF system (list persons and email
21 addresses). Based upon the written agreement of the parties to accept service by email or a court
22 order, I caused the document(s) to be sent to the persons at the email addresses listed below. I
23 did not receive, within a reasonable time after the transmission, any electronic message or other
24 indication that the transmission was unsuccessful.

25 By Facsimile Transmission to person(s) and addresses as follows: I faxed the
26 document(s) to the persons at the fax numbers listed herein. No error was reported by the fax
27 machine that I used. A copy of the record of the fax transmission is attached.

28 I declare under the penalty of perjury that the foregoing is true and correct.

/s/Liz Gould
An employee of FOLEY & OAKES, PC

EXHIBIT "1"

EXHIBIT "1"



1 MOT
 2 STEVEN B. WOLFSON
 Clark County District Attorney
 Nevada Bar #001565
 3 JAY P. RAMAN
 Chief Deputy District Attorney
 4 Nevada Bar #010193
 200 Lewis Avenue
 5 Las Vegas, Nevada 89155-2211
 (702) 671-2500
 6 Attorney for Plaintiff

7
 8 DISTRICT COURT
 CLARK COUNTY, NEVADA

9
 10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

Case No. C-16-313574-1

13 HELEN NATKO,
 #1186757)

Dept No. XIX

14 Defendant.)
 15

16
 17 NOTICE OF MOTION AND MOTION IN LIMINE TO PRECLUDE RULINGS IN
 GUARDIANSHIP TRIAL AND TO PRECLUDE EVIDENCE OF POST-
 18 GUARDIANSHIP BUDGET FROM BEING HEARD IN THE CRIMINAL TRIAL

19 DATE OF NEXT HEARING: MAY 11, 2016
 TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
 21 through JAY P. RAMAN, Chief Deputy District Attorney, and files this Notice of Motion and
 22 Motion in Limine to Preclude Rulings in Guardianship Trial and to Preclude Evidence of Post-
 23 Guardianship Budget from Being Heard in The Criminal Trial.

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

27 ///

28

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

NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XIX thereof, on Wednesday, the 11th day of May, 2016, at the hour of 8:30 o'clock AM, or as soon thereafter as counsel may be heard.

DATED this 22ND day of April, 2016.

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

BY /s/JAY P. RAMAN
JAY P. RAMAN
Chief Deputy District Attorney
Nevada Bar #10193

Points and Authorities

FACTS AND CIRCUMSTANCES

The allegations in the instant case are that on or about July 5, 2013 Helen Natko exploited Delford Mencarelli of \$195,000.00 by transferring the money out of his account into her own sole account where he had no access. The evidence has shown and will show the following circumstances.

- Delford Mencarelli is the father of Terri Black. Terri Black is Delford Mencarelli's only child. Terri Black is married to Richard Black, and they have a son named Daniel Black. Daniel Black is Delford Mencarelli's grandson.
- The Delford Mencarelli's wife passed in approximately 1980. Helen Natko's husband similarly passed away in the same general timeframe. Both Delford Mencarelli and Helen Natko lived in Pennsylvania, but in different towns.
- Delford Mencarelli and Helen Natko never resided in the same home in Pennsylvania, but they were friends and dated each other between 1982 and 1992.

- 1 - In 1992, Helen Natko moved to Las Vegas, Nevada. She sold her home in Pennsylvania
2 and purchased a home in Las Vegas. Delford Mencarelli remained and continued to
3 live in Pennsylvania.
- 4 - Between 1992 and 2002 Delford Mencarelli travels every other year during the cold
5 months of the year to Las Vegas and stays with Helen Natko. This accounts for 4 to 5
6 trips to Las Vegas during that decade span.
- 7 - In 2000, Delford Mencarelli adds his daughter Terri Black as a joint account holder
8 over his Citizen's bank accounts. This is done as a precautionary measure as her father
9 is advancing in age.
- 10 - In 2002, Delford Mencarelli decides to move to Las Vegas and will reside with Helen
11 Natko. Delford Mencarelli sells his Pennsylvania home, and arranges to pay rent to
12 Helen Natko in the amount of \$700/mo. Terri Black states that the Delford Mencarelli's
13 estate including the sale of the Pennsylvania home at that time was approximately
14 \$500,000.00.
- 15 - At the time of the move, Delford Mencarelli is approximately 72 years old. In addition
16 to his savings, he receives a pension from the Power Company, and social security. The
17 pension is approximately \$928.00, the social security payment is approximately
18 \$1211.00.
- 19 - While Delford Mencarelli is living in Las Vegas, Nevada his daughter and family visit
20 him about once a year, normally coinciding with Spring Break due to Terri's son being
21 in school. In addition to the visits, Terri speaks with her father normally once a week,
22 usually on the weekends.
- 23 - In 2008 a Plus Credit Union bank account is opened in Las Vegas by the Delford
24 Mencarelli. From this point forward his pension check is deposited and cashed through
25 this account, and the social security check still goes to Citizens Bank.
- 26 - In April of 2011 Terri and Rick Black fly Delford Mencarelli and Helen Natko to visit
27 them in North Carolina for Easter. Delford Mencarelli at this time was 80 years old,
28 and was noticeably slowing down. Helen Natko claims that Delford Mencarelli needs

- 1 hearing aids, and tries to make Delford Mencarelli wear them -- Delford Mencarelli
2 refuses and denies hearing issues.
- 3 - During time alone with the Delford Mencarelli, Terri reiterates long term planning and
4 care goals. She suggests that they (Rick and Terri) could purchase a condo for Delford
5 Mencarelli and Helen Natko to live in in North Carolina so that they could be closer.
6 Delford Mencarelli refuses the offer, as does Helen Natko when separately proposed to
7 her.
- 8 - As can be seen during the April 2011 visit, Helen Natko and Delford Mencarelli bicker
9 and argue quite a bit.
- 10 - On July 19, 2011 Dr. Shauna Christiansen-Thistle conducts a Mini Mental Status exam
11 on Delford Mencarelli. He scored a 12 out of 30. Dr. Christiansen-Thistle refers Delford
12 Mencarelli to a Neurologist. Dr. Christiansen-Thistle said that Delford Mencarelli was
13 not capable of balancing a checkbook, writing out bills, or being organized in a fashion
14 that it would take to manage his financial condition.
- 15 - On August 4, 2011 \$20,000.00 is transferred from Citizen's bank to plus Credit Union,
16 Terri Black is unaware and not made aware that this has occurred.
- 17 - On August 15, 2011 \$5,000.00 is withdrawn from Delford Mencarelli's Plus Credit
18 Union account. Terri Black is unaware and not made aware that this has occurred.
- 19 - On October 14, 2011 Delford Mencarelli was seen by Dr. Howard Ehrenfeld, a
20 Neurologist. Delford scored a 13 out of 30 on the Mini Mental Status Exam. Dr.
21 Ehrenfeld notes that Delford Mencarelli has had difficulty with his memory for about
22 three years, and that his significant other handles the finances.
- 23 - On November 1, 2011 \$15,000.00 is withdrawn from Delford Mencarelli's Plus Credit
24 Union account. Terri Black is unaware and not made aware that this has occurred.
- 25 - In May of 2012 Delford Mencarelli and Helen Natko travel to Pittsburg to visit each
26 other's relatives. Delford Mencarelli is hospitalized during the stay due to
27 complications with medication and his diabetes. Terri Black is only made aware of
28

- 1 Delford Mencarelli's hospitalization due to calling her Aunt. After several attempts to
2 call Helen Natko, she finally answers and explains that he was in the hospital.
- 3 - In July 2012 in Las Vegas, Delford Mencarelli is hospitalized in Las Vegas. Terri Black
4 is never notified by Helen Natko that her father was in the hospital.
- 5 - On July 23, 2012 \$150,000.00 is transferred from Citizens Bank to the Plus Credit
6 Union. On the same date, Helen Natko is added as joint account holder with Delford
7 Mencarelli.
- 8 - On September 5, 2012 \$5,000.00 is withdrawn from Delford Mencarelli's Plus Credit
9 Union account. Terri Black is unaware and not made aware that this has occurred.
- 10 - In March of 2013, Helen Natko calls Terri and says, 'Come get your father -- he hasn't
11 paid rent this month'. Terri finds this odd, because Helen Natko is known to bring
12 Delford Mencarelli to the bank to cash his pension check, and he hands over the
13 \$700.00. Terri spoke to Helen Natko the next day, she explained that it was just a bad
14 day -- they are ok. Terri expressed that she was more than willing to take her father to
15 live with her in North Carolina.
- 16 - On April 26, 2013 \$50,000.00 is transferred from Citizen's Bank to Delford's Plus
17 Credit Union Account (now joint with Helen)
- 18 - On June 4, 2013 a \$500 check is received by Daniel Black allegedly from Delford
19 Mencarelli for graduation from high school. Terri Black immediately recognizes that it
20 is not Delford Mencarelli's handwriting on the check. Terri was also puzzled because
21 Delford always sent a card and cash, not a check.
- 22 - On or around June 15, 2013 Terri Black went to the Pittsburg area to attend a funeral.
23 Because of the geographic location of Citizens bank, she is finally able to go to a branch
24 and request statements. While viewing the statements from Citizens Bank, she
25 discovers disbursements of \$50,000 twice (one returned due to non-sufficient funds).
26 Upon reviewing earlier statements she discovers transactions of \$20,000 and \$150,000.
- 27 - On June 22, 2013 Terri Black calls Delford Mencarelli. Terri spoke about the funeral
28 and made other small talk with her father, and then approached the subject of the large

1 money transfers. Terri asks about the \$200,000 leaving Citizen's bank. Delford says
2 emphatically and repeatedly "no, all my money is in Citizen's Bank". Helen Natko is
3 also on the phone, and chimes in first 'we moved the money' suggesting it to Delford.
4 Helen then accuses Terri, stating 'why should you have it all?' Helen Natko says, 'come
5 get your father, I am putting him on a plane'. Terri explained after several calls that she
6 would come get her father the next day.

7 - Still on June 22, 2013 Terri calls LVMPD after the events transpire to do a well check
8 on Delford.

9 - On June 23, 2013 Terri and Richard Black arrive in Las Vegas with a one-way ticket
10 for Delford to go to North Carolina with them. Helen Natko refuses to release Delford,
11 and will not even allow Terri to speak in private with her father. Delford looks
12 disheveled. The police are unable or unwilling to assist.

13 - On June 27, 2013 Terri and Richard Black file a petition for appointment of guardian
14 based upon the abovementioned conduct.

15 - On July 5, 2013 Helen Natko transfers \$195,000.00 from Delford Mencarelli's Plus
16 Credit Union Account to an account where the only account holder is Helen Natko.

17 - On August 19, 2013 Delford Mencarelli is evaluated again by Dr. Ehrenfeld. He scores
18 a 10 out of 30 on the Mini Mental Status Exam.

19 - On April 17, 2014 the Las Vegas Metropolitan Police Department begins an
20 investigation into Elderly Exploitation regarding Helen Natko's actions with the
21 Delford Mencarelli's finances.

22 - Douglas Winters, CPA will testify that during the relevant years, Helen Natko's
23 gambling, and more importantly gambling losses far outpaced her income.

24 **Events that occur after the timeframe of charged conduct and are not relevant**

25 - A guardianship trial started on Jun 5, 2014 and took place over the course of 11 non-
26 consecutive days. During the guardianship trial the hearing master, Jon Noeheim,
27 allowed hearsay evidence of the Delford Mencarelli's *wishes* to be presented by Helen
28 Natko and Denise Comastro (private professional guardian), but restricted Terri and

1 Richard Black and Delford's other relatives from presenting hearsay of the Delford
2 Mencarelli's wishes.

- 3 - There were allegations made by Terri and Richard Black that Helen Natko was
4 financially exploiting and isolating Delford Mencarelli, despite those allegations and
5 evidence proving the same, the Guardianship Court ruled that Helen Natko could be
6 guardian of person and estate for Delford Mencarelli.
- 7 - On July 11, 2014 the Guardianship Commissioner Jon Norheim issued a written
8 decision ordering that Helen Natko to have sole guardianship over the person and estate
9 of Delford Mencarelli. The order is finalized on August 5, 2014.
- 10 - On June 1, 2015 Commissioner Norheim is removed from all guardianship matters by
11 the Eighth Judicial District Court. Subsequently, Judge Charles Hoskins is removed
12 from being an alternate or appellate judge over guardianship cases. These changes were
13 due to long standing complaints from the Blacks and others about the way
14 Commissioner Norheim conducted proceedings, decisions, and many alleged frauds
15 being perpetrated against wards by guardians. Guardianship cases were reassigned to
16 Judge Cynthia Dianne Steele. Additionally, Chief Justice Hardesty sets up a
17 commission to make improvements to the guardianship process in Nevada.
- 18 - On June 23, 2015 Judge Steele held her first hearing in Delford Mencarelli guardianship
19 case. Judge Steele reversed and changed the guardianship order to make Helen Natko
20 and Terri Black co-guardians.
- 21 - On July 3, 2015 Delford Mencarelli passed away.
- 22 - The case is now in Probate Court and to a limited extent still in guardianship where
23 fees are being disputed and held.

24 ///

25 ///

26 ///

27

28

ARGUMENT

1 **I. Evidence of what occurred at the Guardianship Trial and Subsequent Budge**
2 **is Irrelevant and should not be admissible at Trial**

3 A concept that almost as old as the law itself, is that issues of law are decided by the
4 Judge, issues of fact are decided by the Jury. A jury's role is to decide the facts of the case and
5 apply them to the law as determined and given to the jury by the court. Sparf v. United States,
6 156 U.S. 51, 102, 15 S. Ct. 273, 39 L. Ed. 343 (1895); United States v. Simpson, 460 F.2d
7 515, 519 (9th Cir. 1972). The standard for what evidence is relevant is codified in NRS 48.015
8 to 48.035.

9
10 NRS 48.015 "Relevant evidence" defined. As used in this chapter,
11 "relevant evidence" means evidence having any tendency to make the
12 existence of any fact that is of consequence to the determination of the
13 action more or less probable than it would be without the evidence.
14 (Emphasis added).

15
16 NRS 48.025 Relevant evidence generally admissible; irrelevant evidence
17 inadmissible.

18 1. All relevant evidence is admissible, except:

19 (a) As otherwise provided by this title;

20 (b) As limited by the Constitution of the United States or of the State of Nevada;

21 or

22 (c) Where a statute limits the review of an administrative determination to the
23 record made or evidence offered before that tribunal.

24 2. Evidence which is not relevant is not admissible. (Emphasis added).

25
26 NRS 48.035 Exclusion of relevant evidence on grounds of prejudice, confusion or
27 waste of time.

28 1. Although relevant, evidence is not admissible if its probative value is
substantially outweighed by the danger of unfair prejudice, of confusion of the
issues or of misleading the jury.

 2. Although relevant, evidence may be excluded if its probative value is
substantially outweighed by considerations of undue delay, waste of time or
needless presentation of cumulative evidence.

1 3. Evidence of another act or crime which is so closely related to an act in
2 controversy or a crime charged that an ordinary witness cannot describe the act in
3 controversy or the crime charged without referring to the other act or crime shall not be
4 excluded, but at the request of an interested party, a cautionary instruction shall be
5 given explaining the reason for its admission. (Emphasis added).

6 A. Evidence of What Occurred at the Guardianship Trial is Not Relevant Evidence

7 The Defendant will improperly attempt to let the jury know that the issues and
8 allegations that are contained in the Criminal Case were heard in the Guardianship Case, and
9 that Hearing Master Jon Norheim ruled that despite these allegations Helen Natko was
10 awarded guardianship.

11 Evidence that the Defense intends to talk about the Guardianship Trial is shown in
12 several places thus far in this case. Helen Natko's Counsel, Dan Foley, made his entire cross-
13 examination of Terri Black nothing more than an attempt to present irrelevant and inadmissible
14 (by using the wrong witness) evidence of the Guardianship Trial before the Justice Court. The
15 Defense presented a binder of evidence to the Justice Court, largely without legal foundation,
16 which includes the Guardianship Commissioner's report and recommendations. The Defense
17 filed a motion in the Justice Court to try and have the Criminal Case dismissed under a theory
18 of collateral estoppel (their flawed reasoning was because allegations of exploitation were
19 made during the guardianship trial that the State of Nevada could not later prosecute).

20 In a Criminal Case, the standard of relevance is shown by what is relevant or proving
21 or disproving the charges in the charging document -- nothing more. The problem with
22 introducing evidence about the Guardianship Trial and result is twofold. The first problem -
23 what occurred in the Guardianship Trial is not relevant evidence because it is built upon
24 inadmissible hearsay. The second problem is that ex-Guardianship Commissioner Norheim's
25 judgements on that inadmissible evidence, or even admissible evidence should not obscure
26 independent view of jurors in a separate criminal case. Whether or not guardianship is
27 rightfully or wrongfully awarded to Helen Natko is not relevant here, the same way that in a
28

1 domestic violence or child abuse case who is ultimately awarded custody would not be
2 relevant.

3 An example of this logical exercise is demonstrated in State v. Barnes :

4
5 The connection Barnes hoped to establish was if the juvenile court determined
6 the children should be placed back in the home, the spanking was not as bad as
7 the State contended, and no crimes were committed. The problem with this
8 contention is that child in need of care hearings and criminal trials are totally
9 different proceedings. The goal in a criminal case is to punish an offender for
10 his crime. K.S.A. 21-3101 et seq. The goal in a child in need of care case is to
11 reintegrate the children back into the home in a manner that will best serve the
12 children's welfare. K.S.A. 38-1501. Proceedings pursuant to the code for care
13 of children are civil in nature. K.S.A. 38-1501.

14 The trial court did not err in granting the State's motion in limine. There is no
15 logical connection between what happened at the custody hearing and whether
16 Barnes committed Crimes against the two boys. Just because the boys were
17 placed back in the home does not mean crimes did not occur.

18 State v. Barnes, 1993 Kan. App. Unpub. LEXIS 485, (Kan. Ct. App. Sept. 24,
19 1993)

20 Much like what occurred in the Barnes case, it is not relevant for the one year after-the-
21 fact civil guardianship trial to come before the criminal jury. The issue before the guardianship
22 hearing master was 'who should have guardianship from that point forward over Delford
23 Mencarelli', it does not mean that crimes did not occur previously, and it does not mean that
24 a full and complete (or fair) exploration of criminal allegations occurred in the Guardianship
25 Trial. The Guardianship Case case is family court/civil in nature, our case is criminal. The
26 State of Nevada was not a party to the family court action, therefore the State had no power to
27 present evidence or question witnesses.

28 There is no lawful justification that evidence of the Guardianship Trial should be
presented at the Preliminary Hearing in this case, and in fact it would be dangerous to do so.

1 B. While certainly not relevant, even if deemed 'relevant' NRS 48.035 excludes the
2 presentation of the Guardianship Trial.

3 The operative parts of NRS 48.035 include the following terms: evidence is not
4 admissible if its probative value is substantially outweighed by the danger of unfair
5 prejudice, of confusion of the issues or of misleading the jury, and evidence may be
6 excluded if its probative value is substantially outweighed by considerations of undue
7 delay, waste of time or needless presentation of cumulative evidence. (Sec 2&3). While it
8 is clear that the Guardianship Trial is not relevant evidence, such evidence would certainly
9 lead to confusion of the issues, unfair prejudice, cause undue delay, waste of time, and needless
10 presentation of cumulative evidence. Those terms properly define the bulk of the Defenses'
11 inadmissible exhibit binder – the Guardianship Trial.

12
13 C. Evidence of Delford Mencarelli's budget established post-guardianship proceedings is
14 likewise irrelevant

15 The Defense will try to enter evidence of the proposed budget, or actual budget that
16 was formulated after guardianship was ordered – just as they did at the Preliminary hearing.
17 The problem with entering said budget into evidence or testimony, is that it was formulated
18 well after the criminal acts in this case, and bears no relevance on whether or not Defendant
19 exploited or committed Theft on the Victim. For example, on July 5, 2013 Helen Natko
20 transfers \$195,000.00 from Delford Mencarelli's Plus Credit Union Account to an account
21 where the only account holder is Helen Natko. The budget which was testified to was
22 formulated and is dated years after July 5, 2013. In fact, the Preliminary Hearing showed that
23 the budgetary schedule was from February of 2015 (Preliminary Hearing Transcript, Vol III.
24 P. 95). Any of the budgets prepared in this case that were enacted would be similarly not
25 relevant because they do not reflect any of the actual circumstances which occurred during the
26 timeframe in question. Therefore, there is substantial risk of confusion of issues and
27
28

1 misleading the jury -- problems which the rules of evidence under NRS 48.035 are designed
2 to prevent.

3 The trial in this case is already going to be an unnecessarily lengthy affair (as was the
4 Preliminary Hearing); the last thing that needs to occur is wading into irrelevant issues that
5 waste time, confuse the issues, are cumulative, and have a substantial probability of impairing
6 a jury's ability to be fair and impartial. Therefore, the Guardianship Trial evidence and any
7 budgets developed should be excluded from the Criminal Trial.

8 CONCLUSION

9 Based on the foregoing, the State respectfully requests that this Honorable Court to take
10 this GRANT the State's Motion and restrict testimony, argument and evidence of the
11 Guardianship Trial and to Preclude Evidence of Post-Guardianship Budget.

12 DATED this 22ND day of April, 2015.

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

15 BY /s/JAY P. RAMAN

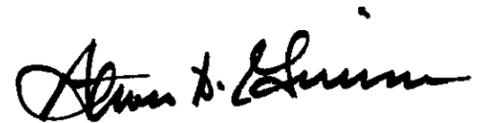
16 JAY P. RAMAN
17 Chief Deputy District Attorney
Nevada Bar #010193

18
19 CERTIFICATE OF FACSIMILE TRANSMISSION

20 I hereby certify that service of the above and foregoing, was made this 22nd day of
21 April, 2016, by facsimile transmission to:

22 DANIEL FOLEY, ESQ.
23 FAX: 702-384-2128

24 /s/Deana Daniels
25 Secretary for the District Attorney's
26 Office
27
28



CLERK OF THE COURT

1 **NOE**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-2070
8 Facsimile: (702) 384-2128
9 Email: dan@foleyoakes.com
10 Attorneys for Helen Natko

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

9 THE STATE OF NEVADA,
10
11 Plaintiff,
12 vs.
13 HELEN NATKO #1186757,
14 Defendant.

Case No. C-16-313574-1
Dept. No. XIX

NOTICE OF ENTRY

14 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT'S MOTION IN LIMINE**
15 **TO EXCLUDE IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI**
16 **BLACK, MR. MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, MR.**
17 **MENCARELLI'S COURT APPOINTED GUARDIAN, AS WELL AS ALL FINANCIAL**
18 **EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS**
19 **GUARDIANSHIP WHICH BEGAN ON SEPTEMBER 16TH, 2013**

18 PLEASE TAKE NOTICE that the Clerk of the Court entered the Order of the Court
19 regarding the parties' Order Granting Defendant's Motion in Limine to Exclude Irrelevant
20 Evidence of Proposed Budgets of Terri Black, Mr. Mencarelli's Court Appointed Temporary
21 Guardian, Mr. Mencarelli's Court Appointed Guardian, as well as All Financial Expenditures on
22 Behalf of Delford Mencarelli During His Guardianship Which Began on September 16th, 2013 in
23 the above-entitled manner on February 21st, 2017. A copy of said Order Granting Defendant's
24 Motion in Limine to Exclude Irrelevant Evidence of Proposed Budgets of Terri Black, Mr.
25 Mencarelli's Court Appointed Temporary Guardian, Mr. Mencarelli's Court Appointed
26

1 Guardian, as well as All Financial Expenditures on Behalf of Delford Mencarelli During His
2 Guardianship Which Began on September 16th, 2013 is attached hereto as Exhibit "A".

3 DATED this 22nd day of February 2017

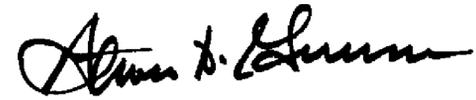
4 FOLEY & OAKES, PC

5 /s/Daniel T. Foley

6 Daniel T. Foley, Esq.
7 Nevada Bar No. 1078
8 626 So. 8th Street
9 Las Vegas, NV 89101
10 (702) 384-2070
11 Attorneys for Defendant

EXHIBIT “A”

EXHIBIT “A”



CLERK OF THE COURT

1 **ORDER**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 So. 8th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 384-2070
8 Facsimile: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Helen Natko*

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 HELEN NATKO #1186757,

13 Defendant.

Case No. C-16-313574-1

Dept. No. XIX

14
15 **ORDER GRANTING DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE**
16 **IRRELEVANT EVIDENCE OF PROPOSED BUDGETS OF TERRI BLACK, MR.**
17 **MENCARELLI'S COURT APPOINTED TEMPORARY GUARDIAN, AND MR.**
18 **MENCARELLI'S COURT APPOINTED GUARDIAN, AS WELL AS ALL FINANCIAL**
19 **EXPENDITURES ON BEHALF OF DELFORD MENCARELLI DURING HIS**
20 **GUARDIANSHIP WHICH BEGAN SEPTEMBER 16, 2013**

21 Defendant, Helen Natko's Motion in Limine to Exclude Irrelevant Evidence of Proposed
22 Budgets of Terri Black, Mr. Mencarelli's Court Appointed Temporary Guardian, and Mr.
23 Mencarelli's Court Appoint Guardian, as Well as All Financial Expenditures on Behalf of
24 Delford Mendcarelli During His Guardianship Which Began September 16, 2013, having come
25 on for hearing on February 8, 2017 at 8:30 am, Ms. Natko and her attorney Daniel T. Foley,
26 Esq., and Jay P. Raman, Esq. from the Clark County District Attorney's office, having appeared
27 at the hearing, the Court having having read the Defendant's Motion, the State's Opposition,
28 and Ms. Natko's Reply brief, the Court, having heard oral arguments from counsel, and good
cause appearing therefore,

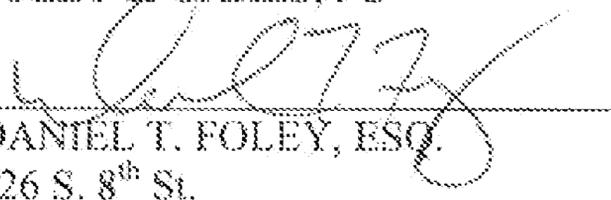
1 IT IS HEREBY ORDERED THAT Helen Natko's Motion in Limine to Exclude
2 Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Menciairelli's Court Appointed
3 Temporary Guardian, and Mr. Menciairelli's Court Appoint Guardian, as Well as All Financial
4 Expenditures on Behalf of Delford Mendcairelli During His Guardianship Which Began
5 September 16, 2013 is Granted in full.

6
7 DATED: February 14th 2017.


DISTRICT COURT JUDGE

8
9
10 Submitted by:

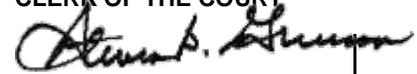
11 FOLEY & OAKES, PC

12 
DANIEL T. FOLEY, ESQ.

13 626 S. 8th St.

14 Las Vegas, Nevada 89101

15 Attorneys for the Defendant
16
17
18
19
20
21
22
23
24
25
26
27
28



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-313574-1
	.	
Plaintiff,	.	DEPT. NO. XIX
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
HELEN NATKO,	.	
	.	
Defendant.	.	
.....	.	

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

JURY TRIAL - DAY 6

**PARTIAL TRANSCRIPT
(EXCLUDES CLOSING ARGUMENTS)**

MONDAY, APRIL 10, 2017

APPEARANCES:

FOR THE STATE:	JAY P. RAMAN, ESQ. EKATERINA DERJAVINA, ESQ. <i>Deputy District Attorneys</i>
----------------	---

FOR THE DEFENDANT:	DANIEL T. FOLEY, ESQ.
--------------------	-----------------------

COURT RECORDER:

CHRISTINE ERICKSON
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC
Englewood, CO 80110
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, MONDAY, APRIL 10, 2017, 11:32 A.M.

2 (Outside the presence of the jury)

3 THE COURT: Okay. We're on the record in the case
4 of State of Nevada versus Helen Natko in C-313574. I'd like
5 the record to reflect the presence of the defendant and her
6 counsel, as well as the State and their counsel. We're
7 outside the presence of the jury.

8 At this point in time, I'd like to know, is the
9 State familiar with the Court's proposed Instructions 1
10 through 30?

11 MR. RAMAN: We are, Your Honor.

12 THE COURT: Do you object to giving any of these
13 Instructions?

14 MR. RAMAN: I don't think so, Judge.

15 THE COURT: Okay. Do you have any additional
16 Instructions that you propose?

17 MR. RAMAN: No.

18 THE COURT: And is the defendant familiar with 1
19 through 30?

20 MR. FOLEY: Yes, Your Honor.

21 THE COURT: And do you object to giving any of these
22 Instructions?

23 MR. FOLEY: I do.

24 THE COURT: Okay.

25 MR. FOLEY: I object, Your Honor, to Instruction No.

1 18.

2 THE COURT: Okay.

3 MR. FOLEY: And the basis of my objection is
4 multiple. For one, I think it directly conflicts with and
5 makes it extremely confusing when you look at Instruction 16
6 and 17. 16 and 17 ever simply recitations of the statute.

7 This jury Instruction No. 18 is from the -- drafted
8 from the case of Walch v. State, which was decided under the
9 old statute NRS 100.085, as it existed prior to its amendment
10 in 1995. And its amendment in 1995 was brought about by the
11 result of the Starr v. Rousselet case, which is Starr is with
12 two R's, and then Rousselet is R-o-u-s-s-e-l-e-t, 877 P.2d
13 525.

14 I have provided the Court with the legislative
15 history from SB-424 from the 1995 Legislature, which I'd like
16 that legislative history marked and admitted.

17 And basically, the purpose of the amendment to the
18 statute was to make it so that when someone created a joint
19 account, as we have here in Instructions 16 and 17, both
20 parties to the joint account had absolute right to remove any
21 funds at any time that they wanted.

22 And the new legislation basically legislatively
23 overruled the Starr v. Rousselet case where the Court allowed
24 parole evidence in to show what the original depositor whose
25 account became a joint account, what his intentions were in

1 creating that joint account.

2 The legislature felt that such a result was
3 untenable, and the banking industry as well as those concerned
4 for individuals regarding estate planning said that -- and the
5 reason the statute was amended, so that you wouldn't have this
6 situation, that every joint account was subject to subsequent
7 review and oral testimony to challenge the intent of the
8 parties.

9 The Court, and we discussed this at length in
10 chamber, the Walch case that came out was a situation where --
11 and I don't quarrel with that result. In the fact that it's
12 still -- still is good law, but I think the law of the Walch
13 v. State case is that if there was an illegal creation of the
14 joint account or if there was an illegal contribution to the
15 joint account, such as Walch v. State, where a woman was put
16 in and given Power of Attorney over the woman's, Nell Laird,
17 L-a-i-r-d, her funds, was given Power of Attorney with a
18 specific Instruction that she could not use those funds for
19 herself or for her beneficiaries. Robin Walch, then who had
20 that Power of Attorney, went and created a joint account and
21 then argued to the Court, well, since I a joint account, I can
22 do whatever I want with the funds.

23 The Court basically said just because you get a
24 joint account doesn't in, in essence, get you a "get out of
25 jail free" card. If you illegally or unlawfully created that

1 joint account, which -- and Robin Walch had done by abusing
2 her authority as a fiduciary under the Power of Attorney and
3 putting it into the joint account, the Court will look at that
4 creation, and the existence of a joint account doesn't void or
5 eliminate any unlawful activities that is took place, again,
6 with the creation or the funding of the joint account.

7 So, I think that this Instruction No. 18 gives the
8 jury the impression that at any point in time after the
9 creation of a joint account, the person whose money it was
10 originally, his intent can be viewed, and one can determine
11 whether the other signer on the joint account, therefore,
12 withdrew money consistent with his intent.

13 I think this is extremely problematic, because you
14 could have someone like that's intent change from before
15 creating the joint account until the day before he died, and
16 thereby, basically, changing this vehicle of joint account any
17 time he wanted by just what is in his mind or what other
18 people think was in his mind.

19 So I really do think that this Instruction 18 is
20 erroneous. I think it, quite frankly, is -- creates
21 reversible error and is absolutely inconsistent with the
22 statutory amendments in 1995.

23 THE COURT: Mr. Raman, did you want to make any
24 further record?

25 MR. RAMAN: Yes, Your Honor. I do not believe that

1 what the defense purports Walch stands for, is what it
2 actually stands for, in comparison to 205.0832, the
3 comprehensive theft statute. This case establishes that none
4 of the authority that Ms. Walch used as a joint accountholder
5 shields her from liability through theft in a criminal case.
6 That was a criminal case.

7 They say, "The effect of NRS 100.085 is to protect a
8 depository, such as a bank, from liability, if it pays out
9 money to a joint tenant of an account." So it allows access
10 and it doesn't fault the bank liability-wise for allowing that
11 access if a joint account exists.

12 "Walch does not show" -- and I'm reading directly
13 from the case -- "how any of this law affords her immunity" --
14 "affords immunity to her as a joint tenant in a criminal
15 prosecution for theft." So essentially, what the defense has
16 been arguing is, well, this is somehow confusing.

17 No, what's confusing is the definitions that have
18 been provided, which we're agreeing to, say joint tenancy is
19 this, joint accounts are this. But you have to dial that back
20 with this Instruction, which comes directly from the holding;
21 not the dicta of the case, the holding, which says, "We
22 conclude that Walch's mere status as a party to the joint
23 accounts does not provide her with lawful authority to use
24 Nell's assets for her own benefit and therefore did not
25 preclude her conviction for theft."

1 We've made a very liberal reading of that as far --
2 actually, the word is "conservative". "A person's status as a
3 joint accountholder does not, by itself, provide lawful
4 authority to use or transfer another's assets for their own
5 benefit."

6 It's basically dialing back and saying, just because
7 you're a joint accountholder on somebody's account doesn't
8 mean that's a bar to your prosecution. You can do whatever
9 the heck you want with total impunity.

10 The common -- common sense logic says, just because
11 I'm on account with somebody doesn't mean I can steal their
12 property. And what Mr. Foley had tried to propose, although,
13 I think his objection is not in the general sense, is that we
14 would somehow have to prove that when the account was created
15 that there was criminal intent, that it was created under
16 criminal means.

17 Obviously, that's not an element of any kind of
18 crime. The taking was not between Citizens Bank going to a
19 joint account with Delford and Helen, and a conversion of that
20 account to its joint account. The taking was when Helen took
21 the \$195,000 of Del's money from the joint account and put it
22 into her own sole account. That's why we've charged July 5th,
23 2013 as being the crime.

24 For us to backwards prove, well, what was her
25 criminal intent at the time a joint account was created, well,

1 now you have circumstances where two people create a joint
2 account 20 years ago, that account's never funded. Then
3 somebody loses capacity, as they have in this case. The
4 person who's taking advantage, transfers money from another
5 account of theirs and then takes it. Now we have to prove all
6 of a sudden 20 years ago that that account was made for this
7 purpose? That's totally contrary to all common decency.

8 That would allow theft to reign supreme. Now,
9 obviously, Walch does not stand for what the defense is
10 purporting it to stand for and I believe Your Honor is correct
11 that the Instructions as they're written is how they should
12 stand.

13 MR. FOLEY: If I might, Your Honor, just to follow
14 up. One, I don't think the comprehensive theft statutes in
15 any way change or trump NRS 100.085. And as far as Counsel's
16 recitation that I'm citing from dicta, the specific quote from
17 the case is, "The jury could have properly found that Walch
18 acted without lawful authority when she placed Nell's funds
19 into the two accounts in the first place."

20 And then the conclusion of the case states, "Walch's
21 status as joint holder of the two accounts did not preclude
22 the jury from finding that she stole funds which passed
23 through the accounts.

24 Not stealing funds at the time she withdrew them,
25 but she stole funds which passed through. And so that's --

1 that's the crime, if you will, that someone doesn't get off
2 the hook by simply stealing money, and then putting them into
3 a joint account. If you've stolen the money, you can face
4 charges for that crime and the fact that you end up putting
5 them in a joint account doesn't let you off the hook.

6 But if there's no crime, no theft in establishing or
7 funding that joint account, once the joint account is
8 established, it's the property of both, and both have full
9 authority and ability to withdraw all funds from the account
10 at any time without subsequent parole evidence being admitted
11 by family members or whatever to say dad's intent changed at
12 some point along the line.

13 THE COURT: Okay. All right. The Instruction that
14 was proposed by the State is jury Instruction No.18. The
15 Instruction proposed by the defense is -- reads this way, "A
16 person's status as a joint accountholder does not excuse a
17 prior unlawful creation of the joint account."

18 And technically, that's correct as well that a
19 person's status as a joint accountholder does not excuse a
20 prior unlawful creation of a joint account. That -- I think,
21 that's common sense as well. But the Instruction is -- you're
22 asking to provide that not in addition, but in position of
23 Jury Instruction No. 18, that a person's status as a joint
24 accountholder does not by itself provide lawful authority to
25 use or transfer another's assets from their own benefit.

1 I think that's the correct status of the law. So
2 are you asking for an additional Instruction or "instead of"
3 Instruction?

4 MR. FOLEY: I'm asking for -- quite frankly, I'd ask
5 for either. I think it's most proper as an "instead of". But
6 as an alternative, I'll take it as an additional Instruction
7 as written.

8 THE COURT: Mr. Raman, do you have any objection to
9 that?

10 MR. RAMAN: Yes, I would, Judge. Again, that has
11 nothing to do with the theory of our case. Our case is
12 charged on July 5th, 2013, she took the money. We're not here
13 to prove elements and add elements to this crime because he
14 wants to propose an Instruction based upon his reading of
15 Walch. That's not how it works. We have certain elements and
16 we have certain charges.

17 THE COURT: Okay.

18 MR. RAMAN: And that's like going down the line of
19 lesser relateds, which we don't do. Now you're going have us
20 prove crimes we never intended to charge? We're not here to
21 prove about whether she had criminal intent at the time of
22 creation of the account. We're here to prove that on July
23 5th, she intended to take the money.

24 THE COURT: All right.

25 MR. FOLEY: We spent a great deal of time on this

1 and throughout the entire case about what his mental status
2 was at the time of the creation of the joint account. The
3 fact that the State may have mischarged, improperly drafted
4 their charges, is simply not Helen's fault. And if that, as
5 Your Honor just said, which I think it is, is a proper and
6 lawful Instruction, then it should be given in the
7 alternative, and let the State argue what they want and we're
8 able to present that as an actual proper statement of the law
9 that that they're --

10 THE COURT: The -- the concern I have with that,
11 Mr. Foley, is that if I -- if I instructed them on the
12 Instruction you have, then that would be confusing because it
13 would lead the jury to believe that then the State would have
14 that added obligation to establish there was an unlawful
15 creation of the account before it was even being used.

16 MR. FOLEY: That doesn't state that that's State's
17 burden. That simply is a statement of the law, that Helen is
18 not excused if this was an unlawful creation of that account.

19 THE COURT: Yeah, but there's no challenge of that
20 at the time the account was created.

21 MR. FOLEY: Well, and actually, that's not so. If
22 you look at the charges, as Counsel argue the other day, they
23 go back to between August 1st, 2011 and August 31st, 2013.

24 THE COURT: Yeah, okay. All right. I will give the
25 Instruction then, in addition. I'm not going to strike the

1 State's Instruction. I'll give them together.

2 MR. FOLEY: Okay.

3 THE COURT: So I'll put it in 18, and then I'll have
4 to renumber the Instructions. So I'll put it in as Number 19
5 and then I'll go on there with my -- I think that mine would
6 have worked.

7 MR. RAMAN: Judge, can you read that one again as
8 you're going to offer it?

9 THE COURT: Yeah. "A person's status as a joint
10 accountholder does not excuse a prior unlawful creation of a
11 joint account." Okay? So --

12 THE CLERK: Wait. What do you want it to be?

13 THE COURT: -- the ones I -- the ones I -- I have.
14 And ask Dave -- get Dave out here.

15 THE CLERK: Okay.

16 THE COURT: Okay?

17 MR. RAMAN: Okay, thanks.

18 (Court/Clerk/Law Clerk conferring)

19 THE COURT: Okay. Is there any other instructions
20 that you wish to propose at this time, Mr. Foley?

21 MR. FOLEY: No, Your Honor.

22 THE COURT: For the record, I am going to -- you had
23 asked an Instruction, "In deciding the facts of the case, you
24 may have to decide what witnesses believe," it's a -- it's a
25 longer version of the credibility/believability. I'm going

1 to go ahead and mark that, but I'm not going to give it.

2 Mr. Foley?

3 MR. FOLEY: Yes, thank you, Your Honor.

4 THE COURT: All right. So, all right. So are you
5 familiar -- are both parties familiar with the -- State, are
6 you familiar with the proposed verdict form?

7 MR. RAMAN: Yes, Your Honor.

8 THE COURT: And Mr. Foley, are you familiar with
9 the proposed verdict form?

10 MR. FOLEY: Yes.

11 THE COURT: Do you have any objection to it be
12 given in that manner?

13 MR. FOLEY: No. No, Your Honor.

14 THE COURT: State?

15 MR. RAMAN: No.

16 THE COURT: All right. So --

17 (Court/Clerk conferring)

18 THE COURT: All right. While we wait for the jury
19 Instructions to be formalized so we can provide them copies
20 of them copies of them --

21 THE COURT: And you want --

22 THE COURT: Yeah, just put it in as 18A. Then why
23 don't you guys take a break, and we'll be off the record,
24 okay?

25 MR. RAMAN: Okay.

1 MR. FOLEY: Thank you, Your Honor.

2 THE MARSHAL: Court is in short recess.

3 (Court recessed at 11:50 a.m. until 12:09 p.m.)

4 (Outside the presence of the jury.)

5 THE MARSHAL: Please be seated.

6 THE COURT: Okay. -- all right. So we need to go
7 ahead and get the jury in. We've settled the Instructions.

8 (Pause in the proceedings; waiting for jury)

9 THE MARSHAL: All rise for the presence of the
10 jury.

11 (In the presence of the jury)

12 THE COURT: Okay. Everybody, please have a seat.
13 Back on the record in Case C-313574. State of Nevada versus
14 Helen Natko. I'd like the record to reflect the presence of
15 the defendant, her counsel, as well as the State and their
16 counsel.

17 (JURY ROLL CALL)

18 THE COURT: All members of the jury have answered
19 to the call. Will the parties stipulate to the presence of
20 the jury?

21 MR. FOLEY: Yes, Your Honor.

22 MR. RAMAN: Yes, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen, I'm want
24 to apologize to you. I got started a little late this
25 morning with my calendar. We had some things to do here. I

1 appreciate your attentiveness and waiting for me. At this
2 point in time, I'm about to instruct you upon the law, what
3 applies to this case. I'd like to instruct you orally
4 without reading it to you, however, these Instructions are of
5 such importance that it's necessary for me to read them
6 carefully to you. The Instructions are long and some are
7 quite complicated.

8 If they are not especially clear whether I read
9 them to you, please keep in mind that when you go to the
10 room, jury room, you'll be able to keep these carefully
11 prepared Instructions with you. Also, you have a copy before
12 you. If you'd like to read along, that's fine, as well.

13 (JURY INSTRUCTIONS READ TO THE JURY)

14 THE COURT: Mr. Raman?

15 MR. RAMAN: Yes, Judge.

16 THE COURT: Did you wish to address the Court
17 (sic)?

18 MR. RAMAN: Absolutely.

19 (State's closing argument not transcribed)

20 THE COURT: Thank you, Mr. Raman. Mr. Foley, do
21 you want to take a break?

22 MR. FOLEY: I do, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen, we're
24 going to give you about a ten minute break. Give you an
25 opportunity to stretch your legs. And you're admonished not

1 to converse amongst yourselves or with anyone else on any
2 subject connected with this trial or read, watch or listen to
3 any report or commentary on the trial or by any person
4 connected with this case or by any medium of information,
5 including without limitation, newspaper, television, Internet
6 or radio.

7 You're further admonished not to form or express
8 any opinion on any subject connected with this trial until
9 the case is finally submitted to you. It's now, what's that
10 20 -- let's say 25 after. So be ready to get started by 25
11 until, okay? We'll be at ease while the jury exits the room.
12 Okay?

13 (Outside the presence of the jury.)

14 THE COURT: Okay. We're outside the presence of
15 the jury. 25 until, be ready to get going. If you need a
16 little more time, let me know. Okay?

17 MR. FOLEY: Thank you, Your Honor.

18 THE COURT: We're off the record.

19 (Court recessed at 1:21 p.m. until 1:38 p.m.)

20 (Outside the presence of the jury.)

21 THE MARSHAL: -- court is back in session.

22 THE COURT: Go ahead and get the jury, Ed.

23 THE MARSHAL: Yes, sir.

24 (Pause in the proceedings; waiting for jury)

25 THE MARSHAL: All rise for the purpose the presence

1 of the jury.

2 (In the presence of the jury.)

3 THE COURT: Okay. Everybody, go ahead and have a
4 seat. We're back on the record in the case of State of
5 Nevada versus Helen Natko in C-313574. I'd like the record
6 to reflect the presence of the defendant, her counsel, as
7 well as the State and their counsel, all members of the jury.
8 Will the parties stipulate to the presence of the jury?

9 MR. RAMAN: Yes, Your Honor.

10 MR. FOLEY: Yes, Your Honor.

11 THE COURT: Okay. Mr. Foley, did you wish to
12 address the jury?

13 MR. FOLEY: Yes, Your Honor.

14 (Defendant's closing argument not transcribed)

15 THE COURT: Thank you, Mr. Foley. Mr. Raman, Ms.
16 Derjavina, do you wish to rebut?

17 MS. DERJAVINA: Yes, Your Honor.

18 THE COURT: Okay.

19 (State's rebuttal closing arguments not transcribed)

20 THE COURT: All right, thank you, Ms. Derjavina.
21 At this point in time, I'm going to have my clerk swear my
22 officers in to take charge of the jurors.

23 (SWEARING OF OFFICERS OF THE COURT)

24 THE COURT: Okay, ladies and gentlemen, what we're
25 going to do at this point in time, is I'm going to release

1 you to the deliberation room, give you an opportunity to
2 start discussing the case.

3 Ladies and gentlemen, the -- under our
4 Constitution, 12 jurors will be deliberating, not all 14 of
5 you. I put two additional jurors in for alternates.
6 Oftentimes, I've had to use them. I don't tell you who the
7 alternates are because I've had experiences where the
8 alternates don't seem to give me the attention that I think
9 is important, even many of them are late, they don't think
10 that this matters, they don't think they're ever going to be
11 involved in the case so they don't pay any attention.

12 So we've come up with a way we do it now. The
13 parties know who the alternates are, but you all don't.
14 George Vasquez and Benjamin Marullo you're my alternates.
15 You are not excused from this matter. However, you will not
16 start deliberation with this group.

17 If for some reason something happens and I need to
18 excuse one of those jurors, then one of you will step in
19 their position. So what I'm going to do is I'm going to have
20 you all exit together. And I need contact information for
21 Mr. Vasquez and Mr. Marullo that I can get you immediately,
22 not only to possibly let you know that we have a verdict or
23 let you know that we need you to come in or to let you know
24 that we're excusing you.

25 I don't need an answering machine. I don't need a

1 boss's number. I need some way of getting ahold of you
2 immediately. Okay? Can you both do that? All right.

3 So at this point in time, I'll let you go ahead and
4 go into the jury room. My Marshal and my JEA will take
5 control of that at this point. You need to exit the back
6 door here. Okay? Take your notebooks with you. All right.
7 Take all items that you brought with you with you.

8 (Jury retired to deliberate at 3:00 P.M.)

9 (Outside the presence of the jury)

10 THE COURT: Okay. We're outside the presence of
11 the jury. Is there anything that needs to be put on the
12 record by either party at this time?

13 MR. RAMAN: No, Judge. Do we give your people our
14 phone numbers?

15 THE COURT: Yes. Mr. Foley, anything?

16 MR. FOLEY: Nothing, Your Honor.

17 THE COURT: All right. Make sure you give me
18 contact information so we can reach you. What I'm planning
19 on doing is if I don't hear anything from them before 5:00,
20 is I'll reach out to them and see if they want to stay. If
21 they do, then I'll continue staying. I'll just have to let
22 you all know how long we're going to keep them. Usually,
23 I'll probably let them go by 5:00, and then they'll come back
24 tomorrow by 8:30 to resume deliberations. Okay?

25 MR. FOLEY: Okay.

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

THE COURT: All right.

MR. RAMAN: Thank you, Judge.

THE COURT: Have a good evening. We're off the record

(Court recessed at 3:01 P.M.)

* * * * *

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



JULIE LORD, INDEPENDENT TRANSCRIBER

1 INST

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

APR 11 2017

BY: *Tia Everett*
TIA EVERETT, DEPUTY

6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO: C-16-313574-1

10 HELEN NATKO,

DEPT NO: XIX

11 Defendant.

12 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

13 MEMBERS OF THE JURY:

14 It is now my duty as judge to instruct you in the law that applies to this case. It is
15 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
16 you find them from the evidence.

17 You must not be concerned with the wisdom of any rule of law stated in these
18 instructions. Regardless of any opinion you may have as to what the law ought to be, it
19 would be a violation of your oath to base a verdict upon any other view of the law than that
20 given in the instructions of the Court.
21

22
23
24
25
26
27
28 C-16-313574-1
INST
Instructions to the Jury
4639867



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

When a deposit has been made in the name of the depositor and one or more other persons, and in a form intended to be paid or delivered to any one of them, or the survivor or survivors of them, the deposit is the property of the persons as joint tenants.

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

The use by a depositor of any of the following words or terms in designating the ownership if an account indicates the intent of the depositor that the account be held in joint tenancy:

- (a) Joint;
- (b) Joint account;
- (c) Jointly held;
- (d) Joint tenants;
- (e) Joint tenancy; or
- (f) Joint tenants with right of survivorship.

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

A person's status as a joint account holder does not by itself provide lawful authority to use or transfer another assets for their own benefit.