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Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Docket 74071 Document 2018-13789

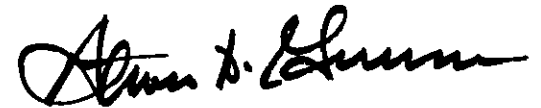
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CLERK OF THE COURT

1 **OPPS**
STEVEN B. WOLFSON
2 Clark County District Attorney
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6 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 **JOSE AZUCENA,**
14 **#7037259**)

15 Defendant.)

CASE NO: **C-17-321044-1**

DEPT NO: **II**

16
17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER**
18 **DEFENDANT'S MOTION TO COMPEL PRODUCTION OF**
DISCOVERY AND BRADY MATERIAL

19 DATE OF HEARING: **APRIL 4, 2017**
TIME OF HEARING: **9:00 A.M.**

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,
21 through STACEY L. KOLLINS, Chief Deputy District Attorney, and hereby submits the
22 attached Points and Authorities in State's Opposition to Defendant's Motion to Reconsdier
23 Defendant's Motion to Compel Production of Discovery and Brady Material.

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

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT PERTINENT TO THE INSTANT MOTION**

3 Defendant's Motion to Reconsider merely repeats the same seventy-two (72) point
4 request as his original motion. The Motion to Reconsider also mistates the State's Opposition
5 to the seventy-two (72) point request. Accordingly, the State is refiling its Opposition.
6 Moreover, the State has complied with the Court's Order, and has provided the information in
7 regards to witness fees and offers for counseling.

8 **LEGAL ARGUMENT**

9 **I. GENERAL LAW RELATED TO DISCOVERY**

10 **A. The Court Can Only Compel “Discovery” Under The Nevada Revised**
11 **Statutes**

12 Under Common Law, a defendant has no right of discovery. State v. Wallace, 399 P.2d
13 909, 97 Ariz. 296 (1965). This, of course, can be superseded by statutory enactment and that
14 is the case in Nevada. Regarding the law of discovery in the State of Nevada, NRS 174.235,
15 *et. seq.* controls. The Nevada Supreme Court has held that even an accused’s statement is not
16 constitutionally compelled through pre-trial discovery. Mears v. State, 83 Nev. 3, 7, 422 P.2d
17 230, 232 (1967), Thompson v. State, 93 Nev. 342, 565 P.2d 1011 (1977).

18 In Franklin v. Eighth Judicial District Court, 85 Nev. 401, 455 P.2d 919 (1969), the
19 Nevada Supreme Court held that the lower court erred in granting defendant’s Motion to
20 Discovery, inspect and copy statements of all persons to be called by the prosecution as
21 witnesses at trial, since NRS 174.245 does not authorize discovery of inspection of statements
22 made by State witnesses or` perspective State witnesses to agents of the State. Nor does the
23 defendant enjoy a constitutional right to discover them. With regard to the discovery statutes
24 previously alluded to, the Court stated that:

25 “Those provisions (NRS 174.235-174.295) represent the legislative
26 intent with respect to the scope of allowable pre-trial discovery and
are not lightly to be disregarded.”

27 Id.

28 //

1 From the aforementioned, it is clear that Nevada's discovery statutes are to be strictly
2 construed and adhered to since no Common Law right of discovery existed. It should,
3 therefore, also be clear that the defendant's motion, so far as it exceeds the requirements of
4 NRS 174.235, *et. seq.*, must be denied.

5 NRS 174.235 outlines what discovery is to be provided by the State of Nevada. It
6 includes:

7 1. Written or recorded statements or confessions made by the
8 defendant or any witness the State intends to call during the case
in chief of the State, within the custody of the State or which the
State can obtain by an exercise of due diligence. (1)(a).

9 2. Results or reports of physical or mental examinations,
10 scientific tests or scientific experiments made in connection to the
case, within the control of the State, or which the State may learn
of by an exercise of due diligence. (1)(b).

11 3. Books, papers, documents, tangible objects which the State
12 intends to introduce during its case in chief, within the possession
of the State, or which the State may find by an exercise of due
13 diligence. (1)(c).

14 The statute makes clear the defense is not entitled to any internal report, document or
15 memorandum prepared by the State in connection with the investigation or prosecution of the
16 case. (2)(a). Furthermore, the defense is not entitled to any report or document that is
17 privileged.

18 **II. BRADY MATERIAL AND ITS PROGENY**

19 **A. Brady And Its Progeny Does Not Authorize The Court To Order Discovery.** 20 **They Are Remedies If The State Fails To Disclose An Item Which Is Found** 21 **To Have Been Required To Be Disclosed Post Trial**

22 The State has an obligation to disclose exculpatory evidence pursuant to Brady v.
23 Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963). Giglio v. United States, 405 U.S. 150, 92 S. Ct.
24 763 (1972), requires that certain impeaching material be disclosed as well. The rule of Brady
25 v. Maryland, 373 U.S. 83 (1963), which requires the State to disclose to the defendant
exculpatory evidence, is founded on the constitutional requirement of a fair trial. Brady is not
26 a rule of discovery, however. As the Supreme Court held in Weatherford v. Bursy, 429 U.S.
27 545, 559, 97 S. Ct. 837, 846 (1977):

28 //

1 There is no general constitutional right to discovery in a criminal case,
2 and Brady did not create one... '[t]he Due Process Clause has little to
3 say regarding the amount of discovery which the parties must be
 afforded....' Wardius v. Oregon, 412 U.S. 470, 474, 93 S. Ct. 2208,
 2212, 37 L.Ed.2d 82 (1973).

4 In addition, Brady does not require the State to conduct trial preparation and
5 investigation on behalf of the defense. The obligation is to produce exculpatory information
6 which the defense would not be able to obtain itself through an ordinary exercise of diligence.

7 While defense attorneys routinely claim they need to be provided the information in
8 order to conduct the investigation to determine if there is any exculpatory information; that is
9 simply not the law. In the Ninth Circuit, the obligation for the prosecution to examine
10 information is triggered by a defense request with no requirement that the defense make a
11 showing that the information is likely to contain helpful information. United States v.
12 Henthorn, 931 F.2d 29, 31 (9th Cir. 1990) (holding that the "government is incorrect in its
13 assertion it is the defendant's burden to make an initial showing of materiality," rather the
14 "obligation to examine the files arises by virtue of making a demand for their production");
15 United States v. Santiago, 46 F.3d 885, 895 (9th Cir. 1995) ("[u]nder Henthorn, the government
16 has a duty, upon defendant's request for production, to inspect for material information the
17 personnel records of federal law enforcement officers who will testify at trial, regardless of
18 whether the defense has made a showing of materiality") *accord* Sonner v. State, 112 Nev.
19 1328, 930 P.2d 707 (1996)(requiring materiality before a review of a police officer's personnel
20 file.).

21 **B. The State Makes The Determination At Its Own Peril If It Will Disclose The**
22 **Information, Not The Defense Or The Court**

23 This, of course, does not mean that files are produced for the defense. Henthorn
24 explains that following that examination, "the files need not be furnished to the defendant or
25 the court unless they contain information that is or may be material to the defendant's case."
26 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
27 Brady material. If the prosecutor is unsure, the information should be provided to the court
28 for review. As the court explained:

1 We stated that the government must ‘disclose information favorable
2 to the defense that meets the appropriate standard of materiality
3 If the prosecution is uncertain about the materiality of information
4 within its possession, it may submit the information to the trial court
for an in camera inspection and evaluation. . . .’ As we noted in Cadet,
the government has a duty to examine personnel files upon a
defendant’s request for their production.

5 Id. at 30-31 (internal citation omitted). Despite this procedure, Defendant’s routinely request
6 the Court to order production of information to them, or to the Court. It is not the Court’s
7 responsibility under the Constitution. It is the prosecution’s responsibility.

8 Moreover, Brady and its progeny are remedies **post-trial** for the prosecution’s failure
9 to perform its responsibility. Brady does not support the defense’s request to conduct an
10 investigation independent of the prosecution, or to ensure the prosecution completes its duty.

11 **III. TIMING OF DISCLOSURES**

12 **A. True Brady Material**

13 Traditionally, Brady material is information which indicates that Defendant did not
14 commit the crime, or his sentence should be less based upon culpability. The State’s duty
15 under Brady is ongoing. When reviewing cases on appeal, however, courts decide allegations
16 of tardy Brady disclosures according to the facts surrounding the disclosure and if the alleged
17 Brady information was used in the trial. The Ninth Circuit has recognized that “Brady does
18 not necessarily require that the prosecution turn over exculpatory material before trial. To
19 escape the Brady sanction, disclosure ‘must be made at a time when [the] disclosure would be
20 of value to the accused.’” United States v. Gordon, 844 F.2d 1397, 1403 (9th Cir. 1988). With
21 this precedent, the Ninth Circuit has typically found no prejudice when alleged Brady
22 information was disclosed at some point before trial. Notwithstanding, whenever the State is
23 in possession of true Brady material, it is the practice of the undersigned to immediately turn
24 over such information.

25 **B. Impeachment Material**

26 From Brady, a line of cases related to the credibility of testifying witnesses, the Court
27 established rules and requirements for impeachment material, or Giglio material. The right to
28 impeach witnesses is based on the Confrontation Clause of the constitution. The United States

1 Supreme Court has held that the Confrontation Clause is not “a constitutionally compelled
2 right of pretrial discovery.” Pennsylvania v. Ritchie, 480 U.S. 39, 52, 107 S. Ct. 989, 999
3 (1987). Instead, the right to confrontation is a trial right, “designed to prevent improper
4 restrictions on the types of questions that defense counsel may ask during cross-examination.”
5 It “does not include the power to require the pretrial disclosure of any and all information that
6 might be useful in contradicting unfavorable testimony.” It guarantees the opportunity for
7 effective cross-examination, “not cross-examination that is effective in whatever way, and to
8 whatever extent the defense might wish.” Id. at 53, 107 S. Ct. 999, *citing* Delaware v.
9 Fensterer, 474 U.S. 15, 20, 106 S. Ct. 292, 294 (1985).

10 Almost universally, courts have held that there is no Giglio obligation if the witness
11 does not testify.¹ *See* United States v. Green, 178 F.3d 1099, 1109 (10th Cir. 1999) (holding
12 that Giglio did not apply when the government “did not ever call” its confidential informant
13 as a witness); United States v. Mullins, 22 F.3d 1365, 1372 (6th Cir. 1994) (finding “no
14 authority that the government must disclose promises of immunity made to individuals the
15 government does not have testify at trial,” and holding that a grant of immunity could not be
16 “‘favorable to the accused’ as impeachment evidence because the government did not call [the
17 witness] and, thus, there was no one to impeach”); *see also* United States v. Pena, 949 F.2d
18 751, 758-59 (5th Cir. 1991) (impeachment evidence regarding a non-testifying witness is an
19 insufficient basis upon which to grant a new trial); United States v. Storey, 956 F. Supp. 934,
20 942 (D. Kan. 1997) (holding that while impeachment evidence falls within the Brady rule,
21 “[s]uch evidence as it pertains to an informant, however is only discoverable if the informant
22 testifies”); Kowalczyk v. United States, 936 F. Supp. 1127, 1149 (E.D.N.Y. 1996) (holding
23 that “[t]he Government was not obligated to produce the Janis arrest record, assuming the
24 prosecution was in possession of such information, as Janis was not a witness at trial”); United
25 States v. Hill, 799 F. Supp. 86, 90 (D. Kan. 1992), (denying defense request for any
26 information which could be used to impeach non-witnesses); United States v. Villareal, 752
27 F. Supp. 851, 853 (N.D. Ill. 1991) (holding that “[a]s for statements by government witnesses

28

¹ The exception to this rule is where the witness will not testify, but the witness’ hearsay statement will be admitted, then the witness’ credibility may be in issue. *See* United States v. Jackson, 345 F.3d 59, 70-71 (2nd Cir. 2003).

1 that qualify as impeachment materials, the government is under no obligation to disclose this
2 information before trial,” and that “the government is under no obligation at any time to
3 provide impeachment evidence for non-witnesses”); United States v. Coggs, 752 F. Supp. 848,
4 849, (N.D. Ill. 1990) (holding that the government is not required to produce impeachment
5 evidence impacting non-witnesses, reasoning that “[r]equiring that the government provide
6 impeachment evidence for non-witnesses will not further the interest sought to be served by
7 Giglio-allowing for a meaningful determination of witness credibility”). Finally, evidence of
8 impeachment of a witness need not be disclosed until the witness testifies. United States v.
9 Rinn, 586 F.2d 113 (9th Cir. 1978) (“[S]ince information concerning “favors or deals” merely
10 goes to the credibility of the witness, it need not be disclosed prior to the witness
11 testifying.”). Thus, unless the witness is going to testify, there is no basis to disclose any
12 impeachment material.

13 On March 14, 2017, defense counsel met with the undersigned for a full file review. At
14 that time, copies of all medical records and reports; photo line-ups; victim and witness
15 statements; as well as statements made by Defendant were given to defense counsel, if not
16 already in defense counsel’s possession.

17 **DEFENDANT’S ENUMERATED DISCOVERY REQUESTS**

18 **1. Statements of Defendant and Any Potential Co-Defendant’s**

19 NRS 174.235(1)(a) provides:

20 1. Except as otherwise provided in NRS 174.233 to 174.295,
21 inclusive, at the request of a defendant, the prosecuting attorney
22 shall permit the defendant to inspect and to copy or photograph
any:

23 (a) **Written or recorded statements or confessions made by the**
24 **defendant**, or any written or recorded statements made by a
25 witness the prosecuting attorney intends to call during the case in
26 chief of the State, or copies thereof, within the possession, custody
or control of the State, the existence of which is known, or by the
exercise of due diligence may become known, to the prosecuting
attorney;

27 There are no Co-Defendant(s) in this case.

28 //

1 **2. Statements of Potential Witnesses**

2 **(a) All statements**

3 While the State usually voluntarily provides all written or recorded statements of
4 witnesses, except those protected as confidential, the State's decision to over include discovery
5 does not expand the nature of those items subject to mandatory disclosure by court order based
6 upon statutory or constitutional authority. The State objects to this request as being vague,
7 overbroad, and compound. Additionally, portions of the request fall outside the scope of the
8 State's obligations under NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83 (1963)
9 and Giglio v. United States, 405 U.S. 150 (1972). To the extent that the request and its multiple
10 subparts fall within the State's obligations under 174.235, Brady and Giglio, they are not
11 specific requests.

12 NRS 174.235(1)(a) provides:

13 1. Except as otherwise provided in NRS 174.233 to 174.295,
14 inclusive, at the request of a defendant, the prosecuting attorney shall
permit the defendant to inspect and to copy or photograph any:

15 (a) Written or recorded statements or confessions made by the
16 defendant, or **any written or recorded statements made by a**
17 **witness the prosecuting attorney intends to call during the case in**
18 **chief of the State**, or copies thereof, within the possession, custody
or control of the State, the existence of which is known, or by the
exercise of due diligence may become known, to the prosecuting
attorney;

19

20 (Emphasis added).

21 Brady places upon the State an obligation to produce exculpatory evidence. Giglio
22 requires that the State disclose certain impeaching material as well.

23 In other words, even in the absence of a motion the State is obligated to turn over the
24 information requested that falls within the State's obligations under 174.235, Brady and
25 Giglio. Defendant has made many sub-requests within the instant request without providing
26 any indication that the defense has performed any investigation or discovered that the material
27 actually exists and the State has failed to turn it over. The State asks that this request be
28 clarified by the defense to address what specific discovery Defendant believes he is missing.

1 In the absence of such a clarification the State asks that the request be denied as it fails to state
2 a specific request.

3 **(b) *Any audio or video recordings***

4 The State will comply with NRS 174.235 and has provided “any written or recorded
5 statements made by a witness the prosecuting attorney intends to call during the case in chief
6 of the State, or copies thereof, within the possession, custody or control of the State, the
7 existence of which is known, or by the exercise of due diligence may become known, to the
8 prosecuting attorney.” Further, Brady does not impose upon the State an obligation “to
9 disclose evidence which is available to the defendant from other sources, including diligent
10 investigation by the defense.” Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

11 **3. Records Related to Investigation**

12 Defendant has been provided with a copy of the police reports generated in this matter
13 pursuant to NRS 174.235. Defendant requests the notes of various individuals regardless of
14 whether they are State witnesses or even agents of the State. This request is not covered by a
15 single line of any discovery statute. If there is exculpatory information, the State obviously
16 must produce it. However, there is no requirement that the notes of all officers and other
17 witnesses (or non-witnesses) be produced and the State requests that this Court not expand
18 the statutory text to include such a requirement.

19 Courts have held that officer notes are not subject to discovery statutes. In State v.
20 Bray, 569 P.2d 688 (Ore. App. 1977), an officer arrested a suspect on a DUI charge. He
21 recorded observations in a booklet. He later prepared a report from his penciled notes and
22 erased the notes. The final report was furnished to the defense. At trial, the court ruled that
23 because the officer had taken notes while speaking to a witness and those notes had been
24 destroyed, the State would be precluded from calling the witness at trial. The issue on appeal
25 was whether the fragmentary notes of the officer constituted a statement within the meaning
26 of the state discovery statutes. The Appellate Court reversed the trial court:

27 //

28 //

1 We construe the statute to require production of any “statement”
2 which is intended by its maker as an account of an event or a
3 declaration of a fact. The statutory purposes of providing witness
4 statements are to minimize surprise, avoid unnecessary trial, provide
5 adequate information for informed pleas and to promote truthful
6 testimony by allowing examination based on prior inconsistent
7 statements. . . Requiring preservation and availability of fragmentary
8 notes intended only as a touchstone for memory would be more likely
9 to discourage police officers from taking notes, with a consequent
10 reduction in accuracy, than to promote the statutory goals.
11 Furthermore, it would be unfair and misleading to allow cross-
12 examination of a witness based upon fragmentary or cryptic notes
13 which were never intended to express a complete statement. For these
14 reasons, we hold that fragmentary notes are not subject to production
15 under discovery statutes.

16 Id. at 690; State v. Wrisley, 909 P.2d 877 (Ore. App. 1995) (noting that police notes are not
17 discoverable when their substance is incorporated into a report disclosed to the defendant);
18 see also State v. Jackson, 571 P.2d 523 (Ore. App. 1978) (holding that a rough draft of a
19 report an officer dictated to a stenographer was not discoverable).

20 Any request for 911 recordings, Dispatch Logs and/or Case Monitoring notes in this
21 matter should be made directly to LVMPD.

22 The State has no knowledge and has been provided no information of any crime tip
23 organizations being involved in this matter.

24 **4. Crime Scene Analysis, Evidence Collection, and Forensic Testing**

25 All reports by crime scene analysts involved in the processing of scenes and all reports
26 related to forensic analysis are part of the standard discovery provided in all cases, which
27 actually exceeds the requirements of NRS 174.235. If the defense wants the underlying case
28 files related to forensic testing, the State will request the forensic lab to provide the underlying
data and will produce that information to Defendant. If the defense wants raw notes of the
crime scene analyst, the State will request production of those notes, if still in existence, from
the crime lab. As it relates to the Las Vegas Metropolitan Police Department, their photograph
laboratory will honor a defendant’s request for the photographs maintained under the event
number.

//

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1 To the extent that Defendant is seeking information broader than that which is contained
2 *supra*, the State objects to this request as being vague, overbroad, compound, and duplicative.
3 Additionally, portions of the request fall outside the scope of the State's obligations under
4 NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States,
5 405 U.S. 150 (1972). To the extent that the request and its multiple subparts fall within the
6 State's obligations under 174.235, Brady and Giglio, they are not specific requests.

7 **5. Medical Records**

8 The State has previously disclosed any and all medical records to include sexual assault
9 examination of the victim(s), as it relates to this case, in the State's possession.

10 **6. Preservation of/Access to Raw Data**

11 The State objects to this request as being vague, overbroad, compound, and duplicative.
12 Additionally, many of the subparts of this request are boilerplate, having nothing to do with
13 the instant case (ex. the request for "Photographic negatives"). Furthermore, this is not a
14 request for discovery at all, it is a request that the State not destroy evidence, without
15 specifically noting what the evidence in question is, and that the State provide "access" to the
16 evidence, without specifically noting what type of access is being sought. Also, the State is
17 under legal and ethical obligations not to destroy evidence, even absent an order from this
18 Court. Given that the instant request is not for discoverable information, and the fact that the
19 defense has not been denied access to any evidence in this case, the State requests that this
20 Court deny the request outright.

21 **7. Electronic Communications/Associated Warrant**

22 NRS 174.235 does not cover Trap and Trace, Cellular Site, Pen Registers and GPS
23 Trackers. However, if the State intends to utilize any information during the trial which was
24 acquired by way of a court order and/or search warrant, the State will provide a copy.

25 **8. Law Enforcement Video or Audio Recordings**

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1 **9. Non Activated Body Camera**

2 This request is not covered by a single line of any discovery statute. If there is
3 exculpatory information, the State obviously must produce it. However, there is no
4 requirement that requested materials be produced and the State requests that this Court not
5 expand the statutory text to include such a requirement. Defendant's request for all Law
6 Enforcement Video or Audio Recordings, to include non-activated body cameral information
7 should be made directly to Metro.

8 **10. Monitoring, Tracking, Associate Warrants**

9 NRS 174.235 does not cover Trap and Trace, Cellular Site, Pen Registers and GPS
10 Trackers. However, if the State intends to utilize any information during the trial which was
11 acquired by way of a court order and/or search warrant, the State will provide a copy.

12 **11. 911 and 311 calls**

13 The State will disclose all 311/911 calls and logs. Defendant is welcome to obtain the
14 request for car to car audio communications; car to dispatch radio communications and unit
15 log incident printouts by issuing a Subpoena to LVMPD.

16 **12. Chain of Custody**

17 The State is unaware of any evidence being destroyed in this case. The chain of custody
18 is on the evidence bag itself. Defense counsel is welcome to visit the evidence vault to review
19 all chain of custody reports.

20 **13. Witness Contact Information**

21 NRS 174.234 provides the law regarding the notice of witnesses. It provides that both
22 sides must disclose witness names and addresses that it intends to call in its case-in-chief not
23 less than 5 judicial days before trial. *See* NRS 174.234(1)(a)(2). Defendant has been provided
24 information to the extent that it conforms to required statutory provisions of NRS 174.234.

25 **14. Information obtained by Confidential Informants**

26 NRS 174.234 and NRS 174.235, the applicable discovery statutes regarding the
27 defendant's request, do not require the State to disclose the identities of informants, and do not
28 require the State to specifically identify the information or evidence provided by any

1 informants. In particular, NRS 174.234(1)(a)(2) states that a prosecutor must only disclose
2 “the names and last known addresses of all witnesses *the prosecuting attorney intends to call*
3 *during the case in chief of the State.*” (Emphasis added). Likewise, NRS 174.235(1)(a) only
4 obliges the State to disclose the “written or recorded statements made by a witness *the*
5 *prosecuting attorney intends to call during the case in chief of the State.*” (Emphasis added).
6 Consequently, pursuant to those statutes, if the State does not intend to call the informant as a
7 witness in its case in chief, this Court cannot compel the State to disclose the identity of any
8 informant and information obtained from such an informant.

9 **1. The identities of informers are privileged under Nevada law, and no exception to**
10 **the privilege applies.**

11 NRS 49.335 affords the State an exclusive statutory privilege to protect the identity of
12 informers. Under that statute, “[t]he State or a political subdivision thereof has a privilege *to*
13 *refuse to disclose the identity of a person who has furnished to a law enforcement officer*
14 *information purporting to reveal the commission of a crime.*” (Emphasis added). This privilege
15 precludes this Court from ordering the disclosure of the identities of any informants. NRS
16 49.335, 49.345.

17 The privilege, moreover, is resilient in the face of the defendant’s numerous statutory
18 and constitutional rights. See NRS 49.365; NRS 174.234(7). First, the defendant’s statutory
19 discovery rights must yield to the State’s exclusive privilege. NRS 174.234(7). Although the
20 State must disclose the identities of witnesses it intends to call in its case in chief pursuant to
21 the defendant’s statutory rights in NRS 174.234, the State cannot be ordered to disclose the
22 identity of an informer under that statute because

23 [a] party is not entitled, pursuant to the provisions of [NRS 174.234],
24 to the disclosure of the name or address of a witness or any other type
25 of item or information *that is privileged or protected from disclosure*
or inspection pursuant to the Constitution or laws of this state or the
Constitution of the United States.

26 NRS 174.234(7) (emphasis added).

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1 Second, the State's privilege does not dissipate in light of a defendant's constitutional
2 rights to a fair trial, to present witnesses on his behalf, and to confront and cross-examine
3 witnesses. By statute, if the Court finds that an informant is a percipient witness who "can...
4 supply information constituting a defense [or] rebut a necessary element of an offense," State
5 v. Stiglitz, 94 Nev. 158, 161, 576 P.2d 746, 747-48 (1978), the court may *dismiss* proceedings
6 against a defendant if the State thereafter declines to disclose the identity of the informer. NRS
7 49.365; Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980) (district court's dismissal of
8 charges affirmed when the State refused to disclose the identity of a confidential informant
9 who was the only independent percipient witness to a drug transaction); Routhier v. Sheriff,
10 93 Nev. 149, 560 P.2d 1371 (1977) (district court should have dismissed charges against
11 defendant when the State refused to reveal the identity of a percipient confidential informant
12 who set up and witnessed the drug transaction leading to the criminal charge); cf. Stiglitz, 94
13 Nev. at 161, 576 P.2d at 747-48 (the identity of an informant need not be revealed where he
14 merely introduces a government agent to the defendant); Twigg v. Sheriff, 95 Nev. 112, 590
15 P.2d 630 (1979) (same). The decision to disclose the informant's identity, however, ultimately
16 remains in the hands of the State regardless of the Court's determination that a confidential
17 informant is a percipient witness.

18 The Nevada Supreme Court has recognized that a defendant is entitled to discovery of
19 an informer's identity when the informer both set up the meeting between the officer and
20 defendant and witnessed the actual transaction. *See* Sheriff v. Vasile, 96 Nev. 5 (1980). In
21 Vasile the police officer testified that he was introduced to Vasile through the confidential
22 informant and the informant was present for the actual drug transaction. Vasile requested the
23 name of the informant from the officer. The State objected under the applicable statutes and
24 the objection was upheld by the Justice Court. Ultimately, Vasile sought relief in District
25 Court where the case was dismissed. Thereafter the State appealed. The Supreme Court
26 affirmed, holding:

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1 In Routhier v. Sheriff, the informant set up and witnessed the
2 transaction which led to the criminal charges. That was precisely the
3 situation involved in the present case. The informant here was seated
4 in the undercover police car with Officer Douglas and Vasile. He was
5 apparently the only independent witness who could hear and see the
6 transaction in question. He was a material witness whose identity
7 should have been disclosed. The magistrate's refusal to require
8 disclosure or dismiss the charges was error. Id. at 8 (emphasis added).

9 The Vasile Court, however, acknowledged that a request for the identity of an informer
10 need not result in the automatic disclosure of the informer's identity.

11 The identity of an informant need not be disclosed where he is not a material witness,
12 because he can neither supply information constituting a defense nor rebut a necessary element
13 of an offense. Id. at 8 (citing Twigg v. Sheriff, 95 Nev. 112 (1979) and State v. Stiglitz, 94
14 Nev. 158 (1979)). Hence, this Court must determine whether the confidential informant
15 involved in the present case could provide information that requires disclosure.

16 Finally, although NRS 49.375(1) creates a lone exception to the privilege by requiring
17 the State to disclose an informer's identity "[i]f information from an informer is relied upon to
18 establish the legality of the means by which evidence was obtained and the [court] is not
19 satisfied that the information was received from an informer reasonably believed to be
20 reliable....," the defendant's boilerplate motion does not claim that the exception applies in this
21 case. See EDCR 3.20(b) ("a party filing a motion must also serve and file with it a
22 memorandum of points and authorities in support of *each ground thereof*" and the failure to
23 do so "may be construed as an admission that the motion is not meritorious, as cause for its
24 denial or as a waiver of all grounds not so supported" (emphasis added)). Even then, the
25 disclosure may be made *in camera*, and the records of the *in camera* disclosure sealed. NRS
26 49.375(2)-(3).

27 **15. Alternative Suspects**

28 There is no information that shows Defendant did not commit the crimes he is charged
with; nor is there information suggesting other possible perpetrators.

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1 **16. Identification and Misidentification**

2 With the exception of the one victim who was not familiar with Defendant in this case,
3 identification is not an issue. Defendant received a copy of the color photo line-up that was
4 used in this case.

5 **17. General Exculpatory Evidence Request**

6 Giglio, governs what impeachment the State must provide. The State asks the Court to
7 hold it to that constitutional standard. Defendant's request is worded in an overbroad manner
8 to encompass immaterial statements about which the State has no knowledge.

9 **18. Witness Benefits**

10 The defendant's specific request for witness compensation and benefits should be
11 denied for two reasons.

12 First, the request exceeds the scope of Giglio. By law, any witness appearing in a
13 criminal case in obedience to a subpoena is entitled to compensation, whether the subpoena is
14 issued by the State or by the defendant. NRS 50.225(1)(a) entitles witnesses "attending the
15 courts of this State in any criminal case... in obedience to a subpoena... [t]o be paid a fee of
16 \$25 for each day's attendance, including Sundays and holidays." Witnesses are also entitled
17 to "mileage reimbursement," NRS 50.225(1)(b) and a per diem allowance, NRS 50.225(2).
18 Additionally, witnesses residing outside the jurisdiction of the Court are "entitled to
19 reimbursement for the actual and necessary expenses for going to and returning from the place
20 where the court is held." NRS 50.225(3).

21 Here, receipts showing that a State witness received statutorily required witness fees,
22 travel expenses, or per diem fees are not "evidence affecting credibility" under Giglio, and
23 consequently, are not discoverable. The fees cannot be favorable to the defendant because a
24 witness's credibility cannot be impeached for receiving compensation to which he or she is
25 legally entitled to receive, and which the county is legally obligated to provide. Lacking
26 impeachment value, the payments are immaterial to both guilt and punishment because their
27 disclosure cannot affect the outcome of the trial. See United States v. Bagley, 473 U.S. 667,
28 675 (1985); Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994) (adopting the

1 “reasonable possibility” materiality test for nondisclosure of evidence favorable to the
2 defendant after a specific request).

3 Second, the request must be denied because the State bears no burden “to disclose
4 evidence which is available to the defendant from other sources, including diligent
5 investigation by the defense.” Steese v. State, 114 Nev. 479, 495 (1998); United States v.
6 Davis, 787 F.2d 1501, 1505 (11th Cir. 1986). Here, the requested evidence is maintained as a
7 public record by the Clark County Department of Finance. The defendant may subpoena that
8 office for these records.

9 Finally, it is important to note that the decision of this Court to preclude discovery of
10 the requested evidence in no way limits the defendant’s right of cross-examination. The
11 defendant is aware that a witness is entitled to per diem payments and travel reimbursements;
12 he can consequently fully cross-examine any witness whether the witness received such
13 payments or promises of payment. See Davis v. Alaska, 415 U.S. 308, 318 (1974)
14 (Confrontation Clause violated when defendant denied right to cross-examine a prosecution
15 witness regarding the witness’s juvenile criminal record) but see Pennsylvania v. Ritchie, 480
16 U.S. 39, 52-53 (1987) (holding that “the right to confrontation is a trial right, designed to
17 prevent improper restrictions on the types of questions that defense counsel may ask during
18 cross-examination... The ability to question adverse witnesses, however, does not include the
19 power to require the pretrial disclosure of any and all information that might be useful in
20 contradicting unfavorable testimony.”).

21 Expenses paid to witnesses by the State or its investigative agents, which are not
22 obligated by statute, constitute an inducement under Giglio and Bagley. See Giglio v. United
23 States, 405 U.S. 150 (1972); United States v. Bagley, 473 U.S. 667, 683-84 (1985) (wherein
24 the Court used the terms “promises of reward” and “inducements” to refer to a prosecutor’s
25 disclosure obligation under Giglio). The State will disclose any such expenses.

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1 **19. Prior Witness Statements**

2 Giglio, governs what impeachment the State must provide. The State asks the Court to
3 hold it to that constitutional standard. Defendant's request is worded in an overbroad manner
4 to encompass immaterial statements about which the State has no knowledge.

5 “Disclosures of any all statements made by any State witness, or any other person, at
6 any time that are in any manner inconsistent with the written and/or recorded statements
7 previously provided...” literally has no bounds and no limits as to materiality nor whether or
8 not the witness will testify. The request for the statements of “any person” are so broad as to
9 defy any possibility of identifying what an order granting such a request would require of the
10 State. The State will comply with NRS 174.235 and has provided “any written or recorded
11 statements made by a witness the prosecuting attorney intends to call during the case in chief
12 of the State, or copies thereof, within the possession, custody or control of the State, the
13 existence of which is known, or by the exercise of due diligence may become known, to the
14 prosecuting attorney.” Further, Brady does not impose upon the State an obligation “to
15 disclose evidence which is available to the defendant from other sources, including diligent
16 investigation by the defense.” Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).
17 The defense is capable of conducting its own pretrial conferences with witnesses, where the
18 defense can inquire as to any change to the witnesses' expected testimony that differs from the
19 statements given to police. This request should be denied.

20 **20. Impeachment Evidence – Law Enforcement Witness**

21 Certainly, due process mandates the disclosure of favorable evidence, material for
22 impeachment or exculpatory purposes, to an accused upon request. Brady v. Maryland, 373
23 U.S. 83 (1963). However, the evidence must be material for one of those purposes in order
24 for Brady to apply. United States v. Pitt, 717 F.2d 1334, 1339 (11th Cir. 1983).

25 In Pitt, the defense requested the personnel file for the chief case agent to search for
26 impeachment information, without any showing that evidence material to the defense would
27 be found in that file. The Court there stated:

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1 We fail to see how, and the appellant has failed to show us how,
2 the contents of FBI Agent Lewis' personnel file would likely
3 contain anything material to an alleged threat against Pitt,
especially when the official records show that the agent was out of
town on the day the alleged threat was made.

4 The request for the agent's personnel file, under the facts of this
5 case, was frivolous. Pitt was entitled to fish, but not with this thin
a pole.

6 Id. at 1339

7 In the Ninth Circuit, the obligation for the prosecution to examine an officer's file is
8 triggered by a defense request with no requirement that the defense make a showing that a file
9 is likely to contain helpful information. United States v. Henthorn, 931 F.2d 29, 31 (9th Cir.
10 1990) (holding that the "government is incorrect in its assertion it is the defendant's burden to
11 make an initial showing of materiality" and that the "obligation to examine the files arises by
12 virtue of making a demand for their production"); United States v. Santiago, 46 F.3d 885, 895
13 (9th Cir. 1995) (Under Henthorn, the government has a duty, upon defendant's request for
14 production, to inspect for material information the personnel records of federal law
15 enforcement officers who will testify at trial, regardless of whether the defense has made a
16 showing of materiality).

17 This, of course, does not mean that files are produced for the defense. Henthorn
18 explains that following that examination, "the files need not be furnished to the defendant or
19 the court unless they contain information that is or may be material to the defendant's case."
20 Id. Thus, the only time disclosure is required is if the State finds information that qualifies as
21 Brady material. If the prosecutor is unsure, the information should be provided to the court
22 for review. As the court explained:

23 We stated that the government must 'disclose information favorable
24 to the defense that meets the appropriate standard of materiality
If the prosecution is uncertain about the materiality of information
25 within its possession, it may submit the information to the trial court
for an in camera inspection and evaluation. . . . As we noted in Cadet,
26 the government has a duty to examine personnel files upon a
defendant's request for their production.

27 Id. at 30-31.

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1 Different than Henthorn, the Nevada Supreme Court issued an opinion that requires
2 some showing of materiality on the part of the defense before it could gain access to a
3 personnel file. The file concerned an officer who was murdered and obviously would not be
4 testifying. Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996). The defense made no
5 showing that there may have been favorable information in the file. Instead, the defense
6 asserted a general right to search the file. The court rejected this assertion of a right to a
7 generalized, unfocused search, but allowed for the possibility that a file could be accessible
8 under some circumstances. The court reasoned, “[i]f Sonner had presented a foundation for
9 believing that [the victim] had a reputation for being an ‘aggressive’ trooper who, consistent
10 with his reputation, provoked Sonner’s action, this might have been sufficient to warrant
11 discovery of corroborating evidence” in the file. Id. at 1341, 930 P.2d at 716. This reasoning
12 suggests that if that type of evidence had been in the file, the State would be required to
13 produce it.

14 Additionally, the LVMPD has serious concerns regarding the disclosure of material
15 from personnel files. Confidentiality is one of the chief requirements in maintaining the
16 effective ability to investigate complaints against officers. Confidentiality ensures that both
17 police officers and citizens will freely contact the department without fear. As one court has
18 stated:

19 It is clear a very real and very important need exists to maintain
20 confidential integrity of the internal investigation in the police
21 division. To do otherwise would seriously inhibit the chief in his
22 control over the members of the division and their wide-ranging duties
23 and responsibilities. This stream of information available to the chief
24 and the persons within and without the division would diminish to a
bare trickle if the source or sources of this information were stripped
of its confidential character. That such an event would serve to defeat
the general public good is supported by a logic almost tautological in
its persuasiveness -- for the desirability of an efficient well disciplined
police force is manifest.

25 McMillan v. Ohio Civil Rights Comm’n, 315 N.E.2d 508, 515 (Ohio 1974).

26 Personnel files are confidential. All witnesses, including police officers, are assured
27 that the information provided by them will not be voluntarily disclosed and that all legal
28 means will be employed to protect this confidentiality. Police officers are compelled to

1 cooperate with internal affairs investigations. Failure to cooperate can result in termination.
2 Officers, knowing that their statements were subject to disclosure, would be less likely to
3 completely cooperate. The knowledge that statements compelled from officers could later be
4 disclosed to third parties for other cases would also act as disincentive for the department to
5 fully investigate. As one court noted:

6 The members of a police department must be able to rely on their
7 confidential records and notations being preserved for their internal
8 use ... for if it were otherwise, the knowledge that some of the
9 confidential information recorded might later be exposed to outside
10 parties would have a certain and chilling effect upon the internal use
11 of such record-making.

12 City of Los Angeles v. Superior Court, 109 Cal. Rptr. 365, 369 (Ct. App. 1973).

13 Based on Nevada law, Defendant in the instant case is required to advance a foundation
14 that the Personnel File of the officer is likely to bear information material to the defense.
15 Defendant's motion is simply an attempt to fish for information. As a result, the instant motion
16 should be denied. Alternatively, the State asks the Court to order the State to review the file
17 and produce any information it deems discoverable.

18 **21. Criminal History Information**

19 The State objects to the extent this request seeks juvenile records, misdemeanors and/or
20 any other information or material outside the rules of evidence.

21 Although a witnesses' criminal record may be material under some circumstances, it is
22 not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d 1353 (1974). In Hill
23 the defense sought production of a witness's felony conviction record. Because the witness
24 was the only eyewitness other than the defendants, and the corroboration of his report was not
25 strong, the court found the requisite materiality and granted the defense motion. However, the
26 court concluded, "[w]e do not hold that good cause exists in every case in which a defendant
27 charged with a felony seeks discovery of any felony convictions any "rap sheet" of prosecution
28 witnesses." Id. at 1358.

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1 In the present case, Defendant has essentially requested that the State perform a National
2 Crime Information Center (NCIC) inquiry on all possible State witnesses and provide that
3 inquiry to the Defendant. The State has not run an NCIC inquiry on any witnesses, nor does
4 it plan to do so in this matter, particularly given that some witnesses are children. The State
5 has no legitimate reason to make such an inquiry and strenuously objects to defense requests
6 that the State provide this information.

7 Although Defendant liberally touts Brady v. Maryland, 373 U.S. 83 (1963) as the basis
8 for his NCIC request, the defense has failed to establish that the requested NCIC information
9 falls within the scope of Brady, that is, that it might in some way be exculpatory or that it
10 might somehow constitute impeachment evidence. Moreover, Defendant has not shown how
11 such information might be "material." In other words, the defense has failed to show that the
12 lack of any State witnesses' NCIC information will somehow result in an unfair trial or will
13 produce a verdict that is not worthy of confidence. See Kyles v. Whitley, 514 U.S. 419, 434
14 (1995).

15 The Supreme Court has stated that information is considered material if there is a
16 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
17 proceeding would have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985). The
18 Supreme Court defined reasonable probability as probability sufficient to "undermine
19 confidence in the outcome" of the trial. *Id.* In addition, the Court in Bagley, stated that
20 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." *Id.*
21 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
22 that, if disclosed and used effectively, it may make the difference between conviction and
23 acquittal." *Id.* (internal quotes omitted).

24 In the present case, Defendant has failed to articulate even an arguable use of the
25 witnesses' NCIC information that would comport with the requirements as outlined by the
26 Supreme Court in Brady, Kyles and Bagley. Defendant is simply looking for any information
27 that he can use to cloud the facts of the case at bar and to cast aspersions on those witnesses.

28 //

1 Pursuant to 28 C.F.R. §20.33(b) as codified under 28 U.S.C.A. § 534 (2002), criminal
2 history information may only be disseminated to law enforcement agencies, those hired by law
3 enforcement agencies and to those who have entered into signed agreements for the specific
4 and authorized use of criminal background information. Pursuant to 28 C.F.R. §20.25,

5 “Any agency or individual violating subpart B of these regulations
6 shall be subject to a civil penalty not to exceed \$10,000 for a violation
7 occurring before September 29, 1999, and not to exceed \$11,000 for
a violation occurring on after September 29, 1999. In addition,
pursuant to 28 C.F.R. §20.38,”

8 Access to systems managed or maintained by the FBI is subject to cancellation in regard to
9 any agency or entity that fails to comply with the provisions of subpart C of this part.

10 If the State is forced to disseminate such information to the defense in this matter, the
11 State and/or the individual who actually provides the NCIC information runs the risk of civil
12 penalties and loss of future access to the NCIC system. In addition, the Multi-System Guide
13 4 (MSG4) published by the Las Vegas Metropolitan Police Department (LVMPD) states that
14 “[d]ata stored in each of our criminal justice systems . . . must be protected to ensure correct,
15 legal and efficient dissemination and use.” P. 21. The MSG4 further states that
16 “[d]issemination of CHI [Criminal History Information] that does not belong to the LVMPD
17 or is obtained through NCIC, NCJIS or NLETS is prohibited.” Id.

18 As a user of the National Crime Information Center (NCIC) database, the State is
19 prohibited from disseminating criminal history information to non-criminal justice agencies as
20 defined by Title 28 Code of Federal Regulations (CFR)§ 20.33, which describes a criminal
21 justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which
22 performs the administration of criminal justice pursuant to a statute or executive order, and
23 which allocates a substantial part of its annual budget to the administration of criminal justice.
24 Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice
25 purposes is prohibited.

26 A 1989 United States Supreme Court case looked at this issue from the standpoint of
27 an invasion of privacy and ruled accordingly:

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1 “Accordingly, we hold as a categorical matter that a third party's
2 request for law enforcement records or information about a private
3 citizen can reasonably be expected to invade that citizen's privacy, and
4 that when the request seeks no "official information" about a
Government agency, but merely records that the Government happens
to be storing, the invasion of privacy is "unwarranted."

5 United States Department of Justice v. the Reporters Committee for Freedom of the Press, 109
S.Ct. 1468, 1485 (1989).

6 Criminal defense attorneys, public or private, are not within the definition of “criminal
7 justice agency,” nor is the criminal defense function considered a “criminal justice purpose.”
8 Therefore, Defendant is not entitled to the criminal history information he seeks.

9 If the District Attorney runs an NCIC inquiry on a witness and that NCIC inquiry is in
10 our file, the FBI has NO policy prohibiting us from disclosing that NCIC inquiry. If, on the
11 other hand, we have not run the NCIC report already, it is a violation of FBI regulations to run
12 it on request of defense counsel, or court order.

13 In short, if the State already has it, the State will decide--pursuant to our obligations
14 under Brady and Giglio--whether or not to divulge any information contained in the NCIC
15 report. If the State doesn't have the NCIC report in our file, the defense has to follow FBI-
16 outlined procedures to get it.

17 Defense must obtain an order from the judge directed to the FBI requested describing
18 specifically what they need. The FBI then reviews the judge's order and almost always
19 complies with it, but the FBI sends the NCIC report to the judge, who then reviews the
20 information and decides on its admissibility before turning anything over to the defense.

21 **22. Significant Public Benefit Parole**

22 The State has not been provided with any information that would indicate any witness
23 in this has been granted SPBP benefits in connection with this case.

24 **23. U-Visa and Related Information**

25 There is no statutory requirement that requested materials be produced and the State
26 requests that this Court not expand the statutory text to include such a requirement. Defendant
27 is certainly entitled to issue Subpoena's to the USCIS, in order to ascertain if the requested
28 items exists as related to victim or her immediate family members.

1 **24 -37 Intentionally left blank by Defendant**

2 **38. CPS Records**

3 **39. Social Worker/Case Worker Notes**

4 Defendant requests that the State provide Defendant with privileged or confidential
5 information, including child protective services records pertaining to any State witness.
6 Beyond the fact that such a request far exceeds the statutory requirements under NRS 174.235,
7 such a request also violates the privacy rights of said individuals and the relevant statutes that
8 would protect against the release of said information if it existed. In addition, the State does
9 not possess such information pertaining to any State witness and does not have access to said
10 information. Further, such information is entirely irrelevant. Defendant has not provided any
11 authority to support such a broad discovery request and therefore, the discovery request
12 violates Nevada law under NRS 174.235 and should be denied.

13 As to the defense's request for documents/records/oral statements pertaining to
14 witnesses' interactions with outside, agencies, the State objects. While, the State
15 acknowledges that its Brady obligations not only apply to materials in its possession, but also
16 extends to materials in the hands of its agents, the State maintains that rather than being
17 accountable for all evidence in the hands of all State agencies, it is only accountable for that
18 evidence in the hands of State agencies who are actually acting on its behalf in the investigation
19 and prosecution of the case. See, Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567
20 (1995)("This in turn means that the individual prosecutor has a duty to learn of any favorable
21 evidence known to the others *acting on the government's behalf in the case, including the*
22 *police.*"); Carriger v. Stewart, 132 F.3d 463, 479 (9th Cir. 1997)("[T]he prosecution has a duty
23 to learn of any exculpatory evidence known to others *acting on the government's behalf.*").

24 Additionally, the State objects to this request on grounds that it is not the holder of
25 specific CPS or DFS records or mental health records. Therefore, the defense must utilize their
26 own resources, including requesting Court orders, to obtain any additional records that they
27 may desire. Furthermore, should the Court order the release of any CPS, DFS, or Mental
28 Health Records, the Court must also order those records to be turned over to the Court for in-

1 camera review. Defendant has not provided any authority to support such a broad discovery
2 request and therefore, the discovery request violates Nevada law under NRS 174.235 and
3 should be denied.

4 **40. Mental Health Worker Records/Notes**

5 While the State does refer witnesses to pertinent third-party counseling agencies from
6 time to time, these referrals cannot be deemed material evidence bearing on the credibility of
7 a witness under Brady and Giglio. Given that the witness may participate in the third-party
8 counseling program irrespective of the witness's cooperation with the criminal prosecution of
9 the defendant, there exists no "reasonable possibility" that a mere referral to an outside agency
10 "will affect the judgement of the trier of fact, and thus the outcome of the trial." Roberts v.
11 State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994) (adopting the "reasonable possibility"
12 materiality test for nondisclosure of evidence favorable to the defendant after a specific
13 request).

14 The aforementioned requests are privileged pursuant to NRS 174.235(2)(b), and the
15 following Nevada Revised Statutes as indicated:

16 NRS 49.209:

17 A patient has a privilege to refuse to disclose and to prevent any
18 other person from disclosing confidential communications
19 between himself and his psychologist or any other person who is
participating in the diagnosis or treatment under the direction of
the psychologist, including a member of the patient's family.

20 NRS 49.252:

21 A client has a privilege to refuse to disclose, and to prevent any
22 other person from disclosing confidential communications among
23 himself, his social worker or any other person who is participating
in the diagnosis or treatment under the direction of the social
worker.

24 Defendant is not entitled to the records and notes of any mental health workers who
25 have had contact with the victim or her family. Moreover the therapy records are not within
26 the sole custody of the State. Defendant may exercise his efforts and resources to obtain such
27 records if they exist. Furthermore, should the Court order the release of any Mental Health
28 Records, the Court must also order those records first be turned over to the Court for in-camera

1 review before disseminating any records deemed relevant by the Court.

2 Defendant has failed to show that any mental health records even exist. This request is
3 too broad. Regardless, the mental health records of the victim are protected as previous stated
4 in subsection (2) herein. Lastly, these records are not within the sole custody of the State.
5 Defendant is encouraged to utilize his own efforts and resources in obtaining such documents.

6 **41. Physical Examination**

7 Defense counsel has been provided with the medical records relating to the sexual
8 assault examinations of the victim(s) in this case. Any photographs and/or videos taken in
9 conjunction with the medical examination, should they exist, will be provided upon the State's
10 receipt of the same. The State is not in possession of any medical records of other witnesses
11 in this case, nor is the State under any obligation to acquire them under statutory or
12 constitutional authority. NRS 174.235(2)(b) precludes this information from being the subject
13 of discovery without a court order and notice to the subject of the request:

14 **2.** The defendant is not entitled, pursuant to the provisions of this
15 section, to the discovery or inspection of:

16 **(a)** An internal report, document or memorandum that is prepared by
17 or on behalf of the prosecuting attorney in connection with the
18 investigation or prosecution of the case.

19 **(b)** A statement, report, book, paper, document, tangible object or
20 any other type of item or **information that is privileged or protected**
from disclosure or inspection pursuant to the constitution or laws
of this state or the Constitution of the United States.

21 (Emphasis added).

22 Also, NRS 49.225 provides as follows:

23 A patient has a privilege to refuse to disclose and to prevent any other
24 person from disclosing confidential communications among himself,
25 his *doctor* or persons who are participating in the diagnosis or
26 treatment under the direction of the doctor, including members of the
27 patient's family.

28 Thus, should Defendant seek this information which is not in the possession of the
State, they should file a motion with the Court with notice to the subject so they can interpose
their objections, if any.

//

1 **42. Prior Allegations of Sexual Misconduct**

2 NRS 50.090 states:

3 In any prosecution for sexual assault or statutory sexual seduction or
4 for attempt to commit or conspiracy to commit either crime, the
5 accused may not present evidence of any previous sexual conduct of
6 the victim of the crime to challenge the victim's credibility as a
7 witness unless the prosecutor has presented evidence or the victim has
 testified concerning such conduct, or the absence of such conduct, in
 which case the scope of the accused's cross-examination of the victim
 or rebuttal must be limited to the evidence presented by the
 prosecution or victim.

8 The State would further point out that there are very limited exceptions to the rape-
9 shield law. One of those would be if the defense was alleging that there was a prior false
10 allegation. In Miller v. State, 105 Nev. 497, 779 P.2d 87, (1989), the Supreme Court of Nevada
11 ruled that the district court had properly excluded evidence the defense attempted to elicit
12 regarding prior sexual abuse allegations made by the complaining witness. The court held that
13 the defendant must prove, by a preponderance of the evidence, the following three elements:(1)
14 the accusation or accusations were in fact made;(2) that the accusation or accusations were in
15 fact false;(3) that the evidence is more probative than prejudicial. Id at Nev. 502, P.2d 90
16 (emphasis supplied). Should the State become aware of any false accusations made by the
17 victim in this case, the State will disclose the information to the defense. Information of
18 previous allegations of physical or sexual abuse of material witnesses in this case is irrelevant
19 and is not required to be turned over to the defense under Brady or the codified rules of
20 discovery in the State of Nevada.

21 **43. Source of Sexual Knowledge**

22 Any information in the State's possession that is potentially responsive to this request
23 has been provided through reports, witness interviews and other discovery. Outside of that
24 material, the State is not aware of or in possession of any such materials.

25 The State objects to the extent this inquiry requires the State to perform investigation
26 for Defendant. Kyles, requires that the State "has a duty to learn of any favorable evidence
27 known to the others *acting on the government's behalf* in the case." Kyles v. Whitley, 514
28 U.S. at 437, (emphasis added). The Court did not, however, require the State to actively learn

1 of possible evidence known to those acting outside the government.

2 Additionally, Brady does not require the State to disclose evidence which is available
3 to a defendant from other sources through a diligent investigation by the defense. Stockton v.
4 Murry, 41 F.3d 920, 927 (4th Cir. 1994); *accord* U.S. v. Davis, 787 F.2d 1501 (11th Cir. 1986).
5 While the State will gladly comply with legally required discovery obligations pursuant to
6 statute and Brady, the State is not obligated to indulge the defendant's request for the State to
7 investigate for the defense.

8 ***44-70 intentionally left blank by Defendant***

9 **71. Contacting other Agencies**

10 The State understands that it must disclose exculpatory information. The State will
11 comply with such. However, Defendant must also exercise diligence in investigating the case.
12 This general, blanket request is not specific. Defendant must first exercise his efforts in
13 determining if these agencies have any information related to the case. Defendant's request
14 here is premature and will require the State to potentially spend limitless hours contacting the
15 hundreds of government agencies to determine if they possess any evidence related to this
16 case; let alone whether the evidence is actually relevant to the case.

17 **72. Media Involvement**

18 There is no statutory requirement that requested materials be produced and the State
19 requests that this Court not expand the statutory text to include such a requirement.

20 **RECIPROCAL DISCOVERY REQUEST BY THE STATE**

21 NRS 174.245 states in pertinent part that:

- 22 1. Except as otherwise provided in NRS 174.233 to 174.295
23 inclusive, at the request of the prosecuting attorney, the defendant
24 shall permit the prosecuting attorney to inspect and to copy or
25 photograph any
26 (a) Written or recorded statements made by a witness the
27 defendant intends to call during the case in chief of the
28 defendant, or copies thereof, within the possession,
custody or control of the defendant, the existence of which
is known, or by the exercise of due diligence may become
known, to the defendant;

//

1 (b) Results or reports of physical or mental examinations,
2 scientific tests or scientific experiments that the defendant
3 intends to introduce in evidence during the case in chief of
4 the defendant, or copies thereof, within the possession,
custody or control of the defendant, the existence of which
is known, or by the exercise of due diligence may become
known, to the defendant; and

5 (c) Books, papers, documents or tangible objects that the
6 defendant intends to introduce in evidence during the case
7 in chief of the defendant, or copies thereof, within the
possession, custody or control of the defendant, the
8 existence of which is known, or by the exercise of due
diligence may become known, to the defendant.

9 The State formally requests that the defense provide all discovery consistent with the
10 requirements of NRS 174.245 in a timely manner and well before the trial in the instant case.
11 This request includes copies of all reports, tests, videos, photographs or any other item or items
12 prepared by or produced from any noticed defense expert witnesses pursuant to NRS 174.234.

13 CONCLUSION

14 In general the defense request for discovery is vague, overbroad and is completely
15 outside the scope of what required by the State under Brady and its progeny. Not only is the
16 defense fully within its ability and power to independently request and/or subpoena the
17 evidence they seek without the intervention of the State, the requests the defense makes are
18 without focus or direct relationship to this case. The defense has not even attempted to
19 articulate the materiality or exculpatory nature of the evidence they seek. The defense has
20 filed a generalized discovery motion and/or is simply on a fishing expedition hoping to find
21 something on which they may build a defense. Furthermore, while it may be possible in some
22 cases to introduce a witness's criminal background information to reasonably aid in the
23 defense of the accused, this is not one of those cases. Allowing the defense access to every
24 witness's NCIC information would be an abomination and a clear violation of their privacy
25 rights. The State cannot be forced to provide a witness's background information without
26 some justifiable and legitimate reason for doing so. The defense has access to its own
27 investigators and is free to conduct any legitimate inquiry it sees fit. It does not have the right,
28 however, to use State time and resources to further victimize the very person for which the

1 State is seeking justice and especially those who are simply general fact witnesses.

2 Based upon the above and foregoing Points and Authorities, Defendant's Motion for
3 Discovery should be denied to the extent any of the requested information does not comply
4 with the discovery statutes and/or is privileged or irrelevant as to the guilt or punishment of
5 Defendant.

6 DATED this 16th day of March, 2017.

7 Respectfully submitted,

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #005391

10
11 BY /s/ STACEY L. KOLLINS
12 STACEY L. KOLLINS
13 Chief Deputy District Attorney
14 Nevada Bar #003814
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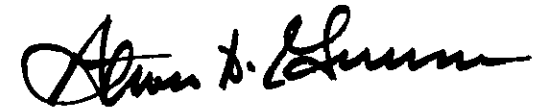
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that service of the above and foregoing was made this 31st day of
21 MARCH 2017, to:

22 CARLI KIERNY, DPD
23 harrolah@ClarkCountyNV.gov

24 BY /s/ HOWARD CONRAD
25 Secretary for the District Attorney's Office
26 Special Victims Unit
27

28 hjc/SVU



CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
CARLI L. KIERNY, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12010
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSE AZUCENA,

Defendant,

CASE NO. C-17-321044-1

DEPT. NO. II

**DEFENDANT'S SECOND SUPPLEMENTAL NOTICE OF WITNESSES,
PURSUANT TO NRS 174.234**

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, JOSE AZUCENA, intends to call the following additional witnesses in his case in chief. This notice is in additional to any other witnesses previously noticed:

1. Nicole Dionisio, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
2. Gina Pearl, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
3. Tiffany Wedlow, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
4. Mary Terzian, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
5. Kelly Budd, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
6. Sara Evans, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
7. Amy Richardson, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
8. Nicholas Poulsen, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146
9. Carmela Chavez, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146

1 10. Lisa McKay, CPS, 6171 W. Charleston Blvd., Las Vegas, NV 89146

2 DATED this 18th day of April, 2017.

3 PHILIP J. KOHN
4 CLARK COUNTY PUBLIC DEFENDER

5 By: /s/ Carli L Kierny
6 CARLI L. KIERNY, #12010
7 Deputy Public Defender
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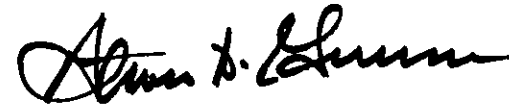
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was served via electronic e-filing to the Clark County District Attorney's Office on the 18th day of April, 2017 by Electronic Filing to:

District Attorneys Office
E-Mail Address:
Jaclyn.Motl@clarkcountyda.com

/s/ Anita H Harrold
Secretary for the Public Defender's Office

Case Name: Jose Azucena
Case No.: C-17-321044-1
Dept. No.: District Court, Department II



CLERK OF THE COURT

1 **SLOW**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER S. HAMNER
6 Chief Deputy District Attorney
7 Nevada Bar #011390
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

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 JOSE AZUCENA,
14 #7037259

15 Defendant.

CASE NO: **C-17-321044-1**

DEPT NO: **II**

16 **FOURTH SUPPLEMENTAL NOTICE OF WITNESSES**

17 **AND/OR EXPERT WITNESSES**
18 **[NRS 174.234]**

19 **TO: JOSE AZUCENA, Defendant; and**

20 **TO: DEPUTY PUBLIC DEFENDER, Counsel of Record:**

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

23 ***indicates additional witness(es) and/or modification(s)**

24 AMADOR, JANETTE; VAWA/U VISA CASEWORKER, HERMANDAD
25 MEXICANA TRANSNACIONAL, 2900 STEWART AVE, LVN 89101

26 ***BRAZZALE, NICHOLAS; 4800 E CHARLESTON #27 LVN**

27 ///

28 ///

1 CETL, DR. SANDRA; Will testify as a medical expert as to the nature, process and
2 limitations of sexual assault examinations in general, and/or as to the sexual assault
3 examination, and findings of the victim(s) in the instant case.

4 CLARK COUNTY COURT INTERPRETER

5 COR; UMC RECORDS

6 ESPINOSA, ELIZABETH; SNCAC, Will testify as an expert as to the nature, process
7 and limitations of forensic interviewing, and/or as the forensic interview(s) conducted in the
8 instant case.

9 ESTRADA, ALICIA; VAWA/U VISA PROGRAM COORDINATOR,
10 HERMANDAD MEXICANA TRANSNACIONAL, 2900 STEWART AVE, LVN 89101

11 ESTRELLA, NICHOLAS; UNK

12 GARCIA-SANCHEZ, MARTHA; 5075 SPYGLASS HILL DR #1031 LVN 89142

13 KATOWICH; LVMPD#06360

14 LARA, MARIA ELENA; 4820 E CHARLESTON BLVD #8 LVN 89104

15 LOSADA, WENDY; RAPE CRISIS CENTER OF SO. NEV

16 MOSQUERA, LUZ MARINA; DIRECTOR, HERMANDAD MEXICANA
17 TRANSNACIONAL

18 PACULT, DR. JOHN; Will testify as an expert regarding the grooming techniques used
19 by perpetrators of sexual abuse upon minors and/or clinical and expert observations about the
20 impact of sexual abuse on a minor, as well as anticipated responses and reactions of a minor
21 who is being sexually abused, including difficulties and issues surrounding the disclosure of
22 sexual abuse by a minor.

23 PRICE, ROGER; LVMPD#05626

24 RUBLE; LVMPD#14982

25 SCHMIDT, JACOB; LVMPD #15319

26 ///

27 ///

28 ///

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

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

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

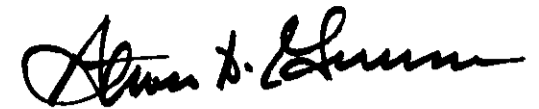
8 BY /s/ CHRISTOPHER S. HAMNER
9 CHRISTOPHER S. HAMNER
10 Chief Deputy District Attorney
11 Nevada Bar #011390

12
13
14 CERTIFICATE OF SERVICE

15 I hereby certify that service of the above and foregoing was made this 19th day of
16 APRIL 2017, to:

17 DEPUTY PUBLIC DEFENDER
18 harrolah@ClarkCountyNV.gov

19
20 BY /s/ J. MOSLEY
21 Secretary for the District Attorney's Office



CLERK OF THE COURT

SLOW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER S. HAMNER
Chief Deputy District Attorney
Nevada Bar #011390
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-

JOSE AZUCENA,
#7037259

Defendant.

CASE NO: C-17-321044-1

DEPT NO: II

FIFTH SUPPLEMENTAL NOTICE OF WITNESSES

AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: JOSE AZUCENA, Defendant; and

TO: DEPUTY PUBLIC DEFENDER, Counsel of Record:

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

***indicates additional witness(es) and/or modification(s)**

AMADOR, JANETTE; VAWA/U VISA CASEWORKER, HERMANDAD
MEXICANA TRANSNACIONAL, 2900 STEWART AVE, LVN 89101

BRAZZALE, NICHOLAS; 4800 E CHARLESTON #27 LVN

///

///

1 CETL, DR. SANDRA; Will testify as a medical expert as to the nature, process and
2 limitations of sexual assault examinations in general, and/or as to the sexual assault
3 examination, and findings of the victim(s) in the instant case.

4 CLARK COUNTY COURT INTERPRETER

5 COR; UMC RECORDS

6 *DE SANTIAGO, LEONARDO; CHARLESTON GARDENS APTS #UNK

7 ESPINOSA, ELIZABETH; SNCAC, Will testify as an expert as to the nature, process
8 and limitations of forensic interviewing, and/or as the forensic interview(s) conducted in the
9 instant case.

10 ESTRADA, ALICIA; VAWA/U VISA PROGRAM COORDINATOR,
11 HERMANDAD MEXICANA TRANSNACIONAL, 2900 STEWART AVE, LVN 89101

12 ESTRELLA, NICHOLAS; UNK

13 GARCIA-SANCHEZ, MARTHA; 5075 SPYGLASS HILL DR #1031 LVN 89142

14 KATOWICH; LVMPD#06360

15 LARA, MARIA ELENA; 4820 E CHARLESTON BLVD #8 LVN 89104

16 *LNU, JUANITO; CHARLESTON GARDENS APTS #UNK

17 *LNU, ORLANDO; CHARLESTON GARDENS APTS #UNK

18 LOSADA, WENDY; RAPE CRISIS CENTER OF SO. NEV

19 MOSQUERA, LUZ MARINA; DIRECTOR, HERMANDAD MEXICANA
20 TRANSNACIONAL

21 PACULT, DR. JOHN; Will testify as an expert regarding the grooming techniques used
22 by perpetrators of sexual abuse upon minors and/or clinical and expert observations about the
23 impact of sexual abuse on a minor, as well as anticipated responses and reactions of a minor
24 who is being sexually abused, including difficulties and issues surrounding the disclosure of
25 sexual abuse by a minor.

26 *PAREDES, LITZI; CHARLESTON GARDENS APTS #UNK

27 PRICE, ROGER; LVMPD#05626

28 RUBLE; LVMPD#14982

1 SCHMIDT, JACOB; LVMPD #15319

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

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

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

9 BY /s/ CHRISTOPHER S. HAMNER
10 CHRISTOPHER S. HAMNER
11 Chief Deputy District Attorney
12 Nevada Bar #011390
13
14

15 CERTIFICATE OF SERVICE

16 I hereby certify that service of the above and foregoing was made this 20th day of
17 APRIL 2017, to:

18 DEPUTY PUBLIC DEFENDER
19 harrolah@ClarkCountyNV.gov

20 BY /s/ J. MOSLEY
21 Secretary for the District Attorney's Office
22
23
24
25
26
27
28

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant


CLERK OF THE COURT

DISTRICT COURT, LAS VEGAS
CLARK COUNTY, NEVADA

HEARING REQUIRED
DATE: 4/24/17
TIME: 9:00

THE STATE OF NEVADA,

Plaintiff,

v.

JOSE AZUCENA,

Defendant,

CASE NO. C-17-321044-1

DEPT. NO. II

DATE: 4/24/17

TIME: ~~10:00 a.m.~~

9:00 AM

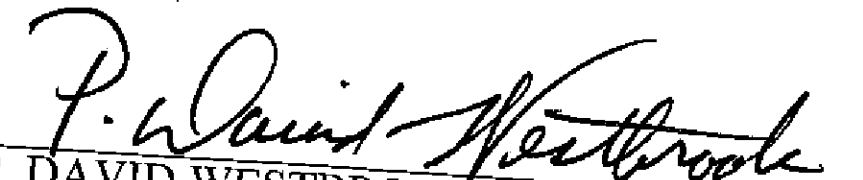
**MOTION TO DISMISS FOR REPEATED AND ONGOING DISCOVERY/BRADY
VIOLATIONS AND MOTION FOR AN EVIDENTIARY HEARING**

COMES NOW, the Defendant, JOSE AZUCENA, by and through CARLI L. KIERNY and P. DAVID WESTBROOK, Chief Deputy Public Defenders, and hereby move that this case be dismissed due to repeated and ongoing discovery and Brady violations. In addition, the defense requests an evidentiary hearing in this matter.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 21st day of April, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
P. DAVID WESTBROOK, #9278
Chief Deputy Public Defender

DECLARATION

P. DAVID WESTBROOK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Chief Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Jose Azucena in the present matter;

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

3. On Tuesday, April 11, 2017, the State provided the defense with addresses for the following witnesses:

- J.O.
- O.O.
- L.S.
- L.P.

4. The next day, Wednesday, April 12, 2017, CCPD Investigator Bruce McAllister visited these newly-produced addresses to interview the witnesses.

5. Mr. McAllister went to the apartment of O.O. and J.O.. He was met at the door by their father, Carlos. Mr. McAllister introduced himself as a Public Defender's Office investigator and handed Carlos his card. Carlos invited him in. Mr. McAllister also confirmed that Carlos spoke English.

6. Once inside, Mr. McAllister met J.O. and O.O. and began asking them questions. After a few minutes, the interview was interrupted by the boys' mother (who we now know is named Veronica Alvarez), who was speaking Spanish. Carlos then asked Mr. McAllister additional questions about his employment. Mr. McAllister again said that he was an investigator for the Public Defender's Office and that he works for the attorneys who represent the defendant in this case.

1 7. In response, Carlos informed Mr. McAllister that they already have an
2 appointment to talk about the case. Mr. McAllister said, "the District Attorney?" and Carlos
3 indicated in the affirmative. Carlos then said, "We are not allowed to say anything until we talk
4 to them."

5 8. Carlos then clarified, "So that's why we're asking if you are a defender of
6 Azucena... we just want to make sure that you are not on his side." Carlos then repeated, "We
7 are not allowed to say anything. That's what they told us when we talked to them, because they
8 have an appointment next week."

9 9. This ended the interview and Mr. McAllister departed.

10 10. This interview was recorded and a copy of the audio has been prepared for the
11 State.

12 11. On April 19, 2017, Deputy District Attorneys Chris Hamner and Stacy Kollins
13 telephoned our office and represented the following:

14 a. New charges were being filed against Jose Azucena under Event
15 #170327001233 and they were producing a voluntary statement from Veronica Alvarez.

16 b. The voluntary statement is in Spanish.

17 c. Veronica Alvarez is the mother of J.O. and O.O.

18 d. J.O. and O.O. have not yet been interviewed by the police or the CAC.

19 e. The prosecutors were unaware of the new allegations and voluntary
20 statement because it was filed under a different event number with different officers.

21 f. Detective Campbell told the prosecutors that he did not know about the
22 case for the reasons stated above. Detective Campbell discovered its existence when it was
23 mentioned to him by coincidence, in passing, by another officer who recognized Mr. Azucena's
24 name.

25 g. Mr. Hamner and Ms. Kollins said they know it's too late to bring these
26 witnesses in or try to get the incidents in as "other bad acts" and said that the new case would
27 eventually be filed separately.

12. During our phone call, I informed Mr. Hamner and Ms. Kollins that our investigator, Bruce McAllister, had attempted to interview J.O. and O.O., but their parents represented that the District Attorney's Office told them not to talk to anyone about this case and that they had a meeting scheduled.

13. Mr. Hamner and Ms. Kollins said that no employee of the District Attorney's Office has ever had any contact with J.O., O.O., or their parents and that they had no meeting currently scheduled with them. I said the witnesses could have been confused about which branch of law enforcement they were working with and could have been given the order by Metro or the CAC. The prosecutors had no information about that.

14. I informed the prosecutors that the meeting was recorded and that a copy would be produced, along with a courtesy copy of the instant motion.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. (NRS 53.045).

EXECUTED this 21st day of April, 2017.

P. David Westbrook
P. DAVID WESTBROOK

PROCEDURAL HISTORY

The following dates are relevant to the arguments presented in this motion:

March 16, 2017: State's Opposition to Defendant's Motion to Compel Production of Discovery and Brady Material filed.

March 23, 2017: Oral argument on Motion to Compel Production of Discovery and Brady Material.

March 31, 2017: State's Opposition to Defendant's Motion to Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material filed.

April 4, 2017: Oral argument on Defendant's Motion to Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material.

STATEMENT OF FACTS

On March 16, 2017, the State filed an opposition to defendant's "Motion to Compel Discovery and Brady Material." Among other things, the State made the following representation:

The State will comply with NRS 174.235 and has provided 'any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.'

State's Opp. to Motion to Compel at 9.

On March 23, 2017, the State "represented that they have turned over all Brady material[.]" 3/23/17 Tr. at 6. The State's specific representations included the following:

MS. KOLLINS: It is our belief that we are in possession of everything that Metro had and we have given all of that to defense counsel. 3/23/17 Tr. at 3.

MS. KOLLINS: We have been in communication with our detective. We can go physically look at the file, we have not done that...But I have gone

1 through everything that's on OnBase, we've gone through that. We have
2 turned everything that's in Metro's electronic file over. Id. at 7.

3 ***

4 MS. KOLLINS: As far as his complaints about U Visas and things like
5 that we don't have any of the information. Id. at 8.

6 ***

7 MR. HAMNER: Yeah, I've had extensive discussion with Detective
8 Campbell...I've made repeated requests that we want everything in his
9 file. That's all been turned over to us pursuant to Detective Campbell.
10 We've reviewed electronically OnBase. We pulled everything and all
11 those things have been provided to them. We've even explained to the
12 defense we don't even think it's very likely that this particular detective,
13 Detective Campbell, based on our experience, even keeps notes on this
14 stuff. We'll double check one more time and see if he actually has notes
15 but we don't believe he does. Id. at 13.

16 On March 31, 2017, the State filed, "State's Opposition to Defendant's Motion to
17 Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material," in
18 which the State made the following representations:

19 Defendant has been provided with a copy of the police reports generated
20 in this matter pursuant to NRS 174.235. State's Opp. to Mot. to
21 Reconsider at 9.

22 ***

23 In response to Defendant's request for witness statements: "The defense is
24 capable of conducting its own pretrial conferences with witnesses." Id. at
25 18.

26 ***

27 In response to Defendant's request for CPS Records: "In addition, the
28 State does not possess such information pertaining to any State witness
and does not have access to said information. Further, such information is
entirely irrelevant." Id. at 25.

In response to Defendant's request for alternate sources of sexual
knowledge: "Any information in the State's possession that is potentially
responsive to his request has been provided through reports, witness
interviews, and other discovery. State's Opp. to Mot. to Reconsider at 28.

The following evidence was produced after the State represented that all Brady materials had been turned over. Contrary to the State's representations, most of this evidence contains at least some exculpatory information and was in the possession of the District Attorney's Office, the Metropolitan Police Department, the Henderson Police Department, Child Protective Services, the Children's Assessment Center, Hermandad Mexicana, or the District Attorney's Victim Witness Assistance Center at the time the prosecutors made their representations.

TABLE 1: EVIDENCE PRODUCED AFTER APRIL 4, 2017

Discovery	State Possession	Produced	Exculpatory?
Recorded interview of L.S.	3/7/17	4/7/16	Yes
Recorded interview of L.P.	3/1/17	4/7/16	Yes
Metro Media Release	11/16/16	4/7/17	Yes
U-VISA App: Maria Estrella-Barajas	3/20/17	4/7/17	Yes
U-VISA App: Amanda Moiza	3/20/17	4/7/17	Yes
Notes of Detective Campbell	11/2/16-11/22/16	4/7/16	Yes
Metro Abuse/Neglect Complaint	10/17/2016	4/7/16	Yes
Contact Info: Y.E.	<i>unknown</i>	4/11/17	<i>unknown</i>
Contact Info: Maria Estrella-Barajas	<i>unknown</i>	4/11/17	<i>unknown</i>
Contact Info: L.S.	<i>unknown</i>	4/11/17	Yes
Contact Info: L.P.	<i>unknown</i>	4/11/17	Yes
Contact Info: J.O.	<i>unknown</i>	4/11/17	Yes
Contact Info: O.O.	<i>unknown</i>	4/11/17	Yes
CPS Report: J.M.	11/16/17-3/27/17	4/18/17	Yes
CPS Report: J.M.2	12/17/2012-3/27/17	4/18/17	Yes
CPS Report: S.R.	2/16/15-3/27/17	4/18/17	Yes
CPS Unity Case Notes: S.R. & J.M.2	12/17/2012-3/27/17	4/18/17	Yes
Incident Detail Report of Officer Erich Tschirgi	11/12/16	4/19/17	Yes
Azucena's prior JOC's	4/19/17	4/19/17	No
Vol. Statement: Veronica Alvarez	3/27/17	4/19/17	Yes
Notice of new witness: Nathan Brazale	4/20/17	4/20/17	<i>unknown</i>
Police body cam video of the arrest	11/12/16	4/20/17	Yes
Photographs of the Charleston Gardens Apartments	<i>unknown</i>	4/21/17	Yes

1 This table has been updated through April 21, 2017 at 1:39 p.m., however; since the State
2 has produced new evidence nearly every day this week, we anticipate the table is incomplete.
3 The defense reserves the right to supplement the record if and when new evidence is produced.

4 ARGUMENT

5 The State is required to produce discovery and Brady materials in a timely fashion: at
6 least 30 days before trial or at such “reasonable” time that the court may permit.¹ The State is
7 required to exercise diligence in seeking out this evidence, whether it is in the direct possession
8 of a prosecutor or another State agent.² The State is also required to be candid with the tribunal.
9 This includes both the duty to refrain from making false statements and to correct prior
10 misrepresentations.³ These are the requirements of the law, but they are absolutely *meaningless*
11 if they are not enforced.

12 The prosecutors in this case assured the Court, both in writing and in person, that all
13 discovery and exculpatory evidence had been produced. These representations have proven false.
14 Since this Court granted Defendant’s “Motion to Reconsider,” the defense has been inundated
15 with new Brady evidence—things he prosecutors claimed were not in the State’s possession,
16 were irrelevant, or simply did not exist. A purportedly “simple” and “straightforward” case has
17 devolved into a trial by ambush, and the Defendant unjustly forced to choose between a speedy
18 trial and a fair trial. The only way to remedy the State’s violations without compromising Mr.
19 Azucena’s rights is to dismiss this case pursuant to NRS 174.295(2).

20
21 **I. The remedy of dismissal is available to the court and is justified by the State’s**
22 **actions—the entire State, not just the prosecutors.**

23 **A. The State is more than just “the District Attorney’s Office”**

24 The State has an ongoing duty to comply with the discovery requirements set forth in
25 NRS 174.235 to 174.295, inclusive. It is important to remember that the word, “State,” does not

26 ¹ See NRS 174.285.

27 ² See, e.g., Kyles v. Whitley, 514 U.S. 419, (1995).

28 ³ NV ST RPC Rule 3.3

1 simply mean, "prosecutors." As a matter of law, the "State" includes police officers, CPS
2 Investigators, CAC Forensic Interviewers and even outside agents who work with law
3 enforcement, such as S.A.N.E. nurses and organizations like Hermandad Mexicana. *See, e.g.,*
4 Kyles v. Whitley, 514 U.S. 419, 437-38 (1995); Medina v. State, 122 Nev. 346 (2006). When
5 any of these State actors violates discovery rules, withholds Brady, or acts in bad faith, the
6 defendant is entitled to relief, whether or not the individual prosecutors were aware of the
7 violations.

8 The importance of holding the *entire* "State," and not just individual prosecutors, to their
9 collective burden is discussed in United States v. Blanco, 392 F.3d 382, 388 (9th Cir. 2004):

10
11 Because the prosecution is in a unique position to obtain information
12 known to other agents of the government, it may not be excused from
13 disclosing what it does not know but could have learned. A prosecutor's
14 duty under *Brady* necessarily requires the cooperation of other
government agents who might possess *Brady* material...

15 Exculpatory evidence cannot be kept out of the hands of the defense just
16 because the prosecutor does not have it, where an investigating agency
17 does. That would undermine *Brady* by allowing the investigating agency
18 to prevent production by keeping a report out of the prosecutor's hands
19 until the agency decided the prosecutor ought to have it, and by allowing
the prosecutor to tell the investigators not to give him certain materials
unless he asked for them.

20 Id. (internal citations and quotation marks omitted).

21 The facts of Blanco are similar to the instant case. The key to the government's case was
22 the testimony of an informant. This witness had received an enormous benefit in exchange for
23 accusing the defendant: a "special parole visa". The Court determined that it is unlikely the
24 AUSA's prosecuting the case knew about the visa, but the lead DEA agent knew and was
25 obligated to produce that information. Furthermore, that obligation existed independent of the
26 prosecutors:

27 There is no ambiguity in our law. The obligation under *Brady* and *Giglio*
28 is the obligation of the **government**, not merely the obligation of the

1 prosecutor. Exculpatory evidence cannot be kept out of the hands of the
2 defense just because the prosecutor does not have it, where an
3 investigating agency does. The JDS, the form agreement by the United
4 States Attorney's office used in this case, misstates the obligation of the
5 government under Brady and Giglio when it provides, "Such disclosure
6 [under Brady and Giglio] is limited to evidence which is known by
7 Government counsel or which could become known by the exercise of due
8 diligence." The government has not discharged its obligation if the AUSA
9 ("Government counsel") has exercised due diligence by asking the DEA
10 for all Brady and Giglio material, and the DEA has refused to provide
11 such information in its possession. **To repeat, Brady and Giglio impose
12 obligations not only on the prosecutor, but on the government as a
13 whole.**

14 Id. at 393–95 (emphasis added)(internal citations and quotation marks omitted). *See also, United*
15 *States v. Zuno-Arce*, 44 F.3d 1420 (9th Cir. 1995) (as amended).

16 The State has violated its discovery and Brady obligations. The prosecutors will attempt
17 to limit the State's responsibility by assigning blame:

- 18 • Detective Campbell didn't tell us;
- 19 • Detective Campbell didn't know;
- 20 • Another officer failed to tell Detective Campbell;
- 21 • It was just a miscommunication;
- 22 • We turned it over as soon as *we* knew about it;
- 23 • It was under a different event number;
- 24 • The Children's Assessment Center did *those* interviews;
- 25 • We didn't have it in *our* file.

26 These are excuses that excuse *nothing*. Every government actor has an equal burden to comply,
27 in good faith, with the law. In this country, we do not punish defendants for the sins of the State.

28 B. Dismissal is the only viable remedy in this case.

In the event of a discovery violation, the District Court has broad power to fashion a
remedy. For example, the court "may order the [State] to permit the discovery or inspection of
materials not previously disclosed, grant a continuance, or prohibit the [State] from introducing

1 in evidence the material not disclosed, or it may enter such other order as it deems just under the
2 circumstances.” NRS 174.295(2); *see also*, Langford v. State, 95 Nev. 631,635(1979).
3 **Dismissal** is within the court’s broad power, and it is the only viable option here. See Blanco,
4 *supra*, 392 F.3d at 395)(“dismissal of the indictment for governmental misconduct” is one of the
5 “range of options” available to the court).

6 When ruling on a request for dismissal, the District Court must consider whether the
7 State acted in bad faith and whether the defendant has suffered prejudice. As the Nevada
8 Supreme Court has explained, it may be an abuse of discretion to deny a request for dismissal or
9 suppression of evidence where there “is a showing that the State has acted in bad faith, **or** that
10 the non-disclosure results in substantial prejudice to appellant.” Jones v. State, 113 Nev. 454,
11 471 (1997(emphasis added). Because both of these factors (bad faith and substantial prejudice)
12 have been met, Mr. Azucena is entitled to the remedy of dismissal.

13 1. **Bad Faith**

14 Bad faith is the willful breach of a legal obligation. It is vital to recognize that the term
15 “bad faith” is *not* synonymous with the word, “intentional.” In fact, Nevada cases separate the
16 two concepts with the word *or*: “Tinch has not shown any intentional **or** bad faith suppression
17 by the State[.]”⁴ The implication is that, while intentional suppression is *always* bad faith, bad
18 faith suppression is *not* always intentional.

19 Black’s Law dictionary defines bad faith as, “Dishonesty of belief or purpose.” Black’s
20 Law Dictionary 56 (2nd ed. 2001). Barron’s Law Dictionary provides a more detailed definition:

21 Breach of faith. Willful failure to respond to plain, well-understood
22 statutory or contractual obligations. Good faith means being faithful to
23 one’s duty or obligation; bad faith means being recreant thereto. **It is thus
the absence of good faith.**

24 Barron’s Law Dictionary 40 (4th ed. 1996)(internal citations omitted)(emphasis added).
25

26
27 ⁴ Tinch v. State, 113 Nev. 1170, 1175, 946 P.2d 1061, 1064 (1997) (holding modified on other
28 grounds by Bigpond v. State, 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012))(emphasis added).

1 No legal definition of bad faith requires proof of some “conspiracy” to withhold
2 evidence, bias against the defendant, or some nefarious intent to intentionally damage the
3 defense case. All that is required is proof that the State—which includes the prosecutors, the
4 police and other State agents—was aware (or should have been aware) of its duty, but did not
5 faithfully fulfill it. Bad faith by any State actor is bad faith by “the State”.

6 a. Misrepresentations by prosecutors are proof of bad faith

7 In this case, the prosecutors made numerous representations that have proven to be
8 objectively false. Each of these representations demonstrates bad faith:

- 9 1) **Exculpatory Evidence:** The State claimed that all exculpatory evidence had
10 been turned over.⁵ If necessary, the defense can go into great detail regarding
11 exactly what is exculpatory and why, but that information bears directly on
12 the theory of defense and must therefore be shared *in camera*. However, the
13 exculpatory exhibits and information are listed in Table 1, *supra*, at p.7.
- 14 2) **CPS Records:** The State claimed it did not possess CPS records and, in any
15 event, CPS records were “irrelevant.” State’s Opp. to Mot. to Reconsider at 9.
16 In reality, the prosecutors have had these records in their constructive
17 possession since 12/17/2012. CPS is a state agency. However, these records
18 appear to have been produced to the prosecution on March 27, 2017. So it
19 seems that on March 31, when prosecutors filed their Opposition, they had the
20 CPS records in their *actual* possession. As to the claim that the records were
21 irrelevant: the prosecutor cannot claim, in good faith, that something is
22 “irrelevant” without reading it. Further, this court issued a Minute Order on
23 4/19/17 finding that the records did, in fact, contain “potentially relevant”
24 information. So either way, the State’s representations were made in bad faith.

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27 _____
28 ⁵ 3/23/17 Tr. at 6.

- 1 3) **Alternate Sources of Sexual Knowledge:** On March 31, 2017, the State
2 claimed that all such information had been provided.⁶ However, as the Court
3 knows from reviewing the CPS records, that was not true.
- 4 4) **U Visas:** The State said, “As far as his complaints about U Visas and things
5 like that we don’t have any of the information.” 3/23/17 Tr. at 8. When a
6 prosecutor says the word, “we,” it means, “The State.” Saying, “we” don’t
7 have something, without vetting that claim, is bad faith. It is now clear that the
8 State had U Visa information since 3/20/17, maybe earlier. In fact, an
9 employee of Hermandad Mexicana is now on the State’s witness list as part of
10 their case in chief.
- 11 5) **Police Reports/Notes:** Since the State said, “Defendant has been provided
12 with a copy of the police reports generated in this matter,”⁷ at least two new
13 reports have been produced. The State also produced Detective Campbell’s
14 case notes—notes the State had earlier said were unlikely to even exist.
- 15 6) **Witness Interviews:** On April 7, 2017, the State turned over recorded
16 interviews of L.P. and L.S.. They had been in State possession since March 1st
17 and March 7th, respectively. The interview of L.P. was entirely in Spanish and
18 the defense was forced to request \$1,500 to have a private company do a rush-
19 order translation, an invoice that will be paid by the Clark County Courts (or,
20 more precisely, the tax payers of Clark County). So, the State is not only
21 guilty of bad faith, but also wasting County funds. Both interviews are, of
22 course, exculpatory.

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27 ⁶ State’s Opp. to Mot. to Reconsider at 25.

28 ⁷ State’s Opp. to Mot. to Reconsider at 9.

1 b. Interfering with a defense investigation by tampering with witnesses is proof of
2 bad faith.

3 In response to Defendant's request for witness statements, the State said: "The defense is
4 capable of conducting its own pretrial conferences with witnesses."⁸ While that fact has no legal
5 bearing on the State's duty to produce discovery, the State's response is interesting in light of the
6 incident described in the Declaration of Counsel, *supra*.

7 Early in the case, the defense became aware of two potential witnesses who we now
8 know as O.O. and J.O. (full names withheld because they are minors). The State's initial
9 discovery only provided the first names of these witnesses and no contact information. The
10 defense had evidence that O.O. and J.O. would contradict the claims of the State's complaining
11 witnesses, but the defense could not locate or even identify them. The State finally provided
12 contact information for O.O. and J.O. on April 11, 2017. Defense investigator, Bruce McAllister,
13 went to the scene the next day.

14 After initially indicating a willingness to talk, the father of O.O. and J.O. cut the
15 interview short. He indicated that the family was scheduled to meet with the State and that they
16 were "not allowed to say anything" to the defense. It is impossible for the defense to "conduct
17 its own pretrial conferences" when the State is ordering witnesses not to cooperate.

18 We do not know who told the family of O.O. and J.O. that they were not permitted to talk
19 to the defense. When presented with this information, the prosecutors said that no one from the
20 District Attorney's Office has spoken to the family. So, perhaps it was a police officer, a CPS
21 investigator, or a forensic examiner from the CAC. We cannot know for sure which State actor
22 was responsible until the Court conducts an evidentiary hearing. But we do know that O.O. and
23 J.O. were ordered not to speak with the defense by a State actor, and that person was acting in
24 bad faith.

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28 ⁸ State's Opp. to Mot. to Reconsider at 18.

1 Bad faith is the willful breach of a legal obligation. The defense has provided a laundry
2 list of the State's broken obligations which grows longer each day. These obligations were
3 placed on the State by statute, case law, the constitution, and by the Order of this Court.

4 The State cannot credibly argue that its duty was unclear, especially in light of the
5 Court's extensive and detailed order of April 4, 2017. This is precisely the reason why defense
6 counsel files such extensive discovery motions and insists on express rulings: so the State cannot
7 later claim that their obligations were unclear.

8 The State cannot credibly argue that their breach of duty was not willful. All lawyers
9 appearing before the Court owe a duty of candor, prosecutors included. The Court *relies* on the
10 duty of candor. This reliance is why, back on March 23rd, when the prosecutor said: "It is our
11 belief that we are in possession of everything Metro had and we have given all of that to defense
12 counsel," the Court was ready to simply accept that representation and move on.⁹ Ideally, the
13 Court *should* be able to do exactly that; but in this case, the State demonstrated why that just
14 can't happen: the State does not always operate in good faith.

15 An attorney cannot make a representation without a good faith basis.¹⁰ For example: one
16 cannot claim, *in good faith*, that CPS records are "irrelevant" without reading them, and one
17 cannot read them without possessing them. So, when a prosecutor says both, "the State does not
18 possess such information," and "such information is entirely irrelevant," she either knows the
19 representation is false, or she knows she lacks the necessary knowledge to make the
20 representation. For purposes of bad faith, the distinction is meaningless. Lack of good faith is, by
21 definition, bad faith.

22 When prosecutors claim that they know their duty, that they have complied with their
23 duty, and that they stand "ready" for trial, the Court must be able to trust them. When this trust is
24 broken, the Court must act, and the only action that will have any meaning to the State is
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26

27 ⁹ 3/23/17 Tr at 3.

28 ¹⁰ See NRPC 3.3: Candor Toward the Tribunal

1 dismissal. Anything else will simply reward the State for misleading the Court and prejudice the
2 defendant.

3 2. Substantial Prejudice

4 Even if the Court finds that the State's actions fall short of "bad faith," the prejudice
5 suffered by Mr. Azucena warrants dismissal by itself. Mr. Azucena is an innocent man, but like
6 so many others, he has been forced to face his charges from behind bars, as though he had
7 already been convicted. His situation is precisely why NRS 178.556(1) exists, so that innocent
8 men like Mr. Azucena are not deprived of liberty while awaiting justice. He suffers "substantial
9 prejudice" every second he waits in custody.

10 Mr. Azucena also has the rights to a fair trial, to present a defense, to cross-examine
11 witness, and to effective assistance of counsel. See U.S. Const. amend. V, VI, XIV Nev. Const.
12 Art. 1 § 8. By failing in its obligation to timely provide discovery and Brady materials, the State
13 has made it nearly impossible for defense counsel to provide the representation to which Mr.
14 Azucena is entitled under the State and Federal constitutions.

15 Since the State first claimed to have turned over all exculpatory evidence and complied
16 with NRS 174.235, the defense has received a cornucopia of "new" documents, reports, pictures,
17 recordings—in both English and untranslated Spanish—and other discovery. Almost every piece
18 contains something exculpatory, and all of it requires research and investigation. Had the State
19 done its job when it was required to, the defense would have had plenty of time to prepare. But
20 the State did not do its job, and unless the Court intervenes, it will be Mr. Azucena who suffers
21 the consequences.

22 Returning to the witness tampering allegations: the State had contact information for
23 O.O. and J.O. well before April 11, 2017, but did not produce it. The late disclosure and possible
24 witness tampering robbed Mr. Azucena of the chance to interview J.O. and O.O. before his trial.
25 Perhaps more importantly, Mr. Azucena lost the opportunity to interview J.O. and O.O. before
26 their scheduled meeting with the State. As a result, the first recorded statement J.O. and O.O.
27 make will now be guided by the *same people* who tampered with them. Had the defense been
28

1 permitted to interview these witnesses, they could have compared the statements taken after
2 police contact with the earlier statements to detect evidence of coaching or reveal
3 inconsistencies. That is now impossible, and the prejudice suffered by Mr. Azucena cannot be
4 cured.

5 The State may try to argue that a continuance would adequately remedy any prejudice to
6 Mr. Azucena; however, a continuance is **not** an option where Mr. Azucena has invoked his
7 constitutional right to a speedy trial. We would simply be trading one form of prejudice for
8 another. As the U.S. Supreme Court recognized in Brooks v. Tennessee, 406 U.S. 605 (1972), a
9 criminal defendant cannot “voluntarily” choose between asserting two constitutional rights.

10 Here, Mr. Azucena cannot request a continuance without waiving his constitutional right
11 to a speedy trial and his statutory right to a trial setting within 60 days.¹¹ See U.S. Const. amend.
12 V, VI, XIV Nev. Const. Art. 1 § 8; see also NRS 178.556(1). Yet, continuing forward without
13 adequate time to prepare will violate Mr. Azucena’s constitutional rights to effective assistance
14 of counsel, due process, and a fundamentally fair trial. See U.S. Const. amend. V, VI, XIV; Nev.
15 Const. Art. 1 § 8. This Court **cannot** force Mr. Azucena to choose between these constitutional
16 rights. See, e.g., Sencion v. State, No. 64655, 2014 WL 7277521, at *2 (Nev. Dec. 19, 2014)
17 (unpublished order) (“we do not believe Sencion should have been forced to choose between
18 waiving his right to a speedy trial and requesting a continuance after this right had been
19 previously invoked, and proceeding to trial unprepared.”).

20 In this case, the State’s failure to uphold its discovery and Brady obligations cannot be
21 remedied in any of the “usual” ways. The case can’t be continued because the defendant invoked
22 his right to a speedy trial within 60 days. The late discovery can’t be suppressed because most of
23 it is *exculpatory*. The State has left this Court with only one remedy: dismissal.

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26 _____
27 ¹¹ It should also be noted that the deprivation of the statutory protection is, itself, a violation of
28 due process. See Hicks v. Oklahoma, 447 U.S. 343, 346 (1980).

1 CONCLUSION

2 For the foregoing reasons, the defense requests that this case be dismissed. To the extent
3 this Court is not prepared to grant the relief requested based on the moving papers alone, an
4 evidentiary hearing is necessary to determine the full extent of the State's bad faith, including its
5 untimely disclosure of exculpatory evidence, its lack of candor to the tribunal, and the evidence
6 that a State actor told witnesses they are, "not allowed to say anything" to defense investigators.

7 DATED this 21st day of April, 2017.

8 PHILIP J. KOHN
9 CLARK COUNTY PUBLIC DEFENDER

10 By: 
11 P. DAVID WESTBROOK, #9278
12 Chief Deputy Public Defender
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1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the
4 above and foregoing MOTION TO DISMISS FOR REPEATED AND ONGOING
5 DISCOVERY/BRADY VIOLATIONS AND MOTION FOR AN EVIDENTIARY HEARING,
6 in case C-17-321044-1, on for hearing on the 24th day of April, 2017 at ~~10:00~~ a.m., in District
7 Court II. 9:00

8 DATED this 21st day of April, 2017.

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11 By: P. David Westbrook
12 P. DAVID WESTBROOK, #9278
13 Chief Deputy Public Defender
14
15

16 **CERTIFICATE OF ELECTRONIC FILING**

17 I hereby certify that service of the above and foregoing was made this 21st day of
18 April, 2017 by Electronic Filing to:

19 District Attorneys Office
20 E-Mail Address:
21 Christopher.Hamner@clarkcountyda.com
22 Stacey.Kollins@clarkcountyda.com
23 Motions@clarkcountyda.com

24 /s/ Anita H Harrold

25 Secretary for the Public Defender's Office
26
27
28

ORIGINAL

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

APR 25 2017

BY Shelly Landwehr
SHELLY LANDWEHR, DEPUTY

MEMO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar # 005391
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-

JOSE AZUCENA,
#7037259

Defendant.

CASE NO. C-17-321044-1

DEPT NO. II

STATE'S MEMORANDUM REGARDING NRS 51.385

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through STACEY KOLLINS, Chief Deputy District Attorney, and files this Memorandum for consideration by this Honorable Court.

NRS 51.385 HEARING FACTORS

NRS 51.385 provides in pertinent part:

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

C-17-321044-1
MEMO
Memorandum
4843726



1 (a) The court finds, in a hearing out of the presence of the jury,
2 that the time, content and circumstances of the statement
provide sufficient circumstantial guarantees of
trustworthiness; and

3 (b) The child testifies at the proceeding or is unavailable or unable
4 to testify.

5 2. In determining the trustworthiness of a statement, the court
shall consider, without limitation, whether:

6 (a) The statement was spontaneous;

7 (b) The child was subjected to repetitive questioning;

8 (c) The child had a motive to fabricate;

9 (d) The child used terminology unexpected of a child of similar
age; and


10 (e) The child was in a stable mental state.

11 The statute allows introduction of hearsay statements made by a child declarant describing
12 sexual conduct or physical abuse if (1) a court holds a hearing outside the jury's presence to
13 assess the circumstances surrounding the trustworthiness of such statements, (2) the child
14 testifies at the hearing or is unavailable or unable to testify, and (3) the court finds such
statements sufficiently trustworthy.

15 DATED this ____ day of April, 2017.

16 STEVEN B. WOLFSON
17 DISTRICT ATTORNEY
Nevada Bar #001565

18
19 BY

20 
21 STACEY KOLLINS
22 Chief Deputy District Attorney
23 Nevada Bar #005391
24
25
26
27
28

ORIGINAL

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

APR 25 2017

BY Shelly Landwehr
SHELLY LANDWEHR, DEPUTY

JURL

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

CASE NO. C321044

DEPT. NO. II

-VS-

JOSE AZUCENA,

Defendant(s).

JURY LIST

- | | |
|---------------------|------------------------|
| 1. CHARLES ELLISTON | 8. ANGELA DONATO |
| 2. ROBERT MERGENER | 9. STAPORN BUASUWAN |
| 3. MINFRED THOMAS | 10. ELZETTA ZURZOLO |
| 4. LINDA KLOSOWSKI | 11. RHONDA GONZALES |
| 5. CEDO BUCALO | 12. CHARLENE TROSCLAIR |
| 6. JOYCE HUDSON | 13. KATHLEEN SCHNEIDER |
| 7. ERIC LACROIX | 14. LORETO AGBUYA |

ALTERNATES

SECRET FROM ABOVE

C-17-321044-1
JURL
Jury List
4643726



ORIGINAL

IND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER HAMNER
Chief Deputy District Attorney
Nevada Bar #011390
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

APR 27 2017

BY, Amy Calderwood
AMY CALDERWOOD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JOSE AZUCENA,
#7037259
Defendant.

CASE NO: C-17-321044-1

DEPT NO: II

AMENDED
INDICTMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss.

The Defendant above named, JOSE AZUCENA, accused by the Clark County Grand Jury of the crimes of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony - NRS 201.230 - NOC 50975), CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony - NRS 200.508(1) - NOC 55226), INDECENT EXPOSURE (Gross Misdemeanor - NRS 201.220 - NOC 50973), SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366 - NOC 50105), ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony - NRS 201.230, 193.330 - NOC 50983) and FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053) committed at and within the County of Clark, State of Nevada, on or between November 1, 2014 and November 30, 2016, as follows:

C-17-321044-1
AIND
Amended Indictment
4644743



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1 COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
4 of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick
5 the mouth and/or tongue and/or body of J.M., with the intent of arousing, appealing to, or
6 gratifying the lust, passions, or sexual desires of Defendant, or J.M.

7 COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

8 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
9 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
10 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
11 fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust,
12 passions, or sexual desires of Defendant, or J.M.

13 COUNT 3 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

14 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
15 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
16 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
17 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
18 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
19 exploitation, by Defendant exposing his penis to J.M.

20 COUNT 4 - INDECENT EXPOSURE

21 did, intentionally, willfully and unlawfully make an open and indecent or obscene
22 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
23 presence of J.M.

24 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
27 of fourteen years, by Defendant causing and/or directing and/or encouraging J.M. to reach into
28 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of J.M.

1 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
2 or gratifying the lust, passions, or sexual desires of Defendant, or J.M.

3 COUNT 6 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

4 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
5 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: J.M., a
6 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
7 encourage J.M. to reach into the front pants pocket of Defendant to get some chocolate, thereby
8 placing the hand of J.M. on or in close proximity to the genitals of Defendant, with the intent
9 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
10 J.M.

11 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

12 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
13 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
14 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
15 fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust,
16 passions, or sexual desires of Defendant, or J.M.

17 COUNT 8 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

18 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
19 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
20 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
21 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
22 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
23 exploitation, by Defendant showing pornography to J.M.

24 COUNT 9 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
27 age of fourteen years, by Defendant using his hand(s) and/or finger(s) and/or penis to touch
28 and/or rub and/or fondle the genital area of M.M.1, with the intent of arousing, appealing to,

1 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

2 COUNT 10 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

3 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
4 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
5 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
6 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
7 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
8 sexual exploitation, by Defendant exposing his penis to M.M.1.

9 COUNT 11 - INDECENT EXPOSURE

10 did, intentionally, willfully and unlawfully make an open and indecent or obscene
11 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
12 presence of M.M.1.

13 COUNT 12 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

14 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
15 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
16 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
17 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
18 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
19 sexual exploitation, by Defendant showing pornography to M.M.1.

20 COUNT 13 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

21 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
22 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
23 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.1 to
24 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
25 of M.M.1 on or in close proximity to the genitals of Defendant, with the intent of arousing,
26 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

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28 //

1 COUNT 14 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
3 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.1,
4 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
5 encourage M.M.1 to reach into the front pants pocket of Defendant to get some chocolate,
6 thereby placing the hand of M.M.1 on or in close proximity to the genitals of Defendant, with
7 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
8 Defendant, or M.M.1.

9 COUNT 15 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

10 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
11 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
12 age of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or
13 lick the mouth and/or tongue and/or body of M.M.2, with the intent of arousing, appealing to,
14 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

15 COUNT 16 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
17 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
18 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
19 and/or fondle the breast(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
20 the lust, passions, or sexual desires of Defendant, or M.M.2.

21 COUNT 17 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

22 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
23 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
24 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
25 and/or fondle the genital area of M.M.2, with the intent of arousing, appealing to, or gratifying
26 the lust, passions, or sexual desires of Defendant, or M.M.2.

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1 COUNT 18 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
4 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
5 and/or fondle the buttock(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
6 the lust, passions, or sexual desires of Defendant, or M.M.2.

7 COUNT 19 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

8 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
9 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
10 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2
11 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
12 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
13 sexual exploitation, by Defendant exposing his penis to M.M.2.

14 COUNT 20 - INDECENT EXPOSURE

15 did, intentionally, willfully and unlawfully make an open and indecent or obscene
16 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
17 presence of M.M.2.

18 COUNT 21 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

19 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
20 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
21 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.2 to
22 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
23 of M.M.2 on or in close proximity to the genitals of Defendant, with the intent of arousing,
24 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

25 COUNT 22 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

26 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
27 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.2,
28 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or

1 encourage M.M.2 to reach into the front pants pocket of Defendant to get some chocolate,
2 thereby placing the hand of M.M.2 on or in close proximity to the genitals of Defendant, with
3 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
4 Defendant, or M.M.2.

5 COUNT 23 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

6 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
7 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
8 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2
9 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
10 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
11 sexual exploitation, by Defendant showing pornography to M.M.2.

12 COUNT 24 - FIRST DEGREE KIDNAPPING

13 did willfully, unlawfully and feloniously, lead, take, entice, carry away or kidnap Y.E.,
14 a minor, with the intent to keep Y.E. for a protracted period of time or permanently and/or
15 imprison or confine the said Y.E., from the parents, guardians, or other person or persons
16 having lawful custody of Y.E., or with the intent to hold Y.E. to unlawful service, or to
17 perpetrate upon the person of Y.E. any unlawful act, to wit: lewdness and/or sexual assault
18 and/or child abuse, neglect or endangerment and/or indecent exposure.

19 COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
20 AGE

21 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
22 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
23 his finger(s) into the vaginal opening of Y.E.

24 COUNT 26 - LEWDNESS WITH A MINOR UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
27 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
28 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,

1 passions, or sexual desires of Defendant, or Y.E.

2 COUNT 27 - LEWDNESS WITH A MINOR UNDER THE AGE OF 14

3 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
4 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
5 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
6 fondle the buttock(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
7 passions, or sexual desires of Defendant, or Y.E.

8 COUNT 28 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

10 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
11 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
12 his finger(s) into the vaginal opening of Y.E.

13 COUNT 29 - LEWDNESS WITH A MINOR UNDER THE AGE OF 14

14 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
15 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
16 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
17 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
18 passions, or sexual desires of Defendant, or Y.E.

19 COUNT 30 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

20 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
21 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
22 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
23 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
24 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
25 exploitation, by Defendant exposing his penis to Y.E.

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1 COUNT 31 - INDECENT EXPOSURE

2 did, intentionally, willfully and unlawfully make an open and indecent or obscene
3 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
4 presence of Y.E.

5 COUNT 32 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

6 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
7 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
8 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
9 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
10 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
11 exploitation, by Defendant showing pornography to Y.E.

12 COUNT 33 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

13 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
14 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
15 of fourteen years, by Defendant causing and/or directing and/or encouraging Y.E. to reach into
16 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of Y.E.
17 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
18 or gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

19 COUNT 34 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
21 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Y.E., a
22 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
23 encourage Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby
24 placing the hand of Y.E. on or in close proximity to the genitals of Defendant, with the intent
25 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
26 Y.E.

27 //

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1 COUNT 35 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
4 of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick
5 the mouth and/or tongue and/or body of Y.E., with the intent of arousing, appealing to, or
6 gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

7 COUNT 36 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

8 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
9 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
10 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
11 fondle the breast(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
12 passions, or sexual desires of Defendant, or Y.E.

13 COUNT 37 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

14 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
15 or with the body, or any part or member thereof, of a child, to wit: N.E., a child under the age
16 of fourteen years, by Defendant using his hand(s) to hold and/or rub the body of N.E. against
17 the chest and/or body of Defendant, with the intent of arousing, appealing to, or gratifying the
18 lust, passions, or sexual desires of Defendant, or N.E.

19 COUNT 38 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

20 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
21 wit: S.R., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
22 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause S.R.
23 to be placed in a situation where S.R. might have suffered unjustifiable physical pain or mental
24 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
25 exploitation, by Defendant exposing his penis to S.R.

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1 COUNT 39 - INDECENT EXPOSURE

2 did, intentionally, willfully and unlawfully make an open and indecent or obscene
3 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
4 presence of S.R.

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

8 BY


9 CHRISTOPHER HAMNER
10 Chief Deputy District Attorney
11 Nevada Bar #011390
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1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER HAMNER
6 Chief Deputy District Attorney
7 Nevada Bar #011390
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

MAY 01 2017

BY, Amy Calderwood
AMY CALDERWOOD, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 JOSE AZUCENA,
14 #7037259

15 Defendant.

CASE NO: C-17-321044-1

DEPT NO: II

SECOND AMENDED
INDICTMENT

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 The Defendant above named, JOSE AZUCENA, accused by the Clark County Grand
19 Jury of the crimes of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category
20 A Felony - NRS 201.230 - NOC 50975), CHILD ABUSE, NEGLECT OR
21 ENDANGERMENT (Category B Felony - NRS 200.508(1) - NOC 55226), INDECENT
22 EXPOSURE (Gross Misdemeanor - NRS 201.220 - NOC 50973), SEXUAL ASSAULT
23 WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS
24 200.364, 200.366 - NOC 50105), ATTEMPT LEWDNESS WITH A CHILD UNDER
25 THE AGE OF 14 (Category B Felony - NRS 201.230, 193.330 - NOC 50983) and FIRST
26 DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50053)
27 committed at and within the County of Clark, State of Nevada, on or between November 1,
28 2014 and November 30, 2016, as follows:

C-17-321044-1
AIND
Amended Indictment
4645444



1 COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
4 of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick
5 the mouth and/or tongue and/or body of J.M., with the intent of arousing, appealing to, or
6 gratifying the lust, passions, or sexual desires of Defendant, or J.M.

7 COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

8 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
9 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
10 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
11 fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust,
12 passions, or sexual desires of Defendant, or J.M.

13 COUNT 3 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

14 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
15 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
16 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
17 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
18 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
19 exploitation, by Defendant exposing his penis to J.M.

20 COUNT 4 - INDECENT EXPOSURE

21 did, intentionally, willfully and unlawfully make an open and indecent or obscene
22 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
23 presence of J.M.

24 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
27 of fourteen years, by Defendant causing and/or directing and/or encouraging J.M. to reach into
28 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of J.M.

1 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
2 or gratifying the lust, passions, or sexual desires of Defendant, or J.M.

3 COUNT 6 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

4 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
5 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: J.M., a
6 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
7 encourage J.M. to reach into the front pants pocket of Defendant to get some chocolate, thereby
8 placing the hand of J.M. on or in close proximity to the genitals of Defendant, with the intent
9 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
10 J.M.

11 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

12 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
13 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
14 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
15 fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust,
16 passions, or sexual desires of Defendant, or J.M.

17 COUNT 8 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

18 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
19 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
20 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
21 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
22 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
23 exploitation, by Defendant showing pornography to J.M.

24 COUNT 9 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
27 age of fourteen years, by Defendant using his hand(s) and/or finger(s) and/or penis to touch
28 and/or rub and/or fondle the genital area of M.M.1, with the intent of arousing, appealing to,

1 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

2 COUNT 10 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

3 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
4 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
5 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
6 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
7 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
8 sexual exploitation, by Defendant exposing his penis to M.M.1.

9 COUNT 11 - INDECENT EXPOSURE

10 did, intentionally, willfully and unlawfully make an open and indecent or obscene
11 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
12 presence of M.M.1.

13 COUNT 12 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

14 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
15 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
16 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
17 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
18 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
19 sexual exploitation, by Defendant showing pornography to M.M.1.

20 COUNT 13 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

21 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
22 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
23 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.1 to
24 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
25 of M.M.1 on or in close proximity to the genitals of Defendant, with the intent of arousing,
26 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

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1 COUNT 14 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
3 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.1,
4 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
5 encourage M.M.1 to reach into the front pants pocket of Defendant to get some chocolate,
6 thereby placing the hand of M.M.1 on or in close proximity to the genitals of Defendant, with
7 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
8 Defendant, or M.M.1.

9 COUNT 15 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

10 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
11 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
12 age of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or
13 lick the mouth and/or tongue and/or body of M.M.2, with the intent of arousing, appealing to,
14 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

15 COUNT 16 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
17 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
18 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
19 and/or fondle the breast(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
20 the lust, passions, or sexual desires of Defendant, or M.M.2.

21 COUNT 17 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

22 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
23 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
24 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
25 and/or fondle the genital area of M.M.2, with the intent of arousing, appealing to, or gratifying
26 the lust, passions, or sexual desires of Defendant, or M.M.2.

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1 COUNT 18 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
4 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
5 and/or fondle the buttock(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
6 the lust, passions, or sexual desires of Defendant, or M.M.2.

7 COUNT 19 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

8 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
9 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
10 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2
11 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
12 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
13 sexual exploitation, by Defendant exposing his penis to M.M.2.

14 COUNT 20 - INDECENT EXPOSURE

15 did, intentionally, willfully and unlawfully make an open and indecent or obscene
16 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
17 presence of M.M.2.

18 COUNT 21 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

19 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
20 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
21 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.2 to
22 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
23 of M.M.2 on or in close proximity to the genitals of Defendant, with the intent of arousing,
24 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

25 COUNT 22 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

26 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
27 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.2,
28 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or

1 encourage M.M.2 to reach into the front pants pocket of Defendant to get some chocolate,
2 thereby placing the hand of M.M.2 on or in close proximity to the genitals of Defendant, with
3 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
4 Defendant, or M.M.2.

5 COUNT 23 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

6 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
7 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
8 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2
9 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
10 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
11 sexual exploitation, by Defendant showing pornography to M.M.2.

12 COUNT 24 - FIRST DEGREE KIDNAPPING

13 did willfully, unlawfully and feloniously, lead, take, entice, carry away or kidnap Y.E.,
14 a minor, with the intent to keep Y.E. for a protracted period of time or permanently and/or
15 imprison or confine the said Y.E., from the parents, guardians, or other person or persons
16 having lawful custody of Y.E., or with the intent to hold Y.E. to unlawful service, or to
17 perpetrate upon the person of Y.E. any unlawful act, to wit: lewdness and/or sexual assault
18 and/or child abuse, neglect or endangerment and/or indecent exposure.

19 COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
20 AGE

21 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
22 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
23 his finger(s) into the vaginal opening of Y.E.

24 COUNT 26 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
27 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
28 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,

1 passions, or sexual desires of Defendant, or Y.E.

2 COUNT 27 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

3 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
4 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
5 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
6 fondle the buttock(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
7 passions, or sexual desires of Defendant, or Y.E.

8 COUNT 28 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
9 AGE

10 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
11 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
12 his finger(s) into the vaginal opening of Y.E.

13 COUNT 29 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

14 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
15 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
16 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
17 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
18 passions, or sexual desires of Defendant, or Y.E.

19 COUNT 30 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

20 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
21 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
22 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
23 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
24 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
25 exploitation, by Defendant exposing his penis to Y.E.

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1 COUNT 31 - INDECENT EXPOSURE

2 did, intentionally, willfully and unlawfully make an open and indecent or obscene
3 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
4 presence of Y.E.

5 COUNT 32 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

6 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
7 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
8 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
9 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
10 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
11 exploitation, by Defendant showing pornography to Y.E.

12 COUNT 33 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

13 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
14 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
15 of fourteen years, by Defendant causing and/or directing and/or encouraging Y.E. to reach into
16 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of Y.E.
17 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
18 or gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

19 COUNT 34 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
21 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Y.E., a
22 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
23 encourage Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby
24 placing the hand of Y.E. on or in close proximity to the genitals of Defendant, with the intent
25 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
26 Y.E.

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1 COUNT 35 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
4 of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick
5 the mouth and/or tongue and/or body of Y.E., with the intent of arousing, appealing to, or
6 gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

7 COUNT 36 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

8 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
9 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
10 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
11 fondle the breast(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
12 passions, or sexual desires of Defendant, or Y.E.

13 COUNT 37 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

14 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
15 or with the body, or any part or member thereof, of a child, to wit: N.E., a child under the age
16 of fourteen years, by Defendant using his hand(s) to hold and/or rub the body of N.E. against
17 the chest and/or body of Defendant, with the intent of arousing, appealing to, or gratifying the
18 lust, passions, or sexual desires of Defendant, or N.E.

19 COUNT 38 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

20 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
21 wit: S.R., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
22 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause S.R.
23 to be placed in a situation where S.R. might have suffered unjustifiable physical pain or mental
24 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
25 exploitation, by Defendant exposing his penis to S.R.

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1 COUNT 39 - INDECENT EXPOSURE

2 did, intentionally, willfully and unlawfully make an open and indecent or obscene
3 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
4 presence of S.R.

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

8 BY


9 CHRISTOPHER HAMNER
10 Chief Deputy District Attorney
11 Nevada Bar #011390
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ORIGINAL

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STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 08 2017

BY: AMY CALDERWOOD
AMY CALDERWOOD, DEPUTY

MEMO
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
CARLI L. KIERNY, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12010
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSE AZUCENA,

Defendant,

CASE NO. C-17-321044-1

DEPT. NO. II

DATE: April 26, 2017
TIME: 10:30 a.m.

MEMORANDUM REGARDING THE USE OF NRS 51.385 TO ADMIT HEARSAY

TESTIMONY

COMES NOW, the Defendant, JOSE AZUCENA, by and through his counsel, P. DAVID WESTBROOK and CARLI L. KIERNY, Chief Deputy Public Defenders, and hereby submit the following motion regarding NRS 51.385 for the Court's consideration.

DATED this 25th day of April, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: P. David Westbrook
P. DAVID WESTBROOK, #9278
Chief Deputy Public Defender

C-17-321044-1
MEMO
Memorandum
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OVERVIEW

Following *voir dire* on April 25, 2017, the State requested that a hearing be scheduled for April 26, 2017, pursuant to NRS 51.385. The Court invited the parties to submit memoranda regarding the State's request. This (uncharacteristically) brief memorandum was prepared in order to be responsive to the Court's request for more information about the nature and purpose of NRS 51.385 and outline some of the objections the defense anticipates.

ARGUMENT

NRS 51.385 is a legal mechanism for admitting a minor's otherwise inadmissible hearsay descriptions of physical or sexual abuse under certain, very limited circumstances. Those requirements are as follows:

- 1) The statement must be made by a minor under the age of 10;
- 2) A hearing must be held outside the presence of the jury;
- 3) During the hearing, the Court must determine that "the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness;"
- 4) "The child testifies at the proceeding or is unavailable or unable to testify."

See NRS 51.385 (a), (b).

At this point, the State cannot use NRS 51.385 to admit the hearsay statements of children on the grounds that they are "unavailable or unable" to testify. Written notice must be given to the defendant **10 days** before trial if the prosecution intends to offer the statements of children who are "unavailable" or "unable" to testify. NRS 51.385(3). It is too late for any such notice here. In addition, the State would have to provide sufficient proof that the witnesses are truly "unable or unavailable" as a matter of law. NRS 51.385 does not permit the State to simply choose to exclude a child witness as a strategy decision. As a threshold matter, the witness must be *legally* unavailable or unable to testify. *See, e.g., Felix v. State*, 849 P.2d 220 (1993); *Bockting v. State*, 847 P.2d 1364 (1993).

The Statement of a minor can only be admitted if the witness is deemed particularly likely to be telling the truth. Under NRS 51.385 (2), the court SHALL consider whether:

- (a) The statement was spontaneous;
- (b) The child was subjected to repetitive questioning;
- (c) The child had a motive to fabricate;
- (d) The child used terminology unexpected of a child of similar age; and
- (e) The child was in a stable mental state.

Child hearsay statements can only be admitted if the Court finds, “(1) the declarant was particularly likely to be telling the truth when the statement was made; (2) the statement is at least as reliable as evidence admitted under any of the accepted hearsay exceptions; and (3) the statement is so trustworthy that adversarial questioning would add little to its reliability.” Felix, *supra*, 109 Nev. at 180–81.

The process used by the State has placed both the Court and the defense at a disadvantage. The State sent the defense a notice of its intent to use statements of the five minor witnesses on April 12, 2017; however, the State never revealed *specifically* which statements it intends to use. This is a problem.

Each and every statement must be considered separately to determine whether there are sufficient guarantees of trustworthiness. A “blanket” determination of the admissibility of statements is error. Felix v. State, 109 Nev. at 187. We are now on day three of this trial. To our knowledge, the State has never filed a motion with the court requesting a hearing, providing relevant exhibits to the court, or identifying what *specific* statements it intends to introduce. How can the defense or the Court prepare for such a hearing?

The text of NRS 51.385 does not establish a clear deadline by which the State must request a hearing, but neither does it abandon other statutory rules of evidence and discovery, or constitutional requirements such as the rights to fundamental fairness and a fair trial. *See* NRS Const. Amend. V, VI. Holding this hearing on the third day of trial is not fair to the defense or the court, especially when accusations are the *only* evidence in this case. If the State is concerned that its alleged victims need to be *bolstered* because they cannot testify with sufficient consistency or credibility, the answer is not adding hearsay, it is dismissing the case.

///

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1 Respectfully submitted this 25th day of April, 2017.

2 PHILIP J. KOHN

3 CLARK COUNTY PUBLIC DEFENDER

4
5
6 By: P. David Westbrook
7 P. DAVID WESTBROOK, #9278
8 Chief Deputy Public Defender
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• **David Westbrook**

From: David Westbrook
Sent: Tuesday, April 25, 2017 9:42 PM
To: scottir@clarkcountycourts.us
Cc: Carli Kierny; 'Christopher.Hamner@clarkcountyda.com'; 'Stacey Kollins'
Subject: Small correction...

I inadvertently left off part of the citation to Felix v. State. The full citation should have read: Felix v. State, 109 Nev. 151, 156, 849 P.2d 220, 224 (1993)(superceded on other grounds by statute, as stated in Evans v. State, 117 Nev. 609, 625, 28 P.3d 498, 509–10 (2001)).

The statute modification referenced in Evans concerns the former NRS 48.030(2), which used to say that children under 10 could not be witnesses if they appeared "incapable of receiving just impressions of the facts ... or of relating them truly." Nevada removed the language treating "children under 10" as a special case. Of course, this has no relevance to our discussion of NRS 51.385.

Thanks again,

P. David Westbrook
Deputy Public Defender
702-455-1762

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STEVEN D. GRIERSON
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
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309 South Third Street, Suite 226
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Telephone: (702) 455-4685
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Attorneys for Defendant

MAY 08 2017

BY, *Amy Calderwood*
AMY CALDERWOOD, DEPUTY

DISTRICT COURT, LAS VEGAS
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSE AZUCENA,

Defendant,

CASE NO. C-17-321044-1

DEPT. NO. II

DATE: 5/8/17

TIME: 9:00 a.m.

RE:

**OFFERS OF PROOF DEFENDANT'S MOTION(S) TO DISMISS FOR REPEATED AND
ONGOING DISCOVERY/BRADY VIOLATIONS**

COMES NOW, the Defendant, JOSE AZUCENA, by and through CARLI L. KIERNY and P. DAVID WESTBROOK, Chief Deputy Public Defenders, and hereby make the following offers of proof concerning Defendant's Motion(s) to dismiss for Brady/Discovery violations. The offers of proof contained herein are not intended to be complete recitations of all proof in this case, and the defense incorporates, by reference, the entire record of this case.

DATED this 7th day of May, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: *P. David Westbrook*
P. DAVID WESTBROOK, #9278
Chief Deputy Public Defender

C-17-321044-1
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1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Chief Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Jose Azucena in the present matter;
2. I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief. (NRS 53.045).

P. David Westbrook
P. DAVID WESTBROOK

PROCEDURAL HISTORY

The following dates are relevant to the arguments presented in this motion:

March 16, 2017: State's Opposition to Defendant's Motion to Compel Production of Discovery and Brady Material filed.

March 23, 2017: Oral argument on Motion to Compel Production of Discovery and Brady Material.

March 31, 2017: State's Opposition to Defendant's Motion to Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material filed.

April 4, 2017: Oral argument on Defendant's Motion to Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material.

May 2, 2017 The State produced 41 pages of computerized file notes from Detective Campbell via email at 8:30 p.m.

May 3, 2017 Defense made an oral motion to dismiss for this latest violation of Discovery and Brady. The oral motion was denied without an evidentiary hearing.

OVERVIEW

This Offer of Proof was prepared to complete the record in this case. It includes a record of both newly discovered Brady and discovery violations that occurred during the trial, and arguments and evidence defense counsel intended to present to the Court during prior arguments which were cut short by the Court.

1. Detective Campbell's Computerized File Notes:

In a minute order dated April 4, 2017, the Court expressly ordered the State to produce records of the Las Vegas Metropolitan Police Department, including, "any and all handwritten or other notes." On **May 2, 2017**, D.D.A. Hamner emailed Carli Kierney **41 pages** of never-before-produced case notes from Detective Campbell, the lead Detective in this case. The notes contained exculpatory evidence related to this case, including evidence that Detective Campbell conducted an inadequate and biased investigation.

1 The case notes also provided additional evidence of bad faith, in the form of an email
2 from Mr. Hamner to Detective Campbell revealing that information about the identities and
3 whereabouts of witnesses J.O., O.O., L.S. and L.P. that Mr. Hamner claimed was unknown to
4 him in March and April of 2017, was in fact known to him in January, 2017. The notes contained
5 exculpatory evidence and avenues for investigation, and the State's failure to produce them
6 constitutes another Brady violation.

7 Additional evidence of bad faith was revealed during the examination of
8 Detective Campbell at trial. During the May 3, 2017 argument on Defendant's Motion to
9 Dismiss, Mr. Hamner represented that the District Attorney's Office does not have access to
10 Detective Campbell's computerized file notes, were unaware of their existence, and turned them
11 over as soon as Detective Campbell revealed that he had them. However, Detective Campbell
12 testified under oath that the District Attorney's Office *does* have access to his computerized file
13 notes—a direct contradiction. Regardless of which statement is true, it is undeniable that these
14 file notes were in the State's possession, they contained exculpatory evidence, they were ordered
15 produced by the Court, and they were not produced until midway through trial. The willful
16 disregard of a Court order is bad faith.

17 **2. Officer Nevarez's Body Camera Recording**

18 Another Brady violation was discovered during the testimony of Officer Nevarez. In the
19 Court's April 4th Order, the State was ordered to produce body camera videos from responding
20 officers in this case. Officer Nevarez revealed on the stand that his body camera was active
21 during his interview of Jose Alvarez. This video would have shown that Mr. Azucena had not
22 been placed in handcuffs and was cooperating fully with law enforcement of his own volition. It
23 would also reveal that the officers on the scene were aware that there was no warrant for Mr.
24 Azucena's arrest. The State has argued repeatedly that Mr. Azucena was hiding from law
25 enforcement in this case. This body camera video would have showed the opposite, but the State
26 has never produced it, in violation of the Court's order.

1 The defense was surprised to learn of the existence of this recording during its cross-
2 examination of Officer Nevarez, given assurances by the State that no additional videos existed,
3 and the fact that the Court ordered all videos to be produced over a month ago. Where is this
4 video? The State certainly can't claim ignorance now; we all heard Officer Nevarez's testimony.
5 The State's continuing failure to turn over this video, in violation of the Court's order, can be
6 nothing other than bad faith.

7 **3. State Expert John Pacult's Notes**

8 Another new discovery violation was revealed during the testimony of the State's
9 grooming expert, John Pacult. Prior to this examination, the State represented at the bench that
10 Mr. Pacult had no notes or reports associated with this case. Mr. Pacult then testified that he had
11 reviewed case-specific information and made notes in the preparation of his testimony. He
12 further testified that the notes were with him, in court, on his computer. Those notes have never
13 been produced.

14 **4. Update to Defendant's Table of Late Discovery and Brady Evidence.**

15 The following is a specific recitation of the exculpatory value of evidence produced late, or
16 not at all, by the State. This table now includes some information that the defense offered to
17 provide to the court for *in camera* review, as revealing it in open court would have revealed
18 defense strategy. It also includes information the defense attempted, but was not permitted, to
19 provide during the May 3, 2017 oral argument. Again, this is not a complete recitation of all
20 exculpatory value and the defense incorporates by reference the entire record of this trial.

21
22 **TABLE 2: EVIDENCE PRODUCED AFTER APRIL 4, 2017
AND ITS EXCULPATORY VALUE**


Discovery	Exculpatory Value:
Recorded interview of L.S.	As demonstrated at trial, the testimony of L.S. contradicts several State witnesses and calls their credibility into question.
Recorded interview of L.P.	As demonstrated at trial, the testimony of L.P. contradicts several State witnesses and calls their credibility into question.

1	Metro Media Release	The Metro Media Release demonstrated that the police did, in fact, enlist the assistance of the media in finding victims for this case, which goes to witness bias and would have, if turned over in a timely manner, provided additional avenues of investigation.
2		
3		
4	U-VISA App: Maria Estrella-Barajas	The availability of a U Visa provides illegal immigrants like Ms. Barajas a powerful motive to fabricate. Her application (and that of her husband) demonstrates that she is taking advantage of the program and is aware of its benefits.
5		
6		
7	U-VISA App: Amanda Moiza	The availability of a U Visa provides illegal immigrants like Ms. Moiza a powerful to motive fabricate. Her application (and that of her husband) demonstrates that she is taking advantage of the program and is aware of its benefits.
8		
9		
10		
11	Handwritten Notes of Det. Campbell	Detective Campbell's notes reveal that he chose to omit important, exculpatory information from his reports, such as the contradictory testimony of L.S. and L.P and his concerns over the credibility of certain witnesses. This evidence goes to bias. The notes also provided evidence of a sloppy investigation and other avenues of investigation the defense was not able to pursue due to late disclosure.
12		
13		
14		
15	Contact Info: L.S.	See "recorded interviews," above.
16	Contact Info: L.P.	See "recorded interviews," above.
17	CPS Reports and Notes:	The CPS reports provided evidence that named-victim S.R. has lied to law enforcement in the past at the direction of her mother, which directly impugns her credibility and her parents. The reports also showed possible alternative sources of sexual knowledge.
18		
19		
20		
21	Incident Detail Report of Officer Erich Tschirgi	This report demonstrated that, contrary to the State's assertions, Mr. Azucena was not in hiding. The police were told by witnesses that Mr. Azucena was at work. The police found him at work finishing a project. He gave his legal name and cooperated fully with officers despite the fact that they had no warrant for his arrest.
22		
23		
24		
25	Vol. Statement: Veronica Alvarez	Ms. Alvarez's statement contains the telephone number of Detective Campbell, which contradicts earlier claims that the State (and Detective Campbell, personally) was unaware of her contact information. This is relevant to a bad faith inquiry.
26		
27		
28		

Police body cam video of Officer Nevarez	This video has never been produced, but judging by Officer Tschirgi's testimony, it would have allowed the jury to see Mr. Azucena's calm and cooperative demeanor, countering State arguments as to consciousness of guilt.
Detective Campbell's File Notes	As stated above, these notes provide evidence that the Metro investigation was sloppy and biased. They also provide additional evidence of bad faith by the State.
Mr. Pacult's Notes	Mr. Pacult's notes were never produced and their contents are unknown.

DATED this 8th day of May, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: 
P. DAVID WESTBROOK, #9278
Chief Deputy Public Defender

MAY 08 2017

BY, Amy Calderwood
AMY CALDERWOOD, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

CASE NO. C321044

DEPT. NO. II

-VS-

JOSE AZUCENA,

Defendant(s).

JURY LIST

- | | |
|---------------------|------------------------|
| 1. CHARLES ELLISTON | 8. ANGELA DONATO |
| 2. ROBERT MERGENER | 9. STAPORN BUASUWAN |
| 3. MINFRED THOMAS | 10. ELZETTA ZURZOLO |
| 4. LINDA KLOSOWSKI | 11. RHONDA GONZALES |
| 5. CEDO BUCALO | 12. CHARLENE TROSCLAIR |
| 6. JOYCE HUDSON | |
| 7. ERIC LACROIX | |

ALTERNATES

KATHLEEN SCHNEIDER

LORETO AGBUYA

C-17-321044-1

JURL

Jury List

4847689



ORIGINAL

PINU

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

MAY 08 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Amy Calderwood
AMY CALDERWOOD, DEPUTY

THE STATE OF NEVADA,
Plaintiff(s),

CASE NO. C-321044-1

-VS-

DEPT. NO. 2

JOSE AZUCENA,
Defendant(s).

PLAINTIFF'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 8th day of May, 2017.

Steven D. Grierson, Clerk of the Court

By: Amy Calderwood
Amy Calderwood, Deputy Clerk


C-17-321044-1
PINU
Proposed Jury Instructions Not Used At Trial
4847871



The Defendant is presumed innocent ~~until~~ **unless** the contrary is proved **beyond a reasonable doubt**. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crimes charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

Rejected as written


ORIGINAL

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

MAY 08 2017

BY, Amy Calderwood
AMY CALDERWOOD, DEPUTY

PINU

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff(s),

CASE NO. C-321044-1

-VS-

DEPT. NO. 2

JOSE AZUCENA,
Defendant(s).

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 8th day of May, 2017.

Steven D. Grierson, Clerk of the Court

By: Amy Calderwood
Amy Calderwood, Deputy Clerk

C-17-321044-1

PINU

Proposed Jury Instructions Not Used At Trial
4847670



INSTRUCTION NO. _____

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault and/or lewdness.

Where a defendant commits a specific type of act constituting sexual assault and/or lewdness, he may be found guilty of more than one count of that specific type of act of sexual assault and/or lewdness if:

1. There is an interruption between the acts which are of the same specific type,
2. Where the acts of the same specific type are interrupted by a different specific type of sexual assault/lewdness, or
3. For each separate object manipulated or inserted into the genital opening (which includes the vagina, the labia majora, labia minor and the clitoris) or anal opening of another.

Only one sexual assault and/or lewdness occurs when a defendant's actions were of one specific type of sexual assault and/or lewdness and those acts were continuous and did not stop between the acts of that specific type.⁵

State Approved
Regent
ASZ

⁵ Townsend v. State, 103 Nev. 113 (1987); Crowley v. State, 120 Nev. 30 (2004)

DEFENDANT'S PROPOSED INSTRUCTION #1

Where multiple sexual acts occur as part of a single criminal encounter, a defendant may be found guilty for each separate or distinct act of sexual assault and/or lewdness.

However, when the sexual acts are part of the same episode, the defendant may be found guilty of only one count of sexual assault or lewdness.

When there is no interruption between the acts, or any interruption amounts to merely a hypertechnical division of a single act, the sexual acts are part of the same episode.¹

~~Additionally, when the sexual act is done merely to predispose the alleged victim to a subsequent act[s], the acts are part of the same episode and the defendant may be convicted of only one count of sexual assault or lewdness.²~~

Not Ginnay
Written
A/G

¹ Townsend v. State, 103 Nev. 113, 121, 734 P.2d 705, 710 (1987) ("Although less clear, we nevertheless conclude that the act of fondling the child's breasts was a separate act of lewdness, particularly in light of the fact that Townsend stopped that activity before proceeding further. We conclude, however, that two sexual assaults did not occur. Townsend simply began lubricating the victim's vaginal area, took his hand away, put more lubricating substance on his finger and then penetrated the child's vagina. Such a hypertechnical division of what was essentially a single act is not sustainable.")

² Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285 (2004) ("Unlike Wright and Townsend, Crowley never interrupted his actions. Crowley's act of rubbing the male victim's penis on the outside of his pants was a prelude to touching the victim's penis inside his underwear and the fellatio. *By touching and rubbing the male victim's penis, Crowley sought to arouse the victim and create willingness to engage in sexual conduct. Crowley's actions were not separate and distinct; they were a part of the same episode.*")

ok

DEFENDANT'S PROPOSED INSTRUCTION #2

When a single act constitutes *both* a sexual assault *and* a lewdness, the defendant may not be convicted of both crimes.³

Before you may find the defendant guilty of both lewdness and sexual assault, the State must prove beyond a reasonable doubt that the act of lewdness was an act other than a sexual assault. In other words, the act constituting lewdness must not be incidental to a subsequent sexual assault.⁴

ok

An act of lewdness is incidental to a subsequent sexual assault when:

- (1) there is no interruption between the act of lewdness and the sexual assault; or
 - (2) the act of lewdness was intended to predispose the alleged victim to a subsequent sexual assault.⁵
- NO

Not Guilty as
matter
[Signature]

DEFENDANT'S PROPOSED INSTRUCTION #3

³ Crowley v. State, 120 Nev. 30, 33, 83 P.3d 282, 285 (2004) (quoting Braunstein v. State, 118 Nev. 68, 79, 40 P.3d 413, 421 (2002)) (The crimes of sexual assault and lewdness are mutually exclusive and convictions for both based upon a single act cannot stand.).

⁴ Gaxiola v. State, 121 Nev. 638, 653, 119 P.3d 1225, 1235 (2005) ("The State has the burden to show that the defendant committed a crime and in the case of lewdness, the statute indicates that part of this burden is to show that the lewdness was an act other than a sexual assault. Therefore, we conclude that the State has the burden, at trial, to show that the lewdness was not incidental to the sexual assault.").


⁵ Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 285 (2004) ("By touching and rubbing the male victim's penis, Crowley sought to arouse the victim and create willingness to engage in sexual conduct. Crowley's actions were not separate and distinct; they were a part of the same episode. Because Crowley intended to predispose the victim to the subsequent fellatio, his conduct was incidental to the sexual assault and cannot support a separate lewdness conviction.").

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his or her testimony which is not proved by other evidence.

Proposed 9.1 [In response to continued use of "Kid Standard"]

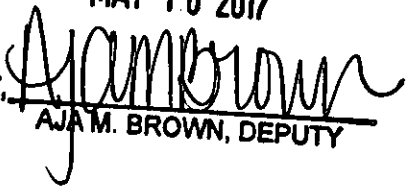
There is no "special" or "lower" Standard for determining the credibility or believability of a child witness.

Offered after State's Closing
Rejected By Court


ORIGINAL

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

MAY 10 2017

BY, 
AJAM. BROWN, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

1 INST

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

10 JOSE AZUCENA,

11 Defendant.

CASE NO: C-17-321044-1

DEPT NO: II

12
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

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

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

22
23
24
25
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27 C-17-321044-1
INST
Instructions to the Jury
4648982



If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

A Second Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Second Amended Indictment that JOSE AZUCENA, accused by the Clark County Grand Jury, that Defendant committed at and within the County of Clark, State of Nevada, on or between November 1, 2014 and November 30, 2016, as follows:

COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick the mouth and/or tongue and/or body of J.M., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or J.M.

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or J.M.

1 COUNT 3 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

2 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
3 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
4 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
5 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
6 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
7 exploitation, by Defendant exposing his penis to J.M.

8 COUNT 4 - INDECENT EXPOSURE

9 did, intentionally, willfully and unlawfully make an open and indecent or obscene
10 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
11 presence of J.M.

12 COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

13 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
14 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
15 of fourteen years, by Defendant causing and/or directing and/or encouraging J.M. to reach into
16 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of J.M.
17 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
18 or gratifying the lust, passions, or sexual desires of Defendant, or J.M.

19 COUNT 6 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
21 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: J.M., a
22 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
23 encourage J.M. to reach into the front pants pocket of Defendant to get some chocolate, thereby
24 placing the hand of J.M. on or in close proximity to the genitals of Defendant, with the intent
25 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
26 J.M.

1 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: J.M., a child under the age
4 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
5 fondle the genital area of J.M., with the intent of arousing, appealing to, or gratifying the lust,
6 passions, or sexual desires of Defendant, or J.M.

7 COUNT 8 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

8 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
9 wit: J.M., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
10 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause J.M.
11 to be placed in a situation where J.M. might have suffered unjustifiable physical pain or mental
12 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
13 exploitation, by Defendant showing pornography to J.M.

14 COUNT 9 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

15 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
16 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
17 age of fourteen years, by Defendant using his hand(s) and/or finger(s) and/or penis to touch
18 and/or rub and/or fondle the genital area of M.M.1, with the intent of arousing, appealing to,
19 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

20 COUNT 10 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

21 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
22 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
23 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
24 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
25 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
26 sexual exploitation, by Defendant exposing his penis to M.M.1.

1 COUNT 11 - INDECENT EXPOSURE

2 did, intentionally, willfully and unlawfully make an open and indecent or obscene
3 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
4 presence of M.M.1.

5 COUNT 12 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

6 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
7 wit: M.M.1, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
8 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.1
9 to be placed in a situation where M.M.1 might have suffered unjustifiable physical pain or
10 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
11 sexual exploitation, by Defendant showing pornography to M.M.1.

12 COUNT 13 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

13 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
14 or with the body, or any part or member thereof, of a child, to wit: M.M.1, a child under the
15 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.1 to
16 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
17 of M.M.1 on or in close proximity to the genitals of Defendant, with the intent of arousing,
18 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.1.

19 COUNT 14 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
21 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.1,
22 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
23 encourage M.M.1 to reach into the front pants pocket of Defendant to get some chocolate,
24 thereby placing the hand of M.M.1 on or in close proximity to the genitals of Defendant, with
25 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
26 Defendant, or M.M.1.

1 COUNT 15 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

2 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
3 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
4 age of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or
5 lick the mouth and/or tongue and/or body of M.M.2, with the intent of arousing, appealing to,
6 or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

7 COUNT 16 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

8 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
9 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
10 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
11 and/or fondle the breast(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
12 the lust, passions, or sexual desires of Defendant, or M.M.2.

13 COUNT 17 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

14 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
15 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
16 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
17 and/or fondle the genital area of M.M.2, with the intent of arousing, appealing to, or gratifying
18 the lust, passions, or sexual desires of Defendant, or M.M.2.

19 COUNT 18 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
21 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
22 age of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub
23 and/or fondle the buttock(s) of M.M.2, with the intent of arousing, appealing to, or gratifying
24 the lust, passions, or sexual desires of Defendant, or M.M.2.

25 COUNT 19 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

26 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
27 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
28 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2

1 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
2 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
3 sexual exploitation, by Defendant exposing his penis to M.M.2.

4 COUNT 20 - INDECENT EXPOSURE

5 did, intentionally, willfully and unlawfully make an open and indecent or obscene
6 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
7 presence of M.M.2.

8 COUNT 21 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

9 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
10 or with the body, or any part or member thereof, of a child, to wit: M.M.2, a child under the
11 age of fourteen years, by Defendant causing and/or directing and/or encouraging M.M.2 to
12 reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand
13 of M.M.2 on or in close proximity to the genitals of Defendant, with the intent of arousing,
14 appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or M.M.2.

15 COUNT 22 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
17 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: M.M.2,
18 a child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
19 encourage M.M.2 to reach into the front pants pocket of Defendant to get some chocolate,
20 thereby placing the hand of M.M.2 on or in close proximity to the genitals of Defendant, with
21 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of
22 Defendant, or M.M.2.

23 COUNT 23 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

24 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
25 wit: M.M.2, to suffer unjustifiable physical pain or mental suffering as a result of abuse or
26 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause M.M.2
27 to be placed in a situation where M.M.2 might have suffered unjustifiable physical pain or
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1 mental suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or
2 sexual exploitation, by Defendant showing pornography to M.M.2.

3 COUNT 24 - FIRST DEGREE KIDNAPPING

4 did willfully, unlawfully and feloniously, lead, take, entice, carry away or kidnap Y.E.,
5 a minor, with the intent to keep Y.E. for a protracted period of time or permanently and/or
6 imprison or confine the said Y.E., from the parents, guardians, or other person or persons
7 having lawful custody of Y.E., or with the intent to hold Y.E. to unlawful service, or to
8 perpetrate upon the person of Y.E. any unlawful act, to wit: lewdness and/or sexual assault
9 and/or child abuse, neglect or endangerment and/or indecent exposure.

10 COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
11 AGE

12 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
13 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
14 his finger(s) into the vaginal opening of Y.E.

15 COUNT 26 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
17 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
18 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
19 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
20 passions, or sexual desires of Defendant, or Y.E.

21 COUNT 27 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

22 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
23 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
24 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
25 fondle the buttock(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
26 passions, or sexual desires of Defendant, or Y.E.

1 COUNT 28 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
2 AGE

3 did then and there, willfully, unlawfully and feloniously commit a sexual penetration
4 upon Y.E., a child under the age of 14 years, to wit: digital penetration, by Defendant inserting
5 his finger(s) into the vaginal opening of Y.E.

6 COUNT 29 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

7 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
8 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
9 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
10 fondle the genital area of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
11 passions, or sexual desires of Defendant, or Y.E.

12 COUNT 30 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

13 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
14 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
15 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
16 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
17 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
18 exploitation, by Defendant exposing his penis to Y.E.

19 COUNT 31 - INDECENT EXPOSURE

20 did, intentionally, willfully and unlawfully make an open and indecent or obscene
21 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
22 presence of Y.E.

23 COUNT 32 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

24 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
25 wit: Y.E., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
26 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause Y.E.
27 to be placed in a situation where Y.E. might have suffered unjustifiable physical pain or mental
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1 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
2 exploitation, by Defendant showing pornography to Y.E.

3 COUNT 33 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

4 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
5 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
6 of fourteen years, by Defendant causing and/or directing and/or encouraging Y.E. to reach into
7 the front pants pocket of Defendant to get some chocolate, thereby placing the hand of Y.E.
8 on or in close proximity to the genitals of Defendant, with the intent of arousing, appealing to,
9 or gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

10 COUNT 34 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

11 did willfully, lewdly, unlawfully and feloniously attempt to commit a lewd or
12 lascivious act upon or with the body, or any part or member thereof, of a child, to wit: Y.E., a
13 child under the age of fourteen years, by Defendant attempting to cause and/or direct and/or
14 encourage Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby
15 placing the hand of Y.E. on or in close proximity to the genitals of Defendant, with the intent
16 of arousing, appealing to, or gratifying the lust, passions, or sexual desires of Defendant, or
17 Y.E.

18 COUNT 35 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

19 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
20 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
21 of fourteen years, by Defendant using his mouth and/or tongue to touch and/or kiss and/or lick
22 the mouth and/or tongue and/or body of Y.E., with the intent of arousing, appealing to, or
23 gratifying the lust, passions, or sexual desires of Defendant, or Y.E.

24 COUNT 36 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

25 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
26 or with the body, or any part or member thereof, of a child, to wit: Y.E., a child under the age
27 of fourteen years, by Defendant using his hand(s) and/or finger(s) to touch and/or rub and/or
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1 fondle the breast(s) of Y.E., with the intent of arousing, appealing to, or gratifying the lust,
2 passions, or sexual desires of Defendant, or Y.E.

3 COUNT 37 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

4 did willfully, lewdly, unlawfully and feloniously commit a lewd or lascivious act upon
5 or with the body, or any part or member thereof, of a child, to wit: N.E., a child under the age
6 of fourteen years, by Defendant using his hand(s) to hold and/or rub the body of N.E. against
7 the chest and/or body of Defendant, with the intent of arousing, appealing to, or gratifying the
8 lust, passions, or sexual desires of Defendant, or N.E.

9 COUNT 38 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

10 did willfully, unlawfully and feloniously cause a child under the age of 18 years, to
11 wit: S.R., to suffer unjustifiable physical pain or mental suffering as a result of abuse or
12 neglect, to wit: negligent treatment or maltreatment or sexual exploitation, and/or cause S.R.
13 to be placed in a situation where S.R. might have suffered unjustifiable physical pain or mental
14 suffering as a result of abuse or neglect, to wit: negligent treatment or maltreatment or sexual
15 exploitation, by Defendant exposing his penis to S.R.

16 COUNT 39 - INDECENT EXPOSURE

17 did, intentionally, willfully and unlawfully make an open and indecent or obscene
18 exposure of his person, by Defendant deliberately exposing his penis in the direct view and
19 presence of S.R.

A Second Amended Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Indictment that JOSE AZUCENA, accused by the Clark County Grand Jury, that Defendant committed at and within the County of Clark, State of Nevada, on or between November 1, 2014 and November 30, 2016, as follows:

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crimes charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

You are here to determine whether the State proved the Defendant guilty beyond a reasonable doubt from the evidence in the case. You are not called upon to return a verdict as to any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

If the evidence is susceptible to two reasonable interpretations, one of which points to the defendant's guilt and the other of which points to the defendant's innocence, it is your duty, under the law, to adopt the interpretation which points to the defendant's innocence and reject that which points to his guilt.

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty.

If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence.

However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his or her testimony which is not proved by other evidence.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

A person who subjects a minor under fourteen to sexual penetration is guilty of sexual assault with a minor under fourteen.

"Sexual penetration" includes penetration however slight. Sexual penetration includes digital penetration, by placing the finger(s) in the genital opening. The genital opening includes the vagina, the labia majora, labia minora and the clitoris.

Physical force is not necessary in the commission of sexual assault.

A person is not required to do more than his or her age, strength, surrounding facts and attending circumstances make it reasonable for him or her to do to manifest opposition to a sexual assault or lewdness.

INSTRUCTION NO. 14

There is no requirement that the testimony of a victim of sexual assault or lewdness be corroborated, and his or her testimony, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 15

Any person who willfully commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with any part of the body of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a minor.

INSTRUCTION NO. 16

An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime.

The law does not require that the lust, passions or sexual desires of either of such persons be aroused, appealed to, or gratified.

To constitute a lewdness with a minor under the age of 14 it is not necessary that the bare skin be touched. The touching may be through the clothing of the child.

Lewdness with a child under the age of 14 years requires an act upon or with the body of a child under the age of 14 years, but does not require physical contact between the perpetrator and the victim.

Where a child has been the victim of sexual assault with a minor under the age of 14 and/or lewdness with a minor under the age of 14 and/or child abuse, neglect or sexual exploitation, and/or indecent exposure and/or first degree kidnapping and does not remember the exact date of the act, the State is not required prove a specific date, but may prove a time frame within which the act took place.

INSTRUCTION NO. 21

Consent in fact of a minor child under fourteen years of age to sexual activity is not a defense to a charge of Lewdness with a Child Under the Age of 14.

Where multiple sexual acts occur as part of a single criminal encounter, a defendant may be found guilty for each separate or distinct act of sexual assault and/or lewdness.

However, when the sexual acts are not separate and distinct, but instead part of the same episode, the defendant may be found guilty of only one count of sexual assault or lewdness.

When there is no interruption between the acts, or any interruption amounts to merely a hypertechnical division of a single act, the sexual acts are part of the same episode.

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3 When a single act constitutes both a sexual assault and a lewdness, the defendant may
4 not be convicted of both crimes.
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6 Before you may find the defendant guilty of both lewdness and sexual assault, the State
7 must prove beyond a reasonable doubt that the act of lewdness was an act other than a sexual
8 assault. In other words, the act constituting lewdness must not be incidental to a subsequent
9 sexual assault.
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A person who leads, takes, entices, or carries away and/or detains any minor

- 1) with the intent to keep the minor for a protracted period of time or permanently and/or imprison or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor,
- 2) with the intent to hold the minor to unlawful service; or
- 3) perpetrate upon the person of the minor any unlawful act;

is guilty of First Degree Kidnapping.

The law does not require the person being kidnapped to be carried away for any minimal distance.

Consent of a minor under the age of 18 is not a defense to First Degree Kidnapping.

Force or threat of force is not an element of First Degree Kidnapping.

While a guilty verdict must be unanimous, you need not be unanimous on the means or the theory of First Degree Kidnapping in arriving at your verdict.

1
2 . A person who willfully causes a child who is less than 18 years of age to suffer
3 unjustifiable physical pain or mental suffering because of abuse or neglect by sexual
4 exploitation or to be placed in a situation where the child may suffer physical pain or mental
5 suffering as the result of abuse or neglect by sexual exploitation is guilty of Child Abuse,
6 Neglect, or Endangerment.
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As used in these instructions:

"Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

"Mental injury" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within a normal range of performance or behavior.

"Sexual Abuse" means an act upon a child constituting: (1) Incest; (2) Lewdness with a Child; (3) Sado-Masochistic Abuse; (4) Sexual Assault; (5) Statutory Sexual Seduction; (6) Open or Gross Lewdness; (7) Mutilation of the Genitalia of a Female Child, aiding, abetting, encouraging or participating in the Mutilation of the Genitalia of a Female Child, or removal of a female child from this State for mutilating the genitalia of the child.

"Sexual Exploitation" means forcing, allowing or encouraging a child to: (1) solicit for or engage in prostitution; (2) view a pornographic film or literature; or (3) be filmed, photographed, or recorded on videotape, or posed, modeled, or depicted in a live performance before an audience, in a manner which captures or displays an exhibition of a child's genitals or any sexual conduct with a child.

"Negligent treatment or maltreatment of a child" occurs if a child been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic, has been abandoned, is without proper care, control or supervision or lacks subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so."

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2 “Physical injury” means:

- 3 1. Permanent or temporary disfigurement; or
4 2. Impairment of any bodily function or organ of the body.

5 “Substantial bodily harm” means:

- 6 1. Bodily injury which creates a substantial risk of death or which causes serious,
7 permanent disfigurement or protracted loss or impairment of the function of any
8 bodily member or organ; or,
9 2. Prolonged physical pain.

10 “Prolonged physical pain” encompasses some physical suffering or injury that lasts
11 longer than the pain immediately resulting from the wrongful act. Excessive corporal
12 punishment may result in physical or mental injury constituting abuse or neglect of a child
13 under the provisions of this chapter.
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A person who makes any open and indecent or obscene exposure of his person is guilty of Indecent Exposure.

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2 An exposure becomes indecent when it occurs at such a time and place where a
3 reasonable ~~man~~ person knows or should know his or her act will be open to the observation of
4 others. The required criminal intent is usually established by some action by which a
5 defendant draws attention to his or her exposed condition or by a display in a place so public
6 that it must be presumed it was intended to be seen by others.
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The well-settled and generally known significance of the phrase "indecent and obscene exposure of the person" is the exhibition of those private parts of the person which instinctive modesty, human decency or natural self-respect requires shall be customarily kept covered in the presence of others.

The flight of a person immediately after the commission of a crime or after he is accused of a crime that has been committed, is not sufficient in itself to establish his guilt; but is fact which, if proved beyond a reasonable doubt, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your determination.

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 32

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant. determining whether the State has proven the Defendant is guilty beyond a reasonable doubt.

INSTRUCTION NO. 33

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.


Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed by
4 the foreperson. The officer will then return you to court where the information sought will be
5 given you in the presence of, and after notice to, the district attorney and the Defendant and
6 his/her counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem it
8 a necessity. Should you require a playback, you must carefully describe the testimony to be
9 played back so that the court recorder can arrange his/her notes. Remember, the court is not
10 at liberty to supplement the evidence.
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

ORIGINAL

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

VER

MAY 10 2017

DISTRICT COURT BY, Ajam Brown
AJAM. BROWN, DEPUTY
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSE AZUCENA,

Defendant.

CASE NO: C-17-321044-1

DEPT NO: II

VERDICT

We, the jury in the above entitled case, find the Defendant JOSE AZUCENA, as follows:

COUNT 1 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

- ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☐ Not Guilty

COUNT 2 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

- ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☐ Not Guilty

COUNT 3 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

(Please check the appropriate box, select only one)

- ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
☐ Not Guilty

C-17-321044-1
VER
Verdict
4648983



1 **COUNT 4 - INDECENT EXPOSURE**

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

3 ☒ Guilty of INDECENT EXPOSURE

4 ☐ Not Guilty

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6 **COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

8 ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

9 ☒ Not Guilty

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11 **COUNT 6 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

13 ☒ Guilty of ATTEMPT LEWDNESS WITH A CHILD UNDER THE
14 AGE OF 14

15 ☐ Not Guilty

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17 **COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

19 ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 ☒ Not Guilty

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22 **COUNT 8 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

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

24 ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT

25 ☐ Not Guilty

1 **COUNT 9 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

- 3 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
4 ☐ Not Guilty

6 **COUNT 10 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

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

- 8 ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
9 ☐ Not Guilty

11 **COUNT 11 -INDECENT EXPOSURE**

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

- 13 ☒ Guilty of INDECENT EXPOSURE
14 ☐ Not Guilty

17 **COUNT 12 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

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

- 19 ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
20 ☐ Not Guilty

22 **COUNT 13 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

- 24 ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
25 ☒ Not Guilty

1 **COUNT 14** - - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

3 ☒ Guilty of ATTEMPT LEWDNESS WITH A CHILD UNDER THE
4 AGE OF 14

5 ☐ Not Guilty

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8 **COUNT 15** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

10 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

11 ☐ Not Guilty

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13 **COUNT 16** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

15 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 ☐ Not Guilty

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18 **COUNT 17** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

20 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

21 ☐ Not Guilty

22
23 **COUNT 18** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

25 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

26 ☐ Not Guilty

1 **COUNT 19 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

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

- 3 ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
4 ☐ Not Guilty

5
6 **COUNT 20 - INDECENT EXPOSURE**

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

- 8 ☒ Guilty of INDECENT EXPOSURE
9 ☐ Not Guilty

10
11 **COUNT 21 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

- 13 ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
14 ☒ Not Guilty

15
16 **COUNT 22 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

- 18 ☒ Guilty of ATTEMPT LEWDNESS WITH A CHILD UNDER THE
19 AGE OF 14
20 ☐ Not Guilty

21
22 **COUNT 23 - CHILD ABUSE, NEGLECT OR ENDANGERMENT**

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

- 24 ☐ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
25 ☒ Not Guilty

1 **COUNT 24 - FIRST DEGREE KIDNAPPING**

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

3 ☒ Guilty of FIRST DEGREE KIDNAPPING

4 ☐ Not Guilty

5
6 **COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF**
7 **AGE**

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

9 ☒ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
10 FOURTEEN YEARS OF AGE

11 ☐ Not Guilty

12
13 **COUNT 26 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

15 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

16 ☐ Not Guilty

17
18 **COUNT 27 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14**

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

20 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

21 ☐ Not Guilty

22
23 **COUNT 28 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF**
24 **AGE**

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

26 ☐ Guilty of SEXUAL ASSAULT WITH A MINOR UNDER
27 FOURTEEN YEARS OF AGE

28 ☒ Not Guilty

COUNT 29 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

- ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☐ Not Guilty

COUNT 30 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

(Please check the appropriate box, select only one)

- ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
☐ Not Guilty

COUNT 31 - INDECENT EXPOSURE

(Please check the appropriate box, select only one)

- ☒ Guilty of INDECENT EXPOSURE
☐ Not Guilty

COUNT 32 - CHILD ABUSE, NEGLECT OR ENDANGERMENT

(Please check the appropriate box, select only one)

- ☒ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT
☐ Not Guilty

COUNT 33 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

(Please check the appropriate box, select only one)

- ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14
☒ Not Guilty

1 **COUNT 34** - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

3 ☒ Guilty of ATTEMPT LEWDNESS WITH A CHILD UNDER THE
4 AGE OF 14

5 ☐ Not Guilty

6
7 **COUNT 35** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

9 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

10 ☐ Not Guilty

11
12 **COUNT 36** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

14 ☒ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

15 ☐ Not Guilty

16
17 **COUNT 37** - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

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

19 ☐ Guilty of LEWDNESS WITH A CHILD UNDER THE AGE OF 14

20 ☒ Not Guilty

21
22 **COUNT 38** - CHILD ABUSE, NEGLECT OR ENDANGERMENT

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

24 ☐ Guilty of CHILD ABUSE, NEGLECT OR ENDANGERMENT

25 ☒ Not Guilty

1 **COUNT 39 - INDECENT EXPOSURE**

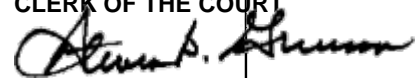
2 *(Please check the appropriate box, select only one)*

3 ☒ Guilty of INDECENT EXPOSURE

4 ~~☐ Not Guilty~~ RG

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7 DATED this 10 day of May, 2017

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JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSE AZUCENA
#7037259

Defendant.

CASE NO. C-17-321044-1

DEPT. NO. II

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 2, 5, 7, 9, 13, 15, 16, 17, 18, 21, 26, 27, 29, 33, 35, 36 and 37 – LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation of NRS 201.230; COUNTS 3, 8, 10, 12, 19, 23, 30, 32 and 38 – CHILD ABUSE, NEGLECT OR ENDANGERMENT (Category B Felony) in violation of NRS 200.508(1); COUNTS 4, 11, 20, 31 and 39 – INDECENT EXPOSURE (Gross Misdemeanor) in violation of NRS 201.220; COUNTS 6, 14, 22 and 34 – ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category B Felony) in violation of NRS 201.230, 193.330; COUNT 24 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310, 200.320; and COUNTS 25 and 28 – SEXUAL ASSAULT WITH A MINOR UNDER

1 FOURTEEN YEARS OF AGE (Category A Felony) in violation of NRS 200.364,
2 200.366; and the matter having been tried before a jury and the Defendant having been
3 found guilty of the crimes of COUNTS 1, 2, 9, 15, 16, 17, 18, 26, 27, 29, 35 and 36 –
4 LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony) in violation
5 of NRS 201.230; COUNTS 3, 8, 10, 12, 19, 30 and 32 – CHILD ABUSE, NEGLECT OR
6 ENDANGERMENT (Category B Felony) in violation of NRS 200.508(1); COUNTS 4, 11,
7 20, 31 and 39 – INDECENT EXPOSURE (Gross Misdemeanor) in violation of NRS
8 201.220; COUNTS 6, 14, 22 and 34 – ATTEMPT LEWDNESS WITH A CHILD UNDER
9 THE AGE OF 14 (Category B Felony) in violation of NRS 201.230, 193.330; COUNT 24
10 – FIRST DEGREE KIDNAPPING (Category A Felony) in violation of NRS 200.310,
11 200.320; and COUNT 25 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
12 YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; thereafter,
13 on the 17th day of August, 2017, the Defendant was present in court for sentencing with
14 counsel CARLI KIERNY, Deputy Public Defender, and good cause appearing,
15

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18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
19 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
20 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
21 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
22
23 **COUNT 1** – LIFE with the eligibility for parole after serving TEN (10) YEARS; **COUNT 2**
24 - LIFE with the eligibility for parole after serving TEN (10) YEARS; **COUNT 3** - a
25 MAXIMUM of TEN (10) YEARS with a MINIMUM Parole Eligibility of THREE (3)
26 YEARS, CONSECUTIVE to COUNT 1; **COUNT 4** – THREE HUNDRED SIXTY-FOUR
27 (364) DAYS in the Clark County Detention Center (CCDC), CONCURRENT with
28

1 COUNT 2; **COUNT 6** - a MAXIMUM of TEN (10) YEARS with a MINIMUM Parole
2 Eligibility of TWO (2) YEARS, CONSECUTIVE to COUNT 3; **COUNT 8** - a MAXIMUM of
3 TEN (10) YEARS with a MINIMUM Parole Eligibility of THREE (3) YEARS,
4 CONCURRENT with COUNT 4; **COUNT 9** - LIFE with the eligibility for parole after
5 serving TEN (10) YEARS, CONSECUTIVE to COUNT 6; **COUNT 10** - a MAXIMUM of
6 TEN (10) YEARS with a MINIMUM Parole Eligibility of THREE (3) YEARS,
7 CONCURRENT with COUNT 8; **COUNT 11** – THREE HUNDRED SIXTY-FOUR (364)
8 DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 10;
9 **COUNT 12** - a MAXIMUM of TEN (10) YEARS with a MINIMUM Parole Eligibility of
10 THREE (3) YEARS, CONCURRENT with COUNT 11; **COUNT 14** – a MAXIMUM of
11 TEN (10) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS,
12 CONCURRENT with COUNT 12; **COUNT 15** - LIFE with the eligibility for parole after
13 serving TEN (10) YEARS, CONSECUTIVE to COUNT 9; **COUNT 16** - LIFE with the
14 eligibility for parole after serving TEN (10) YEARS, CONCURRENT with COUNT 14;
15 **COUNT 17** - LIFE with the eligibility for parole after serving TEN (10) YEARS,
16 CONCURRENT with COUNT 16; **COUNT 18** - LIFE with the eligibility for parole after
17 serving TEN (10) YEARS, CONCURRENT with COUNT 17; **COUNT 19** - a MAXIMUM
18 of TEN (10) YEARS with a MINIMUM Parole Eligibility of THREE (3) YEARS,
19 CONCURRENT with COUNT 18; **COUNT 20** – THREE HUNDRED SIXTY-FOUR (364)
20 DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 19;
21 **COUNT 22** - a MAXIMUM of TEN (10) YEARS with a MINIMUM Parole Eligibility of
22 TWO (2) YEARS, CONCURRENT with COUNT 20; **COUNT 24** - a MAXIMUM of
23 FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility of FIVE (5) YEARS,
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1 CONSECUTIVE to COUNT 15; **COUNT 25** - LIFE with the eligibility for parole after
2 serving THIRTY-FIVE (35) YEARS, CONSECUTIVE to COUNT 24; **COUNT 26** - LIFE
3 with the eligibility for parole after serving TEN (10) YEARS, CONSECUTIVE to COUNT
4 25; **COUNT 27** - LIFE with the eligibility for parole after serving TEN (10) YEARS,
5 CONCURRENT with COUNT 22; **COUNT 29** - LIFE with the eligibility for parole after
6 serving TEN (10) YEARS, CONCURRENT with COUNT 27; **COUNT 30** - a MAXIMUM
7 of TEN (10) YEARS with a MINIMUM Parole Eligibility of THREE (3) YEARS,
8 CONCURRENT with COUNT 29; **COUNT 31** – THREE HUNDRED SIXTY-FOUR (364)
9 DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 30;
10 **COUNT 32** - a MAXIMUM of TEN (10) YEARS with a MINIMUM Parole Eligibility of
11 THREE (3) YEARS, CONCURRENT with COUNT 31; **COUNT 34** - a MAXIMUM of TEN
12 (10) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, CONCURRENT
13 with COUNT 32; **COUNT 35** - LIFE with the eligibility for parole after serving TEN (10)
14 YEARS, CONCURRENT with COUNT 34; **COUNT 36** - LIFE with the eligibility for
15 parole after serving TEN (10) YEARS, CONCURRENT with COUNT 35; and **COUNT**
16 **39** – THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention
17 Center (CCDC), CONCURRENT with COUNT 36; with TWO HUNDRED SEVENTY-
18 EIGHT (278) DAYS credit for time served. COUNTS 5, 7, 13, 21, 23, 28, 33, 37 and 38
19 – NOT GUILTY. The AGGREGATE TOTAL sentence is LIFE with a MINIMUM
20 PAROLE ELIGIBILITY OF EIGHTY-FIVE (85) YEARS.
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25 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
26 is imposed to commence upon release from any term of imprisonment, probation or
27 parole. In addition, before the Defendant is eligible for parole, a panel consisting of
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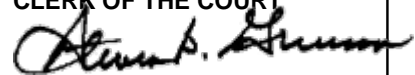
1 the Administrator of the Mental Health and Development Services of the Department
2 of Human Resources or his designee; the Director of the Department of corrections or
3 his designee; and a psychologist licensed to practice in this state; or a psychiatrist
4 licensed to practice medicine in Nevada must certify that the Defendant does not
5 represent a high risk to re-offend based on current accepted standards of assessment.
6

7 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
8 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
9 release from custody.
10

11 DATED this 23 day of August, 2017.

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RICHARD SCOTTI
DISTRICT COURT JUDGE 



1 NOAS

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)
11)
12 Plaintiff,) CASE NO. C-17-321044-1
13)
14 v.) DEPT. NO. II
15)
16 JOSE AZUCENA,)
17)
18 Defendant.)

19 NOTICE OF APPEAL

20 TO: THE STATE OF NEVADA
21 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
22 NEVADA and DEPARTMENT NO. II OF THE EIGHTH JUDICIAL
23 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
24 COUNTY OF CLARK.

25 NOTICE is hereby given that Defendant, Jose Azucena,
26 presently incarcerated in the Nevada State Prison, appeals to the
27 Supreme Court of the State of Nevada from the judgment entered
28 against said Defendant on the 24th day of August, 2017 whereby he
was convicted of Cts. 1, 2, 9, 15, 16, 17, 18, 26, 27, 29, 35 and
36 - Lewdness With a Child Under the Age of 14; Cts. 3, 8, 10, 12,
19, 30 and 32 - Child Abuse, Neglect or Endangerment; Cts. 4, 11,
20, 31, 39 - Indecent Exposure; Cts. 6, 14, 22, 34 - Attempt
Lewdness With Child Under The Age of 14; Ct. 24 - First Degree
Kidnapping; Ct. 25 Sexual Assault With a Minor Under Fourteen
Years of Age and sentenced to \$25 Admin. Assessment fee; \$150 DNA
analysis fee; genetic testing plus \$3 DNA collection fee; Cts. 1
and 2 - 10 years to Life; Ct. 3 - 10 years to Life; Consecutive to

1 Ct. 1; Ct. 4 - 364 days in CCDC; concurrent with Ct. 2 - Ct. 6 -
2 2-10 years consecutive Ct. 3; Ct. 8 - 3-10 years concurrent with
3 Ct. 4- Ct. 9 - 10 years to Life consecutive to Ct. 6; Ct. 10 - 3-
4 10 years concurrent with Ct. 8; Ct. 11 - 364 days in CCDC
5 concurrent with Ct. 10; Ct. 12 - 3-10 years concurrent with Ct.
6 11; Ct. 14 - 2-10 years concurrent with Ct. 12; Ct. 15 - 10 years
7 to Life in prison consecutive to Ct. 9; Ct. 16 - 10 years to Life
8 concurrent with Ct. 14; Ct. 17 - 10 years to Life concurrent with
9 Ct. 16. Ct. 18 - 10 years to Life, concurrent with Ct. 17; Ct. 19
10 - 3-10 years concurrent with Ct. 18; Ct. 20 - 364 days in CCDC
11 concurrent with Ct. 19; Ct. 22 - 2-10 years, concurrent with Ct.
12 20. Ct. 24 - 5-15 years consecutive to Ct. 15; Ct. 25 - 35 to
13 Life consecutive to Ct. 24; Ct. 26 - 10 years to Life consecutive
14 to Ct. 25; Ct. 27 - 10 years to Life concurrent with Ct. 22; Ct.
15 29, 10 years to Life concurrent with Ct. 27; Ct. 30 - 3-10 years
16 in prison concurrent with Ct. 29; Ct. 31 - 364 days in CCDC
17 concurrent with Ct. 30; Ct. 32 - 3-10 years concurrent with Ct.
18 31; Ct. 34 - 2-10 years; Ct. 36 - 10 years to Life concurrent with
19 Ct. 35; Ct. 39 - 364 days in CCDC concurrent with Ct. 36; 278 days
20 CTS. Cts. 5, 7, 13, 21, 23, 28, 33, 27 and 38 Not Guilty. The
21 aggregate total sentence is Life with a minimum parole eligibility
22 of eighty-five (85) years. Special sentence of Lifetime
23 Supervision. Register as sex offender after release from custody.

24 DATED this 18th day of September, 2017.

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/ Deborah L. Westbrook
28 DEBORAH L. WESTBROOK, #9285
Deputy Public Defender

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

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 18th day of September, 2017, by Electronic Filing
to:

District Attorneys Office

E-Mail Address;

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly

Secretary for the
Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 02, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

February 02, 2017 11:45 AM Grand Jury Indictment

HEARD BY: Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 10B**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES**

PRESENT:	Cooper, Jonathan	Deputy District Attorney
	Hamner, Christopher S.	Deputy District Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- John Blackwell, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16BGJ060X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-17-321044-1, Department II.

Mr. Hamner requested a warrant, no bail, and advised Deft is in custody on a no bail hold. COURT ORDERED, INDICTMENT WARRANT ISSUED, NO BAIL, and matter SET for Arraignment. COURT FURTHER ORDERED, Exhibits 1 - 4 to be lodged with the Clerk of the Court.

At request of the State, Las Vegas Justice Court Case Nos. 16F19006X and 16F19626X DISMISSED.

I.W. (CUSTODY)

2-9-17 9:00 AM INITIAL ARRAIGNMENT (DEPT II - Judge Scotti)

PRINT DATE: 02/02/2017

Page 1 of 1

Minutes Date: February 02, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

February 09, 2017 9:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Shelly Landwehr

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Kierny, Carli	Attorney
	Kollins, Stacey	Attorney

JOURNAL ENTRIES

- INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN

Irma Sanchez-Gaston, Interpreter, present. Ms. Kierny stated defendant would waive the reading of the indictment and plead not guilty. Further, Ms. Kierny requested 21 days from today for the filing of any writs. Colloquy regarding sensitive nature of the charges. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 2/14/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 14, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

February 14, 2017 9:00 AM Initial Arraignment

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 11D

COURT CLERK: Shelly Landwehr
 Aja Brown/ab

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Kierny, Carli L.	Attorney for Defendant
	Kollins, Stacey L.	Attorney for State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Spanish Interpreter, Yule Haasman, also present.

DEFT. AZUCENA ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

4/11/17 9:00 AM CALENDAR CALL

4/17/17 10:00 AM JURY TRIAL

PRINT DATE: 03/21/2017

Page 1 of 2

Minutes Date: February 14, 2017

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 23, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

March 23, 2017 9:00 AM Defendant's Motion to Compel Production of Discovery & Brady Material

HEARD BY: Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Shelly Landwehr**RECORDER:** Debbie Winn**REPORTER:**

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Maria Peters, Interpreter, present.

Ms. Kollins stated a file review was conducted last week and has turned over everything to defense. Court inquired as to the basis for defendant's belief that the State is withholding something. Mr. Westbrook argued the State has not met with the officers and does not know if everything has been turned over. Further arguments by Mr. Westbrook regarding the procedure and due process. Further arguments as to visas, promises of benefits to any of witnesses, referrals for counseling and statutory witness fees. Ms. Kollins stated she could get the referral sheets. Following further arguments, COURT ORDERED, motion DENIED WITHOUT PREJUDICE as to all items with the exception of the referral sheets and records of any witnesses feed paid. Court stated, if there is evidence of other materials the State has an obligation to turn that over.

PRINT DATE: 04/03/2017

Page 1 of 2

Minutes Date: March 23, 2017

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 04, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

April 04, 2017 9:00 AM Motion to Reconsider

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Shelly Landwehr

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Kierny, Carli L.	Attorney
	Westbrook, P. David	Attorney
	Kollins, Stacey	Attorney

JOURNAL ENTRIES

- Interpreter, Elsa Mursico, present. Following arguments of counsel, COURT ORDERED as follows:

1. All statements, regardless of whether the statements were written or recorded, made by the defendant, including any comments made at the time of arrest or during transport to the detention center. GRANTED to the extent the requested records are found to exist;
2. Any and all statements of any/all potential witnesses in the case, including any audio and/or video recording of any form collected by investigating officers or any other law enforcement agent as part of the investigation of this matter, as well as any related matters, GRANTED to the extent the State has in its possession, custody or control any requested documents;
3. Any and all records of the Las Vegas Metropolitan Police Department and any other law enforcement agency(ies) involved in the investigation of this or any related matter, including photocopies or other reproduction(s) of any and all handwritten or other notes. GRANTED, to the extent the records exist and are in the possession of the State.
4. Requests, results and/or reports of any and all crime scene analysis, evidence collection and/or forensic testing performed in this case, GRANTED as unopposed;

PRINT DATE: 04/20/2017

Page 1 of 3

Minutes Date: April 04, 2017

5. Medical records, GRANTED as unopposed;
6. Preservation of/access to raw evidence, State is to do their duty and check with police to determine if they have the surveillance video;
7. Electronic communications and associated warrants, GRANTED IN PART. State is directed to comply with its obligation under Bray regarding any crime scene photos and report of CSA;
8. Law enforcement video or audio recordings, GRANTED as unopposed;
9. Non-activated body camera, GRANTED based on State's representations it will ascertain any such data exists, and if so, State will turn it over. Further, State will ascertain if anything was destroyed, otherwise DENIED;
10. Monitoring, tracking, and associated warrants, GRANTED IN PART, to the extent it is in the State's control;
11. 911 and 311 calls, GRANTED as unopposed;
12. Chain of custody, If report, if it exists, shall be produced, GRANTED;
13. All updated witness contact information, GRANTED IN PART. If defendant still needs information they are to submit a written request to the State;
14. Any and all information obtained by the use of confidential informants for any aspect of the investigation of this case, GRANTED based on representations by the State that they will turn over if it exists;
15. Alternative suspects, GRANTED as unopposed;
16. Identification and misidentification, GRANTED as unopposed;
17. General exculpatory evidence request, DENIED as overbroad; however, State is to comply with Brady and Gigilio;
18. Witness benefits, GRANTED if it is in the State's possession, custody or control;
19. Prior witness statements, GRANTED IN PART. The State will look at the files relevant to witnesses and ascertain if there is any relevant information;
20. Impeachment information law enforcement witness, GRANTED IN PART;
21. Criminal history information, GRANTED IN PART as to crimes of moral turpitude
22. Significant public benefit parole, GRANTED as unopposed;
23. U visas and related information, DENIED WITHOUT PREJUDICE;
38. Child protective services records, GRANTED IN PART, records must be turned over for in camera review;
39. Social worker/case worker notes, GRANTED IN PART, State must turn over what it has in its possession or control, for in camera review;
40. Mental health worker records/notes, DENIED WITHOUT PREJUDICE;
41. Crimes of moral turpitude, GRANTED as unopposed;
42. Physical examinations, GRANTED if any such evidence exists;
43. Prior allegations of sexual misconduct, GRANTED if any such evidence exists;
71. Sources of sexual knowledge, PREVIOUSLY GRANTED;
72. Media involvement, DENIED as overbroad, State must comply with Brady and Giglio.

Further, Ms. Kollins stated her concern regarding the victims' names listed in the filed brief. COURT ORDERED,

Motion to Compel Production of Discovery and Brady Materials and Motion to Reconsider Defendant's Motion to Compel Production of Discovery and Brady Material, STRICKEN. Court DIRECTED counsel to refile.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 11, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

April 11, 2017 9:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Shelly Landwehr/STL
Amy Calderwood

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT S MOTION IN LIMINE TO PRECLUDE USE OF THE PREJUDICIAL TERM "VICTIM" ...DEFENDANT'S MOTION IN LIMINE TO PRECLUDE LAY OPINION TESTIMONY THAT THE ACCUSERS' BEHAVIOR IS CONSISTENT WITH THAT OF A VICTIM OF SEXUAL ABUSE...MOTION IN LIMINE TO ADMIT SCHOLARLY TREATISE ON IMMIGRATION LAW

Mr. Hamner announced ready for trial. Ms. Kierney stated she was concerned about the trial date and argued regarding previous ruling and argued regarding exculpatory evidence that defense has no way of introducing and stated she can't listen to one of the tapes because the statement is in Spanish. Ms. Kierney stated the exculpatory information contradicts previous statements of two of the alleged female victims. Further, Ms. Kierney stated she needs to subpoena and talk to the parents.

PRINT DATE: 04/24/2017

Page 1 of 2

Minutes Date: April 11, 2017

Court inquired whether this was an oral motion to continue trial. Ms. Keirney stated defendant has invoked his right to a speedy trial and expressed her concerns with respect to being effective at trial. Further representations.

Mr. Hamner argued regarding the testimony and the grand jury transcript and stated defense has had the information for some time. The location has been known, the witnesses were noticed. Mr. Hamner stated the parents are no legally obligated to speak with defense. Further representations. Colloquy regarding the interview and alleged late disclosure.

Court inquired as to how long the detective had the DVDs. Colloquy. Ms. Kollins stated it is routine to not automatically transcribe DVDs if there is no victimology. Mr. Hamner stated his office could reach out and help locate the two minor witnesses.

Ms. Kierny further argued regarding the minor witnesses in the grand jury transcript, there is limited information on these minors. Court DIRECTED counsel to work with the State and make good efforts. Ms. Kierney stated defense cannot announced ready but cannot ask for a continuance as defendant is not willing to waive his speedy trial rights. Court canvassed defendant regarding his understanding his counsel is unable to get the witnesses for trial, if trial goes forward as planned. Following further arguments, COURT DIRECTED the State to get with defense counsel by 5:00 p.m. this date, regarding addresses.

FURTHER, a motion to continue should be filed on an order shortening time. Colloquy regarding trial schedule. COURT ORDERED, defendant's motion in limine regarding the term victim, GRANTED IN PART; defendant's motion in limine regarding lay opinion, GRANTED; motion in limine regarding scholarly treatise, DENIED. TRIAL DATE STANDS.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 19, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 19, 2017 5:00 PM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** No Hearing Held

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court has reviewed the CPS records in relation to JM (male), JM (female), and SR, which were provided for in camera review. The Court determines that such records are potentially relevant and material, and should be disclosed to defense counsel and the State.

CLERK'S NOTE: Minutes distributed 4/19/17, via e-mail, as follows:

KiernyCL@ClarkCountyNV.gov
Christopher.Hamner@clarkcountyda.com
Stacey.Kollins@clarkcountyda.com
Westbrpd@ClarkCountyNV.gov

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 21, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 21, 2017 3:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:**

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Court has reviewed the Motion to Dismiss, and its tentative ruling is to deny the motion to dismiss and treat it as a motion to continue trial. The Court will entertain oral argument Monday 9:00 am. This is not an evidentiary hearing. The parties should be prepared to proceed to trial Monday at 10:00 am absent further order of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 24, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

**April 24, 2017 9:00 AM Defendant's Motion To Dismiss For Repeated And
Ongoing Discovery/Brady Violations And Motion for
Evidentiary Hearing**

HEARD BY: Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D

COURT CLERK: Shelly Landwehr/stl
Amy Calderwood

RECORDER: Dalyne Easley**REPORTER:**

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacy	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mario Torres, Interpreter, present. Upon Court's inquiry, Mr. Hamner stated he did not know the exact date he first obtained possession of the CPS records. Mr Hamner further stated there is a language barrier with respect to interviewing the children and parents. Colloquy regarding possible evidentiary hearing. Further arguments regarding the notes from Detective Campbell and the delay in producing the voluntary statements. Mr. Hamner stated the State had done its best to meet the obligations under Brady and is ready to go forward.

Mr. Westbrook argued regarding this Court's previous order and stated Brady information is being presented on the eve of trial. Further this is not a request for a continuance as defendant has invoked his right to a speedy trial.

PRINT DATE: 07/10/2017

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Minutes Date: April 24, 2017

Further arguments regarding exculpatory information and the fact that the State had CPS records in their possession since May of 2017. Court stated it does not see how this is a Brady violation and stated it is not willing to dismiss based on delay of discovery. Mr. Hamner argued there was a file review conducted the day before parties appeared in this court, and at that time they were not in possession of those records. Ms. Kollins stated the date Mr. Westbrook is referring to is an internal date from CPS, not the date the State had the records. Additional arguments by Mr. Westbrook regarding bad faith who said the witnesses have been tampered with and were told by the State they could not talk to the defense.

Following further arguments of counsel, COURT ORDERED, motion DENIED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 24, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 24, 2017 10:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
 Shelly Landwehr

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Interpreters, Jeff Banks, Yul Haasmann, Mario Torres, Patty Sanchez and Rose Fernandez, present.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY. Arguments by Ms. Kierney to exclude the two minor witnesses. COURT SO ORDERED. Colloquy regarding Department 2 trial procedures. Pursuant to stipulation, Court stated there will be 12 jurors and 2 secret alternates. Parties will exercise 8 peremptory challenges towards the jury and 1 toward the alternates.

PROSPECTIVE JURY PRESENT. Introduction by Court and counsel. Voir dire oath administered by the Clerk. Jury selection commenced. Conference at the bench. Jury selection resumed. Conference at the bench, with prospective juror #353. Prospective juror #353 excused to return to prospective jury panel. Conference at the bench, with prospective juror jury #156. Prospective juror #156 excused to return to prospective panel.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: April 24, 2017

Court ADMONISHED and EXCUSED prospective jury panel for lunch recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY. Colloquy regarding hardships. Court adjourned for lunch recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY. Colloquy regarding voir dire questions by Court.

PROSPECTIVE JURY PRESENT. Voir dire continued. Court ADMONISHED and EXCUSED prospective jury panel for evening recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY. At the request of counsel, COURT ORDERED, the conference at the bench with prospective juror #156 SEALED, as well as this portion of the proceedings regarding prospective juror #156. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 4/25/17 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 25, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 25, 2017 1:00 PM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
 Shelly Landwehr/STL

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- State's Memorandum Regarding NRS 51.385 FILED IN OPEN COURT.
Interpreters, Rose Fernandez, Yul Haasmann, present.

OUTSIDE THE PRESENCE OF PROSPECTIVE JURY PANEL. Colloquy regarding challenges for cause. PROSPECTIVE JURY PANEL PRESENT. Voir dire resumed. Following conference at the bench, COURT ADMONISHED and EXCUSED panel for brief recess.

OUTSIDE THE PRESENCE OF PROSPECTIVE JURY PANEL. Oral motion by Mr. Westbrook to dismiss panel. Mr. Westbrook stated the manner in which the Court addressed a prospective juror, yelling at her and the language that was used towards that juror, was a concern in that the remaining panel may not be comfortable expressing their feelings and beliefs due to the way this Court treated the prospective juror. COURT ORDERED oral motion DENIED.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: April 25, 2017

Court stated it had to make it known to the venire that it would not allow anyone to lie. Upon Court's inquiry, the State declined to take a position.

PROSPECTIVE JURY PANEL PRESENT. Voir dire resumed. Following conference at the bench, COURT ADMONISHED and EXCUSED panel for brief recess.

PROSPECTIVE JURY PANEL PRESENT. Voir dire resumed. Twelve jurors and two alternates SELECTED and SWORN. Court THANKED and EXCUSED remaining panel.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy disclosure arguments before start of trial, on 4/26/17. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 4/26/17 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 26, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 26, 2017 10:30 AM Hearing

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Shelly Landwehr/stl
 Amy Calderwood

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Interpreters, Yul Haasmann, Rose Fernandez, Michelle Ruth and Elissa Mendoza, present.

OUTSIDE THE PRESENCE OF THE JURY.

Court referenced the brief it received and invited arguments. Mr. Westbrook objected to the hearing going forward. Ms. Kierney invoked the exclusionary ruled. COURT SO ORDERED. Elizabeth Espinoza, SWORN and TESTIFIED. Court ADMONISHED and EXCUSED parties for lunch recess.

COURT RECONVENED. Yusnay Rodriguez, SWORN and TESTIFIED; Amanda Moiza, SWORN and TESTIFIED; Ricardo Rangel, SWORN and TESTIFIED; Maria Barajas, SWORN and TESTIFIED.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: April 26, 2017

Arguments by counsel. Court stated its findings and ruling. Court stated trial would resume 4/27/17 at 1:00 p.m. COURT ADJOURNED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 27, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 27, 2017 1:00 PM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
 Shelly Landwehr/STL

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Amended Indictment FILED IN OPEN COURT. Interpreters, Rose Fernandez, Yul Haasman, Michelle Ruth and Elissa Mendoza, present.

OUTSIDE THE PRESENCE OF THE JURY. Parties stipulate to admit exhibits (see worksheet).

JURY PRESENT. Amended) Indictment read by the Clerk. Opening statements.

Following conference at the bench, Court ADMONISHED jury and EXCUSED for brief recess. OUTSIDE THE PRESENCE OF THE JURY. Arguments regarding the opening statements. Oral motion by Mr. Westbrook for mistrial. COURT ORDERED, DENIED. Mr. Westbrook requested the jury be canvassed to determine if they can hear the arguments at the bench, COURT ORDERED, DENIED.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: April 27, 2017

JURY PRESENT. Court instructed the jury. Testimony presented (see worksheet). Following conference at the bench, Court ADMONISHED jury and EXCUSED for evening recess. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 4/28/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 28, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

April 28, 2017 9:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK:
 Aja Brown

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Hamner, Christopher S.	Attorney for State
	Kierny, Carli L.	Attorney for Defendant
	Kollins, Stacey L.	Attorney for State
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney for Defendant

JOURNAL ENTRIES

- Spanish Interpreters, Yul Haasman, Maria Peters, Maria Peralta De Gomez, Michelle Roth and Rose M. Fernandez also present.

OUTSIDE THE PRESENCE OF THE JURY. Ms. Kollins noted she had further questions for the witness and requested permission to reopen. COURT SO NOTED. Colloquy regarding bench conference procedures.

JURY PRESENT. Statements by Jurors. CONFERENCES AT BENCH. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED. Court ADMONISHED and excused Jury for evening recess.

PRINT DATE: 05/16/2017

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Minutes Date: April 28, 2017

C-17-321044-1

CUSTODY

CONTINUED TO: 5/1/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 01, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

May 01, 2017 9:30 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
Shelly Landwehr

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Second Amended Indictment FILED IN OPEN COURT. Interpreters, Yul Haasmann, Rose Fernandez, Peralta de Gomez, Michael Berry, Michelle, Ruth, Carlos Calva, present.

JURY PRESENT. Testimony and exhibits presented (see worksheet). Following conference at the bench, Court ADMONISHED and EXCUSED for brief recess. OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding trial schedule. Mr. Westbrook argued regarding the testimony stricken by the Court. Ms. Kollins argued regarding that portion of testimony was never heard before at the pretrial. Further arguments. Mr. Westbrook argued regarding representations and rulings made at the hearing held 4/26/17. Court stated Mr. Westbrook could request the DVD of the hearing.

JURY PRESENT. Testimony resumed. Following conference at the bench, Court ADMONISHED and EXCUSED for lunch recess.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: May 01, 2017

OUTSIDE THE PRESENCE OF THE JURY. Arguments regarding testimony. JURY PRESENT. Testimony resumed. Following conference at the bench, Court ADMONISHED and EXCUSED for brief recess. JURY PRESENT. Testimony resumed. Following conference at the bench, Court ADMONISHED and EXCUSED for evening recess. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 05/20/17 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 02, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

May 02, 2017 1:00 PM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
Shelly Landwehr/STL

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Cooper, Jonathan	Attorney
	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Interpreters, Rose Fernandez, Michelle Ruth, Maria Gomez, Yul Hassmann, present.

JURY PRESENT. Testimony and exhibits presented (see worksheet). Following conference at the bench, Court ADMONISHED and EXCUSED jury for brief recess.

JURY PRESENT. Testimony and exhibits presented (see worksheet). Following conference at the bench, Court ADMONISHED and EXCUSED jury for brief recess.

OUTSIDE THE PRESENCE OF THE JURY. Arguments regarding bolstering. Court stated it read the cases.

JURY PRESENT. Testimony and exhibits presented (see worksheet). Following conference at the bench, Court ADMONISHED and EXCUSED jury for evening recess.

PRINT DATE: 07/10/2017

Page 1 of 2

Minutes Date: May 02, 2017

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding witness schedule. Arguments regarding the witness being balled. Arguments regarding counseling records and U Visas. Colloquy regarding whether this Court ordered those records produced. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 05/03/17 11:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 03, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

May 03, 2017 11:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
Shelly Landwehr/STL

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Interpreters, Maria Peters, Yul Haasmann and Michelle Ruth, present.

OUTSIDE THE PRESENCE OF THE JURY. Mr. Hamner stated he had a pretrial with Officer Campbell and indicated he was to turn over all of his notes and Officer Campbell stated he would have to check all of his notes on the computer. Mr. Hamner stated there was never a statement prior to this, regarding notes on the computer and when asked, Detective Campbell stated he was unaware he had to bring the computer notes. Arguments by Mr. Westbrook who moved for a dismissal. Court stated its findings and ORDERED, DENIED.

JURY PRESENT. Testimony and exhibits presented (see worksheet). COURT ADMONISHED and EXCUSED jury for lunch recess.

PRINT DATE: 07/12/2017

Page 1 of 2

Minutes Date: May 03, 2017

JURY PRESENT. Testimony and exhibits presented (see worksheet). COURT ADMONISHED and EXCUSED jury for brief recess

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding witness schedule.

JURY PRESENT. Testimony and exhibits presented (see worksheet). COURT ADMONISHED and EXCUSED jury for evening recess.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding trial schedule for the following day. Mr. Hamner stated there are only three witnesses left and stated the State can rest on Friday, May 5, 2017. Ms. Kierney stated, at this point the defense does not have any witnesses scheduled for Friday. Court advised defense to get witnesses. Ms. Kierney stated they still have to pretrial the witnesses and stated the issues because the witnesses are minors and it can't be done until the minors are out of school. Mr. Westbrook argued the witnesses they have set for Monday were late discovery witnesses. Colloquy regarding settling jury instructions. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 5/04/17 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 04, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

May 04, 2017 1:30 PM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Aja Brown

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Hamner, Christopher S.	Attorney for State
	Kierny, Carli L.	Attorney for Defendant
	Kollins, Stacey L.	Attorney for State
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney for Defendant

JOURNAL ENTRIES

- Spanish Interpreters, Yul Haasman and Maria Peters, also present.

JURY PRESENT. CONFERENCES AT BENCH. Testimony and exhibits presented (see worksheets). COURT ORDERED, matter CONTINUED. Court ADMONISHED and excused Jury for evening recess.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding hearsay with respect to witness testimony.

CUSTODY

PRINT DATE: 05/17/2017

Page 1 of 2

Minutes Date: May 04, 2017

CONTINUED TO: 5/5/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 05, 2017**

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

May 05, 2017 9:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
 Shelly Landwehr/stl

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Interpreters Rose Fernandez, Yul Haasmann, Marta Peralta de Gomez, present.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding the transcript with respect to two of the witnesses. Arguments regarding hearsay statements.

JURY PRESENT. Testimony and exhibits presented (see worksheet). Following conference at the bench, COURT ADMONISHED and EXCUSED the jury for a brief recess.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding witness schedule.

JURY PRESENT. Testimony resumed. COURT ADMONISHED and EXCUSED the jury for lunch recess.

PRINT DATE: 07/12/2017

Page 1 of 2

Minutes Date: May 05, 2017

OUTSIDE THE PRESENCE OF THE JURY. Court canvassed defendant regarding his 5th Amendment right not to testify on his own behalf.

JURY PRESENT. Testimony and exhibits presented (see worksheet). State rested. Testimony and exhibits presented (see worksheet). Following conference at the bench, COURT ADMONISHED and EXCUSED the jury for a brief recess. Testimony resumed. Defense rested. COURT ADMONISHED and EXCUSED the jury for evening recess.

OUTSIDE THE PRESENCE OF THE JURY. Colloquy regarding settling jury instructions. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 5/08/17 11:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 08, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

May 08, 2017 11:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
 Shelly Landwehr/STL

RECORDER: Dalyne Easley

REPORTER:

PARTIES	Azucena, Jose	Defendant
PRESENT:	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Offers of Proof Re: Defendant's Motion(s) to Dismiss For Repeated And Ongoing Discovery / Brady Violations FILED IN OPEN COURT. Memorandum Regarding the use of NRS51.385 to Admit Hearsay Testimony, FILED IN OPEN COURT.

Interpreters Yul Haasmann, Ximena Feine and Noelle Taton, present.

OUTSIDE THE PRESENCE OF THE JURY. Arguments regarding documents filed in open court. Jury instructions settled.

JURY PRESENT. Court instructed the jury. Court ADMONISHED and EXCUSED the jury for brief recess.

PRINT DATE: 07/12/2017

Page 1 of 2

Minutes Date: May 08, 2017

JURY PRESENT. Closing arguments. Court THANKED and EXCUSED alternate jurors. Judicial Executive Assistant and Court Marshal SWORN to take charge of the jury. Court ADMONISHED and EXCUSED the jury for evening recess. COURT ADJOURNED. Matter CONTINUED.

CONTINUED TO: 5/09/17 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 09, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

May 09, 2017 10:00 AM Jury Trial - FIRM

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Amy Calderwood
Shelly Landwehr

RECORDER: Dalyne Easley

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Hamner, Christopher S.	Attorney for State
	Kierny, Carli L.	Attorney for Defendant
	Kollins, Stacey L.	Attorney for State
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney for Defendant

JOURNAL ENTRIES

- At the hour of 10:00 A.M., jury retired to being deliberations.

Spanish Interpreter, Noel Tatton also present.

OUTSIDE PRESENCE OF JURY: Court Clerk Olivia Black now present at 4:09 pm. Court advised it received a note from the jurors and provided a copy to Counsel for review. At the request of Mr. Westbrook, Court read the juror note into the record. Court noted the jurors had been deliberating since 10:00 am and believed it was appropriate to do the Allen Charge. Mr. Westbrook argued he believed the Allen Charge would be unduly coercive and it would be the power of the Court backing up the majority. Mr. Westbrook further argued the Allen Charge would violate Defendant's due process rights under the 5th, 14th Amendment. Mr. Westbrook objected the Allen Charge. Colloquy regarding other options instead of an Allen Charge.

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Minutes Date: May 09, 2017

Mr. Hamer noted the jurors had only deliberated for six hours and argued an Allen Charge was not unduly coercive. Mr. Hamer further argued an Allen Charge was appropriate and declaring a mistrial would be improper. Further arguments by counsel. COURT Stated it would give the jurors the Allen Charge. Colloquy regarding the jury deliberating after the Allen Charge was read. Court noted the jury would continue deliberating thirty minutes after the Allen Charge was read to them thereafter the jurors would be excused for the evening.

JURY PRESENT: Court read Allen Charge to the Jury and ADMONISHED the Jury for evening recess. COURT FURTHER ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 05/10/17 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 22, 2017

C-17-321044-1 State of Nevada
 vs
 Jose Azucena

June 22, 2017 9:00 AM Sentencing

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kory Schlitz

RECORDER: Dalyne Easley

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Hamner, Christopher S.	Attorney for Defendant
	Kierny, Carli L.	Attorney for State
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Spanish Interpreter A. Herrera present on behalf of Defendant.

Ms. Kierny indicated Stockmeyer issues with the Pre-Sentence Investigation (PSI) Report regarding prior Felonies and requested this matter be continued for either P&P to delete the line, or provide documentation on where they received that information from. Mr. Hamner stated no objection and agreed the Defendant should be sent back to P&P for a new PSI. Mr. Hamner further stated he has called off the Victim Speakers for today after. COURT ORDERED, matter REFERRED back to P&P for a Supplemental PSI; matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/17/17 9:00 A.M.

Felony/Gross Misdemeanor

COURT MINUTES

June 22, 2017

C-17-321044-1 State of Nevada
vs
Jose Azucena

June 22, 2017 09:00 AM Sentencing

HEARD BY: Scotti, Richard F. COURTROOM: RJC Courtroom 11D

COURT CLERK: Schlitz, Kory

RECORDER: Easley, Dalayne

REPORTER:

PARTIES PRESENT:

Christopher S. Hamner Attorney for Plaintiff

Carli L. Kierny Attorney for Defendant

Jose Azucena Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Spanish Interpreter A. Herrera present on behalf of Defendant.

Ms. Kierny indicated Stockmeyer issues with the Pre-Sentence Investigation (PSI) Report regarding prior Felonies and requested this matter be continued for either P&P to delete the line, or provide documentation on where they received that information from. Mr. Hamner stated no objection and agreed the Defendant should be sent back to P&P for a new PSI. Mr. Hamner further stated he has called off the Victim Speakers for today after. COURT ORDERED, matter REFERRED back to P&P for a Supplemental PSI; matter CONTINUED.

CUSTODY (COC)

CONTINUED TO: 8/17/17 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 17, 2017**

C-17-321044-1 State of Nevada
vs
Jose Azucena

August 17, 2017 9:00 AM Sentencing

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Louisa Garcia

RECORDER: Dalayne Easley

PARTIES

PRESENT:	Azucena, Jose	Defendant
	Hamner, Christopher S.	Attorney
	Kierny, Carli L.	Attorney
	Kollins, Stacey L.	Attorney
	State of Nevada	Plaintiff
	Westbrook, P. David	Attorney

JOURNAL ENTRIES

- Spanish Interpreters, Maria Peralta-De Gomez and Irma Sanchez-Gastelum present.

Pursuant to the Jury's verdict, DEFT. AZUCENA ADJUDGED GUILTY of COUNTS 1, 2, 9, 15-18, 26, 27, 29, 35, 36 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNTS 3, 8, 10, 12, 19, 30, 32 - CHILD ABUSE, NEGLECT OR ENDANGERMENT (F); COUNTS 4, 11, 20, 31, 39 - INDECENT EXPOSURE (GM); COUNTS 6, 14, 22, 34 - ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (F); COUNT 24 - FIRST DEGREE KIDNAPPING (F); COUNT 25 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (F). Matter argument and submitted. Statement by Defendant. Victim Speakers sworn and gave victim impact statements.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the \$150.00 DNA Analysis fee including testing to determine genetic markers and the \$3.00 DNA Collection fee, Deft. SENTENCED as follows:

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Minutes Date: August 17, 2017

As to COUNT 1 - LIFE with the possibility of parole after serving TEN (10) YEARS;

As to COUNT 3 - to a MAXIMUM of TEN (10) and a MINIMUM of THREE (3) YEARS in NDC, CONSECUTIVE to COUNT 1;

As to COUNT 6 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of TWO (2) YEARS in NDC, CONSECUTIVE to COUNT 3;

As to COUNT 9 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONSECUTIVE to COUNT 6;

As to COUNT 15 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONSECUTIVE to COUNT 9;

As to COUNT 24 - to a MAXIMUM of FIFTEEN (15) YEARS and a MINIMUM of FIVE (5) YEARS in NDC, CONSECUTIVE to COUNT 15;

As to COUNT 25 - LIFE with the possibility of parole after serving a MINIMUM of THIRTY FIVE (35) YEARS, CONSECUTIVE to COUNT 24;

As to COUNT 26 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONSECUTIVE to COUNT 25;

TOTAL AGGREGATED SENTENCE of LIFE with the possibility of parole after serving EIGHTY FIVE (85) YEARS.

The below remaining counts are to run concurrent:

As to COUNT 2 - LIFE with the possibility of parole after serving TEN (10) YEARS;

As to COUNT 4 - THREE HUNDRED SIXTY-FOUR (364) DAYS Clark County Detention Center, CONCURRENT with COUNT 2;

As to COUNT 8 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 4;

As to COUNT 10 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 8;

As to COUNT 11- THREE HUNDRED SIXTY-FOUR (364) DAYS Clark County Detention Center, CONCURRENT with COUNT 10;

As to COUNT 12 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 11;

As to COUNT 14 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of TWO (2) YEARS in NDC, CONCURRENT with COUNT 12;

As to COUNT 16 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 14;

As to COUNT 17 - LIFE with the possibility of parole after serving TEN (10) YEARS, , CONCURRENT with COUNT 16;

As to COUNT 18 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 17;

As to COUNT 19 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 18;

As to COUNT 20- THREE HUNDRED SIXTY-FOUR (364) DAYS Clark County Detention Center, CONCURRENT with COUNT 19;

As to COUNT 22 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of TWO (2) YEARS in NDC, CONCURRENT with COUNT 20;

As to COUNT 27 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 22;

As to COUNT 29 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 27;

As to COUNT 30 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 29;

As to COUNT 31- THREE HUNDRED SIXTY-FOUR (364) DAYS Clark County Detention Center, CONCURRENT with COUNT 30;

As to COUNT 32 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of THREE (3) YEARS in NDC, CONCURRENT with COUNT 31;

As to COUNT 34 - to a MAXIMUM of TEN (10) YEARS and a MINIMUM of TWO (2) YEARS in NDC, CONCURRENT with COUNT 32;

As to COUNT 35 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 34;

As to COUNT 36 - LIFE with the possibility of parole after serving TEN (10) YEARS, CONCURRENT with COUNT 35;

As to COUNT 39- THREE HUNDRED SIXTY-FOUR (364) DAYS Clark County Detention Center, CONCURRENT with COUNT 36;

Deft. has TWO HUNDRED SEVENTY EIGHT (278) DAYS credit for time served. COURT FURTHER ORDERED in accordance with NRS 179D.460, Deft. to register as a sex offender within FORTY-EIGHT (48) HOURS after sentencing or release from custody and a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole, or imprisonment.

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JOSE AZUCENA) No. 74071
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
 _____)

PHILIP J. KOHN Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 ADAM LAXALT Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10 day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOSE AZUCENA, #1183653
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office