

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.Ct. No. 73446

D.C. No. C292987-1

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APPELLANT'S APPENDIX

Volume 2

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Chambers v. State Case No. 73446

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1 Q. Now, you indicated that you had seen a gentleman that
2 you picked out of a lineup coming out of Lisa's trailer;
3 correct?

4 A. Yes.

11:20AM 5 Q. Okay. You never saw that person going into the
6 trailer?

7 A. No.

8 Q. So therefore you wouldn't have known whether that
9 person walked in with a gun or not?

11:20AM 10 A. Absolutely.

11 Q. Now, you did write out a brief one-page statement for
12 the police about what happened; correct?

13 A. Yes.

14 Q. Were you interviewed by the police at all besides
11:21AM 15 what you wrote down?

16 A. No.

17 Q. Okay.

18 A. No, that was the only -- he took my statement and
19 that was it.

11:21AM 20 Q. And when you say he took my statement, that means
21 what you wrote down?

22 A. Yes, what I wrote down.

23 Q. Did he ask you ever -- any police officer ask you:
24 We want to record your statement, ask you some questions?

1 A. No.

2 Q. Now, you testified that you saw this African-American
3 gentleman coming out of Lisa's trailer. How far were you from
4 that gentleman?

11:21AM 5 A. Um, maybe five foot.

6 Q. Was there anyone else with you?

7 A. Um, well, there was, I thought. But, um, but I guess
8 when I entered the yard, nobody came -- no one was behind me,
9 so it was -- I was just the only one that, um, was there at the
10 bottom of the stairs.

11 Q. No other maintenance workers or any other residents
12 of the trailer park, from your memory?

13 A. Well, no, because, um, when I heard the shot, I --
14 after I heard the shots, I heard her still screaming, so I knew
11:22AM 15 she was okay -- or I mean not okay, but she was still alive,
16 and so that's when I -- I had just went in there to see if she
17 was okay. And, um, then the gentleman came out when I was at
18 the bottom of the stairs.

19 Q. So when -- when you're at the bottom of the stairs,
11:22AM 20 those are the stairs leading up to the front door?

21 A. Yes.

22 Q. Of the trailer?

23 A. Yes, sir.

24 Q. And that -- the African-American gentleman that you

1 described, he was leaving at that point?

2 A. Yes.

3 Q. So you're only a matter of feet away from the front
4 door?

11:22AM 5 A. Yes.

6 Q. And when you go inside, Lisa's still inside the
7 trailer?

8 A. Yes.

9 Q. Now, you indicated that you had seen this
10 African-American gentleman with a handgun?

11 A. Yeah, as he was, um -- at the -- at the time, when he
12 came out, um, then it just ran through my mind that, huh, maybe
13 this wasn't a good idea.

14 And so -- but, um, when he started walking
11:23AM 15 down -- I stepped back, and he started walking down the steps,
16 and that's when I could see that, um, in his one hand he was
17 clutching the butt of a weapon, which was about
18 three-quarters -- three-quarters of the way into his pocket.

19 Q. And which pocket was that?

11:23AM 20 A. Um, I think it was his right pocket.

21 Q. Were they -- what kind of pants was he wearing?

22 A. Um, I'm not sure. I -- I don't think they were -- I
23 don't think they were blue jeans. They were -- I'm not -- I
24 can't recall.

1 Q. And I'm assuming this gentleman didn't stop to talk
2 to you. You guys just walked past each other; correct?

3 A. Yes.

4 Q. So whatever view you got of the gun, is it fair to
5 say it was a fairly quick view?

11:24AM

6 A. Yeah, but it was -- I mean it was pretty close too.
7 I mean it was about five feet from me to him, and it was as he
8 was coming down the stairs, that's when I noticed it.

9 Q. I just want to make sure because there was a lot of
10 information there. I was specifically asking timewise, a
11 matter of seconds you two crossing each other's paths?

11:24AM

12 A. Yes. Yes.

13 Q. Okay. Are you able to give a description of what you
14 saw of the handgun?

11:25AM

15 A. Um, all I noticed was -- was his hands around the
16 gun, but I -- I really couldn't tell much about the weapon
17 itself because it was -- it was covered by -- it was inside the
18 pocket.

19 Q. Possible it wasn't a gun?

11:25AM

20 MS. THOMSON: Objection, speculation.

21 THE COURT: We'll see.

22 THE WITNESS: No, I mean, um, it was a gun butt.

23 BY MR. YANEZ:

24 Q. Do you know if it was a revolver or a semiautomatic

1 gun?

2 A. That I don't know.

3 Q. The color?

4 A. Um, if I -- I don't know. I'd be guessing. I just
11:25AM 5 remember his hand around the butt of the gun.

6 Q. So if I understand your testimony, the majority part
7 of the gun is inside his pocket (indicating)?

8 A. Yeah, about three-quarters of the way in, and --

9 Q. So you're only looking at about a quarter of an
11:26AM 10 object that you believe is a gun?

11 A. Yeah.

12 Q. Is that fair to say?

13 A. Absolutely.

14 MR. YANEZ: Court's indulgence.

11:26AM 15 Nothing further -- actually, hold on.

16 Nothing further, Judge.

17 THE COURT: Any redirect?

18 MS. THOMSON: Just one question.

19

11:26AM 20 REDIRECT EXAMINATION

21 BY MS. THOMSON:

22 Q. The individual that you saw coming out of the trailer
23 with the gun tucked part way into his pocket, is that
24 individual present in the courtroom today?

1 A. Yes, he is.

2 Q. Will you please point to the individual and describe
3 something they're wearing today?

4 A. That's him right there (indicating) wearing the blue.

11:27AM 5 MS. THOMSON: Let the record reflect the
6 identity of the defendant?

7 THE COURT: It will.

8 MS. THOMSON: Thank you.

9 I have no other questions.

11:27AM 10 MR. YANEZ: Nothing further, Judge.

11 THE COURT: Sir, thank you so much for your
12 patience and your testimony. They all ask that you step down.

13 Please don't discuss your testimony with anybody
14 aside from a representative from the District Attorney's Office
11:27AM 15 or from Mr. Yanez's office, who will identify himself that
16 that's the person. All right?

17 THE WITNESS: Okay, ma'am. Thank you.

18

19 (Whereupon, at this time the witness was excused.)

11:27AM 20

21 MS. THOMSON: As it turns out, I'm just going to
22 have one witness, and I made notes to myself to counsel him on
23 things he can't testify about that I forgot to do so, if I
24 could just have a second?

1 THE COURT: Yes, because my clerk needs to run
2 to the restroom.

3 MS. THOMSON: Okay. Perfect.

4 (Recess in proceedings.)

11:29AM

5 THE MARSHAL: Follow me up, follow me up.

6 Go ahead and step up, remain standing, raise
7 your right hand to be sworn by the clerk.

8

9

DANIEL PLUMLEE

10 called as a witness on behalf of the State,

11 having been first duly sworn,

12 was examined and testified as follows:

13

14

THE WITNESS: Yes.

11:30AM

15

THE CLERK: Please be seated.

16

Please state your name and spell it for the

17

record.

18

THE WITNESS: Daniel Lloyd Plumlee.

19

D-A-N-I-E-L, L-L-O-Y-D, P-L-U-M-L-E-E.

11:30AM

20

MS. THOMSON: May I proceed? Thank you.

21

22

DIRECT EXAMINATION

23

BY MS. THOMSON:

24

///

1 Q. Good morning, sir.

2 I'm going to direct your attention back to
3 July 9th of this year. At that time were you working at the
4 Van's Trailer Park on Las Vegas Boulevard?

11:30AM 5 A. Yes, I was.

6 Q. Or North Las Vegas Boulevard, I guess more
7 accurately?

8 A. Yes.

9 Q. On that date did you observe something that
10 ultimately causes you to be present today?

11 A. Yes.

12 Q. Okay. What was the first thing that day that caught
13 your attention?

14 A. Hearing gunshots.

11:30AM 15 Q. Okay. And from where did you hear the gunshots?

16 A. Coming out of Trailer 45.

17 Q. Okay. And did Lisa Papoutsis live there?

18 A. Yes.

19 Q. Okay. And I'm sure I'm mispronouncing that, but --
11:31AM 20 when you heard the gunshots, about what time was it?

21 A. It was probably around 10:00, 10:30.

22 Q. Okay. What had you been doing just before you heard
23 the gunshots?

24 A. I just left Lisa's trailer because I was -- had to

1 fix the front door.

2 Q. Okay. While you were at Lisa's trailer, who, other
3 than yourself, was there?

4 A. Gary, the one that was shot, and Lisa.

11:31AM 5 Q. Okay. Are you familiar with a Leo McGowan?

6 A. Yes.

7 Q. Okay. Was he at the trailer while you were fixing
8 the door?

9 A. No.

11:31AM 10 Q. Okay. As you left the trailer, did you go out the
11 front door or the back door?

12 A. I went out the back door.

13 Q. Okay. And where were you headed?

14 A. To the office.

11:31AM 15 Q. Okay. About how long from the time that you left the
16 back door to the time that you heard the shots?

17 A. I went through the gate, and I just got across the
18 way to the office when I heard the gunshots.

19 Q. Okay. When you heard the gunshots what did you do?

11:31AM 20 A. I turned, started running towards the -- Lisa's
21 trailer.

22 Q. Okay. How many gunshots did you hear?

23 A. I believe there was -- I heard two.

24 Q. Okay. And as you went to Lisa's trailer, what, if

1 anything, did you see?

2 A. Um, when I got to the front gate of Lisa's trailer,
3 and I seen somebody coming out the front door.

4 Q. Okay. Is that individual present in the courtroom
11:32AM 5 today?

6 A. Yes, he is.

7 Q. Will you please point to the individual and describe
8 something that they're wearing today?

9 A. He's wearing the -- the -- sandals.

11:32AM 10 MS. THOMSON: Let the record reflect identity of
11 the defendant?

12 THE COURT: It will.

13 MS. THOMSON: Thank you.

14 BY MS. THOMSON:

11:32AM 15 Q. As he was coming from the trailer, did you observe
16 anything on his person that caused you concern?

17 A. He -- he -- there was blood on him, and I observed
18 him, um, looked like a gun, he was putting it back in his front
19 pocket.

11:33AM 20 Q. Okay. You said that you observed blood on him. Do
21 you remember where you saw the blood?

22 A. I think it was on the right -- I think it was on his
23 right arm.

24 Q. Okay. And it appeared to be blood, you obviously --

1 A. Yeah, it --

2 Q. Okay. Do you -- could you tell what kind of gun it
3 was that he was putting in his pocket?

4 A. No, I couldn't.

11:33AM 5 Q. Okay. Did you -- were you able to tell the color of
6 it?

7 A. No.

8 Q. Okay. As he was coming out of the trailer, did you
9 hear him make any statements?

11:33AM 10 A. Yes. He said: That crazy bitch.

11 Q. Okay.

12 A. As he was walking down the stairs.

13 Q. And about how far away were you from him when he said
14 that?

11:33AM 15 A. About me to you.

16 Q. Okay.

17 MS. THOMSON: Does the Court have a measurement
18 on that, or are we just --

19 THE COURT: One second, please.

11:34AM 20 MS. THOMSON: Thank you.

21 BY MS. THOMSON:

22 Q. We think it's about 18 feet -- or is that -- that
23 can't be inches, that has to be feet.

24 THE COURT: Yep.

1 BY MS. THOMSON:

2 Q. After he said that did you see where he went?

3 A. Yeah. He went through the gate and got in an
4 SUV-type thing.

11:34AM 5 Q. Okay. And when he did that, were you able to see the
6 license plate of the vehicle?

7 A. Yeah.

8 Q. Okay. And did you make a point of remembering that
9 to report it to officers?

11:34AM 10 A. Yes, I did. I followed it out to the -- to the
11 street and waited for the officer to come in.

12 Q. Okay. Fair to say that, as you sit here today, you
13 don't remember that license plate?

14 A. No, it was a handicap plate.

11:34AM 15 Q. Nevada plate, do you remember?

16 A. Yes.

17 Q. Okay. As the defendant was coming out of the
18 trailer, did you know where Lisa was located?

19 A. Yes. She was screaming out the back door, she
11:35AM 20 screamed my name a few times.

21 Q. Okay. Did you observe anyone go into the trailer
22 between the time that you left the back door and the time that
23 you observed the defendant coming out the front door?

24 A. No, I didn't observe anything.

1 Q. Okay. Did you observe anyone else leaving that
2 trailer after the defendant came out the front door?

3 A. No.

4 Q. Have you ever met the defendant before that day?

11:35AM

5 A. Yes.

6 Q. Approximately, how many times?

7 A. Um, quite a few times.

8 Q. Okay. Does he have a familial relationship with
9 someone who works at that park, a family member?

11:35AM

10 A. Yeah, I believe so.

11 Q. Okay. But you don't know for sure?

12 A. I think he does, yes.

13 MS. THOMSON: Okay. Court's indulgence.

14 I'll pass the witness.

11:36AM

15 THE COURT: Cross, Mr. Yanez.

16

17 CROSS-EXAMINATION

18 BY MR. YANEZ:

11:36AM

19 Q. Mr. Plumlee, is it fair to say that even before this
20 incident on July 9th, you never liked Mr. Chambers?

21 A. That's not true.

22 Q. That's not true?

23 A. No, it isn't. I do like -- I always have liked

24 Money.

1 Q. I'm sorry, sir?

2 A. I always have liked him.

3 Q. Okay. You spoke to the detectives after the
4 shooting; correct?

11:36AM 5 A. Yes.

6 Q. And didn't you tell the detectives that Mr. Chambers'
7 M.O. and his whole family is to rob people? Do you remember
8 telling that to the detective?

9 A. I didn't tell them the whole family or him is to rob
11:36AM 10 people.

11 Q. You didn't say --

12 A. I don't remember.

13 Q. Let me break it down a little bit so we're not
14 confused as to what you said or didn't say.

11:36AM 15 Didn't you say that Mr. Chambers' M.O. is to rob
16 people?

17 A. I don't -- I don't recall.

18 MR. YANEZ: Permission to approach, Judge?

19 THE COURT: Yes.

11:37AM 20 BY MR. YANEZ:

21 Q. I'm going to show you what is a transcribed statement
22 that you gave to the police. Just ask you to read it to
23 yourself, in particular maybe the last three or four questions.
24 Let me know when you're done, I'm going to ask you some

1 questions.

2 A. (Witness complies.)

3 I -- I still don't recall saying that, but I
4 don't -- I don't remember --

11:37AM 5 Q. Let me -- let me ask you --

6 A. But --

7 Q. Let me ask you some questions so we have a clear
8 record.

9 A. Okay.

11:37AM 10 Q. You did read it; correct?

11 A. Yes, I read it.

12 Q. And it's page 12 of your Voluntary Statement.

13 I know your memory might be different today, but
14 as to what you read just now, which is your statement to the
11:37AM 15 police, you'd agree that you did say: His M.O. is to rob
16 people?

17 A. If it says I said that then, yeah, I said that, but
18 that -- I don't recall saying that.

19 Q. You'd agree with me that you just read that though;
11:38AM 20 correct?

21 A. Yes.

22 Q. It does say that?

23 A. Yeah.

24 Q. But your testimony is, even though you said that,

1 that you have no ill will or animosity towards Mr. Chambers?

2 A. No.

3 Q. When you indicated the 18 feet, that was the distance
4 from where you saw Mr. Chambers with the gun?

11:38AM 5 A. Coming out the front door and the gate, that's about
6 how far it is.

7 Q. Okay. When -- when you saw him coming out, was there
8 anyone else with you, or were you by yourself?

9 A. Brad -- Brad Grieve was in front of me.

11:38AM 10 Q. How far in front of you was he?

11 A. Maybe a foot or two, to my left.

12 Q. I'm sorry, a foot or two to the left?

13 A. Yes.

14 Q. Anyone else with you?

11:38AM 15 A. I don't recall.

16 Q. You'd agree that you never saw Mr. Chambers walking
17 into the trailer; correct?

18 A. Correct.

19 Q. You don't know whether he had a gun or not when he
11:38AM 20 walked in?

21 A. No, I don't -- I don't know.

22 Q. Now, when you saw Mr. Chambers with this gun, where
23 exactly on his body or in his person did you see him with the
24 gun?

1 A. Like his front right pocket (indicating), I just seen
2 the butt of it going in as he was walking out. That was it.

3 Q. Do you know how much of the gun you saw, just the
4 butt, is that it?

11:39AM 5 A. Mm-hmm.

6 Q. Is that a yes?

7 A. Yes.

8 Q. Did you see what color it was?

9 A. No.

11:39AM 10 Q. Could you tell the caliber of it?

11 A. No.

12 Q. Could you tell whether it was a revolver or a
13 semiautomatic?

14 A. By the butt it looked like a revolver.

11:39AM 15 Semiautomatics have different grips, you know.

16 Q. Okay. Fair to say that Mr. Chambers didn't stop to
17 talk to you?

18 A. No, he didn't.

19 Q. Or you guys walked past each other?

11:39AM 20 A. No, I mean he was coming down the stairs, and he --
21 and when he said what he said, I started backing up, and Brad
22 walked in the gate.

23 Q. When you saw what you say is the gun in his pocket,
24 was he holding on to the butt of the gun?

1 A. It was more like he just put it in there.

2 Q. So did you see him take his hand off of it
3 (indicating) or had he already walked by you at that point?

4 A. I don't remember. I -- I don't know.

11:40AM 5 Q. Anything else in his hands?

6 A. No.

7 Q. Do you remember what kind of pants he was wearing?

8 A. They were shorts.

9 Q. Color?

11:40AM 10 A. I don't remember the color.

11 Q. Now, you indicated that you had heard two gunshots?

12 A. Yes.

13 Q. Could you tell by the sound of the gunshot what kind
14 of caliber the gun was?

11:41AM 15 A. It was a large caliber, like a .38 or .357.

16 That's -- you know, like -- I grew up around guns, so that's --
17 it was a --

18 Q. That's what it sounded like to you?

19 A. That's what it sounded like to me.

11:41AM 20 Q. That morning that you heard the gunshots, going back
21 from that morning 48 hours, had you taken any type of drugs,
22 whether illegal narcotics, street drugs, prescription drugs?

23 A. Um, I may have taken meth.

24 Q. Okay. Do you remember when you took meth?

1 A. No, I don't.

2 Q. Okay. But it could have been within 48 hours --

3 A. Yeah.

4 Q. -- hearing the gunshots?

11:42AM 5 A. Yes.

6 Q. Did you get your meth from Lisa?

7 A. No.

8 Q. And when you took the meth, how did you take it, did
9 you inject it? Sniff it?

11:42AM 10 A. Smoked it.

11 Q. Smoked it.

12 Any other drugs besides meth?

13 A. No.

14 Q. Do you have any prior felony convictions within the
11:42AM 15 last ten years?

16 A. Felony, no.

17 Q. Have you done any type of parole or probation within
18 the past ten years?

19 A. Um --

11:42AM 20 Q. And that's whether in this state or another state.

21 A. I've done probation here in town.

22 Q. Okay. Was that for a felony charge?

23 A. No.

24 Q. Any -- any other probation or parole within the past

1 ten years?

2 A. No.

3 Q. Which pocket did you see Mr. Chambers put the gun in?

4 A. I believe his right pocket.

11:43AM 5 Q. And that's his front pocket?

6 A. Yes.

7 Q. Front.

8 And when you -- when you -- you actually walked
9 into the trailer after Mr. Chambers left it; is that correct?

11:43AM 10 A. No, I walked up to the door, the police officer was
11 there then. I didn't go in the trailer.

12 Q. Okay. At no point did you go inside the trailer?

13 A. Not after, no.

14 Q. Okay. You had indicated earlier that you said that
11:43AM 15 Lisa had gone out the back door?

16 A. Yes.

17 Q. Did you see her actually go out the back door?

18 A. No. I could hear her.

19 Q. Okay. You could hear her screaming?

11:43AM 20 A. Yes.

21 Q. So you don't know if she was inside the trailer or
22 she was outside of it?

23 A. She was inside the trailer when I heard her
24 screaming.

1 Q. Okay.

2 A. But she continued screaming out the back door.

3 Q. Is it possible that the methamphetamine you took was,
4 in fact, that morning of the 9th?

11:44AM 5 A. Could have been.

6 MR. YANEZ: I have nothing further, Judge.

7 THE COURT: Redirect?

8 MS. THOMSON: Just briefly.

9

11:44AM 10 REDIRECT EXAMINATION

11 BY MS. THOMSON:

12 Q. You spoke with officers or detectives that day;
13 correct?

14 A. Yes, I did.

11:44AM 15 Q. And do you remember them showing you any photos?

16 A. Yes.

17 MS. THOMSON: May I approach?

18 THE COURT: You may.

19 BY MS. THOMSON:

11:44AM 20 Q. Showing you what's been marked as State's Proposed
21 Exhibit 10, specifically page 2 of the packet, do you recognize
22 what I'm showing you here?

23 A. Yes, I do, that was the lineup they showed me.

24 Q. Okay. And is this an accurate copy of the lineup

1 that they showed you?

2 A. Yes, it is.

3 Q. Okay. And underneath Photograph 4 there's a
4 signature. Is that your signature?

11:44AM 5 A. Yes, it is.

6 Q. Okay. And on page 1 of that packet, there's the
7 second half has some writing on it. Is that your writing?

8 A. Yes, it is.

9 Q. Okay. And is this an accurate copy of the page that
11:45AM 10 you filled out?

11 A. Yes.

12 Q. Okay.

13 MS. THOMSON: Pass the witness.

14 THE COURT: Anything further?

11:45AM 15 MR. YANEZ: Nothing further, Judge.

16 THE COURT: Sir, I ask that you step down.

17 Please don't discuss your testimony with anybody
18 besides a representative from the District Attorney's Office or
19 from Mr. Yanez's office.

11:45AM 20 I thank you for your testimony today. If
21 somebody from Mr. Yanez's office contacts you, they will
22 identify themselves as such. Thank you.

23 THE WITNESS: Thank you.

24

1 (Whereupon, at this time the witness was excused.)

2

3 THE COURT: State, any further witnesses?

4 MS. THOMSON: No, Your Honor.

11:45AM

5 THE COURT: Any other evidence to offer to the
6 Court at this particular time?

7 MS. THOMSON: Yes. Marked as State's Proposed
8 Exhibits 13, 14 and -- 13, 14, 15 and 16 are copies of four of
9 the defendant's prior felony convictions. They are certified
10 copies. I ask that each of them be admitted.

11:45AM

11 THE COURT: Mr. Yanez, have you had an
12 opportunity to review these?

13 MR. YANEZ: I have, Judge.

14 THE COURT: Any objection for the admission of
15 those for the purposes of the Preliminary Hearing?

11:46AM

16 MR. YANEZ: For purpose of prelim, no, Judge.

17 THE COURT: All right. They're going to be
18 deemed admitted for the purposes of Preliminary Hearing only.

19

11:46AM

20 (State's Exhibits 13, 14, 15 and 16, respectively,
21 were admitted into evidence.)

22

23 MS. THOMSON: Court's indulgence.

24 THE COURT: You must give those back to Shana.

1 MS. THOMSON: I will. I'm just confirming that
2 I have --

3 (Sotto voce at this time.)

4 MS. THOMSON: Let me make -- oh, yes, okay.

11:46AM 5 So State's Exhibit 16 was a felony with
6 probation and a reduction to a gross misdemeanor. So it is
7 actually not a prior felony conviction.

8 THE COURT: So which one?

9 MS. THOMSON: State's Exhibit 16. So I'll
11:47AM 10 retract that if the Court will allow.

11 THE COURT: You can retract it. It still stay
12 as proposed.

13 (State's Proposed Exhibit 16
14 was withdrawn, will remain a proposed exhibit.)

11:47AM 15
16 THE COURT: So is that -- so are we doing as --

17 THE REPORTER: A what now?

18 MS. THOMSON: No, it's not on the Criminal
19 Complaint. There's only three case numbers, which is why I was
11:47AM 20 a little concerned.

21 THE COURT: Okay.

22 MS. THOMSON: And then before I rest, or as I
23 rest, I'm going to note that, with regard to Count VI, we have
24 not presented any evidence, that we will not be presenting any

1 evidence, and when the Court makes the bindover, I would ask
2 the Court to consider that we have not presented any evidence.

3 There were some issues with witnesses this
4 morning, and we chose to proceed with witnesses that we were
11:47AM 5 able to procure for the morning, rather than ask for a
6 continuance for that one count.

7 THE COURT: All right.

8 MS. THOMSON: And with that, I would rest.

9 THE COURT: All right. Mr. Yanez, any evidence
11:48AM 10 that the defense is presenting at this time to the Court?

11 MR. YANEZ: No, Judge.

12 I've spoken with Mr. Chambers about his right to
13 testify, and at this point he's going to invoke his Fifth
14 Amendment right and remain silent.

11:48AM 15 THE COURT: Is that correct, Mr. Chambers, your
16 attorney has had that discussion with you, and you wish at this
17 particular time to follow his advice and not testify at this
18 particular juncture?

19 THE DEFENDANT: Yes, ma'am.

11:48AM 20 THE COURT: All right. Mr. Yanez, anything
21 else?

22 MR. YANEZ: No, that's it, Judge.

23 THE COURT: Defense rests?

24 MR. YANEZ: Defense rests.

1 THE COURT: All right.

2 MS. THOMSON: I'll waive and reserve.

3 THE COURT: Mr. Yanez, you're up.

4

11:48AM

5

CLOSING ARGUMENT

6

7 MR. YANEZ: Judge, a few things.

8 I'm, again, I know we've all done this a million

9 times, I know what the standard is, I know it's low; however, I

11:48AM

10 think there are a few -- a few charges that I don't think even

11 slight or marginal evidence has been presented, specifically

12 attempt murder with use of a deadly weapon. That is a

13 specific-intent crime, it's not a general-intent crime.

14 My understanding of the testimony, and she was

11:48AM

15 pretty clear about it, is that, as she smacked the gun away,

16 the gun went off.

17 I don't think that those facts in any way

18 support the specific intent to murder somebody.

19 Whether it's some other type of crime, that's

11:49AM

20 noted here, I'm going to disagree with that, but as to

21 specifically as to attempt murder, I don't think the State has

22 met even slight or marginal evidence as to that charge.

23 As well as to, um, the attempt robbery charge,

24 Judge. The alleged victim in that case -- in that charge was

1 Lisa, and she was kind of all over the place with her
2 testimony, but we had no testimony of property that was
3 supposedly taken, that he wanted.

11:49AM 4 The testimony from Lisa was: You know what this
5 is about. That general statement, I don't think, suffices for
6 slight or marginal evidence for an attempt robbery charge.

7 The State's -- obviously, I'm agreeing with the
8 State on Count VI, that there's been no evidence presented as
9 to that, so I'd ask that that be dismissed. I don't think
11:50AM 10 there's opposition to that.

11 And again -- and also as to Count I, Judge, I
12 will challenge Count I as well, having to do with the specific
13 intent going into there, I think the testimony of the specific
14 intent was that Mr. Chambers was supposedly going in there to
11:50AM 15 buy drugs, not to commit a robbery, a larceny, or any type of
16 assault or battery.

17 And, of course, the -- the sticking point with
18 the burglary charge is what is his intent as he is walking into
19 the structure, and I don't think there's been any evidence
11:50AM 20 presented besides him going in there to buy drugs.

21 I'll submit it on that, Judge.

22 THE COURT: Okay.

23

24

REBUTTAL ARGUMENT

1 MS. THOMSON: Starting with the attempt murder,
2 Your Honor, I recognize that we don't have a situation where
3 there's statements. I don't think it makes it very easy;
4 however, I think that we can look at the circumstances to
11:51AM 5 determine his intent.

6 The fact that he had the gun pointed at her
7 torso, pointed at her chest, this is immediately after having
8 shot

9 Mr. Bly in the head. Additionally, the fact that it went off
11:51AM 10 when she hit his hand tells us that his finger was on the
11 trigger when he was doing that.

12 I think that the totality of the circumstances,
13 the fact that he's just shot another man in the head, and he's
14 now pointing the gun at her chest and making statements to her,
11:51AM 15 you know what this is about, demanding money, which I'll get to
16 as we go along, I think is sufficient that the Court can and
17 should bindover the attempt murder with use.

18 As to the attempt robbery, I fully agree, Lisa
19 is kind of a mess; however, she did state that she told police
11:51AM 20 what had happened that day, and that what she told police was
21 that he pointed the gun at her and asked or told or demanded,
22 depending on how -- what rule we want to use, her money, that
23 she knew what this was about, and that he demanded her money.

24 And I think that that is sufficient for the

1 attempt robbery.

2 There is no -- obviously no need that we
3 establish that he actually took anything, otherwise it would be
4 completed.

11:52AM 5 With regard to the burglary, she testified that
6 they did not have any weapons, that he pulled out the weapon.

7 The statements that he made to Bridgett Graham
8 previously about going to hit a lick, whether Bridgett believed
9 him or not, I think, forms a background for this crime.

11:52AM 10 Additionally, the statements that he made to her
11 about having -- I believe that he made statements to her about
12 having gone in to rob, the fact that he brought a gun with him,
13 all of this, in combination with the short period of time that
14 he's in the trailer before the shooting, we know it's very

11:52AM 15 short based upon the testimony of Mr. Plumlee, who had just
16 left the back of her trailer and is not even across the street
17 to the office before he hears the shots.

18 I think this all comes together to form a basis
19 that this Court can rely upon in binding him over on the
11:53AM 20 burglary while in possession of a firearm.

21 And I'd ask that the defendant be held to answer
22 all of the counts with the exception of Count VI, which I would
23 anticipate the Court would not bindover.

24 THE COURT: All right. Mr. Chambers, as I'm

1 sure your attorney has discussed with you, the standard at my
2 particular level is slight or marginal evidence that a crime
3 may have occurred, and you may have been the person to commit
4 the crimes, and send the matter to the District Court.

11:53AM

5 For those reasons, sir, I'm going to hold you to
6 answer in the Eighth Judicial District Court on the charges of:
7 Burglary while in possession of a firearm; murder with use of a
8 deadly weapon; attempt robbery with use of a deadly weapon;
9 attempt murder with use of a deadly weapon; battery with use of
10 a deadly weapon.

11:53AM

11 I'm not binding you up on the substantial bodily
12 harm. I don't think the State met its slight or marginal on
13 the substantial.

14 I'm not binding you over on trafficking, but I
15 will bind you over on possession of firearm by ex-felon.

11:54AM

16 However, State, did you withdraw Exhibit 16?

17 MS. THOMSON: Yes.

18 THE COURT: Okay. So let me see Exhibit 16.

19 So, State -- all right. So you gave me

11:54AM

20 convictions on -- let me see what was admitted.

21 So I have convictions on 775 --

22 THE REPORTER: On what? I'm sorry. What was
23 the conviction on?

24 THE COURT: Conviction on case ending in 775,

1 conviction in the case ending in 991, so I'm interlineating and
2 striking C142992. At this particular juncture there has been
3 nothing presented to the --

4 MS. THOMSON: Your Honor, there were four
11:54AM 5 marked.

6 THE COURT: I'm sorry, oh, this was together.
7 My apologies.

8 MS. THOMSON: Sorry.

9 THE COURT: All right. So I don't think --
11:55AM 10 okay, so strike that.

11 So we are going to leave in the 992. All right.
12 So he's going to go up on those.

13 Sir, you will need to appear with your attorney
14 in the lower level arraignment Court on the following date and
11:55AM 15 time --

16 THE CLERK: October 14th, 9:30, lower level
17 District Court arraignments.

18 THE COURT: Mr. Chambers, good luck to you.

19 THE DEFENDANT: Thank you.

11:55AM 20 MS. THOMSON: Thank you, Your Honor.

21 THE COURT: Count VI is dismissed and I'm
22 striking substantial bodily harm off of Count V.

23 THE CLERK: Got that.

24 MS. THOMSON: VI without prejudice; correct?

1 THE COURT: What?

2 MS. THOMSON: Without prejudice on Count VI,
3 please?

11:55AM

4 THE COURT: I don't know. You didn't dismiss
5 it, that's your problem.

6 MS. THOMSON: I didn't.

7 THE COURT: You didn't voluntarily dismiss it.
8 I'm not binding it over.

9 MS. THOMSON: Okay.

11:55AM

10 THE COURT: So I've heard no evidence on that.

11 (Proceedings concluded.)
12

* * * * *

13 ATTEST: Full, true and accurate transcript of proceedings.
14

15

16

17

/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

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<p>W/D ^[1] - 2:22</p> <p>wait ^[2] - 66:3, 66:11</p> <p>waited ^[1] - 108:11</p> <p>waiting ^[1] - 66:9</p> <p>waive ^[1] - 122:2</p> <p>walk ^[5] - 7:21, 9:11, 11:8, 91:9</p> <p>walked ^[18] - 11:12, 13:7, 34:20, 35:11, 62:10, 90:15, 90:20, 91:6, 91:10, 92:17, 97:9, 100:2, 112:20, 113:19, 113:22, 114:3, 116:8, 116:10</p> <p>walking ^[10] - 13:20, 71:3, 72:22, 73:2, 99:14, 99:15, 107:12, 112:16, 113:2, 123:18</p> <p>warrant ^[1] - 67:11</p> <p>watch ^[1] - 78:23</p> <p>waving ^[1] - 61:22</p> <p>weapon ^[10] - 53:8, 89:17, 99:17, 100:16, 122:12, 125:6, 126:8, 126:9, 126:10</p> <p>weapons ^[2] - 14:9, 125:6</p> <p>wearing ^[9] - 6:11, 6:12, 67:24, 99:21, 102:3, 102:4, 106:8, 106:9, 114:7</p> <p>week ^[1] - 26:2</p> <p>weeks ^[1] - 84:20</p> <p>welcome ^[1] - 60:10</p> <p>white ^[2] - 34:12, 34:13</p> <p>whole ^[5] - 56:24, 71:13, 90:3, 110:7, 110:9</p> <p>wife ^[3] - 77:3, 77:18, 77:19</p> <p>willing ^[1] - 45:16</p> <p>windows ^[1] - 89:14</p> <p>wish ^[1] - 121:16</p> <p>withdraw ^[1] - 126:16</p> <p>withdrawn ^[1] - 120:14</p> <p>witness ^[31] - 5:3, 5:10, 18:5, 40:19, 42:19, 42:22, 43:2, 43:12, 43:13, 43:24, 60:12, 60:14, 60:20, 63:12, 64:15, 64:17, 65:11, 66:7, 66:8, 66:12, 81:5, 88:2, 88:5, 88:13, 94:18, 102:19, 102:22, 103:10, 109:14, 118:13, 119:1</p> <p>Witness ^[4] - 29:19, 37:16, 76:12, 111:2</p> <p>WITNESS ^[33] - 5:14, 5:20, 7:8, 15:14, 19:4, 21:4, 25:2, 36:21, 44:4, 44:7, 60:10, 60:24, 61:2, 61:5, 64:13, 65:15, 65:21, 65:23, 66:1, 68:19, 68:21, 72:13, 77:20, 77:22, 80:18, 87:16, 88:17, 88:21, 100:22, 102:17, 103:14, 103:18, 118:23</p>	<p>Yanez ^[20] - 4:14, 10:8, 18:6, 20:5, 20:19, 21:5, 23:24, 27:3, 27:18, 28:2, 36:3, 42:22, 52:15, 79:14, 81:6, 109:15, 119:11, 121:9, 121:20, 122:3</p> <p>YANEZ ^[61] - 1:21, 4:15, 4:19, 10:9, 18:7, 18:10, 19:5, 21:7, 24:1, 25:3, 26:19, 27:9, 27:19, 27:23, 28:3, 28:4, 28:19, 29:6, 29:9, 29:13, 29:14, 35:20, 36:20, 36:24, 38:18, 39:2, 40:21, 41:1, 42:5, 43:1, 45:19, 52:18, 57:4, 59:19, 60:2, 63:14, 63:17, 64:4, 72:16, 75:2, 75:18, 79:5, 80:10, 81:7, 81:10, 87:1, 94:22, 100:23, 101:14, 102:10, 109:18, 110:18, 110:20, 117:6, 118:15, 119:13, 119:16, 121:11, 121:22, 121:24, 122:7</p> <p>Yanez's ^[7] - 42:14, 60:7, 64:11, 87:9, 102:15, 118:19, 118:21</p> <p>Yanez..... ^[1] - 3:6</p> <p>yard ^[4] - 90:15, 90:20, 91:9, 98:8</p> <p>year ^[6] - 44:18, 68:8, 77:5, 77:7, 89:5, 104:3</p> <p>years ^[8] - 61:15, 95:19, 95:22, 96:5, 96:15, 115:15, 115:18, 116:1</p> <p>yelling ^[9] - 74:16, 75:1, 75:7, 75:14, 89:12, 89:16, 89:18, 90:10, 90:14</p> <p>yourself ^[8] - 12:6, 29:15, 34:15, 37:15, 76:11, 105:3, 110:23, 112:8</p>


CLERK OF THE COURT

0001
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Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO.: C-13-292987-1
)	
v.	)	DEPT. NO.: II
)	
GARY LAMAR CHAMBERS	)	DATE:
#877763	)	TIME:
Defendant.)	
)	

MOTION IN LIMINE

COMES NOW, the Defendant, GARY LAMAR CHAMBERS, by and through his attorney, Abel Yanez, Esq., of the Nobles & Yanez Law Firm, and moves this Honorable Court *in limine* to preclude any evidence of Defendant's prior convictions.

This motion is made and based upon all the papers and pleadings on file, the attached memorandum of points and authorities in support hereof, and oral argument at the time set for hearing this motion.

DATED this 26th day of January, 2016.

By /s/ Abel Yanez
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Attorney for Defendant

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YOU WILL PLEASE TAKE NOTICE that Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, will bring the above and foregoing Motion in Limine on for hearing before the Court on the 9 day of February 2016, at 9:00 a.m.

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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

Defendant, GARY LAMAR CHAMBERS (hereinafter "CHAMBERS"), is charged with Murder with Use of a Deadly Weapon, Attempt Murder with Use of a Deadly Weapon, Burglary while in Possession of a Firearm, Attempt Robbery with Use of a Deadly Weapon, Battery with Use of a Deadly Weapon, and Possession of Firearm by Ex-Felon. In essence, the charges revolve around an incident that occurred inside the trailer house of one of the alleged victims on July 9, 2013. One of the alleged victims claims that CHAMBERS was there to rob her and the other alleged victim. However, CHAMBERS's position is that he went to the alleged victim's house to buy drugs and was forced to defend himself.

In 2003, CHAMBERS was convicted of two (2) counts of Robbery with Use of a Deadly Weapon, and one (1) count of First Degree Kidnapping. The case involved two armed robberies CHAMBERS was accused of committing. As to the two Robbery with Use of a Deadly Weapon convictions, CHAMBERS was sentenced to a term of 52 months to 240 months for each, and 5 years to Life for the Kidnapping count. All three counts were to run concurrently. *See* Ex. "A." Due to the large amount of time imposed, CHAMBERS currently continues to serve his sentences on these three convictions.

At his upcoming trial, CHAMBERS intends to testify in order to give his side of what happened in this case. Otherwise, the jury will only hear from one of the surviving alleged victims as to what caused the dispute and who was the initial aggressor. However, CHAMBERS is legitimately concerned that if he were to take the stand to tell the jury what happened inside the trailer house, the State will seek to introduce his three convictions from 2003. Consequently, CHAMBERS now moves this Court to preclude the State from introducing at trial these prior convictions.

1
2 **ARGUMENT**

3 In general, Nevada law allows for any person who has taken the witness stand to testify,
4 including a criminal defendant, to be impeached by a prior conviction of a felony crime. *See*
5 N.R.S. § 50.095.¹ “The decision to admit or exclude evidence of prior offenses is within the
6 discretion of the trial court.” *Owens v. State*, 96 Nev. 880, 884, 620 P.2d 1236, 1239 (1980).
7

8 Although the statute “declares a prior felony conviction may be admitted for
9 impeachment,” a trial court must exclude the conviction “if its probative value is substantially
10 outweighed by danger of unfair prejudice, confusion of the issues, or misleading the jury.”
11 *Edwards v. State*, 90 Nev. 255, 263-64, 524 P.2d 328, 334 (1974) (citing N.R.S. § 48.035(1));
12 *Anderson v. State*, 92 Nev. 21, 23, 544 P.2d 1200, 1201 (1976) (“However, prior felony
13 convictions should not be admitted if their ‘probative value is substantially outweighed by the
14 danger of unfair prejudice, of confusion of the issues or of misleading the jury.’”).
15

16 The Nevada Supreme Court has never given trial courts guidance as to what a court should
17 consider in exercising its discretion on whether or not to admit prior convictions. However, the
18 Ninth Circuit Court of Appeals has in interpreting the Federal Rules of Evidence (FRE)
19

20

¹ NRS 50.095. Impeachment by evidence of conviction of crime.

21 1. For the purpose of attacking the credibility of a witness, evidence that the witness has been
22 convicted of a crime is admissible but only if the crime was punishable by death or imprisonment
for more than 1 year under the law under which the witness was convicted.

23 2. Evidence of a conviction is inadmissible under this section if a period of more than 10
years has elapsed since:

24 (a) The date of the release of the witness from confinement; or
25 (b) The expiration of the period of the witness’s parole, probation or sentence, whichever is
the later date.

26 3. Evidence of a conviction is inadmissible under this section if the conviction has been the
subject of a pardon.

27 4. Evidence of juvenile adjudications is inadmissible under this section.

28 5. The pendency of an appeal therefrom does not render evidence of a conviction
inadmissible. Evidence of the pendency of an appeal is admissible.

6. A certified copy of a conviction is prima facie evidence of the conviction.

1 counterpart to Nevada's N.R.S. § 50.095, i.e., FRE 609. *See Mitchell v. Eighth Judicial Dist. Court*
2 *Nev.*, 131 Nev. Adv. Rep. 21, 348 P.3d 675, 679 (2015) ("The Nevada Commission that was
3 tasked with proposing a modern draft evidence code drew on the Preliminary Draft of Proposed
4 Rules of Evidence for the United States District Courts and Magistrates submitted by the Advisory
5 Committee on Federal Rules of Evidence (Draft Federal Rules").

6 In balancing a prior conviction's probativeness versus its prejudicial effect, the Ninth
7 Circuit has explained that a trial court should consider five factors:

- 8
- 9 (1) The impeachment value of the prior crime;
 - 10 (2) The point in time of the conviction and the witness' subsequent history;
 - 11 (3) The similarity between the past crime and the charged crime;
 - 12 (4) The importance of the defendant's testimony; and
 - 13 (5) The centrality of the credibility issue.

14 *See U.S. v. Wallace*, 848 P.2d 1464, 1473 n.12 (1988).

15 Here, a balancing of these factors reveals that CHAMBERS' prior convictions should be
16 excluded. First, the prior convictions do not have significant impeachment value as they do not
17 involve crimes of dishonesty, like fraud, false pretenses, perjury, or theft by deception. *See U.S. v.*
18 *Bagley*, 772 F.2d 482, 487 (9th Cir. 1985). In *Bagley*, the Ninth Circuit explained:

19 Proper impeachment is not, in itself, evidence of guilt or innocence; it merely casts
20 a doubt on other evidence going directly to those issues which the trier of fact
21 should consider. Consistent with this purpose, prior felony convictions which do
22 not in themselves implicate the veracity of a witness may have little impact on
23 credibility. For example, the question of the truth or falsity of a witness's statement
24 generally is not advanced in any material way by a showing of his prior conviction
25 of the crime of burglary or theft, unless issues of credibility are otherwise directly
26 involved.

27 *See id.* (citations omitted). Thus, the impeachment value of CHAMBERS's prior convictions is
28 quite low, yet its prejudicial impact would be overwhelming.

29 Second, the prior convictions are very remote as they date back 13 years. A significant
30 amount of time has elapsed since these convictions. Third, there is a strong similarity between the
31 prior convictions and the charged crimes in that they all deal with alleged robberies with use of a

1 firearm. Similarity between prior convictions and current charges weighs **against** admissibility. On
2 this point, the Ninth Circuit has explained:

3 To allow evidence of a prior conviction of the very crime for which a defendant is
4 on trial may be devastating in its potential impact on a jury. . . . [T]here is a
5 substantial risk that all exculpatory evidence will be overwhelmed by a jury's
6 fixation on the human tendency to draw a conclusion which is impermissible in
7 law: because he did it before, he must have done it again.

8 Bagley, 772 F.2d at 488.

9 Here, besides being charged with Attempt Robbery, even the Murder charge is predicated
10 on a felony-murder theory based on the robbery allegation, as is the Burglary charge (i.e., entry
11 with the intent to commit a robbery). Thus, the only purpose served by admitting the prior
12 convictions would be to plant in the minds of the jury the spectre that CHAMBERS did it before
13 and he did it again.

14 Fourth, CHAMBERS testimony is of paramount importance to his defense. Because the
15 only people who can testify about what happened inside the trailer house is one of the surviving
16 alleged victims and CHAMBERS, there is no one who can provide a defense for CHAMBERS
17 other than himself. Therefore, the importance of CHAMBERS' testimony is overriding.

18 Lastly, although the issue of credibility is central to CHAMBERS' defense, it is not so with
19 the State's case. Besides the testimony of the alleged victim, the State will likely present
20 circumstantial evidence of guilt through the testimony of numerous people who witnessed what
21 happened immediately before and after CHAMBERS entered the trailer house.

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CONCLUSION

Based on the foregoing reasons, CHAMBERS respectfully submits that after reviewing all the evidence adduced at a hearing on his Motion in Limine, together with the foregoing Points and Authorities, this Honorable Court will be impelled to grant it.

DATED this 26th day of January, 2016.

By /s/ Abel Yanez
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Attorney for Defendant

Ex. “A”

ORIGINAL

9

JOCP
DAVID ROGER
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Nevada Bar #002781
200 South Third Street
Las Vegas, Nevada 89155-2211
(702) 455-4711
Attorney for Plaintiff

FILED

FEB 28 11 14 AM '03

Shirley A. Longoria
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY CHAMBERS, aka Gary Lamar
Chambers, #877763

Defendant.

Case No: C185775

Dept No: XVI

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty, pursuant to Alford, to the crime(s) of Count 1- ROBBERY WITH USE OF A DEADLY WEAPON (Felony); Count 2 - ROBBERY WITH USE OF A DEADLY WEAPON (Felony); and Count 3 - FIRST DEGREE KIDNAPPING (Felony), in violation of NRS 200.380, 193.165; 200.310, 200.320; thereafter, on the 19th day of November, 2002, the Defendant was present in court for sentencing with his counsel, KAREN BRASIER, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee and pay a \$150.00 DNA analysis fee to the Clark County Clerk, the Defendant is sentenced as follows:

As to COUNT 1-DEFT. SENTENCED to a MAXIMUM term of (120) ONE HUNDRED TWENTY MONTHS with a MINIMUM parole eligibility of (26) TWENTY-SIX MONTHS plus an equal and CONSECUTIVE MAXIMUM of (120) MONTHS and a

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1 MINIMUM of (26) MONTHS for use of a deadly weapon.

2 As to COUNT II-DEFT. SENTENCED to a MAXIMUM term of (120) ONE
3 HUNDRED TWENTY MONTHS with a MINIMUM parole eligibility of (26) TWENTY-
4 SIX MONTHS plus an equal and CONSECUTIVE MAXIMUM of (120) MONTHS and a
5 MINIMUM of (26) MONTHS for use of a deadly weapon, concurrent to count I.

6 As to COUNT III-To a term of LIFE, with parole eligibility beginning after (5) FIVE
7 YEARS, concurrent with counts I and II.

8 The defendant shall submit to a test for genetic markers as required by statute.
9 Further, Defendant to receive (126) DAYS credit for time served.

10 DATED this 27th day of February, 2003.

11 
12 DISTRICT JUDGE 

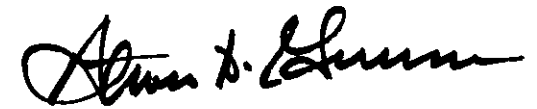
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 26th day of January, 2016, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
Megan.Thomson@ccdancv.com

/s/ Donna McDonald
Secretary for Nobles & Yanez



CLERK OF THE COURT

OPPS

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Nevada Bar #001565
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY LAMAR CHAMBERS,
#877763

Defendant.

CASE NO: C-13-292987-1

DEPT NO: II

STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

DATE OF HEARING: 07/07/2016
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion in Limine.

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

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1 By her account, she then knocked the gun down, which had been pointed at her torso, and it
2 discharged, shooting her in the hand.

3 Chambers then went to his idling vehicle a few spaces down. Waiting in the car were
4 Chamber's daughter, Erika, and her friend, Bridgett Graham. Bridgett later told Detectives
5 that Chambers had picked her and Erika up and told the girls that he needed to drop off a set
6 of keys to his cousin, Sherrod Biddle (A.K.A Bamm) who was an employee of Van's Trailer
7 Oasis. She indicated that just before arriving she had heard Chamber's phone ring. When
8 Chambers answered, he asked the caller if they were at home, telling them that "he was about
9 to be on his way" and "he was about to be outside." After he stopped the car, he exited the
10 idling vehicle and went up to the trailer, where they lost sight of him.

11 While they were waiting, the girls heard shots. When Chambers returned they asked
12 him what had happened. Chambers initially told them he didn't do anything. He indicated he
13 was trying to "get some dope" and the "dude grabbed his hand and the gun went off." Later
14 he said that the "fat bitch started screaming someone's trying to rob her" and that Bly had
15 gotten up and they started wrestling and the gun went off and went past Bly's ear and then
16 went off again and shot her in the shoulder.

17 Bridgett further told the Detectives that after Chambers had gotten out of prison he had
18 talked about how he was going to "come up" and that he always talked about "hittin' a lick."
19 She believed he meant he was going to commit a robbery. She had heard him make such
20 statements just a couple of days before the shooting, but he never provided any details of his
21 intentions to her.

22 Using the license plate number reported by Plumlee, Detectives traced the vehicle
23 Chambers was driving to Cynthia Lacey, Chambers' girlfriend. Lacey told Detectives that
24 Chambers called her between 10:30 and 11:00 am on July 9 and told her that he had been
25 involved in some "shit" and asked her to report her car stolen, which she refused to do. She
26 further indicated that about two weeks earlier Chambers had told her that he was thinking of
27 robbing Lisa because "she was a bitch, had money, was the main person with drugs around
28 //

1 there and was cheating people on deals.” She also stated, he had had a gun in her apartment
2 two days earlier and she told him to get rid of it because she had children at home.

3 Five double-blind line-ups were conducted, one with the victim and four with
4 employees/residents of the trailer park. In each of the five, Chambers was positively identified;
5 by Lisa as the shooter and by the other four as the man leaving just after the shots were fired.

6 Records showing the Defendant’s cell phone usage near the time of the crime indicated
7 that between 10:18 and 10:20 am his phone was utilizing a tower in close proximity to Van’s
8 Trailer Oasis.

9 The Defendant spoke with Detectives and indicated that he had gone to Lisa’s trailer to
10 purchase narcotics. At the time of his arrest Chambers was in possession of 4.72 grams of
11 methamphetamine which he indicated he had purchased for \$90 that morning. He told
12 detectives that he was present when Bly was shot by a white male with long hair.

13 ARGUMENT

14 It has long been the law that the determination of whether to admit or exclude a
15 witnesses prior felony convictions when he testifies rests in the sound discretion of the trial
16 court and will not be disturbed without a clear showing of abuse. Redeford v. State, 93 Nev.
17 649, 654, 572 P.2d 219, 222 (Nev. 1977). Nevada Revised Statute (NRS) 50.095 has
18 codified the admissibility of a prior felony conviction for purposes of attacking the
19 credibility of a witness, but notably lacks any requirement that the felony conviction must
20 speak directly to the truthfulness or veracity of the witness. Yates v. State, 95 Nev. 446, 449,
21 596 P.2d 293, 241 (1979). The Court then included in a footnote:

22 We must remember that impeachment by the use of prior
23 felony convictions is quite different from the use of
24 evidence of prior unconvicted bad acts offered to prove
25 subsequent conduct in conformity therewith. Prior felony
26 convictions which are not too remote are deemed relevant
to the credibility of any witness. NRS 50.095. Evidence of
specific instances of prior unconvicted bad acts of an
accused, however, is not relevant unless his character is in
issue or the evidence is relevant to some issue other than his
character. NRS 48.045.

27 Id. However, NRS 48.035 does limit what relevant evidence may be admitted. In order to
28 admit a felony conviction the Court must perform a “balancing process to determine whether

1 the evidentiary usefulness of the proposed impeachment by prior felony convictions, is
2 **substantially outweighed** by the danger of unfair prejudice, NRS 48.035(1), or by
3 considerations of undue delay and cumulativeness. NRS 48.035(2).” Yates v. State, 95 Nev.
4 at 449-450, 596 P.2d at 242 (emphasis added). Interestingly, years later the Nevada Supreme
5 Court cited Yates as stating that the Nevada Legislature intended district courts to admit
6 evidence of prior convictions for crimes that reflect untruthfulness after balancing the
7 probative value and prejudicial effect of the convictions. Wesley v. State, 112 Nev. 503, 510,
8 916 P.2d 793, 798 - 799 (Nev.,1996).

9 In Yates, the Defendant challenged the admission of his prior felony convictions for
10 Robbery and Larceny during his trial on the charge of Robbery with Use of a Deadly
11 Weapon. The Court found that there was no abuse of discretion in admitting the prior
12 felonies despite the fact that the convictions were similar to the charge he faced. In so doing
13 the Court acknowledged that the nature of the underlying offense may affect the trial court’s
14 determination, the determination will be reversed only with a clear showing of prejudice. Id.
15 at 450, citing Jones v. State, 93 Nev. 287, 564 P.2d 605 (1977). The Court further noted that
16 even if it were to adopt Yates proposed interpretation allowing only felonies which bare on
17 truthfulness or veracity, both his Robbery and Larceny conviction would still be admissible
18 as they involve dishonesty. Yates, 95 Nev. at 449, 596 P.2d at 241. In Wesley, the
19 Defendant was convicted of Robbery and two counts of Murder with Use of a Deadly
20 Weapon and was sentenced to death. The trial court ruled that if Wesley testified he could be
21 impeached with his prior convictions for Robbery and Assault with Use of a Weapon. Upon
22 review, the Nevada Supreme Court held that this ruling was not in error.

23 The Defendant now asks this Court to preclude the State from eliciting his prior
24 Robbery with Use of a Deadly Weapon and First Degree Kidnapping felony convictions in
25 the event that he testifies. In support of this request, the Defendant asserts that these
26 convictions are not relevant and that they are too prejudicial because it would cause the jury
27 to look on his testimony with disfavor.

28 //

1 **A. THE DEFENDANT'S CONVICTIONS ARE RELEVANT**

2 The Nevada Supreme Court in Yates expressly acknowledged that evidence of a
3 Defendant's prior convictions are relevant for purposes of credibility. The Defendant has
4 cited no authority, nor does any exist that the relevance of a conviction rests with the nature
5 of the offenses. Because a witness's credibility is always at issue when they testify, prior
6 convictions for felonies are always considered relevant, so long as they fall within the
7 guidelines in NRS 50.095. The Defendant does not assert that his prior adjudications
8 somehow fall within any of the exceptions outlined by the legislature.

9 The Defendant asserts that his prior convictions are similarly irrelevant because they
10 are thirteen (13) years old, however this overlooks the fact that he received parole on those
11 convictions just shortly before he committed the instant offense.

12 **B. THE PROBATIVE VALUE IS NOT SUBSTANTIALLY OUTWEIGHED BY THE**
13 **PREJUDICIAL EFFECT**

14 The Defendant secondarily asserts that admission of his convictions would be in error
15 because the prejudice to him is great and the jury would be more likely to convict him because
16 the charges are similar. This argument completely fails to address the balancing process in
17 which this Court must engage. In order to exclude the Defendant's prior convictions, this Court
18 must find not just that the prejudice to the Defendant outweighs the probative value, but that
19 it **substantially outweighs** the probative value, this conclusion cannot be reached. The
20 Defendant's two prior convictions are very similar to those addressed in Yates, where the
21 Court noted that the appellant's prior convictions weighed on truthfulness and veracity which
22 certainly has a high probative value. While the Defendant asserts that the Federal Court has
23 found that the prior convictions should be excluded where they are similar to the charge being
24 prosecuted, citing to US v. Bagley, that overlooks that fact that the Court in that case found
25 that it was an abuse of discretion to allow impeachment with prior Robbery convictions where
26 the State had the ability to impeach the Defendant with felony convictions for Forgery, and in
27 that situation it was unnecessary for the jury to hear about the Robbery convictions. 772 F.2d
28 482, (1985). While the Defendant erroneously seeks to use this fact as a basis for lack of

1 relevance, it is rather accurately considered towards the prejudice prong of this Court's
2 determination. Additionally, it is notable, that where a prior conviction was for identical
3 crimes as those faced by a defendant, the Nevada Supreme Court did not find error in the trial
4 court's decision to admit the evidence.

5 The Defendant's prior convictions have significant probative value in the
6 consideration of credibility of the Defendant should he testify. In contrast, the prejudicial
7 effect of the admission of these convictions is slight because they are somewhat older and
8 the State will not be able to elicit that he was in prison until shortly before this crime. Here,
9 the balancing process does not merely yield equality between probative value and prejudicial
10 effect which would still permit introduction of the evidence, but rather demonstrates a
11 probative value far in excess of the prejudicial effect of such evidence. The Defendant
12 asserts that he should not be impeached with his prior felony convictions because his
13 testimony is important in his defense and the State's case is not based upon credibility. This
14 assertion could not be further from the truth. There is no doubt that the defense will seek to
15 challenge the credibility of Lisa Papoutsis, the only living witness to the murder.

16 Furthermore, while there may be evidence of the Defendant's conduct and statements before
17 and after the crime, this does not negate the need for the jury to be informed of the
18 Defendant's prior felony convictions and as such allow them to judge for themselves some
19 of the motives he might have for testifying in the way that he does. Furthermore, the Defense
20 overlooks the fact that once any evidence of self-defense is presented the State must prove
21 beyond a reasonable doubt that there was not self-defense in a case. Certainly it is not
22 reasonable to assert that impeachment of the only party who will proffer evidence is
23 unnecessary for the State. While it is understandable that the Defendant would want to
24 present himself to the jury in a light as favorable as possible, that does not negate the fact
25 that he has the history he has. Furthermore, the State should not have its hands tied in
26 presenting a case, wherein the Defendant has asserted to this Court that he will be adding
27 into the trial another element which the State must prove beyond a reasonable doubt.
28 Obviously the Jury knowing about the Defendant's prior convictions would be prejudicial,

1 otherwise they would not valuable as impeachment evidence, however they are not so
2 prejudicial as to outweigh the probative value. Furthermore, there are ways to ensure that he
3 suffers no more prejudice than that permitted by law as impeachment through Voir Dire and
4 instructing the jury as to the purposes for which they may consider his prior felonies. As
5 such, the State respectfully requests that the Defendant's motion be denied.

6 The State intends to ask only the year and title of the prior convictions, not any
7 substance or underlying facts, as is admissible under Nevada law. Further, should any bad
8 acts sought to be admitted, the appropriate motions will be filed.

9 **CONCLUSION**

10 Because the probative value of the Defendant's prior convictions is not substantially
11 outweighed by the prejudicial effect they might have, the State requests that the Defendant's
12 Motion in Limine to Exclude Prior Convictions be DENIED.

13 DATED this 2nd day of March, 2016.

14 Respectfully submitted,

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

17 BY 
18

MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002

19
20 **CERTIFICATE OF FACSIMILE TRANSMISSION**

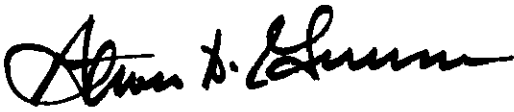
21 I hereby certify that service of STATE'S OPPOSITION TO DEFENDANT'S
22 MOTION IN LIMINE made this 2ND day of March, 2016, by facsimile transmission to:

23 ABEL M. YANEZ, ESQ.
24 ATTORNEY FOR DEFENDANT
FAX#702-641-6002

25 BY: 
26

P. Manis
Secretary for the District Attorney's Office

27
28 THOMS/pm /L-2


CLERK OF THE COURT

RPLY

ABEL M. YANEZ, ESQ.
NEVADA BAR NO. 7566
Nobles & Yanez Law Firm
324 South Third Street, Suite 2
Las Vegas, Nevada 89101
(T): (702) 641-6001
(F): (702) 641-6002
EMAIL: ayanez@noblesyanezlaw.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO.: C-13-292987-1
)	
v.	)	DEPT. NO.: II
)	
GARY LAMAR CHAMBERS	)	DATE:
#877763	)	TIME:
Defendant.)	
)	

REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

COMES NOW, the Defendant, GARY LAMAR CHAMBERS, by and through his attorney, Abel Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits his Reply to the State of Nevada's Opposition to his Motion in Limine.

This Reply is made and based upon all the papers and pleadings on file, the attached memorandum of points and authorities in support hereof, the State's Opposition, and oral argument at the time set for hearing on Defendant's Motion in Limine.

DATED this 27th day of April, 2016.

By /s/ Abel Yanez
ABEL M. YANEZ, #7566
Nobles & Yanez Law Firm
324 South Third Street, Suite 2
Las Vegas, Nevada 89101
(T): (702) 641-6001
(F): (702) 641-6002
EMAIL: ayanez@noblesyanezlaw.com
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

Defendant, GARY LAMAR CHAMBERS (hereinafter “Chambers”), hereby incorporates by reference the statement of facts detailed in his original Motion in Limine. The State of Nevada (hereinafter “State”) filed its Opposition on March 2, 2016. The hearing on Defendant’s Motion and trial is currently set for July 7, 2016.

ARGUMENT

Inexplicably, the State argues in its Opposition that Chambers “has cited no authority, nor does any exist that the relevance of a conviction rests with the nature of the offense.” Opp., pg. 6, lns. 3-5. However, the State must not have carefully read Chambers’ Motion. Because if it had, it would have seen that he provided two Ninth Circuit cases which clearly hold that the “similarity between the past crime and the charged crime” is a factor a court should take into consideration in determining whether or not to admit past convictions. *See* Mot., pgs. 5-6.

For the State’s edification, and to respectfully remind the Court, Chambers’ argued in his Motion in Limine: “Similarity between prior convictions and current charges weighs against admissibility. On this point, the Ninth Circuit has explained:

To allow evidence of a prior conviction of the very crime for which a defendant is on trial may be devastating in its potential impact on a jury. . . . [T]here is a substantial risk that all exculpatory evidence will be overwhelmed by a jury’s fixation on the human tendency to draw a conclusion which is impermissible in law: because he did it before, he must have done it again.

U.S. v. Bagley, 772 F.2d 482, 488 (9th Cir. 1985).” *See* Mot., pg. 6.

Furthermore, a case actually cited to by the State in its Opposition explicitly provides the authority the State claims Chambers’ failed to deliver on this issue. *See Yates v. State*, 95 Nev. 446, 596 P.2d 239 (1979). Specifically, the Court in Yates held that “the nature of the underlying

1 offense by which impeachment is sought may affect the trial court's determination as to the
2 relevance." Yates, 95 Nev. at 450, 596 P.2d at 242.

3 Lastly, in its Opposition, the State tries to justify admission of Chambers' prior convictions
4 based on a misplaced "fairness" argument. The State argues that it "should not have it's [sic] hands
5 tied in presenting a case, wherein the Defendant has asserted to this Court that he will be adding
6 into the trial another element which the State must prove beyond a reasonable doubt." Opp., pg. 7,
7 Ins. 25-27. This "other element" the State refers to is apparently the issue of self-defense.
8

9 However, proving beyond a reasonable doubt that self-defense does not exist in this case is
10 far from "another element" the State must prove. To the contrary, it is part of the basic elements of
11 murder the State must prove. N.R.S. §200.010 defines murder as "the **unlawful** killing of a human
12 being." (emphasis added); *see also* Byford v. State, 116 Nev. 215, 243, 994 P.2d 700, 718-19
13 (2000) (J. Maupin, concurring) ("Once it has been established that a murder has been committed,
14 that is an unlawful killing with malice aforethought, the offense must then be classified by
15 degree."). Of course, if a killing is in self-defense, it is not unlawful. Therefore, whether a
16 defendant raises the issue of self-defense or not, the State cannot meet its burden of proving
17 murder without proving beyond a reasonable doubt that the killing was unlawful. In sum, the
18 State's "fairness" argument is meritless.
19

20 CONCLUSION

21 Based on the foregoing reasons, as well as those contained in his original Motion in
22 Limine, CHAMBERS respectfully requests that the Court grant his Motion.
23

24 DATED this 27th day of April, 2016.

25 By /s/ Abel Yanez
26 ABEL M. YANEZ, #7566
27 Nobles & Yanez Law Firm
28 324 South Third Street, Suite 2
Las Vegas, Nevada 89101
(T): (702) 641-6001
Attorney for Defendant

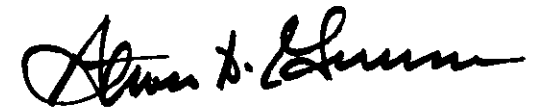
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing Reply to State’s Opposition to Defendant’s Motion in Limine was made this 27th day of April, 2016, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
Megan.Thomson@ccdancv.com

/s/ Kathy Karstedt
Secretary for Nobles & Yanez



CLERK OF THE COURT

1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MEGAN THOMSON
6 Chief Deputy District Attorney
7 Nevada Bar #011002
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 GARY LAMAR CHAMBERS,
13 #877763

14 Defendant.

CASE NO: C-13-292987-1

DEPT NO: II

15 NOTICE OF INTENT TO SEEK PUNISHMENT AS
16 A HABITUAL CRIMINAL

17 TO: GARY LAMAR CHAMBERS, Defendant; and

18 TO: ABLE YANEZ, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
20 207.010 and 207.012 as a violent habitual criminal in the event of a Felony convictions, the
21 STATE OF NEVADA will seek punishment of Defendant GARY LAMAR CHAMBERS, as
22 a habitual criminal in the event of a felony conviction in the above-entitled action.

23 That in the event of a felony conviction in the above-entitled action, the STATE OF
24 NEVADA will ask the court to sentence Defendant GARY LAMAR CHAMBERS as a
25 habitual criminal based upon the following felony convictions, to-wit:

26 1. That on or about 1990, the Defendant was convicted in the State of
27 Nevada, for the crime of Robbery (felony) in Case No. C93296.

1 2. That on or about 2003, the Defendant was convicted in the State of
2 Nevada, for the crime of Robbery (2 counts) and First Degree Kidnapping (1 count) (felony)
3 in Case No. C185775.


4 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
5 207.010, the STATE OF NEVADA will seek punishment of Defendant GARY LAMAR
6 CHAMBERS, as a habitual criminal in the event of a felony conviction in the above-entitled
7 action.

8 3. That on or about 1997, the Defendant was convicted in the State of
9 Nevada, for the crime of Larceny from Person (felony) in Case No. C142992

10 4. That on or about 1997, the Defendant was convicted in the State of
11 Nevada, for the crime of Larceny from Person (felony) in Case No. C142991.

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

15 BY

16 
17 MEGAN THOMSON
18 Chief Deputy District Attorney
19 Nevada Bar #011002

20 CERTIFICATE OF FACSIMILE TRANSMISSION

21 I hereby certify that service of Notice of Intent to Seek Punishment as a Habitual
22 Criminal, was made this 21st day of February, 2017, by Electronic Filing to:

23 ABLE YANEZ, ESQ.
24 702-641-6002

25 /s/ Stephanie Johnson
26 Secretary for the District Attorney's Office

27
28 13F11113X/rmj/L-4

AFFIDAVIT

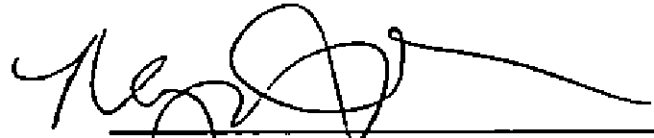
STATE OF NEVADA }
COUNTY OF CLARK } ss:

Megan Thomson, being first duly sworn, deposes and says:

1. That an Information was filed October 10, 2013.
2. That an offer was conveyed to current defense counsel including that the State had the right to argue for habitual criminal treatment on or before October 23, 2014.
3. A conversation was again had with defense counsel on May 18, 2016 via email, that the State was seeking treatment under the habitual criminal statute, specifically NRS 207.012.
4. That it was the undersigned Deputy's belief that a notice of habitual had been filed with the Court.
5. That the lack of filed notice was discovered on Sunday February 19, 2017.
6. That the State filed the notice as soon as possible thereafter.
7. That the Defendant and his counsel were informed and had notice that the State was seeking habitual criminal treatment in the event of a conviction for at least two years before the start of trial.
8. That the State seeks leave to file the Notice of Habitual on February 21, 2017, for good cause as there has been no prejudice to the Defendant.

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

Executed on 21 Feb 17
(Date)


MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002

13F11113X/rmj/L-4

ORIGINAL

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

FEB 22 2017

BY Shelly Landwehr
SHELLY LANDWEHR, DEPUTY

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY CHAMBERS,
#877763

Defendant.

CASE NO: C-13-292987-1

DEPT NO: II

NOTICE OF MOTION AND MOTION TO ADMIT PRELIMINARY HEARING
TRANSCRIPT

DATE OF HEARING:
TIME OF HEARING:

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Admit Preliminary Hearing Transcript.

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

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 II thereof, on , the day of February , 2017, at the hour of o'clock , or as soon thereafter as counsel may be heard.


C-13-292987-1
MOT
Motion
4626902



1 DATED this 22 day of February, 2017.

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

5 BY


6 MEGAN THOMSON
7 Chief Deputy District Attorney
8 Nevada Bar #11002

9 **STATEMENT OF THE CASE**

10 Gary Chambers, (hereinafter "Defendant") was charged by way of Amended Criminal
11 Complaint with one several felonies. On September 29, 2009, a preliminary hearing was
12 held in Justice Court, Department 5. Bridgette Graham testified at the preliminary hearing.
13 The court held Defendant to answer in District Court to charges alleged in the Amended
14 Criminal Complaint.

15 The State received an oral promise to appear from Brigitte Graham and then on
16 Tuesday February 21, 2017 she told the State to quit contacting her and she would not
17 appear. A warrant for her arrest has been sought.

18 **ARGUMENT**

19 In the instant case, Defendant has been charged with one (1) count of Murder with Use
20 of a Deadly Weapon, one (1) count of Attempt Murder with Use of a Deadly Weapon, and (1)
21 one count of Battery with Use of a Deadly Weapon, and (1) count of Burglary While in
22 Possession of a Deadly Weapon. Testimony given during preliminary hearing on a criminal
23 matter may be used at trial if 1) defendant was represented by counsel at the preliminary
24 hearing, 2) that counsel cross-examined the witness; and 3) that the witness is shown to be
25 actually unavailable at the time of trial. Hernandez v. State, 124 Nev. 60, 188 P.3d 1126, 1130
26 (2008). The State must make reasonable efforts to procure a witness's attendance at trial
27 before that witness may be declared unavailable. Id. at 1131. In the instant case, Bridgette
28 Graham testified under oath and was cross-examined by defense counsel at preliminary
hearing.

1 The State hopes to call Bridgette Graham to testify at trial and is currently making
2 reasonable efforts to secure his presence at trial through all means available, including seeking
3 a material witness warrant. The State has been able to ensure contact and appearance with the
4 witness through prior settings and the only contact information she will provide is an email
5 address. The State is seeking leave to use the preliminary hearing transcript, pursuant to
6 Hernandez v. State because the witness gave an oral promise to appear and did not appear on
7 the date and time of the subpoena. She contacted the State and said she was in Texas for a
8 funeral and would return. When contact was made with her on the evening of the date of the
9 subpoena she told the State, via email, that she would not come to trial. When she was told a
10 warrant would be sought she claimed she would appear. The State will continue to make
11 reasonable efforts to secure Bridgette Graham's appearance for trial and will supplement the
12 record as needed to show said efforts.

13 **CONCLUSION**

14 Based on the foregoing, the State respectfully requests that this Court GRANT the State
15 of Nevada's Motion to Admit Preliminary Hearing Testimony of Bridgette Graham.

16
17 DATED this 22 day of February, 2017.

18
19 STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

20
21 BY 

22 MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002
23
24
25
26

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28

ORIGINAL

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRYAN SCHWARTZ
Deputy District Attorney
Nevada Bar #13244
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

FEB 24 2017

BY Kory Schlitz
KORY SCHLITZ, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

C-13-292987-1
MOT
Motion
4626728



THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY CHAMBERS,
#877763

Defendant.

CASE NO: C-13-292987-1

DEPT NO: II

NOTICE OF MOTION AND MOTION TO USE AUDIOVISUAL TESTIMONY

DATE OF HEARING: 2/24/17
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through BRYAN SCHWARTZ, Deputy District Attorney, and files this Notice Of Motion And Motion To Use Audiovisual Testimony.

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

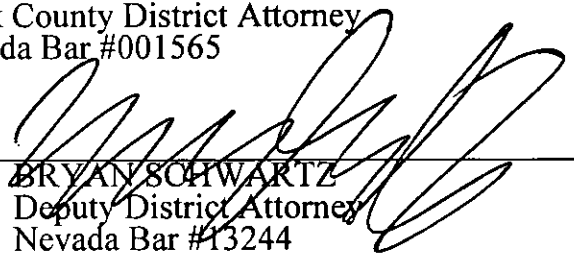
NOTICE OF HEARING

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 II thereof, on Friday, the 24th day of February, 2017, at the hour of 9:00 o'clock AM, or as soon thereafter as counsel may be heard.

1 DATED this 24th day of February, 2017.

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

5 BY

6 
BRYAN SCHWARTZ
7 Deputy District Attorney
8 Nevada Bar #13244

9 **POINTS AND AUTHORITIES**

10 **STATEMENT OF THE CASE**

11 On February 14, 2017, the parties appeared for calendar call and this Court set
12 Defendant's trial to begin on February 21, 2017. On February 23, 2017, the jury was sworn
13 in and the State began presenting its case in chief.

14 On February 24, 2017, the State files the instant Motion to Use Audiovisual Testimony.

15 **ARGUMENT**

16 **I. THE STATE REQUESTS THAT CYNTHIA LACEY BE ALLOWED TO
17 TESTIFY VIA AUDIOVISUAL TECHNOLOGY**

18 In 2013, the Legislature enacted provisions that broadened an already broad principle -
19 that witnesses should be allowed to testify through audiovisual means. The law actually
20 encourages such presentation of witnesses to the extent that it saves resources and that it is
21 feasible.

22 **RULES OF THE NEVADA SUPREME COURT**

23 **PART IX. RULES GOVERNING APPEARANCE BY
24 AUDIOVISUAL TRANSMISSION EQUIPMENT**

25 **(B) RULES GOVERNING APPEARANCE BY
26 SIMULTANEOUS AUDIOVISUAL TRANSMISSION
27 EQUIPMENT FOR CRIMINAL PROCEEDINGS**

28 Rule 1. Definitions. In these rules, unless the context
or subject matter otherwise requires:

1. "Simultaneous audiovisual transmission
equipment" means transmission accomplished through the use of:
 - (a) One or more cameras at a location other than the
courtroom that depict the witness in real time so that the parties,

1 their counsel, the court, and the jury, if any, can see the witness to
2 the same or greater extent than they would see if the witness was
3 present in the courtroom; and

4 (b) One or more cameras in the courtroom that depict
5 the parties, their counsel, the court, and the jury, if any, in real time
6 on a screen visible to the witness who is at another location.

7 2. "Court" means a proceeding before a judicial
8 officer, magistrate, judge, or master for all criminal proceedings
9 in the State of Nevada.

10 3. "Party" shall include the plaintiff, defendant,
11 petitioner, respondent, applicant, and adverse party and also apply
12 to such party's attorney of record.

13 4. "Witness" shall mean a party or other person
14 testifying in the court proceeding.

15 5. "Shall" is mandatory, and "may" is permissive.

16 Rule 2. Policy favoring simultaneous audiovisual
17 transmission equipment appearances. The intent of this rule is to
18 promote uniformity in the practices and procedures relating to
19 simultaneous audiovisual transmission appearances. **To improve
20 access to the courts and reduce litigation costs, courts shall
21 permit parties, to the extent feasible, to appear by
22 simultaneous audiovisual transmission equipment at
23 appropriate proceedings pursuant to these rules.**

24 Rule 3. Application. **These rules apply to all
25 criminal cases except juvenile and appellate proceedings.** A
26 court may follow the procedures set forth in these rules or in NRS
27 50.330 or NRS 171.1975.

28 Rule 4. Personal appearances; appearance by
simultaneous audiovisual transmission equipment.

1 Except as set forth in Rule 3 and Rule 4(2), a party
or witness may request to appear by simultaneous audiovisual
transmission equipment in all other criminal proceedings or
hearings where personal appearance is required. Parties may
stipulate to appearance by simultaneous audiovisual transmission
equipment, but the stipulation must be approved by the court.

2 Except as provided in NRS 50.330, **the personal
appearance of a party or a party's witness is required at trial
unless:**

(a) The parties stipulate to allow the party or the party's
witness to appear by simultaneous audiovisual transmission
equipment, the defendant expressly consents to the use of
simultaneous audiovisual transmission equipment, and the court
approves the stipulation; or

(b) **The court makes an individualized
determination, based on clear and convincing evidence, that
the use of simultaneous audiovisual transmission equipment
for a particular witness is necessary and that all of the other
elements of the right of confrontation are preserved.**

Moreover, pursuant to NRS 171.1975 and 172.138, the State or defense may present
live testimony of a witness by means of audiovisual technology at preliminary hearing and

1 grand jury proceedings. Both statutes refer to three situations when the court *must* allow the
2 witness to testify via audio visual technology:

- 3 1. Witness resides more than 100 miles away
- 4 2. Witness is unable to attend because of a medical condition
- 5 3. Good cause otherwise exists.

6 Both statutes also reference that a certified court reporter be present to transcribe the
7 testimony, and prior to testifying, the witness must sign a written declaration wherein the
8 witness acknowledges that she is subject to the jurisdiction of the Nevada courts and may be
9 subject to criminal prosecution regarding any crime in connection with her testimony (i.e.
10 perjury), and finally that she consents to such jurisdiction. Lastly, the audiovisual technology
11 must allow the witness to be (1) clearly heard and seen, and (2) examined and cross-examined.

12 Here, Cynthia Lacey is a necessary witness for the State. See State's Exhibit 1,
13 Affidavit from Chief Deputy District Attorney Megan Thomson (hereinafter "Exhibit 1"). She
14 is the only witness who observed Defendant with a firearm days before the crime. Moreover,
15 she is the only person who the Defendant expressed his specific intent to rob Lisa.
16 Additionally, Cynthia Lacey now lives more than 100 miles away, and is unable to attend the
17 hearing because she recently had a heart attack and the stress of testifying will be too harmful
18 to her health. Id. The State has done everything in its power to secure her presence for
19 testimony during this trial. Id. Also, while NRS 171.1975 and 172.138 directly apply to
20 preliminary hearings and grand jury testimony, Cynthia Lacey has signed a declaration/waiver
21 consistent with these statutes. See Exhibit 2, Written Waiver of Use of Audiovisual for Jury
22 Trial Testimony, signed by Cynthia Lacey.

23 Moreover, the Defendant is not prejudiced by the use of audiovisual technology for
24 Cynthia Lacey's testimony. Defendant will still have the same ability to cross-examine her
25 under oath, and the jury will be able to observe her physical appearance and demeanor while
26 answering questions to assist in their evaluation of her credibility. As such, the Confrontation
27 Clause rights held by the Defendant would not be abridged in any way by presenting Cynthia
28

1 Lacey through audiovisual means. The State will work with District Court I.T. to present her
2 testimony through approved audiovisual technology.

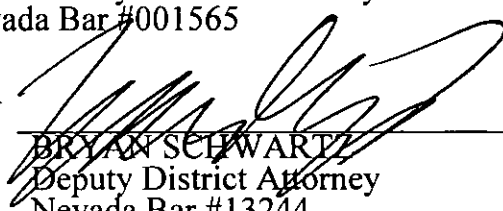
3 Lastly, the Eighth Judicial District Courts have the technology and software in place
4 for such a request. The Courts even have specific forms to be filed to aid in facilitating and
5 scheduling audiovisual testimony, which have been completed in this case, and signed by
6 Cynthia Lacey. See Exhibit 3, Audiovisual Transmission Request and Witness Consent Form.
7 Additionally, numerous Eighth Judicial District Courts have previously allowed parties to use
8 audiovisual technology during the course of a jury trial. See *State of Nevada v. Eligio Torres*¹,
9 C-15-311311-1, Department IX; *State of Nevada v. Danniell Boone Morgan*², C-15-308728-1,
10 Department XI.

11 As such, the State requests that this Court allow Cynthia Lacey to testify using
12 audiovisual technology from Maricopa County.

13 DATED this 24 day of February, 2017.

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

17 BY


18 BRYAN SCHWARTZ
19 Deputy District Attorney
20 Nevada Bar #13244

21 CERTIFICATE OF ELECTRONIC SERVICE

22 I hereby certify that service of Notice of Motion and Motion To Use Audio/Visual
23 Testimony was made this 24th day of February, 2017, by electronic mail to:

24 ABEL YANEZ
25 ayanez@noblesyanezlaw.com

26 BY: /s/Bryan Schwartz
27 BRYAN SCHWARTZ
28 Secretary for the District Attorney's Office

¹ The victim was present in Clark County, however he was in the hospital and unable to leave to attend court.

² The victim was located in Oklahoma. She refused to travel and had school during the court dates.

AFFIDAVIT

STATE OF NEVADA }
COUNTY OF CLARK } ss:

MEGAN THOMSON, being first duly sworn, deposes and says:

1. That the State issued a subpoena for Cynthia Lacey for previous hearings in this case, and was always unsuccessful in locating her.
2. For the current trial setting of February 21, 2017, the State issued a subpoena for Cynthia Lacey and called a telephone number previously associated with her. The State received information that Cynthia Lacey no longer lived in Nevada, and no longer had this phone number. However, a possible address in Utah was given to the State by the call taker.
3. That the State contacted a detective in Ogden, Utah, who then responded to the reported address, and confirmed it was a 400 unit apartment complex. No apartment number was provided to the State.
4. The detective in Utah spent approximately one week attempting to locate Cynthia Lacey using her known identifying information, however he was unsuccessful in locating her.
5. On the evening of February 21, 2017, the State located a potential employer of Cynthia Lacey, and on the following morning of February 22, 2017, contact was made with the employer, who confirmed Cynthia Lacey was in Phoenix, Arizona.
6. Later the same day, Cynthia Lacey was served with a subpoena to appear and an order compelling appearance within her own jurisdiction, and she indicated to the Maricopa County district attorney investigator that she was not willing to travel.
7. At the hearing on February 24, 2017, in Maricopa County, Cynthia

1 Lacey explained to the court that the stress of complying was too much
2 for her health because she had recently had a heart attack.

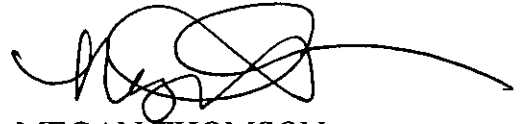
3 8. The court in Maricopa County found this to be a sufficient justification
4 and did not require her to travel to Clark County for her testimony on
5 February 27, 2017. However, the Court ordered her to provide
6 testimony via audiovisual technology.

7 9. Based upon these efforts, Cynthia Lacey is outside the State's ability to
8 require or procure her attendance. She is a necessary witness in that she
9 is the only witness to whom the Defendant expressed his specific
10 intention to rob Lisa Papoutsis, a named victim in the case, and who is
11 able to say that he had a firearm shortly before the crime.

12 I declare under penalty of perjury under the law of the State of Nevada that the
13 foregoing is true and correct.

14
15 Executed on

24 Feb 17
(Date)


MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #11002

WRITTEN WAIVER OF USE OF AUDIOVISUAL FOR
JURY TRIAL TESTIMONY
(NRS 171.1975, 172.138)

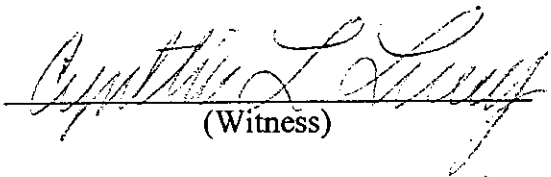
I, Cynthia Lacey, have been advised that the District Attorney intends to use my audiovisual testimony for the jury trial against Gary Chambers #877630 pertaining to the offense(s) of: Burglary While In Possession of a Firearm, Murder with Use of a Deadly Weapon, Attempt Robbery with Use of a Deadly Weapon, Attempt Murder with Use of a Deadly Weapon, Battery with Use of a Deadly Weapon, and Possession of a Firearm by Ex-Felon.

I have been further advised that use of audiovisual technology to present live testimony is permissible in certain circumstances, which comply with Supreme Court Rule IX(B), NRS 171.1975 and 172.138ⁱ.

I solemnly swear under penalty of perjury that the testimony that I am about to give before this district court and jury shall be the truth, the whole truth, and nothing but the truth, so help me God.

I waive any jurisdictional limitations for prosecution of violation of my oath or any other crime in connection with my testimony.

Dated this 24th day of February, 2017.


(Witness)

ⁱ NRS 171.1975 Use of audiovisual technology to present live testimony at preliminary examination: Requirements

1. If a witness resides more than 100 miles from the place of a preliminary examination or is unable to attend the preliminary examination because of a medical condition, or if good cause otherwise exists, the magistrate must allow the

witness to testify at the preliminary examination through the use of audiovisual technology.

2. If a witness testifies at the preliminary examination through the use of audiovisual technology:
 - (a) The testimony of the witness must be transcribed by a certified court reporter; and
 - (b) Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the magistrate, which acknowledges that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction.
3. Audiovisual technology used pursuant to this section must ensure that the witness may be:
 - (a) Clearly heard and seen; and
 - (b) Examined and cross-examined.
4. As used in this section, "audiovisual technology" includes, without limitation, closed-circuit video and videoconferencing.

NRS 172.138 Use of audiovisual technology to present live testimony before grand jury: Requirements.

1. If a witness resides more than 100 miles from the place of a grand jury proceeding or is unable to attend the grand jury proceeding because of a medical condition, or if good cause otherwise exists, the district judge supervising the proceedings of the grand jury must allow a witness to testify before the grand jury through the use of audiovisual technology.
2. If a witness testifies at the grand jury proceeding through the use of audiovisual technology:
 - (a) The testimony of the witness must be transcribed by a certified court reporter appointed pursuant to NRS 172.215 in accordance with the provisions of NRS 172.225; and
 - (b) Before giving testimony, the witness must be sworn and must sign a written declaration, on a form provided by the district judge, which acknowledges that the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction.

-
3. Audiovisual technology used pursuant to this section must ensure that the witness may be:
 - (a) Clearly heard and seen; and
 - (b) Examined
 4. As used in this section, "audiovisual technology" includes, without limitation, closed-circuit video and videoconferencing.

1 ATEAR

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 * * *

6 THE STATE OF NEVADA,
7 Plaintiff,

CASE NO: C-13-292987-1

DEPT. NO. II

8 vs.

9 GARY LAMAR CHAMBERS, #877763
10 Defendants.

Audiovisual Transmission
Equipment Appearance Request

11
12 Pursuant to Rule 4 of the Nevada Supreme Court's RULES GOVERNING
13 APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, the State of Nevada
14 requests that Cynthia Lacey be permitted to testify by remote court appearance via video
15 conference for the trial or evidentiary hearing (circle one) scheduled to begin on February 21,
16 2017.

17
18 Date: February 24, 2017

19 Time: 2pm

20 Courtroom No.: 127

21
22 Cynthia Lacey by executing the attached Audiovisual Transmission
23 Equipment Appearance Consent, agrees to be bound by the oath given by the Court Clerk,
24 Eighth Judicial District Court and to be subject to the jurisdiction of this Court for purposes
25 related to this testimony.

26 The State of Nevada agrees to provide all exhibits to Cynthia Lacey in advance in the
27 same form as have been or will be submitted to the Court Clerk.
28

1 Any objection to this request must be made in writing within two (2) judicial days of
2 service of this request.

3 The State of Nevada agrees that by submitting this request, the party and witness (or their
4 respective representatives) will test and verify the functionality of video conference connectivity
5 with the Court's IT department at least two (2) judicial days before the scheduled appearance.
6

7 Contact information for the test is:

8 Name of Counsel/Party: Ann Pearson, paralegal

9 Email Address: pearsona@mlad.maricopa.gov

10 Phone Number: 602-372-2995, c: 602-578-8348

11 Name of Witness: Cynthia Lee Lacey

12 Email Address: _____

13 Phone Number: 602-599-3133

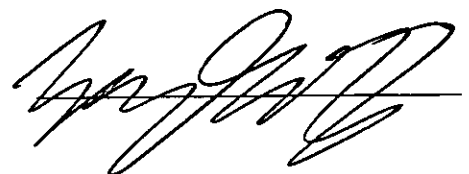
14
15 (Counsel/party) certifies that the video connection has been successfully tested at
16 http://bluejeans.com/111, prior to submitting this application.

17
18 Dated this ___ day of ____, 2016.

19 _____
(Counsel/Party)

20
21 **Certificate of Service**

22 I hereby certify, that on the date filed, this Audiovisual Transmission
23 Equipment Appearance Request were served on the parties identified on Wiznet's e-service list
24 in open court.
25 ~~(or alternate method)~~.

26
27
28 

1 ATEAC

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 ***

7 THE STATE OF NEVADA,
8 Plaintiff,

CASE NO.: C-13-292987-1

DEPT. NO. II

9 vs.

10 GARY LAMAR CHAMBERS, #877763
11 Defendants.

**Audiovisual Transmission
Equipment Appearance Consent**

12
13 By making this request for Audiovisual Transmission Equipment Appearance, the
14 undersigned agrees to be bound by the oath given by the Court Clerk over the video conference
15 connection and to be subject to the jurisdiction of this Court for purposes related to this
16 testimony.
17

18
19 Print Name: Cynthia Lacey

20 Date: 2-24-2017

21 Email Address: CynthiaLacey89145@gmail.com

22 Phone Number: (602) 599-3133

23
24 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
and correct.

25 Executed on February 24, 2017

26 Cynthia Lacey
27 (signature)

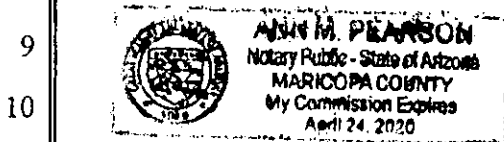
1 OR

2 County of Maricopa)
3) ss
4 State of Arizona)

5 SUBSCRIBED AND SWORN TO BEFORE
6 ME THIS 24th day of February, 2016.

7 Ann M. Pearson
8 Notary Public in and for said County and State

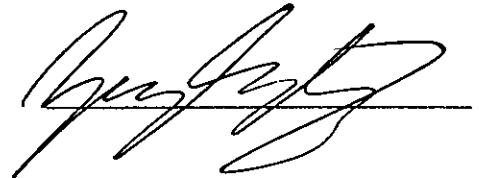
9 My Commission Expires: 4/24/2020



Certificate of Service

11 I hereby certify, that on the date filed, this Audiovisual Transmission Equipment
12 Appearance Consent were served on the parties ~~identified on Wiznet's e-service list (or alternate~~
13 in open court
14 method).

15
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WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

CERTIFIED COPY

Catherine Leisch
Deputy County Attorney
Bar ID No. 010345
Mcaoexec@mcao.maricopa.gov
Firm ID No. 00032000
Maricopa County Attorney
301 W. Jefferson, 2nd Floor
Phoenix, AZ 85003
Phone 602-506-7422

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA, IN THE)	
MATTER OF THE APPLICATION)	
OF THE STATE OF NEVADA FOR)	
AN ORDER REQUIRING ONE)	
)	
CYNTHIA LACEY	)	CR 2017-004863-001 DT
)	
TO APPEAR AS A WITNESS	)	ORDER DIRECTING WITNESS
BEFORE THE EIGHTH JUDICIAL	)	TO APPEAR AND TESTIFY IN
DISTRICT COURT OF THE STATE	)	CLARK, NEVADA
OF NEVADA, COUNTY OF CLARK)	
_____)	

WHEREAS, IT APPEARING to the satisfaction of this court that
CYNTHIA LACEY, is a necessary and material witness for the State of Nevada, in
Case No. C-13-292987-1, entitled State of Nevada v. Gary Chambers.

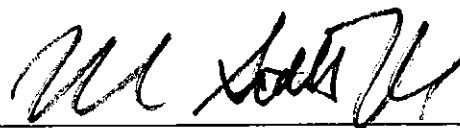
NOW THEREFORE IT IS HEREBY ORDERED AND DIRECTED that
the said CYNTHIA LACEY, appear before the Eighth Judicial District Court of the
State of Nevada, in and for the County of Clark, located in the Eighth Judicial District

AA190

via skype the
Court, 200 Lewis Avenue, in the City of Las Vegas, Nevada, on or about the 27th day
of February, 2017, at 1:00p.m., for approximately three (3) days, and tender her
presence as witness for the State of Nevada in the above stated cause.

FURTHERMORE, failure without good cause to appear as directed may
subject the said witness to citation for contempt of court and, if convicted,
imprisonment and/or a fine.

DATED this 24th day of February, 2017.



JUDGE OF THE SUPERIOR COURT OF
THE STATE OF ARIZONA, IN AND
FOR THE COUNTY OF MARICOPA

The foregoing instrument is a full, true and correct copy
of the original document.

Attest 2124 20 17
MICHAEL K. JEANES, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.

By E. Madis Deputy

FEB 27 2017

PINU

BY: Louisa Garcia
LOUISA GARCIA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA
VS
GARY CHAMBERS

CASE NO.: C-13-292987-1

DEPARTMENT 2

STATE'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 27th day of February, 2017.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Louisa Garcia
Louisa Garcia, Deputy Clerk of the Court

C-13-292987-1

PINU

Proposed Jury Instructions Not Used At Tri:
4827019



AA192


3

It is a killing upon a sudden quarrel or heat of passion, caused by a provocation sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

Voluntary Manslaughter is the unlawful killing of a human being, without malice aforethought and without deliberation or premeditation.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been sufficient time for a cool head to prevail and the voice of reason to be heard, the killing shall be attributed to deliberate revenge and determined by you to be murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.

Not Guilty


NRS §200.040

NRS §200.050

NRS §200.060

INSTRUCTION NO. _____

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness. The fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

Not Guilty: SX-P.
AKS

FEB 27 2017

BY: Louisa Garcia
LOUISA GARCIA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * *

STATE OF NEVADA
VS
GARY CHAMBERS

CASE NO.: C-13-292987-1

DEPARTMENT 2

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 27th day of February, 2017.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: Louisa Garcia
Louisa Garcia, Deputy Clerk of the Court

C-13-292987-1
PINU
Proposed Jury Instructions Not Used At Tri:
4627024



AA195

INSTRUCTION NO. _____

Where a person, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of the person's own free will, is attacked by an assailant and it is necessary for one to take the life of the person's assailant to protect one's own, then the person need not flee for safety, but has the right to stand one's ground and slay the person's adversary.

If one, as a reasonable person, believes that one is about to be killed or seriously injured by an assailant one does not have a duty to retreat unless one is the original aggressor.

Denick
AJL

State v. Grimmet, 33 Nev. 531, 112 P. 273 (1910); Culverson v. State, 106 Nev. 484, 797 P.2d 238 (1990).

INSTRUCTION NO. _____

Self defense is justified when the defendant uses reasonable force to protect himself from attack. Reasonable necessary force is what the defendant reasonably believes his safety requires, and not that amount which one would decide necessary with the benefit of 20/20 hindsight.

Denny.
R/S

(Giordano v. Spencer, 111 Nev. 39 (1995); U.S. v. Saenz, 179 F.3d 686, 688-89 (9th Cir. 1999)).

If the evidence in this case is subject to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the Defendant, and the other to innocence, it is your duty to adapt the interpretation which will admit the Defendant's innocence and reject that which points to guilt.

You will notice the rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, even if the reasonable deduction points to the Defendant's guilt, the entire proof must be beyond a reasonable doubt to support a verdict of guilty.

Denied
HS

Crane v. State, 88 Nev. 684, 504 P.2d 12 (1972); Bails v. State, 92 Nev. 95 (1976).

ORIGINAL
AFFIDAVIT

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

FEB 27 2017

BY: *Shelly Landwehr*
SHELLY LANDWEHR, DEPUTY

C292987

1
2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:
4

5 Megan Thomson, being first duly sworn, deposes and says:

- 6 1. That the State has exercised every available avenue to locate Bridgette
7 Graham.
8 2. After a subpoena was served upon her and she promised to appear an
9 email exchange occurred between her and the prosecution, attached as
10 Exhibit 1, including the fact that she was forwarded the Order signed by
11 the Court that she is a material witness and is to be arrested.
12 3. An internet search was conducted for any obituary listing her as a
13 surviving relative. None was located.
14 4. A material witness warrant was signed and filed on February 22, 2016.
15 a. Contact has been made with the area command around where she
16 has been recently seen and asked to keep an eye out for her.
17 b. A notification to contact a Detective has been put into her SCOPE to
18 ensure the warrant is not overlooked if she is stopped.
19 5. The following steps were taken to attempt to locate her:
20 a. An investigation regarding her children to determine what schools
21 they attend and/or addresses they list, however her children have
22 been formally adopted into other families.
23 b. Welfare was contacted for her phone number and address, the phone
24 number was searched through the jail call system which reflects
25 when it is called a male answers the phone every time.
26 c. The address, last confirmed with welfare on February 1, was
27 researched and it is the same address where we have attempted to
28 contact her several times in the past, which she has used for several

C-13-292987-1
AFFT
Affidavit
4827025



E:\GARY CHAMBERS\ATT TO LOCATE BRIDGETTE.DOCX

AA199

1 years and where she was served with an order regarding Child
2 Support in May 2016 in child support case number R15-187297-R.
3 That address is 4193 Lady Lucille Ct, Las Vegas

- 4 i. A records check on the subscriber for power at this address
5 revealed a Sharon Russell.
- 6 ii. The occupants of the residence indicated they have not seen
7 Brigitte in about three weeks but that she was seen at the
8 Subway and she hops from couch to couch in the
9 neighborhood.
- 10 d. Her Facebook account was located and did not provide any objective
11 information. There were no postings regarding a death in the family
12 and her most recent post was from February 18, 2017.
- 13 e. A PEN Register was prepared for Facebook, signed by the Court on
14 February 23, 2017 and served on Facebook. She logged on to the
15 Facebook on February 24, using a computer which has internet
16 service through Cox. A subpoena was been issued for the address
17 associated to that IP address.
- 18 i. The address associated to the IP address was identified on
19 February 25, 2017 as being on E. Monroe. A Sgt from
20 LVMPD went to the house and asked for Bridgette and was
21 given permission to look around the home. It was observed
22 that she was not there.
- 23 ii. Several messages were exchanged between Bridgette and one
24 of the occupants via facebook on February 27. The content is
25 unknown.
- 26 iii. At the time of this affidavit she has not used an internet
27 source which is traceable to a specific location again.