

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

**DEFENDANT'S MOTION TO SET ASIDE VERDICT
AND ENTER JUDGMENT OF ACQUITTAL**

WEDNESDAY, MAY 3, 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, WEDNESDAY, MAY 3, 2017, 8:37 A.M.

2 THE COURT: Okay. Yeah, this is State of Nevada
3 versus Helen Natko in C-313574.

4 All right. This is on calendar. Today the
5 defendant has filed a Motion to Set Aside the Verdict or Enter
6 a Judgment of Acquittal. Did you want to address the Court
7 any further, Mr. Foley?

8 MR. FOLEY: Very briefly, Your Honor.

9 THE COURT: Okay.

10 MR. FOLEY: Dan Foley on behalf of Helen Natko. May
11 I approach, Your Honor? I just want to hand you this.

12 THE COURT: Yes.

13 MR. FOLEY: This is the amended statute and it's on
14 the back of the Exhibit B that I attached, Your Honor. And
15 that is the amended -- amendment to the statute in 1995 of
16 section 100.085.

17 And I know we've -- we've beat this up pretty good,
18 Your Honor. But one thing that I think that maybe has slipped
19 here is that if you read -- and I provided you with some
20 highlighted information there. Again, it states, "When a
21 deposit" -- on subsection (1). "When a deposit has been made
22 in the name of a depositor and one or other persons in a form
23 intended". Now, that "intended", as it's in italics there,
24 with language that was added to this statute, okay?

25 It's there again in the next section that just says,

1 "If an account is intended to be held in joint tenancy, the
2 account or proceeds are owned by the persons named and may be
3 paid or delivered to any of them during the lifetime of all."
4 Again, "intended".

5 That's when you then go to the big section that was
6 added at the end, which provides that, For purposes of this
7 section, it goes on, it says, anyway, that designating the
8 ownership, the last two lines, of an account indicates the
9 intent of the depositor that the account be held in joint
10 tenancy, and it lists the six incidences which will show that
11 intent.

12 As I've argued, Your Honor, I think this further
13 supports it, that this statute was, by its amendment,
14 overruled Walch v. State, overruled Starr v. Rousselet. And
15 the fact is, is that by creating an account and putting joint
16 tenancy on it, it indicates the intent, and therefore, any
17 such joint account can be withdrawn, all the funds can be
18 withdrawn from either party to that account.

19 That being the case, there was no sufficient
20 evidence admitted in this case to in any way challenge the
21 creation of that joint tenancy account. The focus on this was
22 in the July 13th withdrawal.

23 We had some anecdotal testimony about Del
24 Mencarelli's competency, but there was never an opinion -- no
25 doctor ever said, including Dr. Brown, that to a reasonable

1 degree medical certainty he was incompetent. In fact, his own
2 doctor said he understood and he was competent. That's the
3 basis of the motion, Your Honor.

4 MS. DERJAVINA: And, Your Honor, just briefly. As
5 we -- the State mentioned in our motion, the State's position
6 is that the argument in the motion is inappropriate for a
7 Motion to Set Aside a verdict. In essence, defense counsel is
8 not arguing the sufficiency of the evidence, he's arguing that
9 the Court erred in their interpretation of the Walch decision
10 and therefore erred in the instructions given.

11 That type of argument, if raised at all, should be
12 raised on appeal, not in a Motion to Set Aside the Verdict.
13 Additionally, the State's position is that defense's argument
14 is precluded by res judicata. We've had several litigations
15 regarding the Walch decision, regarding the language of the
16 amendment of the statute, and Court made a final decision
17 during trial, and that decision is final. And if it's to be
18 raised again, it should be raised on appeal, not on a Motion
19 to Set Aside the Verdict.

20 So the State's position is at this -- the arguments
21 raised, as a whole, in defense's motion is in appropriate for
22 a Motion to Set Aside a Verdict.

23 THE COURT: As I had indicated previously, my
24 decision was basically contrary, obviously, to the defendant's
25 position in this matter. But I want to reiterate on this.

1 With respect to the Walch decision, I don't believe that the
2 statute overrules Walch. There's nothing -- there's no --
3 throughout all my research based on this, prior to the jury
4 instructions, and prior -- in regards to your previous motion,
5 there's nothing that shows that Walch has been overruled, that
6 it's not good law.

7 It specifically in that case, though, the defendant
8 did make an argument that the deposits in the two joint
9 accounts became hers and the victim's joint legal property.
10 The defendant, therefore, had lawful authority to withdraw
11 them and use them as the defendant wished pursuant to NRS
12 100.0851, as basically what the argument is being made here by
13 defense counsel.

14 However, the Supreme Court in that -- in the case
15 actually disagreed with the statement, as the defendant
16 contended it to be, indicating that the theft from the case
17 under 100.0851, was enacted to protect -- the statute was
18 enacted to protect the depository, the bank, from liability as
19 it pays money out to a joint tenant of an account. Otherwise,
20 you could be going back to the bank and alleging the bank had
21 misappropriated the funds by giving them to the wrong person.

22 The Supreme Court in the case actually -- in the
23 Walch case actually stated that because the defendant was
24 charged with NRS 205.0832(1) and (2), much like in this case,
25 there's no need for them to struggle with the technical

1 distinctions between embezzlement, larceny and other similar
2 offenses as long as the State charged the appropriate
3 subsections in the statute.

4 The Nevada Supreme Court went on and held that the
5 defendant's mere status as a party to a joint account did not
6 provide her with lawful authority to use the victim's assets
7 for her own benefit and, therefore, did not preclude her from
8 conviction of the theft.

9 Much like the analogy that I made with regards to a
10 car. It easier to understand it, under those circumstances, I
11 believe, that if you have a car and you own a car with another
12 individual, the car's licensed in both your names, the car is
13 insured in both your names. But you take the car from the
14 person that you have access with it, and you prevent that
15 person from having access to that vehicle, then you're subject
16 to the comprehensive theft statute as charged here.

17 And that's what the evidence showed in this case, is
18 that your client took the money out of the account, put it in
19 her own account, preventing the -- Del from having access to
20 that, and preventing Del from being able to exercise any
21 control over that, for that short period of time. And that
22 was the charge and that's the -- was under the theft statute.

23 So for that reason, I'm going to deny your motion,
24 once again, to set aside the verdict and enter a judgment of
25 acquittal.

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MR. FOLEY: Thank you, Your Honor.

THE COURT: Okay.

MS. DERJAVINA: Thank you.

MR. RAMAN: Thank you.

THE COURT: So the sentencing date will stand.

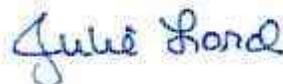
Okay. All right.

MR. RAMAN: Have a good week, Judge.

(Proceeding concluded at 8:45 A.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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 03, 2017

C-16-313574-1 State of Nevada
 vs
 Helen Natko

**May 03, 2017 8:30 AM Defendant's Notice of Hearing of
Motion to Set Aside Verdict and
Enter Judgment of Acquittal**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

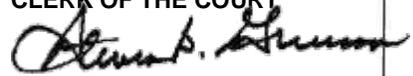
PARTIES

PRESENT: Derjavina, Ekaterina Deputy District Attorney
 Foley, Daniel T. Attorney for Defendant
 Natko, Helen Defendant
 Raman, Jay Deputy District Attorney

JOURNAL ENTRIES

- Mr. Foley argued in support of motion stating the amendment to NRS 100.085 overruled the Walch v State case; therefore, there was no sufficient evidence presented at trial which to challenge the joint tenancy of the account. Mr. Derjavina argued in opposition stating the arguments made this morning should be made on appeal and the State's position is any arguments raised to set aside the verdict are barred by res judicata. Court stated findings and COURT ORDERED, Motion DENIED.

NIC



1 **NOTC**
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
13 vs.
14
15 HELEN NATKO #1186757,
16
17 Defendant.

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

14 **DEFENDANT'S NOTICE OF APPEAL**

15 NOTICE IS HEREBY GIVEN that Defendant Helen Natko hereby appeals to the Supreme
16 Court of the State of Nevada from the Verdict entered herein on April 11th, 2017.

17 DATED this 5th day of May, 2017

18 FOLEY & OAKES, PC

19
20 
21 DANIEL T. FOLEY, ESQ.
22 626 So. 8th St.
23 Las Vegas, Nevada 89101
24 *Attorneys for Defendant Helen Natko*

1 **CERTIFICATE OF SERVICE**

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

5 **DEFENDANT'S NOTICE OF APPEAL**

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

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

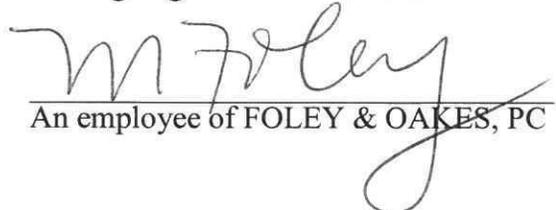
9 Jay P. Raman
10 Deputy District Attorney
11 200 Lewis Ave
12 Las Vegas, NV 89155

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

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

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

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

24 
25 An employee of FOLEY & OAKES, PC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2017

C-16-313574-1 State of Nevada
vs
Helen Natko

July 31, 2017 8:30 AM Sentencing

HEARD BY: Kephart, William D. COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT: Foley, Daniel T. Attorney for Defendant
Natko, Helen Defendant
Raman, Jay Deputy District Attorney

JOURNAL ENTRIES

- DEFT. NATKO ADJUDGED GUILTY of COUNT 1 - EXPLOITATION OF A VULNERABLE PERSON (F) and COUNT 2 - THEFT (F). Matter argued and submitted. Statement by Defendant. VICTIM SPEAKER: Terri Black sworn and testified. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, a \$3.00 DNA Collection fee and a \$10,000.00 Fine; Deft. SENTENCED as to COUNT 1 - to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC); as to COUNT 2 - to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED; placed on PROBATION for an indeterminate period not to exceed FIVE (5) YEARS. CONDITIONS:

Comply with standard probation conditions as follows;

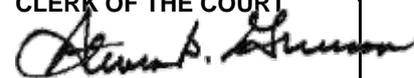
1. Reporting: You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.

2. Residence: You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
3. Intoxicants: You shall not consume any alcoholic beverages (whatsoever) (to excess). Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
4. Controlled Substances: You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
5. Weapons: You shall not possess, have access to, or have under your control, any type of weapon.
6. Search: You shall submit your person, property, place of residence, vehicle or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
7. Associates: You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
8. Directives and Conduct: You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
9. Laws: You shall comply with all municipal, county, state, and federal laws and ordinances.
10. Out-of-State Travel: You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
11. Employment/Program: You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
12. Financial Obligation: You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.

SPECIAL CONDITIONS:

1. Abide by any curfew imposed by probation officer.
2. Pay \$10,000.00 fine or complete a 1000 hours of community service in lieu of the fine during the term of probation.
3. Have no contact whatsoever with the victim's family.
4. Complete an impulse control counseling evaluation and any recommended case plan.
5. No gambling or entry into any gaming establishment unless employed therein and/or to dine therein.

NIC



1 **JOC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

CASE NO: C-16-313574-1

11 HELEN NATKO,
12 #1186757

DEPT NO: XIX

13 Defendant.

14 JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of **EXPLOITATION OF AN OLDER/VULNERABLE PERSON**
18 **(Category B Felony - NRS 200.5092, 200.5099 - NOC 50304)** and **THEFT (Category B**
19 **Felony - NRS 205.0832, 205.0835.4 - NOC 55991)**; thereafter, on the 31st day of July, 2017,
20 the Defendant was present in court for sentencing with her counsel, DANIEL FOLEY, ESQ.,
21 and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
23 addition to the \$25.00 Administrative Assessment Fee, a \$150.00 DNA Analysis fee including
24 testing to determine genetic markers, a \$3.00 DNA Collection fee and a \$10,000.00 Fine;
25 Defendant SENTENCED as to COUNT 1 - to a MINIMUM of TWENTY-FOUR (24)
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27 Corrections (NDC); as to COUNT 2 - to a MINIMUM of TWELVE (12) MONTHS and a
28 MAXIMUM of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

WA:2014\2014F\144\65\14F14465-JOC-(NATKO_HELEN)-001.DOCX

AA00163

1 (NDC); SUSPENDED; placed on PROBATION for an indeterminate period not to exceed
2 FIVE (5)YEARS.

3 CONDITIONS: Comply with standard probation conditions as follows;

4 1. Reporting: You are to report in person to the Division of Parole and Probation as
5 instructed by the Division or its agent. You are required to submit a written report each month
6 on forms supplied by the Division. This report shall be true and correct in all respects.

7 2. Residence: You shall not change your place of residence without first obtaining
8 permission from the Division of Parole and Probation, in each instance.

9 3. Intoxicants: You shall not consume any alcoholic beverages (whatsoever) (to excess).
10 Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically
11 recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or
12 higher shall be sufficient proof of excess.

13 4. Controlled Substances: You shall not use, purchase or possess any illegal drugs, or
14 any prescription drugs, unless first prescribed by a licensed medical professional. You shall
15 immediately notify the Division of Parole and Probation of any prescription received. You
16 shall submit to drug testing as required by the Division or its agent.

17 5. Weapons: You shall not possess, have access to, or have under your control, any type
18 of weapon.

19 6. Search: You shall submit your person, property, place of residence, vehicle or areas
20 under your control to search including electronic surveillance or monitoring of your location,
21 at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or
22 violation of probation by the Division of Parole and Probation or its agent.

23 7. Associates: You must have prior approval by the Division of Parole and Probation to
24 associate with any person convicted of a felony, or any person on probation or parole
25 supervision. You shall not have any contact with persons confined in a correctional institution
26 unless specific written permission has been granted by the Division and the correctional
27 institution.

28 ///

1 8. Directives and Conduct: You shall follow the directives of the Division of Parole and
2 Probation and your conduct shall justify the opportunity granted to you by this community
3 supervision.

4 9. Laws: You shall comply with all municipal, county, state, and federal laws and
5 ordinances.

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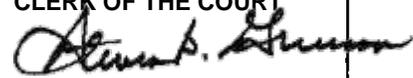
16 SPECIAL CONDITIONS:

- 17 1. Abide by any curfew imposed by probation officer.
18 2. Pay \$10,000.00 fine or complete a 1000 hours of community service in lieu of the
19 fine during the term of probation.
20 3. Have no contact whatsoever with the victim's family.
21 4. Complete an impulse control counseling evaluation and any recommended case plan.
22 5. No gambling or entry into any gaming establishment unless employed therein and/or
23 to dine therein.

24 DATED this 10th day of August, 2017.

25 
26 _____
27 DISTRICT JUDGE *gc*

28 14F14465X/mc/FDD



1 **AJOC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

CASE NO: C-16-313574-1

11 HELEN NATKO,
12 #1186757

DEPT NO: XIX

13 Defendant.

14 **AMENDED JUDGMENT OF CONVICTION**
15 **(JURY VERDICT OF GUILT)**

16 The Defendant previously appeared before the Court with counsel and was adjudged
17 guilty to the crime(s) of **EXPLOITATION OF AN OLDER/VULNERABLE PERSON**
18 **(Category B Felony - NRS 200.5092, 200.5099 - NOC 50304)** and **THEFT (Category B**
19 **Felony - NRS 205.0832, 205.0835.4 - NOC 55991)**; thereafter, on the 31st day of July, 2017,
20 the Defendant was present in court for sentencing with her counsel, DANIEL FOLEY, ESQ.,
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22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
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19 6. Search: You shall submit your person, property, place of residence, vehicle or areas
20 under your control to search including electronic surveillance or monitoring of your location,
21 at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or
22 violation of probation by the Division of Parole and Probation or its agent.

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18 2. Pay \$10,000.00 fine or complete a 1000 hours of community service in lieu of the
19 fine during the term of probation.
20 3. Have no contact whatsoever with the victim's family.
21 4. Complete an impulse control counseling evaluation and any recommended case plan.
22 5. No gambling or entry into any gaming establishment unless employed therein and/or
23 to dine therein.

24 THEREAFTER, on 7th day of September, 2017, an amended Judgment of Conviction
25 was completed due a clerical error.

26 DATED this 7th day of September, 2017.

27 
28 DISTRICT JUDGE

14F14465X/mc/FDD

SEND INQUIRIES TO:



1900 South Jones Blvd.
Las Vegas, NV 89146

(702) 871-4746 www.pluscu.org
*****AUTO**SCH 3-DIGIT 890
4390 0.5040 AT 0.384 20 1 226

DELFOED W MENCARELLI
HELEN NATKO
9536 LAZY RIVER DR
LAS VEGAS NV 89117-0676

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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	07/01/12 07/31/12
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
07/01	ID 00	REGULAR SHARES Beginning Balance					15.00
07/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

07/01	ID 80	ESSENTIALS CHECKING Beginning Balance					229.80
07/02		Deposit by Check			927.53		1157.33
07/02		Withdrawal Cash			927.53-		229.80
07/23		Deposit by Check			150000.00		150229.80
07/31		Ending Balance					150229.80
		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	

Total Dividends Paid Year to Date						0.00	
Total Interest Paid Year to Date						0.00	

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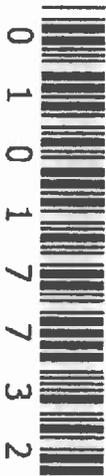
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SHARE ACCOUNTS ARE NON-TRANSFERABLE EXCEPT ON THE BOOKS OF THIS CREDIT UNION.

ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	08/01/12 08/31/12
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
08/01	ID 00	REGULAR SHARES Beginning Balance					15.00
08/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

08/01	ID 80	ESSENTIALS CHECKING Beginning Balance					150229.80
08/01		Deposit by Check			927.53		151157.33
08/01		Withdrawal Cash			927.53		150229.80
08/31		Ending Balance					150229.80
		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			

Total Dividends Paid Year to Date						0.00	
Total Interest Paid Year to Date						0.00	

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

01019854

ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	09/01/12 09/30/12
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 the 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
09/01	ID 00	REGULAR SHARES Beginning Balance					15.00
09/30		Ending Balance					15.00
		Dividends Paid Year to Date				0.00	
<hr/>							
09/01	ID 80	ESSENTIALS CHECKING Beginning Balance					150229.80
09/05		Withdrawal Cash			5000.00		145229.80
09/30		Ending Balance					145229.80
		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			
						Total Dividends Paid Year to Date	0.00

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

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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	10/01/12 10/31/12
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
10/01	ID 00	REGULAR SHARES Beginning Balance					15.00
10/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

10/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145229.80
10/02		Deposit by Check			1058.58		146288.38
10/02		Withdrawal Cash			1058.58		145229.80
10/31		Ending Balance					145229.80
		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			

Total Dividends Paid Year to Date						0.00	

Plus Credit Union offers Great Holiday Specials to help our members save money!

AUTO LOANS - Refinance or Purchase a New or Used Auto and not only will you get a great rate you will also get NO PAYMENTS FOR 90 DAYS!! That's not all... Each additional auto refinanced or purchased within 2 weeks receives .50% off your current offered interest rate and NO PAYMENTS FOR 90 DAYS!!

Need a little help with your current auto loan already financed with Plus C.U. Skip over your December monthly payment with SKIP-A-PAY, effective Nov. 15th through Dec. 31, 2012. Inquire today, (702)871-4746 or visit our branch.

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AA00175

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

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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	11/01/12 11/30/12
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
11/01	ID 00	REGULAR SHARES Beginning Balance					15.00
11/30		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

11/01	ID 80	ESSENTIALS CHECKING Beginning Balance				145229.80	
11/05		Deposit by Check			927.53	146157.33	
11/05		Withdrawal Cash			927.53	145229.80	
11/30		Ending Balance				145229.80	
		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			

Total Dividends Paid Year to Date						0.00	

Plus Credit Union offers Great Holiday Specials to help our members save money!

AUTO LOANS - Rates have dropped even lower! Inquire today 702-871-4746. Refinance or Purchase a New or Used Auto and not only will you get a great rate you will also get NO PAYMENTS FOR 90 DAYS!!

Need a little help with your current auto loan already financed with Plus C.U. Skip your December's monthly payment with SKIP-A-PAY. Offer good till Dec.31st.

Plus CU wishes you a safe and happy holiday season.

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AA00177

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 3362 0.5040 AV 0.360 15 1 20
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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	12/01/12 12/31/12
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
12/01	ID 00	REGULAR SHARES Beginning Balance					15.00
12/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

12/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145229.80
12/04		Deposit by Check			927.53		146157.33
12/04		Withdrawal Cash			927.53		145229.80
12/31		Ending Balance					145229.80
		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		

Total Dividends Paid Year to Date						0.00	

AUTO LOANS - Rates have dropped even lower! Inquire today 702-871-4746. Refinance or Purchase a New or Used Auto and not only will you get a great rate you will also get NO PAYMENTS FOR 90 DAYS!!

Plus Credit Union's Annual Meeting will be held February 21st @ 5:00 pm at your credit union branch. Meet your elected Board of Directors and other current members. Take part in building your credit union's financial success.

Plus CU wishes you a safe and happy New Year.

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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	01/01/13 01/31/13
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
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01/01	ID 00	REGULAR SHARES Beginning Balance					15.00
01/31		Ending Balance					15.00
		Dividends Paid Year to Date				0.00	

01/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145229.80
01/03		Deposit by Check			927.54		146157.34
01/03		Withdrawal Cash			927.54	-145229.80	
01/31		Ending Balance					145229.80
		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

Total Dividends Paid Year to Date 0.00

AUTO LOANS - Rates have dropped even lower! Inquire today 702-371-4745. Refinance or Purchase a New or Used Auto and not only will you get a great rate you will also get NO PAYMENTS FOR 90 DAYS!!

Plus Credit Union's Annual Meeting will be held February 21st @ 5:00 pm at your credit union branch. Meet your elected Board of Directors and other current members. Take part in building your credit union's financial success.

PlusCredit000513

AA00181

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ACCOUNT NUMBER	Redacted #389
STATEMENT PERIOD	02/01/13 02/28/13
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
02/01	ID 00	REGULAR SHARES Beginning Balance					15.00
02/28		Ending Balance					15.00
		Dividends Paid Year to Date				0.00	

02/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145229.80
02/05		Deposit by Check			928.79		146158.59
02/05		Withdrawal Cash			928.79		145229.80
02/28		Ending Balance					145229.80
		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			

Total Dividends Paid Year to Date						0.00	

AUTO LOANS - Save money in 2013 - Refinance or Purchase a New or Used Auto today and save money with Plus Credit Union's great rate and extended terms to make you payment fit your financial needs. No Pay 90 Days and discounts for multiple vehicles financed within a 2 week period. Inquire today 702-371-4746 or www.pluscu.org.

Effective April 1, 2013 there will be changes to our Courtesy Pay Program. You will receive the new guidelines in this statement.

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 3826 0.5040 AV 0.360 16 1 21
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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	03/01/13 03/31/13
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
03/01	ID 00	REGULAR SHARES Beginning Balance					15.00
03/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

03/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145229.80
03/04		Deposit by Check			928.79		146158.59
03/04		Withdrawal Cash			928.00		145230.59
03/31		Ending Balance					145230.59
		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			

Total Dividends Paid Year to Date						0.00	

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ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	04/01/13 04/30/13
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
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04/01	ID 00	REGULAR SHARES Beginning Balance					15.00
04/30		Ending Balance					15.00
		Dividends Paid Year to Date				0.00	

04/01	ID 80	ESSENTIALS CHECKING Beginning Balance					145230.59
04/01		Deposit by Check			928.79		146159.38
04/01		Withdrawal Cash			928.79		145230.59
04/27		Deposit by Check			50000.00		195230.59
04/30		Ending Balance					195230.59
		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

Total Dividends Paid Year to Date 0.00

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

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ACCOUNT NUMBER	Redacted #389
STATEMENT PERIOD	05/01/13 05/31/13
PAGE	1

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**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
05/01	ID 00	REGULAR SHARES Beginning Balance					15.00
05/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

05/01	ID 80	ESSENTIALS CHECKING Beginning Balance					195230.59
05/02		Withdrawal			50000.00-		145230.59
		Dep Ret, DELFORD W MENCARELLI, Ck#786					
05/02		Withdrawal			30.00-		145200.59
		Deposit Return Fee					
05/04		Deposit by Check			2077.79		147278.38
05/04		Withdrawal Cash			928.79-		146349.59
05/06		Deposit by Check			50000.00		196349.59
05/31		Ending Balance					196349.59
		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		

Total Dividends Paid Year to Date						0.00	

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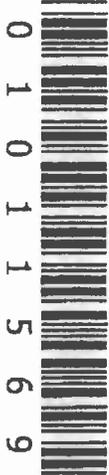
PlusCredit000521

AA00189

SEND INQUIRIES TO:



Credit Union
 1900 South Jones Blvd.
 Las Vegas, NV 89146
 (702) 871-4746 www.pluscu.org
 *****AUTO**5-DIGIT 89117
 3716 0.5040 AV 0.360 16 1 23
 DELFORD 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.

ACCOUNT NUMBER	Redacted 4389
STATEMENT PERIOD	06/01/13 06/30/13
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
06/01	ID 00	REGULAR SHARES Beginning Balance					15.00
06/30		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

06/01	ID 80	ESSENTIALS CHECKING Beginning Balance					196349.59
06/03		Deposit by Check			928.79		197278.38
06/03		Withdrawal Cash			928.79		196349.59
06/30		Ending Balance					196349.59
		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	

Total Dividends Paid Year to Date						0.00	

Effective September 1st there will be changes that may affect your savings account. Please read the enclosed statement insert. If you have any further questions or concerns please contact us at 702-871-4746.

PlusCredit000523

AA00191

SEND INQUIRIES TO:



Credit Union
1900 South Jones Blvd.
Las Vegas, NV 89146

(702) 871-4746 www.pluscu.org
*****AUTO**SCH 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	Redacted 4389
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
07/01	ID 00	REGULAR SHARES Beginning Balance					15.00
07/31		Ending Balance					15.00
		Dividends Paid Year to Date			0.00		

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		1350.38
		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		

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

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

AA00193



Signature Card

ACCOUNT TYPE				SHARES						
<input checked="" type="checkbox"/> General	<input type="checkbox"/> Kids Plus	<input type="checkbox"/> IRA	<input type="checkbox"/> Trust	<input type="checkbox"/> Business	<input checked="" type="checkbox"/> Checking	<input checked="" type="checkbox"/> Saving	<input type="checkbox"/> Certificate	<input type="checkbox"/> Vacation	<input type="checkbox"/> Money Market	<input type="checkbox"/> Holiday Club

PRIMARY MEMBER INFORMATION													
First	DELFO		Middle	W	Last	MENCARELLI		SSN	Redacted		Birth Date	Redacted	
Street	9536 LAZY RIVER DR			City	LAS VEGAS		State	NV	Zip code	MMN		LAZZARI	
I qualify for membership in this Credit Union because											Retires in Southern Nevada	Driver's License #	Redacted
Email	NO EMAIL		Home Phone	702-242-3585		Mobile Phone	N/A		2nd Form of ID	EXISTING MEMBER			
Present Employer	RETIRED		Address	N/A		Phone	N/A						
Someone who always knows your location	TERRY BLACK		Address	NORTH CAROLINA		Phone	704-885-8076						

JOINT MEMBER INFORMATION													
First	HELEN		Middle		Last	NATKO		SSN	Redacted		Birth Date	Redacted	
Street	9536 LAZY RIVER DR			City	LAS VEGAS		State	NV	Zip code	B9117	MMN	ALMASI	
Relationship to Primary Member											SIGNIFICANT OTHER	Driver's License #	Redacted
Email	HELENNATKO@YAHOO.COM		Home Phone	702-242-3585		Mobile Phone	N/A		2nd Form of ID	VISA 7483			

IDENTIFY MEMBER INFORMATION													
First			Middle		Last			SSN			Birth Date		
Street				City			State		Zip code	MMN			
Relationship to Primary Member												Driver's License #	
Email			Home Phone			Mobile Phone			2nd Form of ID				

ATM / DEBIT CARD ACCESS				STATEMENTS			
<input type="checkbox"/> I would like an ATM Card	<input type="checkbox"/> I would like a Debit Card	<input checked="" type="checkbox"/> I don't want ATM / Debit Card access		<input type="checkbox"/> I don't want to receive paper statements	<input checked="" type="checkbox"/> I do want to receive paper statements		

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
 To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying information.

TERMS AND CONDITIONS / JOINT SHARE AGREEMENT
 The Credit Union is hereby authorized to recognize any of the signatures below in the payment of funds or the transaction of any business for this account. The joint owners of this account hereby agree with each other and with the Credit Union that all sums now, heretofore, or hereafter paid in on shares by any or all of said joint owners and shall be owned by them jointly, and be subject to the withdrawal or receipt of any of them. The right or authority of the Credit Union under this agreement shall not be changed or terminated by said owners, or any of them except by written notice to the Credit Union which shall not affect transactions theretofore made. Signing below, as said owner(s) I agree to the terms and conditions set forth in the Truth in Savings and Lending Disclosures that I have received and I allow the Credit Union to pre-qualify me for loan products which may require the Credit Union to pull a credit report on me(s).

SHARE DRAFT AGREEMENT WITH OVERDRAFT TRANSFER CLAUSE
 I/We hereby authorize Plus Credit Union to establish Our Share Draft Account. The Credit Union is authorized to pay share drafts signed by any of us, and to charge all such payments against the shares in this account. It is further agreed that:
 a) Only share draft banks and other methods approved by the Credit Union may be used to withdraw from this account.
 b) The Credit Union is under no obligation to pay a share draft that exceeds the fully paid and collected share balance in this account. The Credit Union may pay such share draft and transfer shares to Our account in the amount of the resulting overdraft, plus a service charge, from any other regular account from which any of the undersigned is then eligible to withdraw shares.
 c) The Credit Union may pay a share draft on whatever day it is presented for payment, notwithstanding the date or any limitation on the time of payment appearing on the share draft.
 d) When paid, share drafts become the property of the Credit Union and will not be with the periodic statement of this account or otherwise.
 e) Except for negligence, the Credit Union is not liable for any action it takes regarding the payment or non-payment of a share draft.
 f) Any objection respecting any item shown on a periodic statement of this account is waived unless made in writing to the Credit Union before the end of 60 days after the statement is mailed.
 g) This account is subject to the Credit Union's right to advance notice of withdrawal, as provided in its bylaws.
 h) This account is also subject to other terms, conditions, and service charges that the Credit Union may establish from time to time.
 i) If this agreement is signed by more than one person, the persons signing below shall be the joint owners of this account or any sub-accounts, which in that event shall be subject to additional terms and conditions noted on this form.
 j) Right to Offset Funds - We understand that if any of my share accounts are in negative status, or if any loan that I am signer on is in default or delinquent status, the Credit Union may offset funds from any account that I am signer on now and in the future.

BACKUP WITHHOLDING										
Check box (A) only if true or (B) below:										
(A) <input checked="" type="checkbox"/> By signing below, I (name) <u>DELFO MENCARELLI</u> certify under penalties of perjury that (1) the Taxpayer Identification Number (TIN) shown on this form is my correct TIN and I am not subject to backup withholding either because (a) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends or (b) the IRS has notified me that I am no longer subject to backup withholding and (2) I am a U.S. person (including a U.S. resident alien).										
(B) <input type="checkbox"/> A separate Certification has been completed.										
By signing below, the undersigned agree to the Credit Union by-laws and the terms and conditions of any approved account, as amended from time to time, and authorizes the Credit Union to verify credit and employment history by necessary means, including preparation of a credit report by a credit reporting agency on the undersigned, as individuals. The undersigned certify that the information provided on this application is true and correct and that the terms on this application apply to all listed accounts. The undersigned acknowledge that they have read the insurance statement and receipt of a copy of the terms and conditions applicable to each listed account and the following policy disclosures:										
<input checked="" type="checkbox"/> Funds Availability	<input checked="" type="checkbox"/> Truth-in-Savings	<input checked="" type="checkbox"/> Electronic Funds Transfer	<input checked="" type="checkbox"/> Privacy	<input type="checkbox"/> Other:						

ASI Your deposits are insured to \$250,000 per account. This institution is not federally insured, and if this institution fails, the Federal Government does not guarantee that depositors will get their money back. Accounts with this institution are not insured by any state government.

NOTARY	
State:	_____
County:	_____
Signed and sworn to (or affirmed) before me on:	_____
By:	_____

X Delfo Mencarelli Primary Member Signature 07/23/2012 Date

X Heleen Natko Joint Member Signature 07/23/2012 Date

Plus Credit 000003

Defford W. MENCARELLI (insert your name) do hereby and appoint:

Name: HELEN MATKO

Address: 9536 Lazy River Dr., Las Vegas, NV 89117

Telephone Number: 702-242-3585

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 HealthCare, the authority of my attorney-in-fact is subject to the following special provisions and limitations:

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..... [initials])
- ✓ 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..... [initials])
- ✓ 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..... [initials]
- ✓ 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..... [initials]

(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).

Shirley Walters Mancini
(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.)

Certificate of Acknowledgment of Notary Public

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

State of Nevada)

: SS:

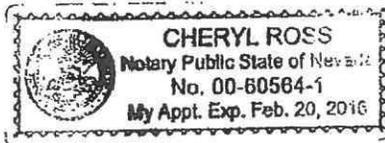
County of Clark)

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

before me, Cheryl Ross (here insert name of notary public) personally appeared Delford Walter Mancarelli (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~~ she executed it. I declare under penalty of perjury that the person whose name is ascribed 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)



Durable Power of Attorney for HealthCare Decisions Warning to Person Executing this Document

This is an important legal document. It creates a Durable Power of Attorney for HealthCare. Before executing this document, you should know these important facts.

1. This document gives the person you designate as your Attorney-in-Fact the power to make health care decisions for you. This power is subject to any limitations or statement of your desires that you include in this document. The power to make health care decisions for you may include consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition. You may state in this document any types of treatment or placements that you do not desire.
2. The person you designate in this document has a duty to act consistent with your desires as stated in this document or otherwise made known or, if your desires are unknown, to act in your best interests.
3. Except as you otherwise specify in this document, the power of the person you designate to make health care decisions for you may include the power to consent to your doctor not giving treatment or stopping treatment which would keep you alive.
4. Unless you specify a shorter period in this document, this Power will exist indefinitely from the date you execute this document and if you are unable to make health care decisions for yourself, this power will continue to exist until the time when you become able to make health care decisions for yourself.
5. Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped if you object.
6. You have the right to revoke the appointment of the person designated in this document to make health care decisions for you by notifying that person of the revocation orally or in writing.
7. You have the right to revoke the authority granted to the person designated in this document to make health care decisions for you by notifying the treating physician, hospital, or other provider of health care orally or in writing.
8. The person designated in this document to make health care decisions for you has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.
9. This document revokes any prior Durable Power of Attorney for HealthCare.
10. If there is anything in this document that you do not understand, you should ask a lawyer to explain to you.

Heleen Natko (insert your name) do hereby and appoint:

Name: Delford Walter MEDICARELLI

Address: 9536 Lazy River Dr, Las Vegas, NV 89111

Telephone Number: 702-342-3555

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.)

2. 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.

3. 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.

4. 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 HealthCare, the authority of my attorney-in-fact is subject to the following special provisions and limitations:

I understand that this power of attorney will exist indefinitely from the date I execute this document unless I 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.....
- 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.....
- 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
- 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.....

(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: _____

8. **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).


(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.)

Certificate of Acknowledgment of Notary Public

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

State of Nevada)

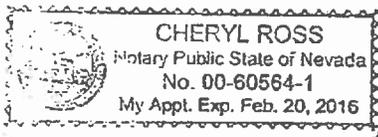
County of Clark)

ss:

On this 19th day of July, in the year 2012,
before me, Cheryl Ross (here insert name of notary public) personally appeared
Helen Natko (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~~ she executed it. I declare under penalty of perjury that the person whose name is ascribed 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)



APR 11 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Tia Everett
TIA EVERETT, DEPUTY

1 VER

4 THE STATE OF NEVADA,

5 Plaintiff,

6 -vs-

7 HELEN NATKO,

8 Defendant.

CASE NO: C-16-313574-1

DEPT NO: XIX

9 VERDICT

10 We, the jury in the above entitled case, find the Defendant HELEN NATKO, as
11 follows:

12 COUNT 1 - EXPLOITATION OF A VULNERABLE PERSON (\$5,000.00 or more)

13 *(Please check the appropriate box, select only one)*

- 14 Guilty of Exploitation of a Vulnerable Person (\$5,000.00 or more)
- 15 Not Guilty

17 We, the jury in the above entitled case, find the Defendant HELEN NATKO, as
18 follows:

19 COUNT 2 - THEFT (\$3,500.00 or more)

20 *(Please check the appropriate box, select only one)*

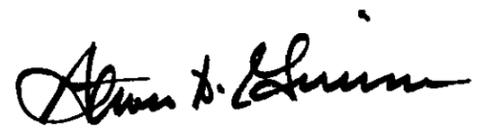
- 21 Guilty of Theft (\$3,500.00 or more)
- 22 Not Guilty

24 DATED this 11 day of April, 2017

26 [Signature]
FOREPERSON

27 C-16-313574-1
VER
Verdict
4639666





CLERK OF THE COURT

1 **MOT**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S. 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

Date of Hearing:
Time of Hearing:

14 **MOTION TO SET ASIDE VERDICT AND ENTER JUDGMENT OF**
15 **ACQUITTAL**

16 COMES NOW Helen Natko (“Helen”), by and through her attorneys Daniel T. Foley
17 Esq. and Moves this Court to Set Aside the Jury’s Verdict and Enter Judgment of Acquittal in
18 Ms. Natko’s favor. Ms. Natko submits these written points and authorities in support of her
19 Motion.

20 Helen is 79 years old. Helen and Delford Mencarelli (“Delford”) had been in an exclusive
21 relationship since July 5, 1982. Both of their spouses died in 1981. Helen and Delford are both
22 from Pennsylvania. After dating Delford for ten years, Helen moved to Las Vegas by herself in
23 1992, leaving Delford behind in Pennsylvania. Delford moved to Las Vegas in 2002, ten years
24 later, for the sole reason to be with Helen. Delford moved into Helen’s house which she purchased
25 and paid off on her own in 1994 and they resided there together until Delford’s death on July 3,
26 2015. Delford was 84 years old when he died.
27
28

1 In May 2012, ten years after Delford moved in with Helen in Las Vegas, during a trip to
2 Pennsylvania, Delford fell ill at his nephew's house and again later the same night at his sister's
3 house. Delford was transported to the hospital where stayed for two days due to low blood sugar.
4 Helen was not able to sign Delford in or out of the hospital because they were not married and his
5 sister was fortunately able to do so. Further, Helen was not able to pay for Delford's medical bills
6 as she was not a signator on his accounts.
7

8 Upon returning to Las Vegas, in July 2012, Delford executed a durable power of attorney
9 to set forth his medical directives and so that Helen could assist with medical decisions if needed,
10 something the hospitals in Pennsylvania and Las Vegas had asked for. At the same time, Delford
11 added Helen as a joint owner to his bank account at the IBEW Plus Credit Union ("the Bank").
12 The account number XXXX4389 is hereinafter referred to as "Helen and Delford's Joint
13 Account". A copy of the signature page from the Bank where Delford added Helen onto Helen
14 and Delford's Joint Account was admitted at trial as Defendant's Exhibit "A", a courtesy copy of
15 which is attached hereto as Exhibit "A".
16

17 One year after Delford made Helen a joint owner of Helen and Delford's Joint Account, a
18 significant dispute arose between Helen and Delford's daughter Terri Black. Mrs. Black came to
19 Las Vegas intending move Delford to her home in North Carolina. Cross Petitions for the
20 appointment of Guardian for Delford were filed by Helen and Mrs. Black. Helen ultimately
21 prevailed and was appointed as Delford's guardian.
22

23 On July 5, 2013, Helen withdrew \$195,000 from Helen and Delford's Joint Account and
24 deposited the \$195,000 into her own account. On July 31, 2013, Helen returned the \$195,000 to
25 her joint account with Delford.

26 At trial this Court, over Ms. Natko's counsel's objections gave directly contrary and
27 inconsistent Jury Instructions regarding the joint bank account. On the one hand, the Court
28 instructed the jury that a joint account holder owned the property in the joint account. On the other

1 hand the Court instructed the jury that despite owning the property in a joint account, a holder of a
2 joint account did not necessarily own the property.

3 This Court gave Jury Instruction # 16 which provided:

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

7
8 This Court also gave Jury Instruction # 18 which provided:

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

11 **ARGUMENT**

12 **NRS 175.381(2) provides**

13 “The court may, on a motion of a defendant or on its own motion, which is made after the jury
14 returns a verdict of guilty or guilty but mentally ill, set aside the verdict and enter a judgment of
15 acquittal if the evidence is insufficient to sustain a conviction. The motion for a judgment of
16 acquittal must be made within 7 days after the jury is discharged or within such further time as
17 the court may fix during that period.

18 This Motion is timely filed as the Jury rendered its verdict in this case on April 11, 2017.

19 **AS A JOINT OWNER OF THE SUBJECT BANK ACCOUNT, HELEN OWNED THE
20 CONTENTS OF THE ACCOUNT AND COULD NOT BE CONVICTED FOR
21 WITHDRAWING THE SAME**

22 The case of Walch v. State, 112 Nev. 25, 909 P.2d 1184 (1996) and its predecessor case
23 Starr v. Rousselet, 110 Nev. 706, 877 P.2d 525 (1994) were both legislatively over ruled by the
24 the Nevada Legislature’s amendment to NRS 100.085 made in 1995. Walch v. State arose long
25 prior to 1995 and the ruling in that case is based on NRS 100.085 prior to its amendment.

26 In 1995, the legislature addressed the Supreme Court’s ruling in Starr v. Rousselet, which
27 is similar to Walch v. State wherein the Court allowed parole evidence to be admitted to show
28 parties to a joint account’s intention in creating the account. Courts finding that joint accounts

1 were not joint accounts was unacceptable in the world of commerce, banking, and estate
2 planning. A copy of the applicable legislative history is attached hereto as Exhibit "B".

3
4 The Nevada legislature amended NRS 100.085 in 1996. The pertinent portions of the
5 statute read as follows:

6 1. When a deposit has been made in the name of the depositor and one or more other
7 persons, and in a form intended to be paid or delivered to any one of them, or the survivor or
8 survivors of them, **the deposit is the property of the persons as joint tenants. If an account is**
9 **intended to be held in joint tenancy, the account or proceeds from the account are owned**
10 **by the persons named, and may be paid or delivered to any of them during the lifetime of**
11 **all**, or to the survivor or survivors of them after the death of less than all of the tenants, or the last
12 of them to survive, and payment or delivery is a valid and sufficient release and discharge of the
13 depository.

14 ...
15 4. For the purposes of this section, unless a depositor specifically provides otherwise, the
16 use by the depositor of any of the following words or terms in designating the ownership
17 of an account indicates the intent of the depositor that the account be held in joint
18 tenancy:

- 19 (a) Joint;
- 20 (b) Joint account;
- 21 (c) Jointly held;
- 22 (d) Joint tenants;
- 23 (e) Joint tenancy; or
- 24 (f) Joint tenants with right of survivorship

25 As shown on Defendant's Exhibit A admitted into evidence during the trial, Delford and
26 Ms. Natko, in creating Ms. Natko and Delford's Joint Account, signed the Credit Union
27 signature page which includes the following language:

28 The Credit Union is hereby authorized to recognize any of the signatures below in
the payment of funds or the transaction of any business for this account. **The**
Joint owners of this account hereby agree with each other and with the Credit
union that all sums, now, heretofore, or hereafter paid in on shares by any or all
said **joint owners** by them **jointly**, and be subject to the withdrawal or receipt of
any of them.

Elsewhere in Exhibit "A", Ms. Natko is twice referred to as the joint member. Ms.
Natko, by law and via Exhibit "A" was an unrestricted owner of the contents of the joint

1 account from which she withdrew and replaced \$195,000. As an owner of that account, Ms.
2 Natko could not have committed any crime by withdrawing funds therefrom.

3 **THIS COURT’S JURY INSTRUCTIONS 16 AND 18 WERE INCONSISTENT AND**
4 **INSTRUCTION 18 WAS A MISTATEMENT OF THE LAW**

5 As argued to the Court during the settling of the jury instructions, the Court’s reliance on
6 the case of Walch v. State, 112 Nev. 25, 909 P.2d 1184 (1996) was erroneous. Walch v. State
7 was legislatively overturned by the modifications to NRS 100.085 in 1996. The Court
8 effectively instructed the jury that the joint account was on one hand Ms. Natko’s unrestricted
9 property and on the other hand Ms. Natko did not have authority to withdraw her own
10 unrestricted property.

11
12 The jury should not have been given jury instruction #18 and by doing so the Court gave
13 conflicting and contradicting instructions which went to the heart of this case. This Court must
14 now recognize its error and set aside the verdict and enter an acquittal in favor of Ms. Natko.
15 At minimum the Court must set aside the verdict and order a new trial.

16
17 **CONCLUSION**

18 Based on the above, this Court must now recognize its error and set aside the guilty
19 verdict and enter an acquittal in favor of Ms. Natko. At minimum the Court must set aside the
20 verdict and order a new trial.

21 DATED this 18th day of April 2017

22 Respectfully Submitted,
23 FOLEY & OAKES, PC
24 /s/Daniel T. Foley
25 DANIEL T. FOLEY, ESQ.
26 626 South Eighth Street
27 Las Vegas, Nevada 89101
28 Attorneys for Helen Natko

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 18th day of April 2017, I served the following
4 document(s):

5 **MOTION TO SET ASIDE VERDICT AND ENTER JUDGMENT OF**
6 **ACQUITTAL**

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

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

10 Jay P. Raman
11 Deputy District Attorney
12 200 Lewis Ave
13 Las Vegas, NV 89155

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

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

EXHIBIT A

EXHIBIT A



Signature Card

Account # 00124889

ACCOUNT TYPE					MEMBER					
<input type="checkbox"/> General	<input type="checkbox"/> Kids Plus	<input type="checkbox"/> IRA	<input type="checkbox"/> Trust	<input type="checkbox"/> Business	<input checked="" type="checkbox"/> Checking	<input checked="" type="checkbox"/> Savings	<input type="checkbox"/> Certificate	<input type="checkbox"/> Vacation	<input type="checkbox"/> Money Market	<input type="checkbox"/> Holiday Club
PRIMARY MEMBER INFORMATION										
First Name: <u>DELEARD</u>		Middle Initial: <u></u>		Last Name: <u>MENCARELLI</u>		SSN: <u>190-02-0903</u>		Date of Birth: <u>05/19/1963</u>		
Street: <u>8506 LAZY RIVER DR</u>		City: <u>LAS VEGAS</u>		State: <u>NV</u>		Zip Code: <u>89117</u>		MVA License # <u>1A0228N</u>		
I qualify for membership in this Credit Union because: <u>Relative to Southern Nevada</u>					Driver's License # <u>1A0228N</u>					
Email: <u>NO EMAIL</u>		Home Phone: <u>702-242-3885</u>		Mobile Phone: <u>NA</u>		2nd Form of ID: <u>EXISTING MEMBER</u>				
Present Employer: <u>RETIRED</u>		Address: <u>NA</u>		Phone: <u>NA</u>						
Someone who always knows your location: <u>YEBRY BLACK</u>					Address: <u>NORTH CAROLINA</u>		Phone: <u>704-852-8078</u>			

JOINT MEMBER INFORMATION										
First Name: <u>SELVA</u>		Middle Initial: <u></u>		Last Name: <u>NAIR</u>		SSN: <u>128-26-2716</u>		Date of Birth: <u>08/06/1933</u>		
Street: <u>8506 LAZY RIVER DR</u>		City: <u>LAS VEGAS</u>		State: <u>NV</u>		Zip Code: <u>89117</u>		MVA License # <u>1A0228N</u>		
Relationship to Primary Member: <u>UNSPECIFIED OTHER</u>					Driver's License # <u>1A0228N</u>					
Email: <u>MELENAH108@AOL.COM</u>		Home Phone: <u>702-242-3885</u>		Mobile Phone: <u>NA</u>		2nd Form of ID: <u>YSA 1A02</u>				

JOINT MEMBER INFORMATION										
First Name: _____		Middle Initial: _____		Last Name: _____		SSN: _____		Date of Birth: _____		
Street: _____		City: _____		State: _____		Zip Code: _____		MVA License # _____		
Relationship to Primary Member: _____					Driver's License # _____					
Email: _____		Home Phone: _____		Mobile Phone: _____		2nd Form of ID: _____				

ATM / DEBIT CARD ACCESS					STATEMENTS					
<input type="checkbox"/> I would like an ATM Card	<input type="checkbox"/> I would like a Debit Card	<input checked="" type="checkbox"/> I don't want ATM / Debit Card access			<input type="checkbox"/> I don't want to receive paper statements	<input checked="" type="checkbox"/> I do want to receive paper statements				

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT
 To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. You may also need to get your driver's license or other identifying information.

TERMS AND CONDITIONS / JOINT SAVING AGREEMENT
 The Credit Union hereby agrees to accept any of the signatures below in the support of funds or the execution of any business for this account. The joint owners of this account hereby agree with each other and with the Credit Union that all items debited, credited, or otherwise paid in or from this account shall be deemed to be the act of the signatory, and the signatory shall be bound by the withdrawal or receipt of any of them. The rights or authority of the Credit Union under this agreement shall not be changed or terminated by withdrawal, or any of them, except by notice in writing to the Credit Union which shall not affect transactions therewith. Signing below, as stated herein, I agree to the terms and conditions set forth in the public disclosure and other documents that I have received and allow the Credit Union to open and maintain this account which may require the Credit Union to put a credit record on my name.

SHARE DRAFT ASSURANCE WITH INSTRUMENT TRANSFER CLAUSE
 I, the undersigned, hereby agree to accept any of the signatures below in the support of funds or the execution of any business for this account. The joint owners of this account hereby agree with each other and with the Credit Union that all items debited, credited, or otherwise paid in or from this account shall be deemed to be the act of the signatory, and the signatory shall be bound by the withdrawal or receipt of any of them. The rights or authority of the Credit Union under this agreement shall not be changed or terminated by withdrawal, or any of them, except by notice in writing to the Credit Union which shall not affect transactions therewith. Signing below, as stated herein, I agree to the terms and conditions set forth in the public disclosure and other documents that I have received and allow the Credit Union to open and maintain this account which may require the Credit Union to put a credit record on my name.

BACKUP WITHHOLDER
 Check box (A) only if you or (B) below:
 (A) By signing below, I, DELEARD MENCARELLI, certify under penalty of perjury that (1) the Taxpayer Identification Number (TIN) shown on this form is my correct TIN and I am not subject to backup withholding either because (a) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (b) the IRS has notified me that I am no longer subject to backup withholding and (2) I am a U.S. person (including a U.S. resident alien).
 (B) A separate Certification has been completed.

By signing below, the undersigned agree to the Credit Union by laws and the terms and conditions of any approved account, as amended from time to time, and authorize the Credit Union to verify credit and employment history by necessary means, including preparation of a credit report by a credit reporting agency on the undersigned, as individuals. The undersigned certify that the information provided on this application is true and correct and that the terms on this application apply to all listed accounts. The undersigned acknowledge that they have read the instrument statement and receipt of a copy of the terms and conditions applicable to each listed account and the following policy statements:

Funds Availability Truth in Savings Electronic Funds Transfer Privacy Other: _____

Your deposits are insured to \$250,000 per account. This institution is not federally insured, and if this institution fails, the Federal Government does not guarantee that depositors will get their money back. Accounts with this institution are not insured by any state government.

<input checked="" type="checkbox"/> <u>Deleard Mencarelli</u> Primary Member Signature	<u>07/23/2012</u> Date	NOTARY State: _____ County: _____ Signed and sealed to (or attested) before me on: _____ By: _____ <input checked="" type="checkbox"/> Notary Signature
<input checked="" type="checkbox"/> <u>[Signature]</u> Joint Member Signature	<u>07/23/2012</u> Date	
<input checked="" type="checkbox"/> <u>[Signature]</u> Joint Member Signature	<u>07/23/2012</u> Date	

TRUST OR BENEFICIARY DESIGNATION	
Name: <u>YEBRY BLACK</u>	Address: <u>CITRUS BLVD, NORTH CAROLINA 27018, NC</u>
Name: _____	Address: _____

I, the account owner, hereby agree that any amounts payable to anyone or added to this account shall be paid to the above party(ies), if then living, when I have designated beneficiary. I assume the right to change or terminate the designation. This must be done prior to my death, and in a form provided by the Credit Union. In the absence of living such a designation, change, or termination, I agree on behalf of myself or my heirs, assigns, personal representatives and all other persons claiming through me to indemnify and hold the Credit Union harmless of loss or damage.

EFFECTIVE DATES ONLY					
Employee: <u>CLARKEN CRACE</u>	Teller # <u>294</u>	Check/Deposit # <u>EXISTING MEMBER</u>	Issued - Date _____	When _____	
<input checked="" type="checkbox"/> <u>[Signature]</u> Application Approved By	<u>07/23/2012</u> Date	Check/Deposit # <u>13456789012345</u>	Issued - Date <u>NA</u>	When <u>1993</u>	
		Check/Deposit # _____	Issued - Date _____	When _____	
		Report # <u>NA</u>			

EXHIBIT B

EXHIBIT B

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: Feb. 25, 1997
TIME : 3:23 pm
LEG. DAY IS: 116
PAGE : 1 OF 1

N E L I S

1995SB 424

By Judiciary

JOINT TENANCY

Revises provisions governing deposits held in joint tenancy. (BDR 8-1812)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

05/01 65 Read first time. Referred to Committee on Judiciary. To printer.
05/02 66 From printer. To committee.
05/02 66 Dates discussed in Committee: 5/5, 5/16 (DP)
05/17 77 From committee: Do pass.
05/19 79 Read second time. To engrossment.
05/19 79 Engrossed.
05/22 80 Read third time. Passed. Title approved. (20 Yeas, 0 Nays, 0 Absent, 0 Excused, 1 Not Voting.) To Assembly.
05/23 81 In Assembly.
05/23 81 Read first time. Referred to Committee on Judiciary. To committee.
05/23 81 Dates discussed in committee: 6/15, 6/24 (DP)
06/25 108 From committee: Do pass.
06/25 108 Placed on Second Reading File.
06/25 108 Read second time.
06/26 109 Read third time. Passed. Title approved. (42 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Senate.
06/27 110 In Senate.
06/27 110 To enrollment.
06/28 111 Enrolled and delivered to Governor.
06/29 112 Approved by the Governor. Chapter 426.
Effective October 1, 1995.

(* = instrument from prior session)

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

S.B. 424 (Chapter 426)

Senate Bill 424 clarifies the provisions governing deposits held in joint tenancy. Under this measure, the use by the depositor of the terms joint, joint account, jointly held, joint tenants, or joint tenants with the right of survivorship indicates the intent of the depositor that the account be held in joint tenancy.

Senate Bill 424 specifies the meaning of joint tenancy as it applies to bank accounts. The measure addresses a 1994 Nevada Supreme Court decision (*Starr v. Rousselet*), that concluded that a joint tenancy could not be created without the right of survivorship language. This conclusion is contrary to the traditional creation of a joint tenancy, which does not require such language. Under Senate Bill 424, a joint tenancy can be created through a variety of terms, including right of survivorship, that indicate the intent of a depositor to form such an account.

only
ended

SENATE BILL NO. 424--COMMITTEE ON JUDICIARY

MAY 1, 1995

Referred to Committee on Judiciary

SUMMARY--Revises provisions governing deposits held in joint tenancy. (BDR 8-1812)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION--Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to deposits of money; revising the provisions governing deposits held in joint tenancy; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. NRS 100.085 is hereby amended to read as follows:
2 100.085 1. When a deposit has been made in the name of the depositor
3 and one or more other persons, and in a form *intended* to be paid or delivered
4 to any one of them, or the survivor or survivors of them, the deposit is the
5 property of the persons as joint tenants. [The money or property shall be held
6 for the exclusive use of] *If an account is intended to be held in joint tenancy,*
7 *the account or proceeds from the account are owned by the persons named,*
8 *and may be paid or delivered to any of them during the lifetime of all, or to*
9 *the survivor or survivors of them after the death of [the depositor,] less than*
10 *all of the tenants, or the last of them to survive, and payment or delivery is a*
11 *valid and sufficient release and discharge of the depository.*
12 2. The making of a deposit in the form of a joint tenancy vests title to the
13 deposit in the survivor or survivors.
14 3. When a deposit has been made in the name of the depositor and one or
15 more other persons, and in a form to be paid or delivered to the survivor or
16 survivors of them, but one or more of the other persons is not authorized to
17 withdraw from the deposit during the life of the depositor or depositors, the
18 person or persons so restricted have no present interest in the deposit, but
19 upon the death of the last depositor entitled to withdraw, the deposit is
20 presumed to belong to the survivor or survivors. Unless written notice of a
21 claim against the deposit has been given by a survivor or a third person before
22 payment or delivery, payment or delivery to a survivor is a valid and suffi-
23 cient release and discharge of the depository.
24 4. *For the purposes of this section, unless a depositor specifically provides*
25 *otherwise, the use by the depositor of any of the following words or terms in*
26 *designating the ownership of an account indicates the intent of the depositor*
27 *that the account be held in joint tenancy:*
28 (a) *Joint;*

- 1 (b) *Joint account;*
- 2 (c) *Jointly held;*
- 3 (d) *Joint tenants;*
- 4 (e) *Joint tenancy; or*
- 5 (f) *Joint tenants with right of survivorship.*

Ⓢ

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
May 5, 1995**

The Senate Committee on Judiciary was called to order by Vice Chairman Jon C. Porter, at 8:30 a.m., on Friday, May 5, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

COMMITTEE MEMBERS ABSENT:

Senator Mark A. James, Chairman (Excused)

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

John Dedolph, President, CEO, Sun State Bank
John P. Sande, III, Attorney, Lobbyist, Nevada Bankers Association, Airport
Authority of Washoe County
Arvind A. Menon, Senior Vice President, CFO, Bank of America
Scott Walshaw, Commissioner, Division of Financial Institutions, Department of
Business and Industry
Douglas Walther, Deputy Attorney General, Division of Financial Institutions,
Department of Business and Industry
Brian R. Hutchins, Chief Deputy Attorney General, Transportation Division, Office
of the Attorney General
Ted. L. Wehking, Executive Vice President, Nevada Bankers Association

Mr
Senate Committee on Judiciary
May 5, 1995
Page 9

was uncertain if the NDOT's procedure could be broad enough to allow for the necessary testing, as well allowing for entry upon property where the owner is unwilling. He offered to take whatever approach will be the most efficient and effective.

Senator Washington asked if sound pollution is a factor that would be alleviated through the new procedure. Mr. Sande replied in the affirmative in cases where property is needed to expand the sound buffer zone. He stated the procedure would apply to any land necessary to the airport whether for parking, sound buffer, or runways.

Mr. Hutchins interjected there is no real pre-condemnation action in court, once an action is filed in court it is a condemnation. The NDOT has never had to condemn a piece of property simply to gain access, he asserted. There was no further testimony and the vice chair closed the hearing on S.B. 415.

SENATE BILL 424: Revises provisions governing deposits held in joint tenancy.

The committee moved to the hearing on S.B. 424. Mr. Sande, representing the Nevada Bankers Association, was the witness for this bill as well. He introduced Ted. L. Wehking, Executive Vice President, Nevada Bankers Association. Mr. Sande explained there is a need to change the law dealing with joint tenancies due to a recent court decision, Starr v. Rousselet (Exhibit E) which declares joint bank accounts are not afforded rights of survivorship, without specific language to that effect.

Mr. Sande explained the circumstances of the case which led to the decision. It is commonly held that a joint banking account automatically, by intent, would pass to the surviving holder, should one party die. With this decision, the assumption can no longer hold, he explained, as the court allowed parole evidence which showed it was not Mr. Rousselet's intent to have the assets pass to Ms. Starr. Mr. Sande read portions of the decision (Exhibit E). The upshot, he explained, is unless there are terms "right of survivorship" in the documents creating the account, it is not a joint tenancy.

This decision creates grave problems for the state's banking institutions, as well as account holders who believe their joint account will automatically pass to the surviving party. A dissent to the decision was entered by Justice Young, along with Justice Rose, which indicates this decision is in error, Mr. Sande said. The

Senate Committee on Judiciary
May 5, 1995
Page 10

intent of S.B. 424 is to return the law to its previously understood meaning, with subsection 4 of section 1 containing the provision which makes this return.

The witness reported he does probate law in his practice, and it is very important for persons without financial resources to be able to avoid the costs of probate through the creation of joint accounts. He turned to Mr. Wehking for his comments.

Mr. Wehking told the committee this court decision makes all existing signature cards for accounts obsolete. It will be necessary to contact all the account holders and have them fill out new signature cards which contain verbiage making the account a joint tenancy with rights of survivorship, he reported. This will create massive work and great confusion for the account holders, who are unaware of the court decision and its impact. Simply trying to explain the situation will be extremely difficult, he opined. Mr. Wehking confirmed the banking industry was shocked that this case went to hearing without them being aware of its existence and its possible impact.

clar

Mr. Porter asked for confirmation of his understanding of the situation, he observed the court decision, if left alone, will require the banks to change all the signature cards for joint accounts; if the law is changed, this will not be necessary. Mr. Wehking corrected the senator, noting the banks would not be required to change all the cards, they simply would have to live with the court's decision and its associated need to probate all accounts.

Senator Adler stated his experience in the area shows a joint account is passed to the sole ownership of the surviving tenant. With this decision, the bank cannot allow this passage of ownership because there may be other heirs, he observed. The decision "really screws up the process," he added. Mr. Sande agreed, and explained further. If property is truly joint tenancy property, it will pass "by operation of law" to the surviving holder; this is similar to being named a beneficiary to a life insurance policy, he explained. If an account is not joint tenancy, Mr. Sande continued, it is necessary to go into court, indicate who owned what interest in the property, then file probate proceedings in order to be able to take possession of the property. This can be very costly, because it is necessary to hire an attorney for these proceedings, he added.

The witness asserted the assumption of joint tenancy with rights of survivorship should be returned, and if the court wishes to allow parole evidence to disprove the validity of a joint tenancy. Senator Adler asked if language to that effect should go into the bill. Mr. Sande agreed that incorporating this language would

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be useful. Mr. Sande noted there is a need to address a taxation concern, as well. In community property, if one person dies, both halves of the property suffer an increase in taxation level, he said, if property is held in true joint tenancy, only one half receives the increase. It might be possible to come up with some language to address this question, Mr. Sande opined.

Senator Porter told the audience that all bills heard by the committee today will be scheduled for a work session the following week. He called Gary Stagliano, Chief of Investigations and Recovery, Welfare Division, Department of Human Resources, who offered testimony regarding the bill. He read from a prepared statement (Exhibit E).

Mr. Stagliano noted if the bill draft request (BDR) the Welfare Division is hoping for passes, they would probably have no opposition to S.B. 424. If the bill passes in its present form the division would have concern about section 1, subsection 49(a-c) which would preclude the division from making claims against those accounts. He offered to answer questions.

Senator Porter asked if the BDR the welfare division seeks is something that could be incorporated into S.B. 424. Mr. Stagliano replied in the negative. He offered to work with the banking industry to find language that will work for both entities. Mr. Sande noted he would be happy to meet with the representatives from the Welfare Division to accomplish a compromise. He noted he would be unable to attend the work session Senator Porter had spoke of for Monday, but promised the amendments for midweek.

Senator Adler opined the bill is very necessary and it must be passed in order to clarify the meaning of joint accounts.

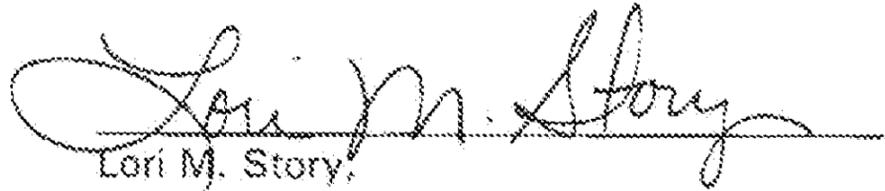
Senator Titus asked Mr. Stagliano whether his department is able to attach accounts that are held jointly by married couples, one of whom is home and the other who is in a nursing home. She recalled there was legislation which prohibited the impoverishment of both people in order to pay for the care of the

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one spouse. Mr. Stagliano stated the division would only go after the portion of the property which is held for the individual needing the care.

There was no further business before the committee, and the hearing was adjourned at 9:50 a.m.

RESPECTFULLY SUBMITTED:



Lori M. Story,
Committee Secretary

APPROVED BY:


Senator Mark A. James, Chairman

DATE: 7-14-95

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MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
May 16, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:00 a.m., on Tuesday, May 16, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Dean Heller, Secretary of State
Carol Lefcourte, Deputy Secretary of State
John P. Fowler, Chairman, Executive Committee, Business Law Section, Nevada State Bar
Marsha Berkbigler, Lobbyist, Nevada State Medical Association
Ben Graham, Chief Deputy, Clark County District Attorney, Lobbyist, Nevada District Attorneys Association
Nancy Tiffany, Unit Manager, Division of Parole and Probation, Department of Motor Vehicles and Public Safety
Fred L. Hillerby, Lobbyist, Nevada Society of CPAs
Bill Bradley, Lobbyist, Nevada Trial Lawyers Association
Gary L. Stagliano, Chief, Investigations and Recovery Services, Welfare Division, Department of Human Resources
Anne Cathcart, Senior Deputy Attorney General, Litigation Division, Office of the Attorney General

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May 16, 1995
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discussion, it was agreed the name of the managing partner would be at least sufficient.

There was no further discussion and the chairman called for a motion to amend and do pass S.B. 347.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS S.B. 347 AS OUTLINED IN EXHIBIT E, AND AS AGREED ABOVE.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

SENATE BILL 424: Revises provisions governing deposits held in joint tenancy.

Senator James moved the work session to S.B. 424. He asked if John Sande was present to speak about the bill. He was not. Gary L. Stagliano, Chief, Investigations and Recovery Services, Welfare Division, Department of Human Resources, did take the floor to speak once again regarding the possible fiscal impact to the Welfare Division. He reported he has had conversations with Mr. Sande, noting there has been an agreement between them; Mr. Sande and the banking association will support the Welfare Division's pending legislation and the Welfare Division agrees to support S.B. 424.

Senator James asked where the fiscal impact will come in. Mr Stagliano stated the modification of joint tenancy language for banking purposes would "disallow" the division from pursuing estate recovery cases. Currently, joint accounts do not have the luxury of a joint tenancy protection, he observed, but this bill will provide that protection.

The chairman observed the intent of the bill is to clarify when an account is held jointly, there are survivorship rights, unless language to the contrary is specified in the account. This bill is necessary as a result of a supreme court decision, he noted. Mr. Stagliano agreed, noting because of the decision the Welfare Division can pursue the accounts for Medicaid estate recovery purposes, up to the total interest in the account that was held by the decedent. There were no questions, nor proposed amendments. The chair called for a motion to do pass S.B. 424.

SENATOR ADLER MOVED TO DO PASS S.B. 424.

SENATOR PORTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

SENATE BILL 392: Revises provisions governing employment of offenders, accounting of money of offenders and forfeiture of good-time credits.

Anne Cathcart, Senior Deputy Attorney General, Litigation Division, Office of the Attorney General, brought a proposed amendment to S.B. 392. She handed the committee copies of a letter she had offered at a previous hearing, to which she made the proposed changes (Exhibit G).

Ms. Cathcart went over the proposed changes. In section 5 of the bill, the director sets an indigence level that applies to every inmate. In section 6, there is a statement which clarifies the provisions of the chapter do not create any right on behalf of any offender to any minimum wage. Next, the priority of claims against monies in the inmates' accounts is listed on the final two pages of the exhibit.

Ms. Cathcart thanked Senator Adler for his assistance with the matter. She credited him with the idea to divide the inmates into three separate categories as well as other aspects of the proposal. She referred further explanation of the changes to George Weeks, Assistant Director, Department of Prisons.

Senator Adler noted the percentages on the right column of the chart (last two pages of Exhibit G) are going to be set within the regulations of the Department of Prisons. The bill will only address the prioritization of the deductions. He explained the three classifications of prisoners are: inmates that earn minimum wage and above (approximately 350 inmates of 7700 total); inmates that earn less than minimum wage; and finally, those who only receive deposits in their accounts.

Senator Adler reported there are 4,711 inmates (61 percent of the total prison population) whose average daily balance in their account is \$1.31. 775 inmates (10 percent) have an average daily balance of \$10-\$25. Those with \$1,000-\$2500 make up only 1.3 percent of the prison population (102 inmates). He admitted the balances of accounts will not realistically result in collections of any great amount.

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Assemblymen Batten, Manendo and Evans requested a roll call on Assemblyman Batten's motion.

Roll call on Assemblyman Batten's motion:

YEAS—8.

NAYS—Allard, Anderson, Arberry, Braunlin, Brower, Buckley, Carpenter, Chowning, Close, de Braga, Ernaut, Fetic, Freeman, Goldwater, Harrington, Humke, Krenzer, Lambert, Marvel, Monaghan, Neighbors, Perkins, Price, Sandoval, Schneider, Segerblom, Steel, Stroth, Tripple, Mr. Speaker Hettrick—30.

Absent—Nolan.

Not voting—Tiffany, Williams, Mr. Speaker Dini—3.

The motion having failed to receive a majority, Mr. Speaker declared the amendment lost.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Arberry moved that Senate Bill No. 401 be re-referred to the Committee on Ways and Means.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 424.

Bill read second time and ordered to third reading.

Senate Bill No. 433.

Bill read second time and ordered to third reading.

Senate Bill No. 462.

Bill read second time and ordered to third reading.

Senate Bill No. 474.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:
Amendment No. 1278.

Amend sec. 3, page 2, lines 13 and 14, by deleting "dangerous" and inserting "harmful".

Amend sec. 4, page 2, line 25, by deleting "In" and inserting: "1. Except as otherwise provided in subsection 2, in".

Amend sec. 4, page 2, line 29, by deleting "1." and inserting "(a)".

Amend sec. 4, page 2, line 32, by deleting "2." and inserting "(b)".

Amend sec. 4, page 2, line 34, by deleting "3." and inserting "(c)".

Amend sec. 4, page 2, line 37, by deleting: "subsection 1, 2 or 3" and inserting: "paragraph (a), (b) or (c)".

Amend sec. 4, page 2, between lines 40 and 41, by inserting:

"2. The limitations on liability set forth in subsection 1 do not apply to an action brought against an insurer who acts in bad faith regarding its obligations to provide insurance coverage."

Amend sec. 8, pages 3 and 4, by deleting lines 42 through 48 on page 3 and lines 1 through 5 on page 4 and inserting: "an employee under the control or supervision of the owner or keeper unless:

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Roll call on Senate Bill No. 68:

YEAS—42.

NAYS—None.

Senate Bill No. 68 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 229.

Bill read third time.

Remarks by Assemblyman Anderson.

Roll call on Senate Bill No. 229:

YEAS—42.

NAYS—None.

Senate Bill No. 229 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 231.

Bill read third time.

Remarks by Assemblymen Ohrenschall, Sandoval, Freeman, Anderson, Perkins, Batten and Chowning.

Assemblyman Chowning moved that Senate Bill No. 231 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Senate Bill No. 349.

Bill read third time.

Remarks by Assemblyman Allard.

Roll call on Senate Bill No. 349:

YEAS—41.

NAYS—None.

Not voting—Ernaut.

Senate Bill No. 349 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 378.

Bill read third time.

Remarks by Assemblyman Goldwater.

Roll call on Senate Bill No. 378:

YEAS—42.

NAYS—None.

Senate Bill No. 378 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 424.

Bill read third time.

Remarks by Assemblyman Ohrenschall.

Roll call on Senate Bill No. 424:

YEAS—42.

NAYS—NONE.

Senate Bill No. 424 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 433.

Bill read third time.

Remarks by Assemblyman Humke.

Roll call on Senate Bill No. 433:

YEAS—42.

NAYS—None.

Senate Bill No. 433 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 462.

Bill read third time.

Remarks by Assemblyman Manendo.

Roll call on Senate Bill No. 462:

YEAS—42.

NAYS—None.

Senate Bill No. 462 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 475.

Bill read third time.

Remarks by Assemblyman Batten.

Roll call on Senate Bill No. 475:

YEAS—42.

NAYS—None.

Senate Bill No. 475 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Mr. Speaker announced that if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 1:07 p.m.

ASSEMBLY IN SESSION

At 1:30 p.m.

Mr. Speaker presiding.

Quorum present.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-eighth Session
June 15, 1995

The Committee on Judiciary was called to order at 8:10 a.m., on Thursday, June 15, 1995, Chairman Humke presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

COMMITTEE MEMBERS EXCUSED:

Mr. Richard Perkins

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Patty Hicks, Committee Secretary

OTHERS PRESENT:

J. T. Watson, Jr., U.S. Immigration & Naturalization Service
Rick Eaton, U.S. Immigration & Naturalization Service
Christina Chandler, 8th Judicial District Court
Anne Cathcart, Attorney General's Office

Assembly Committee on Judiciary
June 15, 1995
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Ms. Buckley echoed it is a good bill.

Chairman Humke complimented Mr. Watson and Mr. Eaton on their excellent presentation.

Mr. Carlos Concha, Acting Deputy Chief, Division of Parole and Probation (P&P), testified in support of the bill and advised they [P&P] work with INS in full cooperation.

Chairman Humke closed the hearing on S.B. 475 and opened the hearing on Senate Bill 424.

SENATE BILL 424 - Revises provisions governing deposits held in joint tenancy.

Mr. John Sande, representing the Nevada Bankers Association testified the bill deals with joint accounts at banks and handed out a copy of the decision (Exhibit E) issued July 7, 1994 by the Nevada Supreme Court, STARR v. ROUSSELET. He stated the case indicates why bad facts make bad law and reviewed the facts of the case: the decedent (Rousselet) was a widower with three adult children; was in a platonic relationship with Ms. Starr living together, occupying separate bedrooms, for several years; he was hospitalized; and six days later Valley Bank processed a signature card adding Ms. Starr to the checking account of over \$60,000. Evidence at the trial suggested this was done for convenience purposes so Ms. Starr could pay joint expenses while he was hospitalized. Mr. Rousselet died on January 14, 1990, a Sunday. Monday was a bank holiday and on Tuesday Ms. Starr closed the account and transferred funds into her own individual account. The litigation was to determine whether or not Ms. Starr was entitled to the funds and if she would have been entitled to the funds if this were a true joint account. It was established that there was a right of survivorship. Mr. Sande noted the court found it was not a joint account and awarded all the funds, as part of his estate, which went to his children. Mr. Sande stated the case reversed what everybody thought was the case; there were no magic words to set up a joint account with a right of survivorship. Most banks do not have right of survivorship language in their joint accounts; "they say, you're creating a joint account and either party has access to those funds." He referred to pages 6 and 7 (Exhibit E), noting how the Court struggles and in his opinion does not come up with a very clear decision, and quoted, "Neither the terms of statute ...evidence." He continued on page 8, Justices Young and Rose (dissenters) set forth clear reasons why this needs to be

addressed by legislation since the majority's decision causes all sorts of problems. Mr. Sande quoted page 8 (Exhibit F), "The majority's decision calls into question the validity of the expectation...a surviving tenant in common." He stated the court of the majority did not address this and the minority goes on to ask if a new form of ownership is being created, that of joint tenants who may remove funds, but not keep them. Mr. Sande outlined the problem this has caused; there are many bank accounts in the state that do not have survivorship language and numerous people thinking they will avoid probate by putting their funds in joint accounts expecting, on their death, for funds to pass to their surviving spouse or to their children. He added, "We" think the intent of virtually all people who have put their money in joint accounts is the right of survivorship and believe, in those rare instances, the court could have reached a different conclusion by allowing parol evidence to show this was not truly a joint tenancy, it was done for convenience purposes only and Ms. Starr held these assets in trust for the estate of Mr. Rousselet. S.B. 424 makes it clear there are no magic words that are necessary to create joint tenancy. He continued beginning on Page 1, Line 28, of the bill, language, such as, "joint, joint account, jointly held, joint tenancy, or joint tenants with right of survivorship" will be allowed to establish an account is a joint account/joint tenancy account and, as NRS 100.085 is being amended, clearly pass to the survivor on the death of one of the tenants.

Chairman Humke asked if Mr. Sande had written remarks he could offer.

Mr. Sande responded no but he could prepare them (Exhibit G.)

Chairman Humke requested they be submitted and directed, to obtain a full record the following questions and answers be transcribed verbatim. He acknowledged the Supreme Court is literally begging for some legislative history and clarity. He felt the proposed statute is quite clear but thinks it should be backed-up with a very clear record.

Ms. Buckley noted Mr. Sande's testimony made a lot of sense and questioned, "If now joint tenancy would necessarily mean joint tenancy with right of survivorship. Are we now setting a precedent; saying there is really no difference between the two. I worry about blurring the legal line and that "magic language" by not being there, now automatically assumes that it is in there." She asked Mr. Sande to comment.

Mr. Sande responded, "I think we are amending, (again this is only for bank

Assembly Committee on Judiciary

June 15, 1995

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accounts/deposits which is NRS 100.085), and I think it's clear (in there) that they are defining, if it is held as a joint tenancy, as that is defined in that statute under Subsection 4 on Page 1, if it is defined like that when people put it into a joint account and specifically says, as these deposits agreements do say, that either party, or any party that on the account, has the right to those funds, that they will pass to the survivor on the death so that there's certainty. I think we are creating certainty and also that it was the way everyone anticipated things were done in the past; for example, there's reference in the decision to a case which had an irrebuttable presumption. The McKissick case we rejected dictum in an earlier case which suggested that oral evidence could be admitted to remedy any deficiency in a written instrument [unintelligible] to establish ownership in joint tenancy. In addition, we stated, "since joint tenancy is a method by-which property may be passed upon death of a written instrument specifying such an intention, is essential. I think there is another case they make reference to a"

Ms. Buckley interjected for a follow-up.

Mr. Sande stated he would get the reference to the case where it was an irrebuttable presumption.

Ms. Buckley asked, "Why couldn't a bank say; check box 'A' or check box 'B'. 'A': Joint tenancy means a share either one can withdraw and if one of you die it goes to the will; and 'B': joint tenancy with right of survivorship means whoever the second name on the account is, gets the money. Why doesn't that work."

Mr. Sande responded, "Well, first of all, I suppose you could do that. One of the reasons for this bill is we have a whole lot of accounts out there that are already like joint accounts and there are a lot of people relying upon the fact that they're passed by right of survivorship. But as a practical matter, and the reason why I think this is good policy, is how is a bank to know whether or not someone has died, unless, the person that's withdrawing the funds says, "Oh, by the way, I'm doing this because my spouse passed away." The bank has millions of transactions and people come and go, so, from a policy standpoint, I think it's important for some certainty and they're not violating the law because somebody has died."

Ms. Steel stated she had a lot of problems with the concept. "We have different forms of property besides banking property and this different termination [terminology]; most people deal with banks and once they get accustomed to your definition of joint property ownership they may assume that in other areas, in other

properties. I really have a problem with muddying-up that water. I think, I agree with Ms. Buckley, that it would be simpler to just put on your forms, "alert-this could happen", and maybe send out a little letter to your other people that have this. You mentioned that bad facts make bad laws but knee jerk reactions to isolated incidences also make bad law.

Mr. Sande replied, "Maybe I misspoke myself. I think that every person that I have ever worked with (and I practice in the estate area) that's ever put a deposit in a joint account, almost universally, understands that it passes to the survivor. Number one, you have, like I said, thousands of accounts out there. If this legislature is taking the position that these are not joint accounts with right of survivorship; if you are taking that position, what kind of account is it? Is it a tenant in common? At least I would argue, and I think this is the case, you're going to have to probate every single one of those accounts if someone passes away. So you have a \$100,000 account and you have to go to probate and hire me as an attorney, it's going to cost you an awful lot of money and an awful lot of the residents of our state. Secondly, is I'm not aware of any (joint tenancy to me means that it passes on death to the survivor) I've never seen a joint tenancy created in Nevada that was intended not to pass to the survivor upon death. If you want to have some type of joint ownership and not have it pass to the survivor, it's called tenants-in-common. You can specifically set that up. We even created a type of property--I drafted the bill, which was community property--with right of survivorship. The reason we did that is because of the advantage from a tax stand point when one of them dies. But, I guess, the point I would make is I think what we are doing here is clarifying what the intent of the people of Nevada is right now when they set up a joint account. In almost all cases they believe it's going to pass to the survivor. In those rare instances, such as this, where somebody did it for convenience only and did not really understand the import of it, you have, in my opinion, the ability to go into court and to go and to stop the person taking those funds by using undue influence. This is really a case of undue influence where somebody took advantage of somebody. But, in most cases, most people are putting it in there because they anticipate they want it to pass to their child, they don't want to create a trust, they don't want to have to probate it, they want it to pass to their surviving spouse and avoid probate. I think that we should clarify that as the Legislature; you should clarify this as the Legislature and make sure we don't have that type of difficulty in the future. Like I said, there are thousands of accounts out there and if this bill doesn't pass, I think the banks will say that's putting us on notice that if we know someone's died we can not release that to the survivor."

Chairman Humke asked Ms. Steel if that was satisfactory.

Ms. Steel wished to follow-up. She asked, "If I have my name on an account with Mr. Humke--we don't even live in the same house and we have two different families--but we have a joint account; we both have equal rights to the money in that account: is that correct?"

Mr. Sande responded, "Under any interpretation either of you could take all the funds out of that account."

Ms. Steel inquired, "So, I don't understand the problem from the bank's point of view or why you feel that you have to not give the money out because, by the law, you would have to give the money to whoever asks you for it, anyway. So I don't understand your concern on the death of a person, I guess."

Mr. Sande replied, "If you were saying that--well, that's exactly what happened in this case. But, if you were saying joint tenancy does not include right of survivorship, unless it's specifically in there, then as a bank, as long as both you and Mr. Humke are alive, yes, we could go and release the whole funds. If we know, though, that Mr. Humke passed away and you come in and say I'd like to have those funds, we can't do it; you're not entitled to them anymore because of this weird decision. All of a sudden that death has basically terminated, you can not have that as a survivor. That's what's weird about this case. That's the bad result. That's what she did in this case. She went in after the death of Rousselet and she took the funds and the Court said, "No, you can't do that because you're not entitled to those funds on the death of one of the tenants.", and that's what the dissent points out. The dissent points out that this is wacky; this creates a real unusual situation and the dissenting opinion says, what are we creating here, now? Have we created a tenancy-in-common? If we've created a tenancy-in-common both owners have 50% in interest. So, in that case, Mr. Rousselet's heirs would only get 50% and she would get 50%. I really think this is a case of undue influence where the court should have admitted parol evidence for the purposes of saying there was not an intent to create a joint tenancy. She was put on there not to have any rights to take those funds for herself. She was put on there for the sole purpose of paying their expenses and helping him out when he's in the hospital. They could have done that; they could have set a constructive trust. Instead, again, bad facts. They tried to craft something and they ended up with a law, I mean, I don't know what happens now on death.

Ms. Steel asked as follow-up, "So, as a result of this case did your bank, or did the bank, that released the funds to Ms. Starr suffer any penalties.

Mr. Sande replied, "No. No, there's no penalties because of what they did. She got the funds; there's a lawsuit initiated; there's an injunction placed upon her from not disposing of those funds; and ultimately the Court said, several years later, these funds belong not to you, they belong to the estate of Rousselet."

Ms. Steel asked, "So, how does it impose responsibility upon you, I guess, at the bank if you hear somebody dies."

Mr. Sande responded, "Well, if you are saying that this is not a joint account with right of survivorship and if you're saying there's a legislative policy, you turned out this legislation, then the banks are put on notice, basically, that the Legislature says unless you have specific language creating survivorship you don't have a right of survivorship. So, if we're put on notice that Mr. Humke has died and we allow you to withdraw the funds, we may be in trouble because Mr. Humke's heirs may come and say, "How could you go and let those out; that was not a right of survivorship. You know Mr. Humke was dead. You should have gone and allowed his estate to come in and take those funds; at least claimed part of them." We don't want to be put in that situation and furthermore, we think, if you turn this down and some client comes into me I'll say, hey, we can't go and pass these funds over to the survivor. We have to probate them. We have to file the probate because they are not the property of the survivor. The survivor can't get those funds. If there's not the right of survivorship you have no right to those funds and you, and it's either tenancy-in-common, you divide it fifty-fifty, or you figure out who put the funds in there originally. I guess that would be the question.

Ms. Steel inquired, "So, it's only joint if you're both still alive."

Mr. Sande answered, "Under this case."

Ms. Steel added, "And under the law?"

Mr. Sande replied, "The way the Supreme Court, the majority decision, seemed to suggest. That's why the minority had so much problem. They said, what are we creating? The court really doesn't address that issue and that's again when you have bad facts and you try to go and craft a result you end up with a lot more questions that were not resolved in this decision. I don't know the answer to that."

Mr. Carpenter asked, "Why didn't you include the wording of community property with the right of survivorship."

Mr. Sande responded, "That's a general statute that doesn't apply to deposit agreements. It applies to real property and there's specific language you have to use to create it. It deals primarily with holding title to real property; it doesn't apply to bank accounts. To my knowledge they don't have any bank accounts like that. Another thing too, with bank accounts; the reason for community property with right of survivorship and I'll just go through this real quick. When you die, any property that you have in your estate gets a step-up in basis for purposes of income tax. What that means is, if you had, for example, a home that you bought for \$20,000 and when you die it's worth a \$100,000 and on your death if your estate sells that property for \$100,000 the basis will be \$100,000, the value the date at death. So you pay no income tax on the difference of \$20,000 and the \$100,000 which you sold it for. So, in other words, you avoid capital gains on that amount. I don't know if everybody follows that, but, basically if you had sold that house when you were alive that basis would be \$20,000 and you sold it for \$100,000 you would have an \$80,000 gain. That's one of the few tax breaks you get when you die. Where the problem came up is where you have it owned by husband and wife. The IRS has said if it's community property, and you own a home as community property, you and your spouse, when you die it's worth \$100,000 you get a step-up on both halves because it's owned equally by the two of you. You get a step-up on both halves even though one of the tenants, or community property members is still alive you still get a step-up basis on the whole value of the property. On the other hand, if it's joint tenancy or tenants-in-common and not community property you get a step-up on only one-half. So you take one-half of the value of the property, so that means \$50,000 would be the basis in your half and your spouses half, if you bought it for \$20,000, would be \$10,000. So the whole basis would be \$60,000 and you pay a tax on \$40,000 if you sold it for \$100,000. The IRS, since they assess for community property, we wanted to create a statute in Nevada that said, try to make it community property. So we created community property with right of survivorship so people could own property and get the tax break on death. The reason it doesn't apply to joint bank accounts because a bank account doesn't have any capital appreciation in it. The bank account is cash and whatever the value it is, that's the basis. It hasn't appreciated in value so there's no need to have it as community property with right of survivorship.

Mr. Carpenter acknowledging Mr. Sande as the lawyer and the expert, stated, "But,

I think there's a lot of wills made out that refer to community property with right of survivorship. As I understand it, it passes to the remaining spouse. You're not taxed at that time; but, when that spouse dies, the second spouse, it is certainly going to be taxed. I don't agree with you on this stepped-up basis; that's on a home that you've lived in a certain time. I really think you ought to, I don't see any reason for not having that in there. I think it would maybe clarify some of these situations that, where there's wills left that refer to community property with right of survivorship. And, under this bill, why the fellow that established a relationship with this lady, if he had wanted to put it into a joint tenancy with right of survivorship he could have done that, right?"

Mr. Sande responded, "Well, you have two questions, there. First of all, I think you are talking about, when you are talking about, there's no tax when you have a spouse that passes by right of survivorship; that's an estate tax. What I was talking about was the income tax. The income tax still applies and if that spouse has property that the surviving spouse turns around and sells, she will pay income tax unless there is a step-up in basis, and that's what I was talking about."

Mr. Carpenter stated, "We'll discuss that later. Your accountant and my accountant have two different opinions. But anyway,...."

Mr. Sande interjected stated, "The second thing is what did he intend to do. I think what he intended to do; the testimony indicated that he did not intend to create a joint tenancy with right of survivorship. He probably didn't even know what he was doing, quite frankly; he's in the hospital."

Mr. Carpenter asked, "If he had wanted to he could have done that, right?"

Mr. Sande replied, "Well, I think the facts in this case indicated he...."

Mr. Carpenter interrupted, "If I want to give my money to my girlfriend after my wife dies there's nothing preventing me from doing that, right?"

Mr. Sande stated, "Well, I wouldn't do that. Let me point out, in this case, Mr. Rousselet was in the hospital. But, let me point out, what I'm saying is 99.9% of the people that go to the bank and set up a joint account and put somebody on that account anticipate that it's going to pass to the survivor on their death. They're not all sophisticated, they haven't been before this Committee and understood exactly what goes on, but, that's what we're trying to address; those

Assembly Committee on Judiciary
June 15, 1995
Page 12

people who believe (and 99.9 % believe) that they're setting up a joint account with right of survivorship. And that's how we've done it for years and we never had a problem until this case."

Mr. Carpenter stated, "Still didn't answer my question."

Chairman Humke commented, "Well, Mr. Carpenter, that's what the hearing is for. Do you wish to pose another question? Do you wish us to come back to you?"

Mr. Carpenter answered, "I'm only saying that after my wife dies and it's in joint tenancy and then it passes to me (at that time my children have nothing to do with it because I'm still the only one in control) and then if I suddenly get this girlfriend and I want to pass my bank account to her then we can go into a joint tenancy situation at that time and she would get the bank account."

Mr. Sande replied, "I think you're accurate there. I think what the problem here was that's exactly what Mr. Rousselet did and the Court said that he really didn't mean to do that. Even though he signed the document he didn't mean to go and set up a joint account with right of survivorship; he didn't even mean to give her access to those funds; he didn't intend to create a joint account. He put her on the account, he's in the hospital, so somebody could pay his bills. And that's what the Court found in this case. Even with the bill we're proposing there's always the ability for somebody to come in and say, "Lookit, I signed this but I really didn't know what I was doing at the time and undue influence was exercised over me at that time and I signed something under duress.""

Chairman Humke asked Mr. Carpenter if his question had been answered.

Mr. Carpenter answered, "After consultation with my number one lady lawyer, we know where we're at here."

Mr. Goldwater commented, "I have a unique perspective on this issue, some fine legal minds on this Committee, but I was a bank teller. I can tell you that there is no more troublesome issue for we, as bank tellers, than joint accounts. It's problem enough while people are alive, but to think there's a problem when people die to have to say, now, on every joint account, "prove that the other person is alive before you withdraw this money", would be unbelievably troublesome and burdensome and create even more chaos where chaos already exists. The logic of this, I know, from legal point of view is one thing; but, for us simpletons--bank

tellers--it would be unbelievable, so I am in full support of this bill.

Chairman Humke asked Mr. Sande if he had any response.

Mr. Sande replied, "I think that was brilliant."

Ms. Buckley noted, "I was convinced that during the dialog with Ms. Steel that this is the only way to go with regard to bank accounts because they are different and what you said about having to prove whether someone's alive or dead certainly is quite accurate. I did want to comment, though, this discussion is harkening me back to the days of property in the first year of law school and I would like to know if you can still recite the rule in Shelly's Case."

Mr. Sande replied, "Absolutely not. I can remember the book, though."

Chairman Humke wished to state for the record, "Not seeing Ms. Ohrenschall here, I know, were she here, she could recite the rule in Shelly's Case." Chairman Humke related a personal note regarding his law school studies in property law. He then asked if Mr. Sande had any concluding remarks.

Mr. Sande replied, "No, that's all I have and I will provide some written testimony."

Chairman Humke closed the hearing on S.B. 424. He addressed Co-Chairman Anderson and continued there was desire to take some votes and most of the bills today could be voted upon, being largely without controversy, and asked if he wished to proceed in work session.

Mr. Anderson noted the lack of a quorum but he would like to take a previous night's work document regarding Assembly Bill 606. Chairman Humke suggested working on the bills pending from the previous night. Further discussion ensued regarding the schedule for the remaining time. The meeting recessed.

Chairman Humke reconvened the meeting in work session beginning with Assembly Bill 606.

ASSEMBLY BILL 606 - Revises provisions governing criminal and civil liability for crimes motivated by certain characteristics of victims.

**MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Sixty-eighth Session
June 24, 1995**

The Committee on Judiciary was called to order at 2:55 p.m., on Saturday, June 24, 1995, Chairman Humke presiding in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. David E. Humke, Chairman
Ms. Barbara E. Buckley, Vice Chairman
Mr. Brian Sandoval, Vice Chairman
Mr. Thomas Batten
Mr. John C. Carpenter
Mr. David Goldwater
Mr. Mark Manendo
Mrs. Jan Monaghan
Ms. Genie Ohrenschall
Mr. Richard Perkins
Mr. Michael A. (Mike) Schneider
Ms. Dianne Steel
Ms. Jeannine Stroth

STAFF MEMBERS PRESENT:

Dennis Neilander, Research Analyst
Patty Hicks, Committee Secretary

OTHERS PRESENT:

Honorable Bob Rose, Supreme Court Justice
Lieutenant Stan Olsen, Las Vegas Metropolitan Police Department
Ben Graham, Esq., Nevada District Attorneys Association/Clark County
District Attorney's Office
Ms. Carole Lefcourte, Deputy Secretary of State for Commercial Recordings
John Fowler, Esq., Chairman, Business Law Section, State Bar of Nevada
Mr. Eric Cooper, Nevada Sheriffs and Chiefs Association

Assembly Committee on Judiciary
June 24, 1995
Page 15

Upon discussion, Mr. Carpenter referenced a news report of Senate voting for an increase in judges' salaries which will probably come to this house. If that happens, Mr. Carpenter asked if it would increase their retirement. Chairman Humke advised testimony was heard that this retirement system is not precisely tied to the salary paid to the judicial member. Chairman Humke advised the pension benefits and increases thereon take place by statute change and not like a state employee. Chairman Humke stated a vote for this motion does not bind a member's vote on the floor if it passes the Ways and Means Committee.

Ms. Ohrenschall inquired into the possibility of considering a simple motion to rerefer without consideration of motion to do pass. Chairman Humke agreed that process would work as well.

THE MOTION CARRIED. (ASSEMBLYMEN CARPENTER AND MONAGHAN VOTED NO. ASSEMBLYMEN BUCKLEY, SANDOVAL, PERKINS AND BATTEN WERE NOT PRESENT TO VOTE.)

SENATE BILL NO. 424 - Revises provisions governing deposits held in joint tenancy.

Mr. Neilander, Research Analyst, gave a brief synopsis of S.B. 424. Mr. Neilander advised this bill came about because of a recent Supreme Court decision which essentially created uncertainty as to what happens to joint banking accounts and whether they are held in joint tenancy. Mr. Neilander stated the bill provides for accounts held as joint tenancy with right of survivorship and attempts to clarify the concerns raised in the 1994 Supreme Court opinion, Starr v. Rousselet.

ASSEMBLYMAN OHRENSCHALL MOVED DO PASS
S.B. 424.

ASSEMBLYMAN GOLDWATER SECONDED THE MOTION.

Mr. Carpenter expressed if persons knew they were in joint tenancies, there should be an explanation or a box to check when applying for an account. Otherwise, there will be major problems in this area.

Mr. Goldwater declared he was previously a bank teller and in that regard, he believes not passing this bill will cause more trouble than passing it and S.B. 424

is a very necessary piece of legislation.

Ms. Ohrenschall commented since the Starr decision most people were under the impression when opening joint accounts in banks they were in fact creating a class of joint tenancy. Ms. Ohrenschall stated it would be conforming to the general routine with passage.

Ms. Steel announced she has reviewed the bill since the first hearing and feels comfortable proceeding with it at this time.

Chairman Humke inquired if Mr. Carpenter had an amendment to offer. Mr. Carpenter stated instructions should be available to persons when instituting a joint account.

Chairman Humke commented if there is a need for a form or signature card it could be done by amendment and the Co-chairs would be happy to hold the bill.

John Sande, attorney at law, Nevada Bankers Association, advised the banking industry wants to make sure their customers do the right thing. Mr. Sande did not believe a check off box would help and recommended a disclosure statement or booklet for every customer written in simplistic terms. He added if people have concerns they should consult an attorney. Also, Mr. Sande stated the Nevada Bankers Association will coordinate with Mr. Carpenter to come up with a program.

Mr. Carpenter replied it will be of great benefit to the public and will raise the knowledge necessary for all concerned parties. Chairman Humke brought the motion back to the floor.

THE MOTION CARRIED. (ASSEMBLYMEN BUCKLEY,
SANDOVAL, PERKINS AND BATTEN WERE NOT PRESENT
TO VOTE.)

Floor assignment was given to Ms. Ohrenschall.

Chairman Humke brought S.B. 435 back to committee for discussion.

Mr. Anderson advised he had a writing from Mr. Graham which solves the problem in part by amending S.B. 435 to add section victims may include the arrested person to eliminate the ambiguity. Mr. Goldwater stated it was satisfactory to him

5/19/95

Senate Bill No. 344.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 417.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 424.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 183.

Bill read second time and ordered to third reading.

Assembly Bill No. 233.

Bill read second time and ordered to third reading.

Assembly Bill No. 235.

Bill read second time and ordered to third reading.

Assembly Bill No. 263.

Bill read second time and ordered to third reading.

Assembly Joint Resolution No. 25.

Resolution read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 536.

Bill read third time.

Remarks by Senators O'Connell, McGinness, Coffin, Neal, Porter and Raggio.

Roll call on Assembly Bill No. 536:

YEAS—20.

NAYS—None.

Absent—Regan.

Assembly Bill No. 536 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Senator O'Connell moved that all rules be suspended and that Assembly Bill No. 536 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 83.

Bill read third time.

Remarks by Senators Adler, O'Connell, Neal and Raggio.

Senator Adler requested that the following remarks be entered in the Journal.

SENATOR ADLER:

Thank you, Mr. President pro Tempore. I am not going to speak extensively on this measure, but for the second time I want to state that I believe this bill represents bad policy in allowing the Secretary of the State to hire independent counsel at state expense. I know comments have been made indicating that other agencies have counsels which are not Deputy Attorneys General, such as the Public Service Commission. But, I should remind you that the reason they do have that is that the Consumer Advocate's Office is under the Attorney General so there would be an internal conflict. Therefore, they were required to have independent counsel.

5/22/95

Bill read third time.

Roll call on Senate Bill No. 344:

YEAS—21.

NAYS—None.

Senate Bill No. 344 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 417.

Bill read third time.

Roll call on Senate Bill No. 417:

YEAS—21.

NAYS—None.

Senate Bill No. 417 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 424.

Bill read third time.

Remarks by Senators Neal and James.

Roll call on Senate Bill No. 424:

YEAS—20.

NAYS—None.

Not voting—Raggio.

Senate Bill No. 424 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 23 of the 67th Session.

Resolution read third time.

Roll call on Senate Joint Resolution No. 23 of the 67th Session:

YEAS—20.

NAYS—Neal.

Senate Joint Resolution No. 23 of the 67th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved that Assembly Bills Nos. 49, 59, 163, 164, 183, 233, 235, 263, 295, 296, 344, 357; Assembly Joint Resolutions Nos. 19, 25 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Raggio.

Motion carried.

as the former hearing. Upon conclusion thereof, or as soon as practicable thereafter, the board shall make and announce its decision.

Sec. 22. NRS 623A.360 is hereby amended to read as follows:

623A.360 Any person who:

1. Violates any of the provisions of this chapter;
2. Having had his certificate suspended or revoked, continues to represent himself as a landscape architect;
3. Engages in the practice of landscape architecture without holding a certificate issued by the board; or
4. Uses the title or term "landscape architect ["]", "landscape designer" or any other title or term indicating or implying that he is a landscape architect in any sign, card, listing, advertisement or in any other manner without holding a certificate issued by the board, is guilty of a misdemeanor.

Sec. 23. NRS 623A.370 is hereby amended to read as follows:

623A.370 A violation of this chapter by a person unlawfully representing himself as a landscape architect or engaging in the practice of landscape architecture without holding a certificate issued by the board may be enjoined by a district court on petition by the president of the board in the name of the board. In any such proceeding it is not necessary to show that any person is individually injured. If the respondent is found guilty of unlawfully representing himself as a landscape architect [,] or engaging in the practice of landscape architecture without holding a certificate issued by the board, the court shall enjoin him from continuing [such representation.] that representation or practice. The procedure in such cases [shall] must be the same as in any other application for an injunction. The remedy by injunction is in addition to any criminal prosecution and punishment or any disciplinary action by the board.

Sec. 24. NRS 623A.300 is hereby repealed.

Senate Bill No. 424—Committee on Judiciary

CHAPTER 426

AN ACT relating to deposits of money; revising the provisions governing deposits held in joint tenancy; and providing other matters properly relating thereto.

[Approved June 29, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 100.085 is hereby amended to read as follows:

100.085 1. 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. [The money or property shall be held for the exclusive use of] If an account is intended to be held in joint tenancy, the account or proceeds from the account are owned by the persons named,

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and may be paid or delivered to any of them during the lifetime of all, or to the survivor or survivors of them after the death of [the depositor,] less than all of the tenants, or the last of them to survive, and payment or delivery is a valid and sufficient release and discharge of the depository.

2. The making of a deposit in the form of a joint tenancy vests title to the deposit in the survivor or survivors.

3. When a deposit has been made in the name of the depositor and one or more other persons, and in a form to be paid or delivered to the survivor or survivors of them, but one or more of the other persons is not authorized to withdraw from the deposit during the life of the depositor or depositors, the person or persons so restricted have no present interest in the deposit, but upon the death of the last depositor entitled to withdraw, the deposit is presumed to belong to the survivor or survivors. Unless written notice of a claim against the deposit has been given by a survivor or a third person before payment or delivery, payment or delivery to a survivor is a valid and sufficient release and discharge of the depository.

4. For the purposes of this section, unless a depositor specifically provides otherwise, the use by the depositor of any of the following words or terms in designating the ownership of 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.

Senate Bill No. 473--Committee on Government Affairs

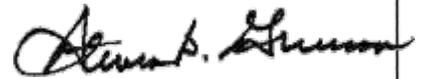
CHAPTER 427

AN ACT relating to county improvements; authorizing the board of county commissioners in certain counties to impose a surcharge on telephone services for the enhancement of the telephone systems for reporting emergencies in those counties; requiring a board of county commissioners which imposes the surcharge to create a committee to develop a plan for the enhancement of the telephone system for reporting an emergency in that county; requiring telephone companies and suppliers of mobile telephone service to collect the surcharge from their customers; authorizing those companies and suppliers to retain a portion of the surcharge as a fee for collecting the surcharge; and providing other matters properly relating thereto.

[Approved June 29, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 244A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 EKATERINA DERJAVINA
6 Deputy District Attorney
7 Nevada Bar #14047
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 HELEN NATKO,
13 #1186757

14 Defendant.

CASE NO: C-16-313574-1

DEPT NO: XIX

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE VERDICT**
16 **AND ENTER JUDGMENT OF ACQUITTAL**

17 DATE OF HEARING: MAY 3, 2016
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through EKATERINA DERJAVINA, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion to Set Aside
22 Verdict and Enter Judgment of Acquittal.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2015, Helen Natako (“Defendant”) was charged by way of an Amended
4 Criminal Complaint with two counts of Exploitation of a Vulnerable Person (Category B
5 Felony – NRS 200.5092, 200.5099) and two counts of Theft (Category B Felony – 205.0832,
6 205.0835.4). A preliminary hearing was held over the course of several days; September 4,
7 September 17, November 19, and December 28, 2015. At the conclusion of the preliminary
8 hearing, Defendant was held to answer in District Court on one count of Exploitation of a
9 Vulnerable Person and one count of Theft.

10 On April 3, 2017, Defendant’s jury trial commenced. On April 11, 2017, the jury
11 returned a verdict finding Defendant guilty of both counts. Defendant’s sentencing was
12 scheduled for July 31, 2017.

13 On April 18, 2017, Defendant filed the instant Motion to Set Aside Jury Verdict and
14 Enter Judgment of Acquittal. The State responds as follows.

15 **ARGUMENT**

16 The Defendant labels its pleading as a Motion to Set Aside Jury Verdict and Enter
17 Judgment of Acquittal (“Motion”). The Defendant cites NRS 175.381(2) in support of the
18 Motion. NRS 175.381 (2) states in part:

19
20 The court may, on a motion of a defendant or on its own motion,
21 which is made after the jury returns a verdict of guilty or guilty
22 but mentally ill, set aside the verdict and enter a judgment of
23 acquittal *if the evidence is insufficient to sustain a conviction*.
24 The motion for a judgment of acquittal must be made within 7
25 days after the jury is discharged or within such further time as the
26 court may fix during that period.

27 (emphasis added)

28 //

1 Pursuant to NRS 175.381(2) the Court may to set aside a jury verdict and enter a
2 judgment of acquittal if the Court finds the evidence presented at trial was insufficient to
3 sustain a conviction. The standard for the review of the sufficiency of the evidence is
4 “whether, after viewing the evidence in the light most favorable to the prosecution, any
5 rational trier of fact could have found the essential elements of the crime beyond a reasonable
6 doubt.” Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995).

7 However, the entire thrust of Defendant’s motion is nothing more than an attempt to
8 relitigate an issue that was already litigated at trial and decided by the Court. Essentially,
9 Defendant’s claim is that the Court erred in its reliance on Walch v. State, 112 Nev. 25, 909
10 P.2d 1184 (1996) and on that basis, erroneously gave Instruction 16 and 18. It is based on that
11 mistaken assumption that the Defendant claims she could not have been convicted of any
12 crime relating to her withdrawal of the funds from the joint bank account and, because of this,
13 this Court should set aside the verdict and enter an acquittal in Defendant’s favor.¹

14 Ultimately, Defendant’s argument is not a sufficiency of the evidence claim but a claim
15 that the Court erred in its ruling during trial. Such an argument is inappropriate for a motion
16 to set aside verdict. It should be raised, if at all, on appeal. Therefore, Defendant’s Motion
17 should be denied.

18 Furthermore, the issue raised by Defendant in the Motion is governed by res judicata.
19 The doctrine of res judicata applies in criminal proceedings and prevents a Defendant from
20 relitigating claims already rejected by a court. See Mason v. State, 206 S.W.3d 869, 875 (Ark.
21 2005) (recognizing the doctrine’s applicability in the criminal context); see also York v. State,
22 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).

23 On January 25, 2017, the State filed a Motion in Limine of State's Comprehensive
24 Evidence to Prove Defendant's Motive and Intent and Other Evidentiary Issues
25 “Comprehensive Motion”. One issue raised by the State in the Comprehensive Motion was
26 an instruction that Defendant’s status as a party to the joint account does not give her lawful
27 authority to use the Victim’s assets. See Comprehensive Motion p. 38. The State cited to

28

¹ In the alternative, Defendant argues that at a minimum the Court should set aside the verdict and order a new trial. However, a new trial is a not a remedy under NRS 175.381.

1 Walch v. State in support of its argument. Id. Defendant filed an opposition making the same
2 argument regarding the issue as contained in the instant Motion. See Defendant's Opposition
3 to State's Motion In Limine of State's Comprehensive Evidence to Prove Defendants' Motive
4 and Intent and Other Evidentiary Issues p. 12-13. During argument on the Comprehensive
5 Motion, the Court deferred its ruling on the issue to the time of trial. See Court Minutes
6 February 8, 2017.

7 On April 7, 2017, during argument on Defendant's oral motion for acquittal and
8 dismissal the Court rejected the Defendant's claim regarding the Walch v. State case and ruled
9 that based on the Walch decision, Defendant's status as a joint bank account holder did not
10 give her lawful authority to use or transfer the money for her own benefit. See Court Minutes
11 April 7, 2017. Defendant requested an opportunity to further brief the "Walch issue". Id.

12 On April 10, 2017, during settling of the jury instruction the parties once again
13 discussed the issue of the Walch decision, specifically in regard to Instructions 16-18A. See
14 Court Minutes April 10, 2017. The Court once again ruled that Defendant's status as a joint
15 bank account holder did not give her lawful authority to use or transfer the money for her own
16 benefit. Id. Now, Defendant is improperly attempting to argue the same issue in the form of
17 a Motion to Set Aside Verdict. Accordingly, Defendant's Motion seeks a second bite at the
18 apple and should be denied.²

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27 _____
28 ² It is the State's position that Defendant's claim is improperly raised in a Motion to Set Aside Verdict and is precluded by res judicata. To the extent that this Court would like the State to respond on the merits of the issue, the State requests leave to conduct supplemental briefing.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Motion to Set Aside Verdict and Enter Judgment of Acquittal be denied.

DATED this 27th day of April, 2017.

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

BY 

EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition To Defendant's Motion To Set Aside Verdict And Enter Judgment Of Acquittal, was made this 27th day of April, 2017, by Electronic Filing to:

DANIEL FOLEY, ESQ.
EMAIL: dan@foleyoakes.com



Secretary for the District Attorney's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 73048

Electronically Filed
Dec 13 2017 04:02 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
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SUPREME COURT CASE NO. 73048

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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

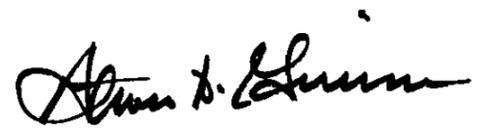
By United States Mail, postage fully prepaid to person(s) and addresses as follows:

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.

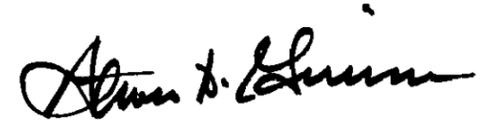
19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

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)
27
28


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 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.

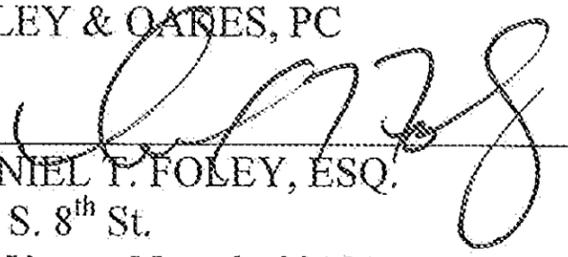
11 4. Mr. Yanez reported that on the afternoon of June 17, 2016, the State relayed a
12 4th offer of settlement to the Defendant through Mr. Yanez without communicating the offer to
13 Mr. Foley. The settlement was to plead guilty to a gross misdemeanor on the two remaining
14 counts with 6 months probation. 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.

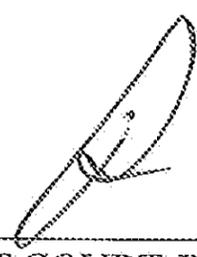
17 Based on the above findings and good cause appearing therefor,

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.

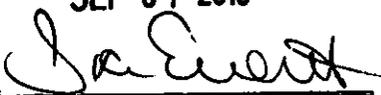
21 Submitted by:
22 FOLEY & OAKES, PC

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

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

DATE OF HEARING: September 7, 2016
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 Stipulation on Pending Motions in Limine as of August 30, 2016.

STIPULATIONS

The following stipulations have been reached between the State and Defense regarding the Motions in Limine outstanding as of August 30, 2016. These stipulations dispose of the need to argue on these particular Motions in Limine, but do not foreclose future anticipated Motions in Limine on different evidentiary issues. Additionally, dependent on how parties proceed in the Criminal trial, evidence that has been stipulated to be not 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**

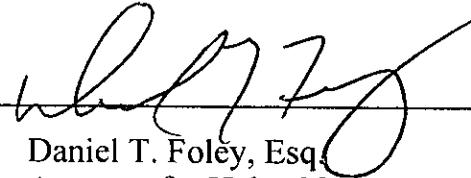
1 The State and Defendant request the Court to acknowledge the above stipulations
2 regarding the Motions in Limine.

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

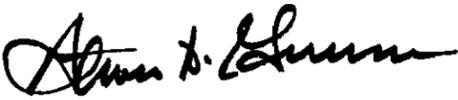
5
6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

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
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.)

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)

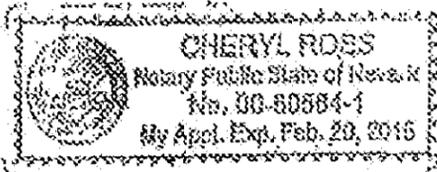
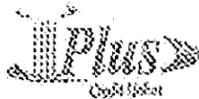


EXHIBIT B

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 would like to add... I do not wish to add...

IMPORTANT INFORMATION: Please read this information carefully before signing this card.

TERMS AND CONDITIONS: The Credit Union is not responsible for any loss of funds...

AGREEMENT WITH CREDIT CARD MEMBER: I hereby agree to the terms and conditions of my credit card...

AGREEMENT WITH CREDIT CARD MEMBER: Check box () only if you are (a) below... (b) I agree to the terms...

ASST: Your deposits are insured to \$250,000 per account...

Signature section with three lines for signatures and dates.

TRUST OR SECRETARY OF SIGNATURE: Name, Address, etc.

If the account owner, jointly or as a co-owner, is unable to sign...

COOPERATION USE ONLY: Employee, Supervisor, etc.

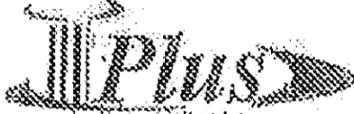
EXHIBIT C

EXHIBIT C

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 NAIKO
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.

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2
0
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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		
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

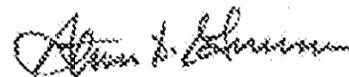
Number	Amount	Number	Amount	Number	Amount	Number	Amount	
002474	4000.00	002475	4697.00					
07/01 ID 01	*** ANNUAL PERCENTAGE RATE 14.000% ***							
07/31	READY CREDIT (Open End) Beginning Balance						0.00	
	Ending Balance						0.00	
	Credit Limit 1,000.00 Credit Available 1,000.00							

--- 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

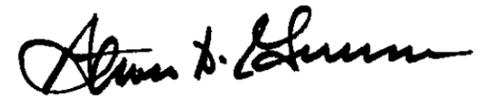
21
22 BY /s/JAY RAMAN
JAY RAMAN
23 Chief Deputy District Attorney
Nevada Bar #10193
24
25
26
27
28

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

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28

14F11465X/dd-Fraud Unit/EAU
LVMPD EV#140417-1239
(TK.3)



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

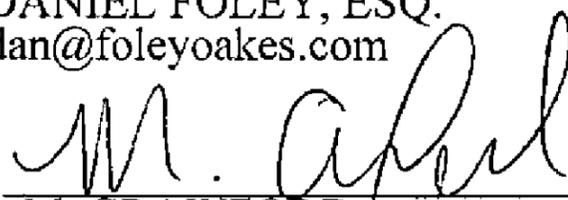
14 BY 

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

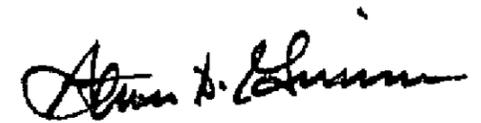
23 BY 

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
15 DATED this _____ day of November, 2014.

PALMER LAW GROUP, PLLC

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

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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.S. by Helen Natko*

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

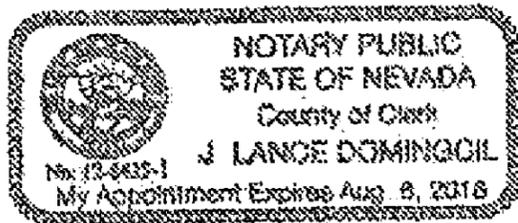


EXHIBIT "1"

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"

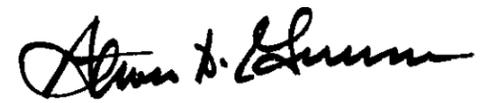
Exhibit 2

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
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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 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 **NOTICE OF MOTION AND MOTION IN LIMINE TO PRECLUDE RULINGS IN**
 17 **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.

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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 ///

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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
inadmissible.

17 1. All relevant evidence is admissible, except:

18 (a) As otherwise provided by this title;

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

20 or

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

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

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

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

27 2. Although relevant, evidence may be excluded if its probative value is
28 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

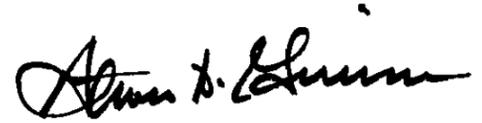
16 JAY P. RAMAN
17 Chief Deputy District Attorney
18 Nevada Bar #010193

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

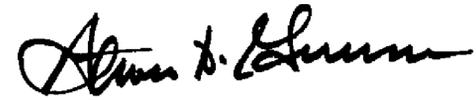
4 FOLEY & OAKES, PC

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**
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6 Las Vegas, Nevada 89101
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9 Email: dan@foleyoakes.com
10 *Attorneys for Helen Natko*

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

9 THE STATE OF NEVADA,

Case No. C-16-313574-1

10 Plaintiff,

Dept. No. XIX

11 vs.

12 HELEN NATKO #1186757,

13 Defendant.

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,

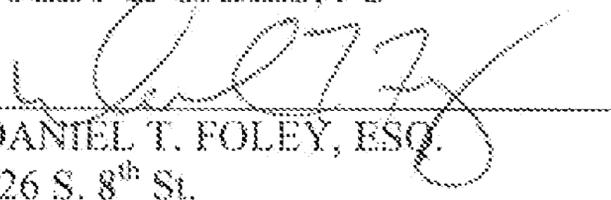
1 IT IS HEREBY ORDERED THAT Helen Natko's Motion in Limine to Exclude
2 Irrelevant Evidence of Proposed Budgets of Terri Black, Mr. Menciairelli's Court Appointed
3 Temporary Guardian, and Mr. Menciairelli's Court Appoint Guardian, as Well as All Financial
4 Expenditures on Behalf of Delford Mendcairelli 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:

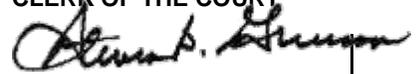
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

HELEN NATKO,

Defendant.

.

CASE NO. C-16-313574-1

DEPT. NO. XIX

**TRANSCRIPT OF
PROCEEDINGS**

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.
Deputy District Attorneys

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.

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THE COURT: All right.

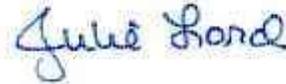
MR. RAMAN: Thank you, Judge.

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.
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28 C-16-313574-1
INST
Instructions to the Jury
4639867



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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.

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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.

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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.