IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA

Appellant,

v.

TAREN DESHAWN BROWN A/K/A,
TAREN DE SHAWNE BROWN A/K/A,
"GOLDY-LOX",

Respondent.
_____/

No. 75184

APPELLANT'S APPENDIX

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CODE 1800
Christopher J. Hicks
#7747
P.O. Box 11130
Reno, NV 89520
(775) 328-3200

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No.: CR17-1851

Dept. No.: D07

TAREN DESHAWN BROWN,
also known as
TAREN DE SHAWNE BROWN,
also known as
"GOLDY-LOX",

Defendant.
_____/

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that TAREN DESHAWN BROWN also known as TAREN DE SHAWNE BROWN also known as "GOLDY-LOX", the defendant above named, has committed the crime(s) of:

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COUNT I. ATTEMPTED MURDER – WITH THE USE OF A DEADLY WEAPON, a violation of NRS 193.330 being an attempt to violate NRS 200.010, and NRS 193.165, a category B felony, (50031) in the manner following:

That the said defendant, TAREN DESHAWN BROWN, on October 28th, 2017, within the County of Washoe, State of Nevada, did willfully, unlawfully, and intentionally attempt to kill VINTELL LAMONTTA JOHNSON, a human being, by pointing a gun at him from a short distance and pulling the trigger, at 200 E 4TH ST, Reno, Washoe County, Nevada.

COUNT II. ASSAULT WITH A DEADLY WEAPON, a violation of NRS 200.471, a category B felony, (50201) in the manner following:

That the said defendant, TAREN DESHAWN BROWN, on October 28th, 2017, within the County of Washoe, State of Nevada, did willfully and unlawfully attempt to use physical force against VINTELL LAMONTTA JOHNSON and/or intentionally place VINTELL LAMONTTA JOHNSON in reasonable apprehension of immediate bodily harm, with the use of a deadly weapon: Defendant pointed a firearm at the victim from a short distance, causing the victim to fear for his life, and then pulled the trigger in an attempt to use physical force against the victim.

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COUNT III. CARRYING A CONCEALED FIREARM, a violation of NRS 202.350.1d, a category C felony, (51459) in the manner following:

That the said defendant, TAREN DESHAWN BROWN, on October 28th, 2017, within the County of Washoe, State of Nevada, did willfully and unlawfully carry concealed upon his person a certain firearm, a FIE Titan .25 ACP pistol.

COUNT IV. POSSESSION OF A FIREARM WITH A REMOVED OR ALTERED SERIAL NUMBER, a violation of NRS 202.277.2, a category D felony, (51437) in the manner following:

That the said defendant TAREN DESHAWN BROWN, on October 28th, 2017, within the County of Washoe, State of Nevada, did willfully, unlawfully, and knowingly have in his possession a certain firearm, a FIE Titan .25 ACP pistol, on which the serial number had been intentionally changed, altered, removed, or obliterated.

All of which is contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Nevada.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By:___/s/ Adam Cate_____
ADAM D. CATE
12942
DEPUTY DISTRICT ATTORNEY

The following are the names and addresses of such witnesses as are known to me at the time of the filing of the within Information:

KRISTEN BELLINGER, RENO POLICE DEPARTMENT
ADAM BLOUNT, RENO POLICE DEPARTMENT
GREG BONNETTE, RENO POLICE DEPARTMENT
MICHAEL COOMBE, RENO POLICE DEPARTMENT
MARK GREENWELL, RENO POLICE DEPARTMENT
RAND HUTSON, RENO POLICE DEPARTMENT
JOSEPH MERCER, SPARKS POLICE DEPARTMENT
SCOTT SHAW, RENO POLICE DEPARTMENT
LARMON SMITH, RENO POLICE DEPARTMENT
RTC
JAELYNN JOANNE THOMAS, 2374 WEDEKIND RD APT E Reno, NV 89512
TYLER WAMRE, RENO POLICE DEPARTMENT
TASHEEKA CLAIBORNE, RENO POLICE DEPARTMENT
VINTELL LAMONTTA JOHNSON, 63 HIGH ST APT 17 RENO, NV 89502

The party executing this document hereby affirms that this document submitted for recording does not contain the social security number of any person or persons pursuant to NRS 239B.230.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By /s/ Adam Cate
ADAM D. CATE
12942
DEPUTY DISTRICT ATTORNEY

PCN: RPD0030689C-BROWN

CODE 2480
WASHOE COUNTY PUBLIC DEFENDER
EMILIE MEYER, #11419
P. O. BOX 11130
RENO, NV 89520-0027
(775) 337-4800
ATTORNEY FOR DEFENDANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs. Case No. CR17-1851

TAREN BROWN, Dept. No. 6

Defendant.

_____/

MOTION TO SUPPRESS OR REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LCR 7(C)

Comes Now, TAREN BROWN, Defendant, by and through counsel, JEREMY T. BOSLER, Washoe County Public Defender, and EMILIE MEYER, Deputy Public Defender, and hereby moves to suppress the statements obtained during Mr. Brown's interrogation in the back of a Reno Police Department (RPD) squad car on October 28, 2017.

This Motion is based upon the attached Points and Authorities, the Fourteenth, Fifth, and Sixth Amendments to the United States Constitution and Nev. Const. art. 1 § 8 and any evidence as may be presented at the hearing on this matter.

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POINTS AND AUTHORITIES

I. SUMMARY OF FACTS

Mr. Brown stands charged with four felonies: Attempted Murder, Assault with a Deadly Weapon, Carrying a Concealed Weapon Without a Permit and Destruction of a Serial Number on a Firearm. The State has previously disclosed an audio recording of the interrogation by Sergeant Larmon Smith. In that recording, Mr. Brown makes statements which the State may seek to elicit from law enforcement witnesses at trial. Such statements were elicited at the Preliminary Hearing. The State has not declared whether it will seek at trial to introduce those statements in evidence. If the State has no intention of seeking introduction into evidence of any statements Mr. Brown made, the State can so indicate in its responsive pleading and a hearing on this Motion will not be necessary. If, however, the State does seek admission of any such statements, this Court should suppress the statements based on the failure to properly Mirandize and therefore the lack of voluntariness of any statements.

On October 28, 2017, three RPD officers detained Mr. Brown at gun point. According to Officer Tyler Wamre's Preliminary Hearing testimony, Mr. Brown was drawn on by one officer and then two additional officers (Preliminary Hearing Transcript (PHT) p. 48, ll. 15-17). The officers then handcuffed Mr. Brown, who was ordered to lie on the ground and then searched. Prior to the search, Mr. Brown indicated that he had a firearm in his pocket. (PHT p. 49, ll. 4-5).

Shortly after the search, Mr. Brown was placed in a RPD squad car and Sergeant Larmon Smith conducted an interrogation with Officer Tasheeka Claiborne recording. The State provided the recording through discovery, provided as Audio Interview 171028_0004, which includes the *Miranda*-style admonishment Sergeant Smith provided to Mr. Brown. It is worth noting that Sergeant Smith had immediately prior to the admonishment acknowledged knowing Mr. Brown from a prior encounter in which Mr. Brown was a victim of a shooting, saying, "Man, I would love to hear your side of it because I know there is always two sides to

every equation and like you said we already met before under some other circumstances." (Audio Interview 171028_0004 at 1:14-1:23).

The following is the *Miranda*-style admonishment as provided. The statements below all come from Audio Interview 171028_0004 at 1:26-1:57:

> Sergeant Smith: "You are in custody man. You have rights, okay, so I just want you to know that you don't have to talk to me. You have the right to remain silent, you know, and if we do talk about stuff, you know, we can use that stuff against you. Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well. Now, do you understand your rights everything (indistinct) just said, Mr. Brown?"
>
> Mr. Brown: "Yes, I heard you."
>
> Sergeant Smith: "Okay now you understand that your rights and stuff. Do you want to tell me your side of it and tell me what happened, what led up to this, bro?"

II. ARGUMENT

MR. BROWN WAS DEFECTIVELY MIRANDIZED AND FAILED TO EFFECTIVELY WAIVE HIS *MIRANDA* RIGHTS DURING HIS INTERROGATION AND THUS HIS STATEMENTS MUST BE SUPPRESSED.

"The Fifth Amendment privilege against self-incrimination provides that a suspect's statements made during custodial interrogation are inadmissible at trial unless the police first provide a *Miranda* warning." *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (internal quotation marks and citation omitted). Mr. Brown was not provided an adequate opportunity to exercise his Fifth Amendment right as he was defectively Mirandized.

Mr. Brown was not admonished that anything he said could be used in a court of law. He was not told that he had the right to have a lawyer present while he was being questioned, and he was not told that he could exercise his rights at any time. Those were the rights Mr. Brown has under *Miranda v. Arizona*, 384 U.S. 436 (1966) that he did not waive because he

was not informed of those rights. Rather, Mr. Brown was told if he spoke with Sergeant Smith, who was accompanied by Officer Claiborne "we can use that stuff against you" and that Mr. Brown could be provided "an attorney, or something like that, regardless of what charges we have." These are fundamental distortions of Mr. Brown's *Miranda* rights and require suppression of the entirety of his statements (as documented in Audio Interview 171028_0004) as a matter of law.

Miranda was decided on the recognition that custodial questioning is "inherently coercive." *New York v. Quarles*, 467 U.S. 649, 654 (1984). By universally mandating the administration of specific warnings to suspects in custody, *Miranda* "created a prophylactic rule that establishes an irrebuttable presumption of involuntariness with respect to statements made during custodial interrogation that are not preceded by [those] warnings." *United States v. Garcia Abrego*, 141 F.3d 142, 169 (5th Cir. 1998).

A *Miranda* "warning is a clearcut fact." *Miranda v. Arizona*, 384 U.S. 436, 468-69 (1966). Giving it, withholding it, or, in this case, irretrievably misinterpreting it, "free[s] courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary." *See Berkemer v. McCarty*, 468 U.S. 420, 433 (1984). The integrity of the warning itself is the test. "Where the Court finds the *Miranda* warning deficient if the police take a suspect into custody and then ask him questions without informing him of the rights …, his responses cannot be introduced into evidence to establish his guilt." *Id.* at 429. The defective *Miranda* warning here means that Mr. Brown's statements cannot be used to establish his guilt.

Mr. Brown recognizes that, "no talismanic incantation [is] required to satisfy [*Miranda's*] strictures" (*California v. Prysock*, 453 U.S. 355, 359 (1981). However, while not required to provide a specific script, law enforcement officers must touch "all of the bases" of

the Miranda admonish for it to be sufficient. (*Duckworth v. Eagan*, 492 U.S. 195, 203 (1989)). In this instance there are clear bases left untouched by Sergeant Smith.

A. SERGENT SMITH'S *MIRANDA* WARNINGS OMITTED KEY RIGHTS AND THIS OMISSION REQUIRES SUPPRESSION AS A MATTER OF LAW.

The entirety of the Sergeant Smith's admonishment is recorded and the recording shows he never communicated two critical rights Mr. Brown has: 1) the right to have a lawyer present during questioning, and 2) his ability to exercise his rights at any time.

The deficiency in the warning regarding Mr. Brown's right to have counsel present during questioning is an absolute deficiency. The Fifth Amendment privilege includes the "prophylactic right to have counsel present during custodial interrogations." *Kaczmarek v. State*, 120 Nev. 314, 328, 91 P.3d 16, 26 (2004). In *Miranda*, the Court found the information regarding a right to counsel during questioning so critical that it described it as "an absolute prerequisite to interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead." *Miranda* at 471-2. In this case, the specific language "regardless of what charges we have for you" not only fails to convey the right to an attorney during the interrogation, but attached the right "with some future point in time after the police interrogation" which is explicitly impermissible under *California* (at 360).

While the language in *Miranda* is less absolute with regard to officer's duty to communicate an individual's ability to exercise the right to stop questioning. When an officer communicates that ability to stop speaking, it is important because it tempers the psychological operation of power on an individual in custody. "Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice." *Id.* at 474.

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Taken together, the omissions of these rights alone require this Court suppress the statements Mr. Brown made during the interrogation. However, there were additional defects in the admonishment.

B. SERGENT SMITH IMPROPERLY WARNED MR. BROWN REGARDING THE ADVERSE USE OF HIS STATEMENTS IN THE COURTROOM AND THIS OMISSION REQUIRES SUPPRESSION AS A MATTER OF LAW.

Sergeant Smith's statement "we can use that stuff against you" is an improper admonishment as it fails to convey the full exposure Mr. Brown faced when making any statement. The failure to faithfully replicate *Miranda*'s cautionary language made the admonishment "susceptible to equivocation" if not affirmatively misleading by omission. *United States v. San Juan-Cruz*, 314 F.3d 384, 387 (9th Cir. 2002).

Not only was the choice to describe "statements" as "stuff" problematic as it may be unclear what could be used against Mr. Brown, Sergeant Smith chose to say "we" while Mr. Brown was being interrogated by two law enforcement officers. A plain language interpretation of the statement could be that if Mr. Brown said "stuff" then the officers may use that in forming an opinion. The word "we" does not convey that any statements would be used by other public officials, including the District Attorney, and potentially admitted in a courtroom as a statement against interest. Although not controlling *Missouri v. Seibert*, 542 U.S. 600, (2004), provides an illustrative list of admonitions found sufficient. Each specified that statements found adequate and in each the phrase "in court" is given as critical context (see *United States v. Loucious*, 847 F.3d 1146 citing *United States v. Noa*, 443 F.2d 144 (1971), *People of the Territory of Guam v. Snaer*, 758 F.2d 1341 (1985). *Florida v. Powell*, 559 U.S. 50 (2010).)

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C. FAILING TO APPROPRIATELY CONVEY MR.BROWN'S RIGHT TO COUNSEL AS THE RIGHT TO THE PRESENCE AND ADVICE OF AN ATTORNEY REQUIRES SUPPRESSION AS A MATTER OF LAW.

"If you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well." As given, the admonishment fails to convey the seriousness of a right to an attorney and tends to suggest that the right attaches only after charges are filed and not during or before questioning. The right to have an attorney present during questioning has been previously addressed. However, advising Mr. Brown that he had a right to "attorney or something" and that one could be provided "regardless of the charges" is a further fundamentally distortion of the *Miranda* admonishment and requires *per se* suppression.

The adequacy of a *Miranda* admonishment presents a pure question of law, *cf. United States v. Perez-Lopez*, 348 F.3d 839, 844 (9th Cir. 2003), and gives exclusive scrutiny to a warning's language and text, regardless of a suspect's actual understanding of her rights. *See United States v. Boutella-Rosales*, 728 F.3d 865, 867 n.2 (9th Cir. 2013); *State v. Carlson*, 266 P.3d 369, 374 (Ariz. Ct. App. 2011). The test is not whether Mr. Brown actually understood what Sergeant Smith was saying, but rather whether the warnings as Sergeant Smith recited "reasonably convey[ed]" to an accused "his rights as required by *Miranda*. *United States v. Boutella-Rosales*, 728 F.3d 865, 867 (9th Cir. 2013) (internal quotation marks omitted). The purpose of *Miranda* is to provide "meaningful advice to the unlettered and unlearned in language which [they] can comprehend and on which [they] can knowingly act." *San Juan-Cruz*, 314 F.3d at 387 (internal quotation marks omitted). Accordingly, "[I]n order for the warning to be valid, the combination or the wording of its warnings [1] cannot be affirmatively misleading[,] . . . [2] must be clear and [3] [can]not be susceptible to equivocation." *Id*. at 387.

Misinterpreting *Miranda*'s guarantee of a suspect's access to independent counsel to mean access to an "attorney or something" seriously distorts this core caution. This was not merely an "imperfect" interpretation. *Cf. United States v. Hernandez*, 93 F.3d 1493, 1502 (10th Cir. 1996). It was a fundamentally erroneous and affirmatively misleading interpretation, and a more compelling distortion of *Miranda* than the defects at issue in *Boutella-Rosales*, 728 F.3d at 867 (mistranslation of a "free" attorney to mean a "liber" one). Mr. Brown was not then at liberty to speak with a priest or a friend or "something," the right is to have counsel present at any time, including during Sergeant Smith's questioning.

Secondly, by suggesting that an "attorney or something" could be provided "regardless of what charges" fails to pass the second prong under *San Juan-Cruz.* The right to have counsel present during the interrogation is central to the *Miranda* rights, as discussed above. No charges had then been issued and the statement as provided did not clearly convey to Mr. Brown that the right to counsel included the right to have counsel present immediately, as the right attached when he was detained. In fact, it is "susceptible to equivocation" and may suggest that the right only attaches upon the issuance of charges and no detainment. That lack of clarity regarding a fundamental right, whether intentionally misleading or not, requires suppression.

D. THERE WAS NO EFFECTIVE *MIRANDA* WAIVER BY MR. BROWN, EXPRESS OR IMPLIED.

While *Miranda* waivers may be implied, that doctrine applies only to suspects who are proven to have understood their rights. *See Bergheim v. Thompkins*, 560 U.S. 370 (2010). It is unclear under the circumstances that Mr. Brown did.

The State must demonstrate a valid *Miranda* waiver by a preponderance of the evidence. *See Colorado v. Connelly*, 479 U.S. 157, 168 (1986); *see also Bergheim v.*

Thompkins, 130 S.Ct. 2250, 2272 (2010) (Sotomayor, J., dissenting) (*Miranda* imposes a "heavy burden [upon] the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination," and that in order to satisfy that burden a "high standard[d] of proof" is applicable).

Similar to a guilty plea and the waiver of the right to counsel, *see Sparks v. State*, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005); *O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38, 43 (2007), a valid *Miranda* waiver must be knowing, voluntary, and intelligent. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). The core analysis of a waiver's effectiveness "has two distinct dimensions: [a] waiver must be [1] voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception, and [2] made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Bergheim v. Thompkins*, 560 U.S. 370, 371 (2010).

Because of the previously discussed deficiencies in the admonishment, one cannot claim that Mr. Brown had a "full awareness" of his *Miranda* rights. *Id*.

Furthermore, Mr. Brown never explicitly waived his rights. When he was asked to confirm his understanding he indicated he had "heard," which does not equate to understanding, and it is that understanding that is central to a voluntary waiver.

Lastly, before he begins making statements, Sergeant Smith asks "Do you want to tell me your side of it and tell me what happened, what led up to this, bro?" Given the totality of the circumstances, this language matters. Sergeant Smith's prior contact with Mr. Brown significantly affects Mr. Brown's voluntariness and waiver. Mr. Brown immediately remembered Sergeant Smith from a prior context where Mr. Brown was a victim. Sergeant Smith acknowledges that, and then, after an informal and defective Miranda admonishment

further undercuts the significant risk Mr. Brown faces calling him "bro." Mr. Brown had been at gun point and was in the back of a police car. He is never informed he is being recorded. Then someone who he knows from helping investigate a crime against him, extends the familiar of "bro," thus further muddying an already defective *Miranda*-style admonishment. In such a context, Mr. Brown could not be presumed to have a "full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon it." *Id*. Mr. Brown's implied waiver of his *Miranda* rights was, therefore, not knowing, voluntary, or intelligent, and his statements must be suppressed.

IF THE COURT DECLINES TO SUPRESS MR. BROWN'S STATEMENTS, HE REQUESTS A PRELIMINARY HEARING REGARDING THOSE STATEMENTS.

Prior to the introduction at trial of testimony or other evidence of statements Mr. Brown made, he is entitled to a hearing outside the presence of the jury to determine whether such statements were lawfully obtained. Under NRS 47.090, "preliminary hearings on the admissibility of confessions or statements by the accused or evidence allegedly unlawfully obtained shall be conducted outside the hearing of the jury. The accused does not, by testifying at the hearing, subject himself to cross-examination as to other issues in the case. Testimony given by him at the hearing is not admissible against him on the issue of guilt at the trial."

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III. CONCLUSION

Based on the defective Miranda admonishment and the correlated involuntary and deficient waiver, this Court must suppress Mr. Brown's statements made during Sergeant Smith's interrogation.

If this Court intends to admit the statements, Mr. Brown requests, pursuant to applicable case law and statutory and Constitutional provisions, that this Court conduct a pretrial hearing regarding the admissibility of any statements he made prior to seating the jury.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of February, 2018.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/Emilie Meyer
EMILIE MEYER
Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 6th day of February, 2018, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

DISTRICT ATTORNEY
1 SOUTH SIERRA STREET
RENO, NV

/s/ Wendy Lucero
WENDY LUCERO

2645
Christopher J. Hicks
#7747
P.O. Box 30083
Reno, NV 89520-3083
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

TAREN DE_SHAWNE BROWN,

Defendant.

_____/

Case No.: CR17-1851

DEPT: 6

OPPOSITION TO MOTION SUPPRESS

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, Washoe County District Attorney and ADAM D. CATE, Deputy District Attorney and hereby files its Opposition to Motion to Suppress.

This motion is based upon the attached Memorandum of Points and Authorities, all papers on file, and any oral argument or evidence that may be presented in court.

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendant claims that the *Miranda* admonishment provided to him by Reno Police Department Sergeant Larmon Smith was "defective" necessitating suppression of his incriminating statements that followed. Specifically, Defendant claims that: (1) he was not admonished that anything he said could be used in a court of law; (2) he was not told that he had a right to have a lawyer present during questioning; and, (3) that he could exercise those rights at any time.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court of the United States delineated the warning that must be provided to the subject of a custodial interrogation prior to any questioning. "[T]he person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444.

> The four warnings *Miranda* requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed. *See California v. Prysock*, 453 U.S. 355, 359, 101 S.Ct. 2806, 69 L.Ed.2d 696 (1981) (per curiam) ("This Court has never indicated that the rigidity of *Miranda* extends to the precise formulation of the warnings given a criminal defendant." (internal quotation marks omitted)); *Rhode Island v. Innis*, 446 U.S. 291, 297, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) (safeguards against self-incrimination include "*Miranda* warnings ... or their equivalent"). In determining whether police officers adequately conveyed the four warnings, we have said, reviewing courts are not required to examine the words employed "as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.' " *Duckworth*, 492 U.S., at 203, 109

> S.Ct. 2875 (quoting *Prysock*, 453 U.S., at 361, 101 S.Ct. 2806).

Florida v. Powell, 559 U.S. 50, 60 (2010). The Supreme Court's jurisprudence in *Prysock*, *Innis*, and *Powell*, each reversing lower court's decisions suppressing statements, establishes that the precise language of the warning is not to be challenged so long as the proper information is conveyed, as it was by Sergeant Smith in this case. The Supreme Court has never required a "talismanic incantation ... to satisfy [*Miranda*'s] strictures." *Prysock*, 453 U.S. at 359. The relevant inquiry is simply "whether the warnings reasonably convey to a suspect his rights as required by Miranda." *Duckworth*, 492 U.S. 195; *Doody v. Schriro*, 596 F.3d 620, 635 (9th Cir.) *cert. granted, judgment vacated sub nom. Ryan v. Doody*, 562 U.S. 956 (2010). Courts are not permitted to apply just the plain language of *Miranda* to the case at hand. Rather, *Miranda* warnings must be examined from a practical viewpoint. *Camacho v. United States*, 407 F.2d 39, 42 n. 2 (9th Cir. 1969)

A. Defendant Was Clearly Informed His Statements Could Be Used Against Him in a Prosecution

"If we do talk about stuff, you know, we can use that stuff against you." Defendant makes great hay out of the fact that he was not warned that what he said could be used against him "in a court of law." Of course, *Miranda* itself at one point requires only that the suspect be informed "that any statement he does make may be used as evidence against him." *Miranda* at 444. Presumably defense would find the Supreme Court's own warning inadequate as well.

In *United States v. Frankson*, the defendant sought to suppress a statement he gave to police because he was only warned that "[a]nything you say, do, or write can and will be used against you," and not that it would be specifically used in a court of law. 83 F.3d 79, 81 (4th Cir. 1996). The court, noting the Supreme Court's decision in *Prysock*, concluded the warning was adequate despite the fact the suspect was not specifically warned his statements would be used in a court of law. "It is not critical that [the officer] failed to state that Frankson's statements could be used against him at a particular location, in court. [The officer]'s instruction unequivocally conveyed that all of Frankson's statements could be used against him anytime, anywhere, including a court of law, a broader warning than Miranda actually requires." *Id.* at 82.

Other courts have reached similar conclusions. *See United States v. Castro-Higuero*, 473 F.3d 880, 886 (8th Cir. 2007) (the contention "that [a suspect] did not know the full extent of his rights because the interpreter only informed him that anything he said could be used against him, instead of informing him that anything he said could be used against him in court, is also without merit."); *Evans v. Swenson*, 455 F.2d 291, 295-96 (8th Cir. 1972) (finding, with little explanation, that a warning phrased as "any statement you do make could be used against you" was an appropriate conveyance of "the risk or consequences of not [remaining silent]"). Indeed, the Sixth Circuit reached the same conclusion as recently as 2016. *United States v. Crumpton*, 824 F.3d 593, 606 (6th Cir. 2016) ("A suspect who is informed of his right to remain silent and the fact that failing

to do so will result in his statements being used 'against him' is sufficiently informed of the key information the warning seeks to provide" despite not being warned specifically that the statements could be used in court.). Defendant has not cited, nor is the State aware of, a single case in which a statement was suppressed due to a police officer's failure to specifically admonish a suspect that his statement could be used "in court."

B. The Warning Adequately Conveyed Defendant's Right to An Attorney During Questioning

Just after being told that he did not have to speak with police and that he had the right to remain silent, Defendant was informed that he would be provided with an attorney if he could not afford one. While the warning did not specifically provide that the attorney could be present during questioning, numerous courts, including the Nevada Supreme Court, have concluded that the warning regarding an attorney just after being warned of the right to remain silent and in the clear context of an interrogation clearly implies that the attorney may be present for questioning.

In *Criswell v. State*, 84 Nev. 459 (1968), *disapproved of on other grounds by Finger v. State*, 117 Nev. 548 (2001)(acknowledging change in insanity defense discussed elsewhere is *Criswell*), the Nevada Supreme Court explicitly held that a *Miranda* warning that conveys the right to an attorney necessarily conveys that the attorney may be present for questioning. "While the warnings given in the district attorney's office did not specifically advise the appellant that he was entitled to have an attorney present at that

moment and during all stages of interrogation, no other reasonable inference could be drawn from the warnings as given." *Id.* at 462. While the Nevada Supreme Court's decision in *Criswell* remains binding in Nevada, it is important to note that many other courts have reached a similar conclusion.

For example, in *United States v. Lamia*, 429 F.2d 373, 376-77 (2nd Cir. 1970), "Lamia was also told that he had the 'right to an attorney' and if he was not able to afford an attorney one would be appointed by the court." Lamia argued that this did not adequately warn him of his right to an attorney during questioning. The Second Circuit disagreed. "Lamia had been told without qualification that he had the right to an attorney and that one would be appointed if he could not afford one. Viewing this statement in context, Lamia having just been informed that he did not have to make any statement to the agents outside of the bar, Lamia was effectively warned that he need not make any statement until he had the advice of an attorney." *Id.* at 377.

Lamia, decided in 1970, was actually cited by the Supreme Court of the United States eleven years later when it decided *Prysock*. *Prysock*, 453 U.S. at 359. ("This Court has never indicated that the "rigidity" of *Miranda* extends to the precise formulation of the warnings given a criminal defendant. See, *e.g., United States v. Lamia*"). Many courts have gone on to reach the same conclusion reached in *Lamia*. *See, e.g., United States v. Caldwell*, 954 F.2d 496, 504 (8th Cir. 1992) (stating that "the general warning that [the defendant] had the right to an attorney, which immediately followed

the warning that he had the right to remain silent, could not have misled [the defendant] into believing that an attorney could not be present during questioning"); *United States v. Adams*, 484 F.2d 357, 361-62 (7th Cir.1973) (relying in part on *Lamia*); *Eubanks v. State*, 240 Ga. 166, 240 S.E.2d 54, 55 (1977) (holding that where defendant was advised of right to remain silent and "that he had a right to any attorney," warnings were sufficient because it was "implicit in this instruction that if the suspect desired an attorney the interrogation would cease until an attorney was present"); *United States v. Frankson*, 83 F.3d 79, 81 (4th Cir. 1996) (the advice to the defendant that he had "the right to an attorney" would necessarily be understood to comprehend the specific right to the presence of counsel before and during questioning).

In the present case Defendant does not dispute that he was advised of his right to an attorney, and that one would be appointed for him if he could not afford one. Based upon the cases presented, including binding Nevada law, this is all that is required.

C. There is No Legal Requirement to Inform a Suspect that He May Terminate Questioning at Any Time

Miranda requires that a suspect be warned that he (1) may remain silent, (2) anything he says can be used against him, (3) he has the right to an attorney and (4) if he cannot afford one, an attorney will be appointed for him. *Miranda*, 284 U.S. 436. "It is significant that in the forty-six years [(now 52)] since the *Miranda* case was decided, the United States Supreme Court has not seen fit to fashion a fifth warning which requires a specific advisement of the right to

discontinue questioning. Cases have been found approving *Miranda* warnings which include a specific, separate advisement of the right to discontinue questioning at any time. No cases have been found, however . . . which require a specific separate advisement of the right to discontinue questioning, nor have any cases been found which invalidate a *Miranda* warning based solely on the failure to include such a specific separate advisement." *United States v. Nyuon*, 2012 WL 5995109 (United States District Court, D. South Dakota, November 29, 2012); *see also United States v. Anthon*, 648 F.2d 669 (1981) (no express requirement to warn suspects of right to terminate questioning); *United States v. Lares-Valdez*, 939 F.2d 688, 690 (9th Cir. 1991) (finding that the *Miranda* court contemplated the right to cease questioning and declined to include it among the warnings necessary to protect a suspect's Fifth and Sixth Amendment rights); *Mock v. Rose*, 472 F.2d 619, 622 (6th Cir. 1972) (holding *Miranda* warnings do not include the right to stop answering questions at any time); *Flannagin v. State*, 289 Ala. 177, 266 So.2d 643, 651 (1972) (holding an officer is not required under *Miranda* to inform a suspect that he has the right to stop questioning at any time because "[t]he right of an accused to exercise [the four *Miranda*] rights at any time during the proceeding is not a separate right of which he must be independently informed. It is, instead, the practical result of his exercising those other rights at a time of his choosing"); *Katzensky v. State*, 228 Ga. 6, 183 S.E.2d 749, 751 (1971) ("*Miranda* does not require the officers to advise the individual that he may withdraw the waiver of his constitutional rights at any time during the

interrogation."). *Commonwealth v. Lewis*, 374 Mass. 203, 205, 371 N.E.2d 775, 777 (warning regarding termination of questioning is "not required by Federal law").

Defendant claims that the requirement to warn a suspect that they may stop the interrogation at any time is "less absolute." Mot. at 5. It is actually absolutely unnecessary and Defendant has not, and cannot, point the court to a single case in which a statement was suppressed for failure to warn on this issue.

D. Defendant's Fifth Amendment Waiver Was Voluntary

A suspect's waiver of Miranda rights is valid only if it is "made voluntarily, knowingly[,] and intelligently." *Miranda*, 384 U.S. at 444. "There are two essential elements of a valid waiver: First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveal[s] both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

Although it bears a "heavy burden" of demonstrating the validity of a waiver, *Miranda*, 384 U.S. at 475, "the State need prove waiver [of *Miranda* rights] only by a preponderance of the evidence," *Colorado v. Connelly*, 479 U.S. 157, 168 (1986). To meet its burden,

the State need not adduce proof with respect to every factor that might have a bearing on the validity of the waiver. *See Michael C.*, 442 U.S. 707, (holding that waiver by juvenile was valid where record contained no evidence regarding education or intelligence of juvenile). While analysis of the waiver issue begins with a presumption that "a defendant did not waive his rights," *North Carolina v. Butler*, 441 U.S. 369, 373 (1979), "litigation over voluntariness tends to end with the finding of a valid waiver," *Missouri v. Seibert*, 542 U.S. 600, 609 (2004). "[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare." *Berkemer v. McCarty*, 468 U.S. 420, 433 n. 20 (1984). The "voluntariness of a waiver" of *Miranda* rights "depend[s] on the absence of police overreaching." *Connelly*, 479 U.S. at 170. "An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver." *Butler*, 441 U.S. at 373. "[A] waiver may be inferred from the actions and words of the person interrogated." *Mendoza v. State*, 122 Nev. 267, 276 (2006).

In *Allen v. State*, 91 Nev. 568 (1975), the Nevada Supreme Court had an opportunity to consider whether a waiver was valid under similar circumstances to the present case. Relying on another portion of *Lamia*, *supra*, the Nevada Supreme Court concluded that where a suspect is provided with a *Miranda* warning, indicated he understands

that warning, and then proceeds to discuss his participation in the crime, generally has adequately waived his 5th amendment privilege. *See also Taylor v. State*, 96 Nev. 385 (1980) (relying on *Allen* and concluding that where a suspect is advised of Miranda before making an incriminating statement and there is no allegation that the statements were the result of coercion or deception the statements were properly admitted); *Frankson,* 83 F.3d at 82 (a defendant need not utter specific words to waive his rights, but that a defendant's willingness to answer questions after acknowledging that he understands his rights constitutes an implied waiver.). Likewise, in *Mendoza v State*, the Nevada Supreme Court concluded that the defendant had validly waived *Miranda* where, without written or oral explicit waiver, defendant never indicated any difficulty understanding his rights, did not express a desire not to speak, and spoke with police after being made aware of his rights. 122 Nev. At 276-77.

In the present case, after being informed of his rights, Defendant is specifically asked whether he understood them. He replies: "Yes, I heard you." Clearly indicating he understood what had been told to him. He then goes on to make several incriminating statements. The Defendant does not allege any coercion or police overreaching, or that he was compelled to make the statement in any way. Indeed, the audio recording indicates to the contrary. This is not the rare case where the court can conclude Defendant did not waive his rights.

///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 20th day of February, 2018.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By /s/ Adam Cate
ADAM D. CATE
12942
Deputy District Attorney

CERTIFICATE OF SERVICE BY E-FILING

I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JAMES B. LESLIE, ESQ.
PUBLIC DEFENDER'S OFFICE
RENO, NV

DATED this 20th day of February, 2018.

/s/Gloria M. Lozano-Garcia
GLORIA M. LOZANO-GARCIA

Code #4185
SUNSHINE REPORTING SERVICES
151 County Estates Circle
Reno, Nevada 89511

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, Case No. CR17-1851

Plaintiff, Dept No. 6

vs.

TAREN DESHAWN BROWN,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

PRE-TRIAL MOTIONS

FEBRUARY 21, 2018

RENO, NEVADA

REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

JOB NO. 452010

A P P E A R A N C E S

FOR THE PLAINTIFF:

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE
BY: ADAM D. CATE, ESQ.
One South Sierra Street
P.O. Box 11130
Reno, Nevada 89520
774-328-3200
acate@da.washoecounty.us

FOR THE DEFENDANT:

WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
BY: EMILIE B. MEYER, ESQ.
AND: JAMES B. LESLIE, ESQ.
350 S. Center St, 5th Flr
Reno, Nevada 89520
775-337-4822
emeyer@washoecounty.us

I N D E X

E X H I B I T S

NUMBER	DESCRIPTION	MARKED	ADMITTED
Exhibit A	CD of Interview of Taren Brown by Sergeant Smith	4	32

RENO, NEVADA, WEDNESDAY, FEBRUARY 21, 2018, 11:10 A.M.

-oOo-

(Exhibit Number A was marked for identification.)

THE COURT: This is Case Number CR17-1851, State vs. Taren Deshawn Brown. Please state your appearances.

MS. MEYER: Good morning. Emilie Meyer here today with Jim Leslie representing Mr. Taren Brown.

THE COURT: Good morning, Mr. Brown.

THE DEFENDANT: Good morning.

MR. CATE: Good morning, Your Honor. Adam Cate on behalf of the State of Nevada.

THE COURT: All right. This is the time set for pre-trial motions in this matter. All parties are anticipating going to trial on Monday, correct?

MS. MEYER: That is correct, Your Honor.

THE COURT: The State?

MR. CATE: Yes, Your Honor.

THE COURT: Okay. I'm just going to go in order here. January 5th, 2018, Defendant's Request for Full Discovery was filed. No opposition was filed and no reply filed.

I'm not sure that this was actually submitted, but in our review of the file I want to make sure that I have handled all of the matters that might be outstanding, so

with there being no opposition that will be granted.

Okay. Motion for Equal Access to Juror Information filed January 24th, 2018, the State's Opposition to Motion for Equal Access filed February 5th, 2018, my review indicated no reply was filed, correct?

MS. MEYER: That is correct, Your Honor.

THE COURT: Okay. Pursuant to this Court's prior orders, this will be granted. I will issue a written order. It will be consistent with the order granted in the State of Nevada versus Francisco Merino Ojeda.

I have noticed Ms. Noble is here and I believe she argued that before the Supreme Court. I'm not aware that a decision has been rendered. Okay. It's an en banc, so we are waiting. I'm going to keep my rulings consistent on this issue until I am told otherwise by the Supreme Court.

MR. CATE: Your Honor, do you have a CR number for that other case?

THE COURT: I do, CR15-0829. I will issue a written order on this.

MR. CATE: I just want to look it up so I will have an idea.

THE COURT: It says, yes, that -- Actually, I have a copy of the order right here and I will tell you what the terms are. What I will be ordering is that you must disclose the criminal histories the State gathers, if any,

for potential venire members in compliance with Federal restrictions.

The State shall provide a hard copy of the criminal histories to this Court no later than 4:00 p.m. the Friday before trial, and that counsel will have to retrieve the hard copy no later than 5:00 p.m. in a one hour window to come get it.

And I will make this observation as it is public record, but yesterday during our jury selection on a trafficking case we had a potential juror that had five felony trafficking convictions, so it enhances what I believe is relevancy and to keep it an equal playing field for all parties, so I'm going to make a note that I will issue a written order on that.

Okay. Motion in Limine Re: Alleged Other Bad Acts under NRS 48.045 filed on January 24, 2018. Defendant is seeking an order precluding the State from proffering at trial evidence of other bad acts that are prohibited by NRS 48.045 and subject to trial court determination of admissibility at a hearing outside the presence of the jury if this is offered. There is no opposition filed and no reply. My interpretation is you are not intending to offer any?

MR. CATE: That's correct, Your Honor.

THE COURT: Okay. So that is granted. If the

instance arises, then we will handle it out of the presence.

January 24, 2018, Motion in Limine Regarding Prior Convictions, NRS 50.095. Defendant requests the State be precluded from directly or indirectly referring to or proffering evidence of prior felony convictions unless the Defendant testifies at trial, and then if that is the case that everything be handled in conformity with Nevada law.

Again, no opposition filed. No reply filed. Again, my interpretation is you do not intend to do that unless the Defendant testifies, correct?

MR. CATE: Your Honor, the State is unaware of any usable prior felony convictions for this Defendant.

THE COURT: Okay. So it's granted in the chance that anything is located that could be used.

All right. Motion to Invoke the Rule of Exclusion and Motions Regarding Custody During Trial filed on January 24th, 2018. Defendant invokes the Rule of Exclusion. And, Counsel, my sign that I actually made and laminated myself out there precludes witnesses from talking to each other, too.

So please tell your witnesses that not only are they excluded from the courtroom, but they can't talk about their testimony in the hallway or we will have a hearing outside and I will ask them about it, okay?

MS. MEYER: Thank you.

THE COURT: In addition, Defendant requests that he not be exposed to jurors while in prison garb, should be jail garb, or restraints and seeks to preclude any direct or indirect reference to his in custody status during trial.

No opposition filed and no reply filed. That is granted. Deputy Masters takes great pains to make sure that the jurors do not view a defendant in anything but their street clothes and what they are wearing in trial, okay?

MR. CATE: Your Honor, if I may, the State did not oppose that motion when it was filed. The State still has no opposition to the general principles of that motion.

However, if the Defendant's Motion to Suppress is granted, he made similar admissions on some calls that he made from the Washoe County Jail, and so I obviously didn't know that that was the plan when my time to file that opposition was filed.

You know, I have no opposition to obviously him not being seen in jail clothes and all of those things and I prefer to not reference these as jail calls, but if that's the only way the State is left with the ability to authenticate these calls if we do go down that road, then the State will be seeking to admit those.

THE COURT: All right. So what I will do, that isn't what I was intending by my order.

MR. CATE: And I understood that.

THE COURT: I think it's just something random that says that he is in custody. With regard to introduction of the jail calls, that is not subject to this order, okay, and that will be analyzed separately.

MR. CATE: Thank you, Your Honor.

THE COURT: Motion to Suppress or Request for an Evidentiary Hearing pursuant to LCR7(C) filed February 6, 2018. The Defendant seeks to suppress the statements made by Defendant to Sergeant, is it Larmon?

MR. CATE: Larmon.

THE COURT: Larmon Smith during interrogation based on the failure to properly Mirandize and, therefore, lack voluntariness. The State filed an Opposition to the Motion to Suppress on February 20, 2018, essentially maintaining that the precise language of the Miranda Warning given to Defendant is not to be challenged when the proper information is conveyed.

The State argues, one, that the Defendant was clearly informed his statements could be used against him in prosecution. My recollection is it doesn't actually say in the court of law, the discussion that occurred, so I'm going to ask that be addressed.

Two, the warning adequately conveyed Defendant's right to an attorney during questioning. And, three, there is no legal requirement to inform a suspect he may terminate

the questioning at any time. And, four, the Defendant's Fifth Amendment waiver was voluntary. So we need to address that today, as well as I just received the -- so we are going to go forward with that.

Before we do that, let's address the just recently filed motion, the State's Motion to Admit Preliminary Hearing Testimony or in the Alternative a Motion for the Issuance of a Material Witness Warrant. That was filed yesterday. Are you intending to file any responsive documents?

MS. MEYER: Yes, Your Honor, and we have discussed it with the State. That was filed last night and we would ask time -- First of all, we don't believe that the time for it has become ripe yet as we are not at trial, so we would seek leave to address it Monday morning.

THE COURT: Do you know where this material witness is?

MR. CATE: No, Your Honor. If I knew where he was, I think we, I mean, I'm confident that he is in the Reno area.

THE COURT: Okay.

MR. CATE: So, basically, you know, I know I filed this last night, but it wasn't in anticipation of today's hearing. It was trying to get it on file as soon as possible once it became clear to me that Mr. Johnson wasn't

going to be cooperating and wanting to come to court, so I didn't file it last night because I wanted to necessarily discuss it today.

THE COURT: Okay.

MR. CATE: I certainly didn't want to put the Defense in the position of having to argue that, you know, after receiving it after 5:00 p.m., but I did want to get it on file so that we know what's going on, and the State would request that the Court issue a material bench warrant sooner rather than later for the witness, Mr. Johnson, so the State can effectuate attempting to find him.

THE COURT: Well, and obviously that's the point. So do you have an objection to the Court issuing a warrant, but still allowing you time to address the underlying request for preliminary hearing testimony?

MS. MEYER: My only objection to that, which is very limited, is I reviewed the affidavit supplied by Mr. Stallings, who is the investigator, and it seems as though Mr. Stallings affirms that he began the process of attempting to serve Mr. Johnson, the alleged victim in this case, on January 26th.

This case was set for a speedy trial on December 4th, and the elapse of time and then the last minute call to address the issue now before trial seems to be in conflict with each other, and I am concerned about the

due process rights of my client in terms of compelling a witness through the material witness warrant given the amount of time that elapsed between December 4th and January 26 and now the rush to issue a warrant by this Court. That's my concern with it.

THE COURT: Well, and I suppose that you can address that in your writing, because it seems to me that knowing that somebody is going to cooperate or not is different from the date that we set the trial. In other words, he clearly cooperated at least one point in the past, correct?

MR. CATE: Yes, Your Honor.

THE COURT: All right. So what I'm going to do is I am going to issue the bench warrant on material witness order. I'm not going to foreclose you from -- I want to get it in the process, because I can always quash it if there were to be a reason, but I am going to allow you to oppose -- How much time do you need?

MS. MEYER: Your Honor, we would ask based on Counsel's schedule just for Monday morning.

THE COURT: All right. To file the written materials, because I want to read them.

MS. MEYER: The written materials will be filed by 5:00 on Friday, if the Court will allow, and then we would ask to address it Monday morning.

THE COURT: That's fine. If you need, because I know you are here in trial, if you need to serve them, if you need more time, then you can serve them and I will read them on the weekend if you send them by e-mail, and then you could file them in on Monday morning.

MS. MEYER: Thank you. I have the good offices of Mr. Leslie to help me so we should be able to address it.

THE COURT: All right. And then I will allow you, Mr. Cate, to respond on Monday morning.

MR. CATE: Certainly, Your Honor. Thank you.

THE COURT: So I'm going to give this order and bench warrant to my Clerk for me to execute later so that it won't get lost in my papers.

And let's go back to the Motion to Suppress. You may proceed.

MS. MEYER: Thank you, Your Honor. Your Honor, I don't have much to add beyond the opposition, excuse me, beyond the motion itself. I have listened to it.

I do have a copy made of the part of the interview/interrogation that was the Miranda Warning as given by the sergeant in this case. However, the State did not in its reply note any problems with the transcription that I provided.

In the State's reply regarding the, informed that the statements could be used in the prosecution, on page 3

the State cites to three different circuits, none of which are controlling in this court, and in its reply on page 8 it gets to the Defendant's Fifth Amendment Waiver being voluntary.

I don't think we get there. I don't think that this Court has to address that, because I think the infirmities in the Miranda Warning were so significant as to not be a meaningful Miranda admonishment.

He was not informed that his statements could be used against him in a court of law, and I read the State's position that there is no talismanic language that is required for Miranda. However, the State cites to the totality, and I think that that can cut both ways.

In this case, there was Sergeant Smith and there was also Officer Claiborne, C-L-A-I-B-O-R-N-E, and they were present, and the statement to the Defendant was if you say stuff, we can use that against you. And the we in that case, there were two people present.

And the Court has held in, excuse me, U.S. versus San Juan Cruz, J-U-A-N, Cruz, C-R-U-Z, 314 Federal Supplement 384, which I cited to in my motion itself that there has to be, it has to be designed so that the person receiving it understands what is being said and they should be able to have a plain language understanding.

A plain language understanding for someone not

inculcated in the law, as Mr. Cate and you and I are, the we is the people present at the time of the interrogation.

The State does not, the State also says that they conveyed, that, excuse me, Sergeant Smith adequately conveyed the Defendant's right to an attorney during questioning citing to Criswell.

I reviewed Criswell and in that case the totality of the circumstances were that he was, the Defendant in that case was being interviewed in a District Attorney's Office and it's primarily cited to as an insanity case.

In this case, what the plain language was, and I'm quoting now from what I believe was an adequate, and at this point is undisputed, an adequate recitation of the Miranda admonishment is, "And we could get an attorney for you or something with whatever charges we have for you."

The fact that Sergeant Smith specified "with whatever charges we have for you" conveys a particular point in time. A point in time that is after the interrogation happened when Mr. Brown has been booked and charged formally, and that does not and, in fact, cuts against his right to have counsel present during questioning.

It doesn't just remain silent. It specifically says the opposite of that, and the clear meaning of that is to minimize his right to an attorney present in that moment. He doesn't say we could get you one right now, which also

wouldn't refer to questioning, but would certainly be more indicative of his rights.

He doesn't say we can -- and finally Sergeant Smith never tells Mr. Brown that he can discontinue questioning at any time, and that is part of the rights spoken to in the Miranda Warning, that you can start talking, realize what is happening, and then stop talking.

And the reason that that's an important right is one of the concerns addressed by Miranda and its admonishment is the pressure of a police interrogation, and that psychological pressure especially whereas in this case Mr. Brown, as I pointed out in the motion, knew Sergeant Smith as a victim as well as now in this context, where the pressure is with the full custody of the law to keep talking. For Mr. Brown to know that he had the right to stop talking is an important part of that admonishment and it was not mentioned.

For all of those reasons, and I would like to play the portion for you that I have, if the Court will allow.

MR. CATE: Your Honor, if I may, you know, I believe that Defense has filed a Motion to Suppress. That places the burden of production on the State when a Motion to Suppress is filed to produce evidence and the State is prepared to present that evidence.

I do have a witness that I would like to present.

I think it's constitutionally required once this motion has been filed, so maybe that might be the best way to go through and introduce this into evidence.

THE COURT: Any objection to that flow?

MS. MEYER: Well, my objection to the flow of having the officer testify is that there has been no, in the opposition there was no objection to the information that I transcribed from the interview. Therefore, I don't believe that there is any question about the accuracy of that, because the reply didn't address it, and so I'm not sure if he is going to come in and tell us that that wasn't what he said.

THE COURT: Well, I want to gather as much information as I can to render the best ruling, so I'm going to, I already have read your information and I'm going to allow you to present both the testimony and I want to hear it. So would you like to add anything more at this time or simply respond, you will have an opportunity to respond to Mr. Cate?

MS. MEYER: No, Your Honor, an opportunity to respond would be what I would like.

THE COURT: All right. Mr. Cate.

MR. CATE: Your Honor, would you like to hear my outline of my argument first or the evidence first?

THE COURT: Why don't you give me a roadmap.

MR. CATE: Okay. Certainly, Your Honor, and I don't intend to make it, I mean, I think that my opposition is pretty clear of the State's position, but, basically, you know, the State's position is that the Defense has cited these general Miranda principles for the fact that they must be warned it can be used in a court of law, that they must be told that their attorney can be present during questioning, that they must be told they can stop the questioning at any time.

Well, the State's response includes specific citations to actual case law about those specific issues, not general Miranda principles, this exact issue stating to the contrary of what the Defense has just cited.

With regard to the court of law portion and the warning that you can stop the questioning at any time, the Defense hasn't cited nor is the State aware of any case where that has been found to be a necessary element of the warning.

So, basically, they are asking you to go out where no judge has ever gone before on those particular rulings. And, obviously, this isn't a new area of law. You know, these have been litigated for 60, well, 52 years now since Miranda was decided.

Miranda does discuss that they can stop questioning at any time, but it goes on to list the four

things that must be communicated and that's not one of them.

THE COURT: Doesn't the four things that have to be communicated under Miranda specifically say court of law?

MR. CATE: So we can look at different parts in Miranda. Their final conclusory paragraph says, quote, court of law.

When they first -- At the very top of Miranda when they say the four things that must be communicated where they are saying our conclusion today is that such and such, they don't use that language. They use different language.

They say they must be informed that it can be used as evidence against you. So in one opinion, the United States Supreme Court really uses two different ways of saying the same thing about that warning.

And, you know, I think that the case from, I think it's the Fourth Circuit where they discuss specifically, you know, the police officer saying anything you say can be used against you, no court of law after it, and they actually say that's a broader warning than saying in the court of law.

THE COURT: And the word stuff qualifies?

MR. CATE: I think the word stuff qualifies in this case, because when you listen to it, and you will listen to it, and when you get to hear from Mr. Smith, you will get to hear his southern accent and you will get to hear the way he talks.

But even just looking at the language that was used, we are going to talk about stuff. That stuff is the stuff we are going to talk about. Okay. And then it's referenced again in the second sentence, that stuff can be used against you.

So I think it's clear that he is referencing what we discuss right now we can use against you. And I think that the general understanding of when you have police talking to you and they say we is that we, the police, the state, the criminal justice process, we are going to use what you say against you.

You know, I think that when they say we can use this against you in a court of law, the average unlearned, untrained defendant doesn't know what a court of law is. You know, the court of law, maybe that's a specific portion of the court. Maybe it's this.

You know, we know that references here in a jury trial or other preliminary hearing, but the average defendant doesn't know what that specifically means. What they need to be warned about is, hey, if you talk, those statements are going to be used to put you in trouble for this crime, and that was clearly communicated to the Defendant in this case.

THE COURT: And so you would agree that Miranda doesn't require, as Ms. Meyer said, a talismanic

incantation?

MR. CATE: Certainly.

THE COURT: But it's that what was given to Mr. Brown was the fully effective equivalent?

MR. CATE: Right. And, you know, I think that I addressed in my motion that, you know, in, basically, all of the Miranda cases, and when I say all I'm not familiar with every single Miranda case the United States Supreme Court has discussed, but in the major ones what are they saying? They are saying to appellate courts, hey, you are reading this too narrowly.

Each one, you know, Prysock and Innis and Powell, it's a situation where the Supreme Court is saying, no, hold on. We never said that it has to be in this much detail. We are saying it has to convey these principles, and this did convey that principle and so they reversed the lower Court's decision.

And so I think that they sent a clear message on what they think when it comes to Miranda, and I think that applies equally with, you know, there is that quote from the U.S. District Court case where they say, you know, it's been 46 years since Miranda was decided. They have had ample opportunity to add a fifth warning about stopping during the interrogation and they haven't done it.

They haven't taken a case on it, they haven't said

it, and numerous appellate courts have said that it is not a warning that is required. No appellant court has said that a warning is inquired on that. Again, so it's asking you to go where no court has gone before.

Now, with regard to the attorney issue, I think the Nevada Supreme Court case is controlling in this case. I think that it reaches the same conclusion as all of the other courts which the State has reviewed, and that is that if you are warned that you have a right to an attorney right after you were just told that you have the right to remain silent, it's clear that that warning applies to right here, right now, not some distant time in the future.

I'm telling you, you have the right to remain silent, you have the right to an attorney, and I'm about to ask you these questions. That obviously conveys that right to an attorney is right now.

When Ms. Meyer was quoting what Mr. Smith said to you just now, I don't think she adequately quoted even what she wrote in her motion. I do think what her motion says is correct, but whatever charges we have for you some future point down the line, that's not what Mr. Smith or Sergeant Smith is communicating.

What he is communicating, he is saying whether we charge him with anything, regardless of what the charges are, whatever happens right now you have the right to an

attorney.

And so that, you know, there are cases, and I admit that a case where a person is Mirandized and says you have the right to an attorney and if you can't afford one one will be appointed for you at your first appearance in two weeks, that's a problem because that's specifically communicating that they don't have the right to an attorney right now.

But in this case he says regardless of the charges, whatever they may be, you have the right to an attorney, and that is conveying to the Defendant right after he was just told he doesn't have to say anything, he has the right to remain silent, that that attorney is talking about right now before you answer any questions.

And I think that, you know, the State cited numerous, numerous cases about that. That Lamia case that the State cited was actually cited by the United States Supreme Court in Prysock as a good example of what the Supreme Court meant when they said no talismanic incantation of what needs to be said.

Look at Lamia where the Court ruled that it doesn't have to say during questioning. It's implied when we are saying right now that that's what it is, so that's essentially the State's argument with regard to the three warning issues.

With regard to the waiver of his Miranda Rights, Your Honor, I think it's, you will have an opportunity to listen to it. I think it's very clear that Mr. Brown on that recording understands what he has been told. He says, yes, I heard you.

You know, the Defense may say, well, he says he heard you. He doesn't say he understood you. Okay. Well, I mean, it's pretty common, I mean, we have all been in an argument with someone and say, yeah, I heard you.

That doesn't mean I heard you, like actually what you said went into my ear. It means I understood what you said, and that's exactly what the Defendant says when he says, yes, I heard you.

And he is asked twice do you understand? Do you want to speak with me? A little bit different formulation, but it's two different times he is asked in a row and he then continues to speak with the officers.

And you will hear it. He wants to talk to them. Sergeant Smith has to intervene and stop him from talking so he can warn him about his Miranda Rights.

And with that, Your Honor, that's essentially, you know, I think that there doesn't need to be an explicit waiver of Miranda Rights. The law is clear on that, and I think the Supreme Court cases on that are very clear that it's, you know, while it's the State's burden, it's a rare

circumstance where someone after being told their rights and then continues to speak with the officer that that wasn't a voluntary, knowingly intelligent waiver of those rights.

THE COURT: All right. Thank you.

MS. MEYER: And, Your Honor, just for the record before a witness is called, it's my understanding that Sergeant Smith has been in the courtroom for the argument. I was unaware of that. I didn't address it and so I just wanted the record to reflect that he was present during the State's argument and my argument.

THE COURT: All right. I did not receive a request for him to be excluded this morning.

MR. CATE: And with that, Your Honor, the State would call Sergeant Larmon Smith.

LARMON KYLE SMITH,

called as a witness, having been duly sworn,

testified as follows:

THE COURT: Good morning, Officer.

MR. SMITH: Good morning.

DIRECT EXAMINATION

BY MR. CATE:

Q Sergeant Smith, if I could just please have you

state your full name for the record and spell your name, please.

A My first name is Larmon, that's L-A-R-M-O-N, middle name is Kyle, K-Y-L-E, last name is Smith, S-M-I-T-H.

Q And, Sergeant Smith, you are a sergeant with the Reno Police Department; is that accurate?

A Yes, sir.

Q And what's your role as a sergeant with the Reno Police Department?

A I currently am assigned to the regional gang unit as a sergeant.

Q And are there multiple sergeants with the gang unit or what is your role with the gang unit?

A We have two sergeants. We cover seven days a week, so we have to have a sergeant for each side of the week.

Q Okay. So it's fair to say that you are one of the two people who was basically directly in charge of the gang unit?

A Yes, sir.

Q And so you know why we are here, what case we are here about, right?

A Yes, sir.

Q Does the fact that you are in charge of the gang unit have anything to do with this case?

A No, sir, it does not.

Q Okay. So going to October 20, 2017, did you get involved in the investigation of an Attempted Homicide or Assault With a Deadly Weapon that occurred at the bus station at Fourth and Lake Street?

A Yes, sir.

Q And how was it that you came to be involved in that investigation?

A I was traveling on Lake Street northbound going to actually meet some of my guys over at the Eldorado to get some lunch and happened to notice a commotion as I'm passing the bus station.

Just out of the corner of my eye, I see two people running into the street and it catches my attention. I look at them, and they are running right for my car, so I apply my brakes. One of the individuals runs almost directly to the side of my car.

Q And I'm just going to stop you right there, but it's fair to say that you didn't seek out this investigation, correct? It essentially came to you?

A Yes, sir.

Q The people involved in this ran in the street in front of your car and you had to slam on your brakes?

A Yes, sir.

Q And so that location at Fourth and Lake Street,

did you ever respond to a different location with regard to your investigation of this crime?

A Yes sir.

Q And what location was that?

A That would have been off of Sixth Street in between Lake and Evans. There is a parking lot there on the north side of East Sixth Street.

Q And so approximately how long after you see this commotion is it that you are now over at the second location?

A 20 to 30 minutes, just guessing.

Q And so when you arrived at that location is one of the -- did you understand whether there was a potential suspect obtained in this case?

A Yes, sir.

Q And was one of the things that you did perform an interview of that individual?

A Yes, sir.

Q And who was the individual that you interviewed?

A Mr. Taren Brown.

Q And is that the Defendant here today?

A Yes, sir.

Q And so where did this encounter with Mr. Brown occur?

A Mr. Brown was in the back of a patrol officer

vehicle, and myself and Officer Tasheeka Claiborne were standing outside of the door.

Q And so when you interviewed Mr. Brown was there any thought in your mind other than that this was a custodial interrogation?

A No, sir.

Q And so do you know whether the conversation that you had with Mr. Brown was recorded?

A Yes, sir.

Q And you had an opportunity to review that recording?

A Yes, sir.

Q Your initial interaction with Mr. Brown, is that included on this tape?

A Yes, sir.

Q So there were no conversations prior. That day you had never spoken to Mr. Brown prior to what we hear on this audio?

A Yes, sir.

Q When you were speaking with Mr. Brown, how was his demeanor?

A He was, I mean, he was cooperative, talkative. He was emotional at times.

Q At some point did you read him his Miranda Rights?

A Yes, sir.

Q And, obviously, it was recorded, so we know exactly what you said, right?

A Yes, sir.

Q But when you were doing that were you doing that, was he providing information to you at that point?

A Yes, sir.

Q And so how would you describe that?

A He was very forthcoming, obviously, recognizing that he was in the back of a patrol car. I just approached him and told him I had been an eyewitness to the event, that it happened over a couple blocks away, that I knew there was probably two sides to the story, and that I would like to hear his side of the story, I'm paraphrasing.

And at that point he admits to me, yes, it was and began to talk to me, and at that point I stopped him and I said hold on just a second. Before we start talking, you know, obviously, you are here and you are handcuffed in the back of the police car, and I need to let you know what your rights are.

Q And so is it fair to say you essentially had to interrupt Mr. Brown --

A Yes.

Q -- to inform him of his rights?

May I approach, Your Honor?

THE COURT: You may.

BY MR. CATE:

Q Sergeant Smith, I'm going to show you what has been previously marked as Exhibit A for purposes of this hearing. Do you recognize what that is?

A That's a CD containing the audio interview.

Q And so have you previously had an opportunity to review the contents of this disc?

A Yes, sir.

Q And do you know that because you initialed that disc yesterday?

A Yes, sir, I initialed it and dated it.

MR. CATE: Okay. And so, Your Honor, the State would move to admit Exhibit A.

THE COURT: Any objection?

MS. MEYER: Not for the limited purpose of this hearing, but I am going to ask that the recording stop at 1 minute and 58 seconds. That's my understanding based on reviewing it where the Miranda Warning admonishment section ends.

THE COURT: Go ahead.

MR. CATE: Well, Your Honor, I do have an opposition to that.

THE COURT: Well, I thought you were saying that you wanted to -- do you want to address something at that point or you just want it precluded entirely?

MS. MEYER: I want it precluded entirely based on relevance.

THE COURT: Well, I think I can hear it here in this type of a hearing and I want to hear the whole thing.

MR. CATE: Yes. And, Your Honor, I appreciate your ruling, but I just want to be clear the State's position is that with regard to the waiver of the Defendant's rights, his demeanor, and the way he is acting, the way he is speaking throughout the entire conversation is relevant to determining whether the Defendant knowingly, voluntarily, and intelligently waived his rights.

(Exhibit Number A was admitted into evidence.)

MR. CATE: And just before I start, Your Honor, if it's too loud, not loud enough --

THE COURT: I will.

MR. CATE: -- let me know.

(Whereupon the CD was played).

MS. MEYER: And, Your Honor, I renew my objection at this point.

THE COURT: Overruled.

MR. CATE: I have no further questions for the witness, Your Honor.

THE COURT: And do you have a written transcript

of this?

MR. CATE: I do not, Your Honor.

THE COURT: Thank you. Counsel?

MS. MEYER: Just briefly.

CROSS EXAMINATION

BY MS. MEYER:

Q You listened to that, correct?

A Yes, ma'am.

Q Thank you, Sergeant. And you indicated that Mr. Brown was interrupted, that you had to interrupt Mr. Brown, correct?

A Yes, ma'am.

Q But before you interrupted him, you said I want to hear your side of it, correct?

A Yes, ma'am.

Q And he recognized you right upon you getting to the car, correct?

A Yes, ma'am, but I think that may be mistaken identity, because I was out of town on the case that he is referencing.

Q But you nonetheless said yeah, yeah, yeah, yeah?

A Yes, ma'am, absolutely.

Q And you indicated that when you were talking with the State that you read him his Miranda admonishment; is

that correct?

A Yes, ma'am.

Q Did you read it from a card?

A No, ma'am.

Q The Reno Police Department has those cards, correct?

A Yes, ma'am, they do.

Q And you didn't have him sign a written waiver, correct?

A No, ma'am.

Q And the Reno Police Department has those written waivers, correct?

A Yes, ma'am.

Q And on those written waivers there is the recitation of the Miranda Warnings, correct?

A Yes.

Q And those would have been accessible to you at the time?

A Yes.

MS. MEYER: No further questions, Your Honor.

THE COURT: All right. Thank you. Anything further?

MR. CATE: I don't, Your Honor.

THE COURT: All right. Thank you.

Ms. Meyer, you have only a portion of it

transcribed, correct?

MS. MEYER: Correct. I did that myself and it's an arduous process, and for my purposes I was listening for the admonishment because I believe in my reading of the case law, and I know that this is an argument, but in my reading of the case law we don't get beyond that because of the infirmities in that based on my reading.

THE COURT: Okay. Thank you. Anything else to add?

MR. CATE: Your Honor, the only thing I would say is that in that last little discussion about what the other options are from the Police Department, you know, I don't think that is particularly relevant in this case. It may have been available. The question is what was read to the Defendant in this case, is that constitutionally adequate.

THE COURT: Right. And, actually, I had written down the very question that Ms. Meyer asked. You asked did you read it.

MR. CATE: Right.

THE COURT: I think that's the point, did he read it?

MR. CATE: Yeah, kind of a colloquial --

THE COURT: Right.

MR. CATE: -- was read his rights --

THE COURT: They were given.

(The Court Reporter interrupted.)

MR. CATE: Yes, I apologize.

THE COURT: They were given.

MR. CATE: Yes.

THE COURT: And we agree that he did not read from anything?

MR. CATE: Correct, Your Honor.

THE COURT: All right.

MR. CATE: And I would just say, you know, on that front, and I think that Sergeant Larmon would agree with me, this was not, you know, the dot all of your I's and cross your T's. You know, the State is not here to tell you this was the perfect Miranda Warning, but was it constitutionally adequate? Yes, it was.

THE COURT: All right. Thank you.

MS. MEYER: Just based on the State's position, the State has said that there is no, that we are asking this Court to go where no Court has ever gone, and I would say that there is no case law cited by the State that finds a Miranda admonishment that is deficient, in all of these ways deficient.

The State cites cases where the Miranda Warning is found complete absent the phrase in the court or in a court of law, that's correct. And the State cites court cases where a defendant is not admonished about having the lawyer

at the moment during, before and during questioning as the talismanic language. Those admonishments are held up and that is correct.

And it is also correct that there are admonishment warnings where the defendant is not apprised of his ability to discontinue questioning at any time and that those admonishments are held up.

It is in the State's word the totality of the circumstance and that there is no case that they have cited where an admonishment was deficient in all three of those ways at the same time, where the Defendant knew or believed he knew the sergeant from an instant where they were on the same side, where the language was as colloquial as we, bro, stuff.

All of that matters, and so it may be that we are asking this Court to address a Miranda Warning that has never been addressed before in its deficiency, but that just is an opportunity for this Court to uphold the values of due process, confrontation, and 5th and 6th Amendment Rights that this Defendant has and that's what we are going to ask you to do by suppressing his statements.

THE COURT: All right. Thank you. I'm going to take this under advisement. I'm hoping to have an order issued tomorrow. If not, it will be Friday, okay?

MS. MEYER: Thank you.

MR. CATE: Your Honor, I apologize.

THE COURT: It's all right.

MR. CATE: There is just two additional things I wanted to address briefly before we go just in preparation for trial on Monday.

THE COURT: Okay.

MR. CATE: One, I just request that that warrant that you have agreed, the material witness warrant, if your Clerk could just let me know as soon as that's ready, if I could get a certified copy and we will get it into NCIC and do what we can to start looking. I think the earlier the better on that.

THE COURT: We will do it over the lunch hour.

MR. CATE: Perfect. And then, second, with regard to jury instructions, I do have my draft jury instructions prepared. I didn't bring them with me today. My recollection from the last trial I did in here was you really prefer electronic copies?

THE COURT: Yes, that's fine. Usually I require hard copies, but I do require electronic copies as well because we end up manipulating them.

MR. CATE: Perfect, and I can just get in touch with your law clerk --

THE COURT: Yes.

MR. CATE: -- just to get her e-mail address to

send that over?

THE COURT: Yes.

MR. CATE: Okay. And then I will just issue them an e-mail as well.

THE COURT: Okay. Anything else for purposes of trial? You will be needing this same equipment, correct?

MR. CATE: Yes, Your Honor. I don't, depending on how long your trial goes this time, I don't know whether to take it out and bring it back in.

THE COURT: It's fine if they leave it.

MR. CATE: Okay. I will communicate that.

THE COURT: They are going to leave it. And you have a time to mark exhibits, correct?

MR. CATE: Yes, Your Honor.

THE COURT: Okay.

THE CLERK: We are doing that on Friday at 11:00.

THE COURT: Okay. And no need for a, or do you need a bigger panel at all?

MR. CATE: I don't believe so, Your Honor.

MS. MEYER: I don't believe so, Your Honor.

THE COURT: And do you want two alternates?

MS. MEYER: Yes, please, Your Honor.

THE COURT: We did that this week because it's flu season and everybody is -- we had a couple people that kept landing in the same chair that were sick.

Anything else we need to address, Ms. Clerk?

THE CLERK: Judge, I'm sorry if I missed it, did we discuss the bail for this material witness?

MR. CATE: Oh, I don't believe we did.

THE COURT: We did not.

MR. CATE: Your Honor, the State, we are a couple days before trial, so it's not like he is going to be in jail forever here. It's clear that he doesn't want to cooperate, that he is not being cooperative with the prosecution at this point. I'm not sure any bail could secure his presence, so the State would just request $50,000 cash only.

THE COURT: Any comment?

MS. MEYER: We have no position on that.

THE COURT: All right. That's what we will enter. So I will look at it and we will get that process going and that will not foreclose your objections.

MS. MEYER: Thank you.

THE COURT: All right. We will be in recess.

MR. CATE: Thank you, Your Honor.

THE COURT: Thank you very much.

(Whereupon the proceedings concluded at 12:13 p.m.)

-oOo-

STATE OF NEVADA)
) Ss.
WASHOE COUNTY)

I, CORRIE L. WOLDEN, an Official Reporter of the Second Judicial District Court of the State of Nevada, in and for Washoe County, DO HEREBY CERTIFY;

That I am not a relative, employee or independent contractor of counsel to any of the parties; or a relative, employee or independent contractor of the parties involved in the proceeding, or a person financially interested in the proceeding;

That I was present in Department No. 6 of the above-entitled Court on February 21, 2018, and took verbatim stenotype notes of the proceedings had upon the matter captioned within, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 41, is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 4th day of March, 2018.

/s/Corrie L. Wolden

CORRIE L. WOLDEN
CSR #194, RPR, CP

Code No. 4185

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

---oOo---

THE STATE OF NEVADA,

Plaintiff,

-vs-

TAREN DESHAWN BROWN,

Defendant.

_____/

Case No. CR17-1851

Department No. 6

HEARING RE: MOTION TO STAY

Friday, February 23rd, 2018

Reno, Nevada

Reported by: KATE MURRAY, CCR #599
Job 453877

APPEARANCES:

For the Plaintiff:	ADAM CATE Deputy District Attorney One South Sierra Street Reno, Nevada
For the Defendant:	EMILIE MEYER Deputy Public Defender 350 South Center Street Reno, Nevada
The Defendant:	NOT PRESENT

RENO, NEVADA; FRIDAY, FEBRUARY 23RD, 2018; 4:00 P.M.

---oOo---

THE COURT: This is Case No. CR17-1851, State versus Taren Deshawn Brown. Please state your appearances.

MR. CATE: Good afternoon, Your Honor. Adam Cate on behalf of the State of Nevada.

MS. MEYER: Good afternoon. Emilie Meyer here today for Mr. Taren Brown.

For the record, I did speak with him in advance of this hearing at 3:00 o'clock. I informed him that he could have the right to be present and transported.

He understood what the nature of this proceeding was and waived his appearance at this hearing.

THE COURT: All right. Thank you. I understand that the State requested a hearing this afternoon.

MR. CATE: That's correct, Your Honor. Pursuant to NRS 177.015(2), the State has the right to appeal from an order granting a motion to suppress in a criminal trial, and the State intends

to exercise that right to file a notice of appeal within two days of the Court's decision.

Because of that, the State is requesting a stay of these proceedings so that the State may proceed with that appeal.

THE COURT: All right. Just so that we have a clear record, the Court issued two orders today. It's my understanding that the matter that you intend to appeal relates to the order granting the motion to suppress.

MR. CATE: That's correct, Your Honor.

THE COURT: And not with regard to the jury information?

MR. CATE: That's correct, Your Honor.

THE COURT: Previously, you provided me with a -- or through my clerk -- a copy of State vs. Robles-Nieves, 306 P.3d 399. It's 129 Advanced Opinion 55, and it's a 2013 case.

I have had an opportunity to review that. I have also reviewed the transcript from the arraignment as well as the underlying statute that requires trial, 174.511, within 60 days after arraignment.

Now, I read this Robles-Nieves case to be -- and you can correct me if I'm wrong. I want

to hear from both of you.

The history is that Judge Bell denied the State's request to stay, that a request in the District Court is a procedural requirement for seeking a stay in the Supreme Court, but that this case actually addresses four factors in the opinion written by Justice Hardesty, that this case very specifically provides the four factors that the Supreme Court utilizes in determining a stay but does not give any guidance to this Court in whether or not to grant a stay.

My concern in this case is the defendant's right to a speedy trial, within 60 days. If I look at the transcript, I specifically asked what the 60 days were. There is confirmation that it's March 5th.

Secondly, that there was an agreement because of scheduling of counsel that the motions would be heard this week.

I would like you to address on factors that would guide a District Court and not the Supreme Court on the factors, if you have any, that would govern whether the basis on which this Court would grant a stay.

I am going to refer to you two

problematic areas, as I analyze it.

One I have mentioned, any violation of the right to speedy trial. I know for purposes of the Supreme Court, you look at good cause and it's allowed under the statute you have cited, so an interlocutory appeal does constitute good cause, but that doesn't govern me.

The second bigger issue I have, which I think they refer to here, is a court who has just issued an order granting a motion to suppress isn't the court that should be evaluating the State's likelihood of success above.

So I am viewing this proceeding really as a procedural requirement for you to seek a stay that would be imposed by the Supreme Court.

Do you see the case any different?

MR. CATE: I do a little bit, Your Honor, and I'll try and address all your concerns, but I want to address the speedy trial, the 60-day requirement first.

I think this case, Robles-Nieves is directly on point because in this case, the defendant had invoked his right to trial within 60 days.

Prior to the Supreme Court granting the

stay because the District Court had refused to grant a stay, the District Court had imposed a stay of almost a year on the trial. The defendant had been in custody --

THE COURT: Eighteen months.

MR. CATE: -- 18 months, and I think that there was some time period prior to his arraignment in District Court, so I don't know exactly how long of that was the 60 days or not.

Pretty clearly, We, therefore, conclude unless the appeal is frivolous or involves only a tangential issue, the State's interlocutory appeal under NRS 177.015(2) will be regarded as good cause for delay in bringing a defendant to trial.

Pursuant to Nevada's -- so I don't think that -- that was my concern as well when I was researching this issue. Okay, what happens? How does this interplay with the defendant's right to trial within 60 days?

THE COURT: Right.

MR. CATE: But the bottom line is a defendant shouldn't be permitted to invoke his right to trial within 60 days and then file a motion 20 days before trial, and then if that motion is granted by the District Court, then the State just

has no recourse.

THE COURT: Well, I think you're going down the implied waiver road.

MR. CATE: I would say it's not the implied waiver that he has waived it, and I understand what you're saying like when someone files a pretrial writ of habeas corpus. I'm not saying that.

I'm saying that the State's rights, whether the defendant waives it or not -- I'm not saying he has waived it by filing this motion. I'm saying that good cause is that the State has the statutory right to appeal from this Court's order, and that statutory right is -- if we proceed to trial on Monday, then that right that the State has is essentially removed.

THE COURT: Well, that goes to the first factor that they talk about.

MR. CATE: Right.

THE COURT: Does it really annihilate the very purpose? Ms. Meyer?

MS. MEYER: Thank you, Your Honor. We don't contest the first factor. This is, I have to admit, a novel position for me to be in, and so I applied these four factors in analyzing this case,

and similarly to the defense in this case, I don't contest the first factor, that being whether the object of the appeal would be defeated.

I do contest the second factor, which, as read in the Robles-Nieves case, is whether the appellant will suffer irreparable or serious injury.

We did do the exhibit marking today, and I will say that this case differs from the case in Robles-Nieves in that I think that the State's position is slightly different in this case.

They did mark in two different videos of the alleged event that happened and are documented as well as a jail phone call by the defendant, so in this case, while certainly a piece of evidence that the defense wants to keep out for reasons is a part of their case, and this Court has granted a motion suppressing it.

The State in this case, I think, actually is a better position than the State was in Robles-Nieves. I think that that has to be factored in in the essential balance test provided in the Robles-Nieves case.

I think that that goes to the good cause and how much good cause should weigh when there are other avenues to get in the evidence.

In this case as to the irreparable harm to the defendant, Mr. Brown has been absolutely consistent in wanting this to proceed quickly. He invoked his speedy preliminary hearing right. He invoked his speedy trial right. He has remained in custody under $350,000 bail.

In this case, the process of the appeal just on the stay took eight months. That is a significant period of time for any individual to remain in custody, and there is serious harm for any day that someone is in custody.

THE COURT: That was an evaluation and opinion on the stay.

MS. MEYER: Correct.

THE COURT: But customarily, the Supreme Court grants them very quickly.

MS. MEYER: It might happen quickly and it might happen with eight months. We don't know, and absent my ability to confer and convey to my client how long it will take, even the uncertainty, psychologically, it creates a harm.

Now, whether that is irreparable or unmitigated, I can't comment on because I think it is, but there have been studies on the amount of institutionalization and impact that incarceration

has on an individual. I think that that harm is significant. That is why we seek early release at bail hearings whenever possible.

Then the fourth factor, and I just want to touch on that, is the likelihood to prevail.

I think in this case, I'm not the best to comment because I would not have filed a frivolous motion, but I do think that the deficits in the Miranda warning in this are patently obvious, and I think that that is something when taken in all the factors, I know that the State has a right to procedural fairness as does the defense, but in weighing all the factors, I think two and four mitigate in favor of the defendant and mitigate in favor of moving forward with this trial that he has planned on.

The parties have been prepared. This motion was timely filed, and I think that all of that should go into weighing whether or not this Court grants a stay.

Your Honor, I apologize. If this Court does grant the stay, we would like to be heard separately on the issue of custodial status.

THE COURT: I understand.

Mr. Cate, I know that you expressed your

frustration the other day with the date of the filing of the motion.

When I reread this transcript, it appeared to me -- you don't contend that it was late filed, do you? You just contend that it was filed right under the line.

MR. CATE: Exactly, Your Honor. It's consistent with what happened in the case cited by the State.

THE COURT: Okay. Here is what I am going to do. One, I agree and I concur that under NRS 177.015(2) that the State has the ability to seek an interlocutory appeal from my granting of the motion to suppress.

My analysis of State vs. Robles-Nieves goes to, very specifically, addressing the renewed motion for stay with the Supreme Court, and that those four factors really apply to the Supreme Court and that this Court isn't the appropriate Court to determine whether or not the State has a likelihood to prevail when I just issued my order a couple of hours ago.

I am continuing the trial in this matter to March 5th. That is within the 60 days as agreed upon in the prior transcript. That should give,

preserve any arguments with regard to irreparable harm, violations of the right to a speedy trial.

It should give you sufficient time, Mr. Cate, to get your stay.

If, for some reason, that -- under the factors that I think they will look at and they'll make a determination of your likelihood of success, that should happen this week, and I think that is the most procedurally sound way for both parties to protect the rights and you to secure your relief.

I had one recently that came back the next day, so I think you can file it under my denial. They can tell me to stay. Then everybody is protected, and we don't go to OR requests, which if it's viable, I would, of course, hear it, but you are still in your 60 days right now because we set it a week early.

I am going to set this for a hearing next Friday, and if we have not heard from the Supreme Court, then you can renew your motion for stay here and that will also give us some more time to research, even in other jurisdictions if there is a similar statute that guides the District Court and not the Supreme Court and is not looking under the NRAP rules.

So I'm not expecting anyone to be prepared to go to trial on Monday.

MR. CATE: Thank you, Your Honor, and I appreciate you hearing us so late on a Friday. It saves us a weekend of work potentially.

THE COURT: Right. I think your focus needs to be on what you need to do with the Supreme Court.

MS. MEYER: Your Honor, if I may, the hearing on the second will be?

THE COURT: Is that convenient? Well, you're supposed to be here, so I know you're available.

THE CLERK: We can set it either at 11:00 or at 2:00.

THE COURT: Do we have something at 9:00?

THE CLERK: We do.

THE COURT: Oh, we have backup behind your trial.

MS. MEYER: You would prefer 2:00?

MR. CATE: Yes.

MS. MEYER: Then I can go with 2:00.

MR. CATE: That gives us a little more time. We have established today that sometimes hours count.

THE COURT: Right. I think you'll get a response, and I have made a clear record of why I'm doing it, and I think that you could not seek the stay above if I hadn't ruled.

MR. CATE: That's pretty accurate, Your Honor. Thank you.

THE COURT: Okay.

(Hearing concluded at 4:15 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KATE MURRAY, Certified Court Reporter of the Second Judicial District Court, in and for the County of Washoe, State of Nevada, do hereby certify:

That I was present in the above-entitled court on Friday, February 23rd, 2018, and took stenotype notes of the above-entitled proceedings, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said hearing.

DATED: At Reno, Nevada, this 27th day of February, 2018.

/s/Kate Murray
KATE MURRAY, CCR #599

FILED
Electronically
CR17-1851
2018-02-23 02:19:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6547422

CODE NO. 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

TAREN DESHAWN BROWN, also known as TAREN DE SHAWNE BROWN, also known as "GOLDY-LOX,"

Defendant.

_____/

Case No. CR17-1851

Dept. No. 6

ORDER GRANTING MOTION TO SUPPRESS OR REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LCR 7(C)

Before this Court is a *Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(c)* ("*Motion*") filed by Defendant TAREN BROWN ("Mr. Brown") through his counsel Emilie Meyer, Deputy Public Defender. The State of Nevada filed its *Opposition to Motion to Suppress* ("*Opposition*") through its counsel Deputy District Attorney Adam D. Cate. No reply was filed.

On February 21, 2018, the Court held a hearing on all pretrial motions, and the parties presented oral argument on the instant *Motion*. Mr. Brown then submitted the *Motion* for decision. After hearing the evidence and argument, and analyzing the same under the applicable law, the Court finds the *Motion* should be granted/denied.

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I. FACTS AND PROCEDURAL HISTORY

On October 28, 2017, Mr. Brown was apprehended by officers with the Reno Police Department ("RPD") after Mr. Brown allegedly pointed a gun at VINTELL LAMONTTA JOHNSON ("Mr. Johnson") and pulled the trigger. See *Information*, filed November 28, 2017. Officers handcuffed Mr. Brown and conducted a search of his person. *Motion*, p. 2. Shortly after the search, Mr. Brown was placed in an RPD squad car and Sergeant Larmon Smith ("Sergeant Smith") conducted an interrogation. Id. Officer Tasheeka Claiborne ("Officer Claiborne") recorded the interrogation. Id. Said recording was disclosed by the State and provided as Audio Interview 171028_0004 ("Audio Interview"). Id.

Prior to questioning, Sergeant Smith provided the following admonishment,[1] as reflected in Audio Interview at 1:26-1:57:

> Sergeant Smith: You are in custody man. You have rights, okay, so I just want you to know that you don't have to talk to me. You have the right to remain silent, you know, and if we do talk about stuff, you know, we can use that stuff against you. Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well. Now, do you understand your rights everything (indistinct) just said, Mr. Brown?
>
> Mr. Brown: Yes, I heard you.
>
> Sergeant Smith: Okay now do you understand that your rights and stuff. Do you want to tell me your side of it and tell me what happened, what led up to this bro?

In response to Sergeant Smith's admonishment, Mr. Brown appeared to waive his rights and made a number of incriminating statements regarding the incident to Sergeant Smith and Officer Claiborne. See Audio Interview, generally. Mr. Brown now seeks to

[1] As the recording has not been professional transcribed, Sergeant Smith's admonishment, alone, was transcribed by defense counsel. The Court listened to the recording in question at the hearing on February 21, 2018 and notes the aforementioned transcription accurately reflects the admonishment given to Mr. Brown by Sergeant Smith.

suppress the recording of his interrogation based on Sergeant Brown's failure to properly Mirandize Mr. Brown and, therefore, lack of voluntariness of Mr. Brown's statements. *Motion*, p. 2.

In his *Motion*, Mr. Brown argues Sergeant Smith's Miranda warning was deficient based on three primary grounds. First, Mr. Brown contends Sergeant Smith failed to communicate Mr. Brown's right to have counsel present during questioning. *Motion*, p. 5. Mr. Brown maintains the information regarding a right to counsel during questioning is "'an absolute prerequisite to interrogation [and] [n]o amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead.'" *Motion*, p. 5, quoting Miranda v. Arizona, 384 U.S. 436, 471-72 (1966). Mr. Brown argues Sergeant Smith's statement, "[i]f you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well," suggests the right to an attorney attaches only after charges are filed and not during or before questioning. Id., p. 7.

Second, Mr. Brown contends Sergeant Smith failed to communicate Mr. Brown's ability to exercise his rights at any time. *Motion*, p. 5. While Mr. Brown concedes the language in Miranda is less absolute as to this right, Mr. Brown argues "[w]ithout the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice." Id., quoting Miranda, 384 U.S. at 474.

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Third, Mr. Brown maintains Sergeant Smith improperly warned him regarding the adverse use of his statements in the courtroom. *Motion*, p. 6. Mr. Brown contends Sergeant Smith's statement, "we can use that stuff against you" fails to convey the full exposure faced when making a statement because it omits the phrase "in court," refers to statements as "stuff," and includes the word "we." Id.

Because Sergeant Smith's Miranda warning was constitutionally ineffective, Mr. Brown argues he did not have "full awareness" of his Miranda rights and, therefore, did not voluntarily waive them. Id., p. 9.

The State opposes the *Motion*, maintaining "the precise language of the warning is not to be challenged so long as the proper information is conveyed." *Opposition*, p. 2. The State contends Sergeant Smith conveyed the proper information, as federal courts have consistently found Miranda warnings adequate where the suspect was not specifically warned his statements would be used in a court of law. Id., p. 3, citing United States v. Frankson, 83 F.3d 79, 81 (4th Cir. 1996); United States v. Castro-Higuero, 473 F.3d 880, 886 (8th Cir. 2007); United States v. Crumpton, 824 F.3d 593, 606 (6th Cir. 2016). The State emphasizes Mr. Brown provides no contrary authority.

In addition, the State contends the warning adequately conveyed Mr. Brown's right to an attorney during questioning. Id., p. 4. The State argues the Nevada Supreme Court has explicitly held a Miranda warning that conveys the right to an attorney necessarily conveys that the attorney may be present for questioning. Id.; see also Criswell v. State, 84 Nev. 459, 443 P.2d 552 (1968), disapproved on other grounds by Finger v. State, 117 Nev. 548 (2001). The State also notes various federal court cases reaching similar conclusions. Id., p. 5.

The State also maintains there is no legal requirement to inform a suspect he may terminate questioning at any time, and emphasizes Mr. Brown again provides no contrary authority for his contention. Id., p. 7.

Therefore, the State maintains Mr. Brown's acknowledgment of Sergeant Smith's Miranda warning and subsequent discussion of his participation in the incident in question constituted a valid waiver of his Fifth Amendment privilege. Id., p. 10, citing Allen v. State, 91 Nev. 568 (1975).

On February 21, 2018, the Court heard oral argument on the *Motion*, during which the parties reiterated their respective arguments and responded to the Court's inquiries. Thereafter, the Court took the *Motion* under advisement.

Accordingly, after review of the papers and pleadings filed, the oral argument of the parties, and the applicable law, the Court sets forth its Order as follows.

II. STANDARD OF REVIEW; LAW AND ANALYSIS

The admissibility of any statement given during a custodial interrogation depends on whether the police provided a suspect with four warnings: "(1) the right to remain silent, (2) that anything he says can be used against him in a court of law, (3) that he has the right to the presence of an attorney, and (4) that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." United States v. Perez-Lopez, 348 F.3d 839, 848 (9th Cir. 2003) (emphasis removed) (numbering added). The Supreme Court of the United States has "never insisted that *Miranda* warnings be given in the exact form described in [the *Miranda*] decision," and moreover, "no talismanic incantation [is] required to satisfy its strictures." Duckworth v. Eagan, 492 U.S. 195, 202-03, 109 S. Ct. 2875, 2880 (1989). The inquiry is "whether the warnings reasonably 'conve[y] to [a suspect]

his rights as required by *Miranda*.'" Florida v. Powell, 559 U.S. 50, 60, 130 S. Ct. 1195, 1204 (2010) *citing* Duckworth, *supra*. However, "thoroughness and clarity are especially important when communicating with uneducated defendants." Perez-Lopez, 348 F.3d at 848. To be constitutionally adequate, Miranda warnings must be "sufficiently comprehensive and comprehensible when given a commonsense reading." Powell, 559 U.S. at 63.

As a general rule, "suppression issues present mixed questions of law and fact." State v. Beckman, 129 Nev. Adv. Op. 51, 305 P.3d 912, 916 (2013). When ruling on a motion to suppress, a district court should set forth factual findings in support of its determination in order to aid appellate review. Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005). Pursuant to Nevada Supreme Court authority, the Court makes its findings of fact and conclusions of law on each of Mr. Brown's grounds for suppression of the *Audio Interview*.

Mr. Brown does not challenge his "right to remain silent," and therefore, the Court does not discuss it here. Instead, the Court analyzes whether Mr. Brown's right to counsel was effectively conveyed and whether Sergeant Smith effectively informed Mr. Brown that anything he said could be used against him "in a court of law."

A. Right of Subject to be Informed Statements May be Used Against Him in a Court of Law.

The second *Miranda* warning requires police to inform a defendant "that anything he says can be used against him in a court of law." Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630 (1966). As Miranda explains, in full,

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> The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.

Miranda v. Arizona, 384 U.S. 436, 469, 86 S. Ct. 1602, 1625 (1966).

The Court has not located any United States Supreme Court or Nevada Supreme Court authority directly addressing the sufficiently of a Miranda warning that omits the phrase "in court," but is persuaded by federal circuit court authority. In United States v. Franklin, 83 F.3d 79, 81 (4th Cir. 1996), the Fourth Circuit found it was not critical "that [the officer] failed to state that Frankson's statements could be used against him at a particular location, in court. [The officer]'s instruction unequivocally conveyed that all of Frankson's statements could be used against him anytime, anywhere, including a court of law, a broader warning that Miranda actually requires." In addition, in United States v. Crumpton, 824 F.3d 593, 606 (6th Cir. 2016), the Sixth Circuit found "[a] suspect who is informed of his right to remain silent and the fact that failing to do so will result in his statements being used 'against him' is sufficiently informed of the key information the warning seeks to provide" despite not being warned specifically that the statements could be used in court.

Thus, based upon the aforementioned persuasive authority, the Court finds Sergeant Smith's admonishment that "[y]ou have the right to remain silent, you know, and if we do talk about stuff, you know, we can use that stuff against you," satisfies the requirements of Miranda and does not, itself, warrant suppression of Mr. Brown's interview with Sergeant Smith.

B. Right to Counsel During Questioning.

Miranda requires all individuals "be informed, prior to custodial interrogation, 'that [they have] the right to the presence of an attorney, and that if [they] cannot afford an attorney one will be appointed for [them] prior to any questioning if [they] so desire." U.S. v. Connell, 869 F.2d 1349, 1351 (9th Cir. 1989), quoting Miranda, 348 U.S. at 479. "What Miranda requires 'is meaningful advice to the unlettered and unlearned in language which [they] can comprehend and on which [they] can knowingly act.'" Connell, 869F.2d at 1351, quoting Coyote v. U.S., 380 F.2d 305, 308 (10th Cir. 1967). In order for the warning to be valid, the combination of the wording of its warnings cannot be affirmatively misleading. Id. at 1352. "The warning must be clear and not susceptible to equivocation." U.S. v. San Juan-Cruz, 314 F.3d 384, 387 (9th Cir. 2002). In addition, "a Miranda warning must convey *clearly* to the arrested party that he or she possesses the right to have an attorney present prior to and during questioning." Id. at 388 (emphasis in original).

Here, Sergeant Smith informed Mr. Brown as follows: "Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well." Sergeant Smith did not explicitly inform Mr. Brown that he had the right to the presence of counsel prior to and during questioning.

The State relies on the Nevada Supreme Court's decision in Criswell for the proposition that a Miranda warning that conveys the right to an attorney necessarily conveys that the attorney may be present for questioning. *Opposition*, p. 4; Criswell, 84 Nev. at 462, 443 P.2d at 554 ("While the warnings given in the district attorney's office did not specifically advise the appellant that he was entitled to have an attorney present at that moment and during all stages of interrogation, no other reasonable inference could be drawn from the

warnings as given."). The State also cites to numerous courts that have reached similar conclusions. However, those cases are easily distinguishable from the facts of this case.

In Criswell, prior to questioning, the defendant "was advised of his constitutional right to remain silent, that anything he might say could be used against him in court, that he had the right to counsel, and if he was indigent and could not afford counsel that the counsel would be provided." Id. at 461, 443 P.2d at 553. In addition, in United States v. Lamia, 429 F.2d 373, 375-76 (2nd Cir. 1970), the defendant was advised that "he need not make any statement to us at that time, that any statement he would make could be used against him in court; he had a right to an attorney, if he wasn't able to afford an attorney, an attorney would be appointed by the court." With regard to the defendant's contention that he was not apprised he had the right to the presence of an attorney during questioning, the Second Circuit found, "having just been informed that he did not have to make any statement to the agents outside of the bar, Lamia was effectively warned that he need not make any statement until he had the advice of an attorney." Id. at 377.

However, the State is incorrect that a warning that conveys the right to an attorney **necessarily** conveys that the attorney may be present for questioning. The Ninth Circuit's decision in Connell makes it clear otherwise unobjectionable Miranda warnings have not been found inadequate by courts "simply because they fail explicitly to state that an individual's right to appointed counsel encompasses the right to have that counsel present prior to and during questioning." Connell, 869 P.2d at 1351. Rather, "where individuals have been separately advised both of their right to counsel before and during questioning and of their right to appointed counsel, reviewing courts will assume that a logical inference has been made – that is, that appointed counsel is available throughout the interrogation

process." Id. at 1351-52. However, the Ninth Circuit rejected as "fatally flawed...a version of the Miranda litany if the combination or wording of its warnings is in some way affirmatively misleading, making such an inference less readily available." Id.

Unlike the cases relied upon by the State, Mr. Brown was not separately apprised of his right to an attorney and his right to have an attorney appointed to him such that "no other reasonable inference could be drawn from the warnings as given." See Criswell, at 461, 442 P.2d at 553. Rather, the Court finds the combination of words used by Sergeant Smith was both "affirmatively misleading" and "subject to equivocation." See San Juan-Cruz, 314 F.3d at 387. Sergeant Smith's warning, viewed as a whole, is subject to the reasonable interpretation that Mr. Brown did not have the right to counsel during questioning. The Court notes a defendant is entitled to be informed of **both** his right to the presence of counsel during questioning **and** his right to be appointed counsel to represent him if he is indigent. These are separate admonishments that were apparently merged into one by Sergeant Smith such that Mr. Brown was never explicitly informed he had the right to an attorney **during questioning.** In addition, Sergeant Smith's use of the phrase, "regardless of what charges we have for you, we can always provide one of them for you as well," implies Mr. Brown may have an attorney appointed to defend him against whatever charges result from his arrest. Because Mr. Brown had not yet been charged with a crime, Sergeant Smith's warning was subject to the reasonable misinterpretation that Mr. Brown had the right to have counsel appointed at some future point in time after he had been charged with a crime, not prior to and during questioning. As such, Sergeant Smith's warning was ambiguous, unclear, subject to equivocation, and was not the "fully effective equivalent" of the language used in the Miranda decision.

Thus, the Court finds the warning was constitutionally ineffective. Suppression of Mr. Brown's interview with Sergeant Smith is required and may not be used in the State's case in chief.[2]

C. Voluntariness of Statement.

In order to admit statements made during custodial interrogation, the defendant must knowingly and voluntarily waive the Miranda rights. Kroger v. State, 117 Nev. 138, 142, 17 P.3d 428, 430 (2001). The Court reviews "the facts and circumstances of each particular case weighing the totality of the circumstances to determine whether the Miranda warnings were properly given and whether the defendant waived his Miranda rights." Id.

The Court finds Sergeant Smith's admonishment did not adequately and reasonably convey the third warning to Mr. Brown such that it would make him aware that he had the right to the presence of counsel prior to and during questioning. As such, the Court similarly finds Mr. Brown did not "voluntarily, knowingly and intelligently" waive his Miranda rights, requiring suppression of Mr. Brown's interview with Sergeant Smith. See Miranda, 384 U.S. at 444.

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[2] The suppression of Mr. Brown's audio interview does not preclude the State from admitting Mr. Brown's otherwise inadmissible statements for the limited purpose of impeaching Mr. Brown's testimony. In Harris v. New York, 401 U.S. 222, 225-26 (1971) the United States Supreme Court reasoned, "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury...The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances." (internal citations omitted); see also Allan v. State, 103 Nev. 512, 513, 746 P.2d 138, 140 (1987).

III. CONCLUSION

The Court concludes the audio interview of Mr. Brown should be suppressed for failure to properly Mirandize Mr. Brown. As such, Audio Interview 171028_0004 may not be used by the State in its case in chief.

Accordingly, and good cause appearing therefor,

IT IS HEREBY ORDERED the *Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(c)* is GRANTED.

Dated this 22nd day of February, 2018.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 23rd day of February, 2018, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

ADAM CATE, ESQ.

ERICA FLAVIN, ESQ.

EMILIE MEYER, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Brey

CODE No. 2515
CHRISTOPHER J. HICKS
#7747
P. O. Box 11130
Reno, Nevada 89520-0027
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v. Case No. CR17-1851

TAREN DEHSHAWN BROWN, also known as TAREN DE SHAWNE BROWN, also known as "GOLDY LOX," Dept. No. 6

Defendant.

_____/

NOTICE OF APPEAL

Notice is hereby given that Plaintiff above-named, hereby appeals to the Supreme Court of Nevada from this Court's Order granting Defendant's Motion to Suppress, signed and filed on February 23, 2018.

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: February 23, 2018.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on February 23, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jim Leslie, Chief Deputy Public Defender

Emilie Meyer, Deputy Public Defender

/s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE

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Clerk of the Court
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Christopher J. Hicks
#7747
P.O. Box 30083
Reno, NV 89520-3083
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

TAREN DE_SHAWNE BROWN,

Defendant.

_____/

Case No.: CR17-1851

DEPT: 6

CASE APPEAL STATEMENT

1. Appellant, the State of Nevada, hereby files this Case Appeal Statement.

2. Honorable, Lynne K. Simons, District Judge.

3. Counsel for Appellant The State of Nevada is:

CHRISTOPHER J. HICKS
District Attorney

Jennifer P. Noble
Appellate Deputy
P. O. Box 11130
Reno, Nevada 89520

/ / /

4. Appellate counsel for Defendant Taren DeShawn Brown is:

Jim Leslie and/or Emilie Meyer
Washoe County Public Defender's Office
P. O. Box 11130
Reno, Nevada 89520

5. Counsel for Appellant and Defendant are licensed to practice law in the State of Nevada.

6. Not applicable.

7. Not applicable.

8. Not applicable.

9. The Information was filed in the district court on November 28, 2017. Defendant's Motion to Suppress was filed on February 6, 2018.

10. This appeal is from an order granting Defendant's Motion to Suppress, signed and filed on February 23, 2018.

11. This case has not previously been the subject of an appeal or original writ proceeding in the Supreme Court.

12. This appeal does not involve child custody or visitation.

13. Not applicable.

This is a fast track appeal.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of February, 2018.

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By /s/ Jennifer Noble
JENNIFER P. NOBLE
9446
Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on February 23, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jim Leslie, Chief Deputy Public Defender

Emilie Meyer, Deputy Public Defender

/s/ JENNIFER P. NOBLE

JENNIFER P. NOBLE

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

Case History - CR17-1851

DEPT. D6

HON. LYNNE K. SIMONS

Report Date & Time
2/26/2018
8:50:52AM

Case Description: STATE VS. TAREN DESHAWN BROWN (TN)(D6)

Case ID: **CR17-1851** **Case Type:** **CRIMINAL** **Initial Filing Date:** **11/15/2017**

Parties

PLTF	STATE OF NEVADA - STATE
DA	Terrence P. McCarthy, Esq. - 2745
DA	Adam D. Cate, Esq. - 12942
DEFT	TAREN DESHAWN BROWN - @171240
PD	James B. Leslie, Esq. - 4464
PD	Emilie Meyer, Esq. - 11419
PNP	Div. of Parole & Probation - DPNP

Charges

Charge No.	*Charge Code*	*Charge Date*	*Charge Description*
1	50031	11/28/2017	INF ATTEMPTED MURDER - WITH THE USE OF A DEADLY WEAPON
2	50201	11/28/2017	INF ASSAULT WITH A DEADLY WEAPON
3	51459	11/28/2017	INF CARRYING A CONCEALED FIREARM
4	51437	11/28/2017	INF POSSESSION OF A FIREARM WITH A REMOVED OR ALTERED SERIAL NUMBER

Plea Information

Charge No.	*Plea Code*	*Plea Date*	*Plea Description*
1	50031	1/4/2018	PLED NOT GUILTY
2	50201	1/4/2018	PLED NOT GUILTY
4	51437	1/4/2018	PLED NOT GUILTY
3	51459	1/4/2018	PLED NOT GUILTY

Release Information

Custody Status

Hearings

	Department	***Event Description***	***Sched. Date & Time***		***Disposed Date***
1	D6	ARRAIGNMENT	12/6/2017	09:00:00	12/6/2017

Event Extra Text:

Disposition:
D445 12/6/2017
DEPARTMENT 6 SHALL RETAIN THIS MATTER; MATTER SET FOR HEARING ON THE PETITION FOR WRIT; COURT HELD THE STRIKING OF THE PETITION AS FUGITIVE DOC IN ABEYANCE

Case Description: STATE VS. TAREN DESHAWN BROWN (TN)(D6)

Case ID: CR17-1851 **Case Type:** CRIMINAL **Initial Filing Date:** 11/15/2017

	Department	Event Description	Sched. Date & Time		Disposed Date
2	D6	HEARING...	1/4/2018	11:00:00	1/4/2018

Event Extra Text: (PETITION FOR WRIT)

Disposition:
D725 1/4/2018
TO ALL COUNTS IN INFORMATION;
MEMORANDUM OF LAW FILED 12/28/17 - WITHDRAWN
PETITION FILED 12/1/17 - STRICKEN AS FUGITIVE DOCUMENT
LETTER FILED 12/1/17 - STRICKEN AS FUGITIVE DOCUMENT
DEFT INVOKES RIGHT TO SPEEDY TRIAL; PRE-TRIAL MTNS HRG SET

	Department	Event Description	Sched. Date & Time		Disposed Date
3	D6	MOTION TO CONFIRM TRIAL	2/14/2018	09:00:00	2/14/2018

Event Extra Text: (PRE-TRIAL MTNS - 2/21/18; 5 DAY JURY TRIAL - 2/26/18)

Disposition:
D425 2/14/2018
COUNSEL CONFIRMED JURY TRIAL SET FOR 2/26/18

	Department	Event Description	Sched. Date & Time		Disposed Date
4	D6	PRE-TRIAL MOTIONS	2/21/2018	11:00:00	2/21/2018

Event Extra Text:

Disposition:
D430 2/21/2018
MOTION TO INVOKE RULE OF EXCLUSION AND MOTIONS REGARDING CUSTODY DURING TRIAL FILED JANUARY 24, 2018, GRANTED, HOWEVER, IS JAIL PHONE CALLS THE STATE MAY SEEK TO ADMIT ARE NOT SUBJECT TO THE COURT'S ORDER; MOTION IN LIMINE RE: PRIOR CONVICTIONS FILED JANUARY 24, 2018, GRANTED BASED ON NON-OPP; MOTION IN LIMINE RE: ALLEGED OTHER BAD ACTS, FILED JANUARY 24, 2018, GRANTED, MOTION FOR MATERIAL WITNESS BENCH WARRANT FILED FEBRUARY 20, 2018, - DEFENSE SHALL FILE OPPOSITION BY FEBRUARY 23, 2018, MATERIAL WITNESS BENCH WARRANT SHALL ISSUE PENDING ARGUMENTS; MOTION TO SUPPRESS FILED FEBRUARY 6, 2018.....

	Department	Event Description	Sched. Date & Time		Disposed Date
5	D6	Request for Submission	2/21/2018	12:15:00	2/23/2018

Event Extra Text: MOTION FOR EQUAL ACCESS TO JUROR INFORMATION (NO ORDER PROVIDED)

Disposition:
S200 2/23/2018
ORDER

	Department	Event Description	Sched. Date & Time		Disposed Date
6	D6	Request for Submission	2/21/2018	12:18:00	2/23/2018

Event Extra Text: MOTION IN LIMINE RE: PRIOR CONVICTIONS (N RS 50.095) ON 1-24-18

Disposition:
S200 2/23/2018

	Department	Event Description	Sched. Date & Time		Disposed Date
7	D6	Request for Submission	2/21/2018	12:12:00	2/23/2018

Event Extra Text: MOTION TO SUPRESS OR REQUEST FOR AN EVIDENTIARY HEARING (NO ORDER PROVIDED)

Disposition:
S200 2/23/2018

Case Description: STATE VS. TAREN DESHAWN BROWN (TN)(D6)

Case ID: CR17-1851 **Case Type:** CRIMINAL **Initial Filing Date:** 11/15/2017

	Department	Event Description	Sched. Date & Time		Disposed Date
8	D6	Request for Submission	2/21/2018	12:16:00	2/23/2018

Event Extra Text: MOTION IN LIMINE RE: ALLEGED OTHER BAD ACTS (NO ORDER PROVIDED)

Disposition: S200 2/23/2018

	Department	Event Description	Sched. Date & Time		Disposed Date
9	D6	Request for Submission	2/21/2018	12:27:00	2/23/2018

Event Extra Text: MOTION TO INVOKE RULE OF EXCLUSION OF MOTIONS REGARDING CUSTODY DURING TRIAL ON 1-24-18

Disposition: S200 2/23/2018

	Department	Event Description	Sched. Date & Time		Disposed Date
10	D6	HEARING...	2/23/2018	16:00:00	2/23/2018

Event Extra Text: (RE: REQUEST TO STAY)

Disposition: D355 2/23/2018
COURT DENIED STATE'S REQUEST TO STAY MATTER PENDING APPEAL; COURT VACATED TRIAL SET FOR FEBRUARY 26, 2018; TRIAL RESET FOR MARCH 5, 2018; STATE MAY SEEK STAY FROM SUPREME COURT

	Department	Event Description	Sched. Date & Time		Disposed Date
11	D6	EXHIBITS TO BE MARKED W/CLERK	2/23/2018	11:00:00	2/23/2018

Event Extra Text:

Disposition: D596 2/23/2018
EXHIBIT 1 - 14b

	Department	Event Description	Sched. Date & Time		Disposed Date
12	D6	TRIAL - JURY	2/26/2018	09:00:00	2/23/2018

Event Extra Text: (5 DAYS)

Disposition: D844 2/23/2018
TO MARCH 5, 2018, AT 9:00 A.M.

Agency Cross Reference

Code	Agency Description	Case Reference I.D.
DA	District Attorney's Office	DA1712678
PC	PCN number	PCNRPD0030689C
RJ	Reno Justice's Court	RCR2017094044
RP	Reno Police Department	RPDRP17023199

Actions

Action Entry Date	Code	Code Description	Text
11/15/2017	1250E	Application for Setting eFile	12/06/17 AT 9:00 A.M. ARRAIGNMENT - Transaction 6397048 - Approved By: NOREVIEW : 11-15-2017:16:56:2
11/15/2017	2522	Notice of Bindover	Transaction 6396716 - Approved By: MPURDY : 11-15-2017:16:45:23
11/15/2017	NEF	Proof of Electronic Service	Transaction 6397051 - Approved By: NOREVIEW : 11-15-2017:16:57:13
11/15/2017	3700	Proceedings	Transaction 6396716 - Approved By: MPURDY : 11-15-2017:16:45:23
11/16/2017	NEF	Proof of Electronic Service	Transaction 6398385 - Approved By: NOREVIEW : 11-16-2017:13:08:27
11/16/2017	4075	Substitution of Counsel	JENNIFER MAYHEW PD - Transaction 6397208 - Approved By: CSULEZIC : 11-16-2017:09:45:53
11/16/2017	4105	Supplemental ...	RJC STATE'S EXHIBIT A

Case Description: STATE VS. TAREN DESHAWN BROWN (TN)(D6)

Case ID: CR17-1851 **Case Type: CRIMINAL** **Initial Filing Date: 11/15/2017**

11/16/2017	NEF	Proof of Electronic Service	Transaction 6397592 - Approved By: NOREVIEW : 11-16-2017:09:46:47
11/16/2017	1491	Pretrl Srvcs Assessment Report	Transaction 6398352 - Approved By: CSULEZIC : 11-16-2017:13:07:27
11/16/2017	1695	** Exhibit(s) ...	RJC STATE'S EXHIBIT A IN EVIDENCE ROOM
11/17/2017	COC	Evidence Chain of Custody Form	
11/27/2017	4105	Supplemental ...	SUPPLEMENTAL PROCEEDINGS - Transaction 6409901 - Approved By: CSULEZIC : 11-27-2017:14:35:57
11/27/2017	NEF	Proof of Electronic Service	Transaction 6410119 - Approved By: NOREVIEW : 11-27-2017:14:36:56
11/28/2017	NEF	Proof of Electronic Service	Transaction 6410980 - Approved By: NOREVIEW : 11-28-2017:08:38:30
11/28/2017	1800	Information	Transaction 6410950 - Approved By: MCHOLICO : 11-28-2017:08:37:29
12/1/2017	3585	Pet Writ Habeas Corpus	APPLICATION OF TAREN D. BROWN FOR WRIT OF HABEAS CORPUS BROWS DELARATION ATTACHED
12/1/2017	1930	Letters ...	
12/28/2017	1960	Memorandum ...	MEMORANDUM OF LAW RE: CLIENT COMPLAINTS AND CONFLICTS OF INTEREST - Transaction 6456935
12/28/2017	NEF	Proof of Electronic Service	Transaction 6456959 - Approved By: NOREVIEW : 12-28-2017:12:02:44
1/4/2018	1275	** 60 Day Rule - Invoked	
1/5/2018	3870	Request	DEFENDANT'S REQUEST FOR FULL DISCOVERY - Transaction 6468151 - Approved By: PMSEWELL : 01-05
1/5/2018	NEF	Proof of Electronic Service	Transaction 6468365 - Approved By: NOREVIEW : 01-05-2018:13:49:38
1/12/2018	2520	Notice of Appearance	EMILIE MEYER PD / DEFT TAREN DE SHAWNE BROWN - Transaction 6480235 - Approved By: YVILORIA : 0
1/12/2018	NEF	Proof of Electronic Service	Transaction 6480390 - Approved By: NOREVIEW : 01-12-2018:15:23:36
1/12/2018	4075	Substitution of Counsel	JIM LESLIE PD IN PLACE OF JENNIER A. MAYHEW PD / DEFT TAREN DE SHAWNE BROWN - Transaction 6
1/12/2018	NEF	Proof of Electronic Service	Transaction 6480437 - Approved By: NOREVIEW : 01-12-2018:15:30:09
1/23/2018	4185	Transcript	Arraignment January 4, 2018 - Transaction 6495432 - Approved By: NOREVIEW : 01-23-2018:17:39:15
1/23/2018	NEF	Proof of Electronic Service	Transaction 6495433 - Approved By: NOREVIEW : 01-23-2018:17:40:14
1/24/2018	2245	Mtn in Limine	MOTION IN LIMINE RE: ALLEGED OTHER BAD ACTS NRS 48.045 - Transaction 6496569 - Approved By: YVI
1/24/2018	2245	Mtn in Limine	MOTION IN LIMINE RE: PRIOR CONVICTIONS (NRS 50.095) - Transaction 6496569 - Approved By: YVILORIA
1/24/2018	NEF	Proof of Electronic Service	Transaction 6496985 - Approved By: NOREVIEW : 01-24-2018:14:43:48
1/24/2018	2490	Motion ...	MOTION FOR EQUAL ACCESS TO JUROR INFORMATION - Transaction 6496569 - Approved By: YVILORIA :
1/24/2018	2490	Motion ...	MOTION TO INVOKE RULE OF EXCLUSION AND MOTIONS REGARDING CUSTODY DURING TRIAL - Trans
2/5/2018	NEF	Proof of Electronic Service	Transaction 6515742 - Approved By: NOREVIEW : 02-05-2018:15:02:18
2/5/2018	2645	Opposition to Mtn ...	OPPOSITION TO MOTION FOR EQUAL ACCESS TO JUROR INFORMATION - Transaction 6514855 - Approve
2/6/2018	2480	Mtn to Suppress...	MOTION TO SUPPRESS OR REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LCR 7(C) - Transa
2/6/2018	NEF	Proof of Electronic Service	Transaction 6518839 - Approved By: NOREVIEW : 02-06-2018:16:55:17
2/13/2018	NEF	Proof of Electronic Service	Transaction 6530049 - Approved By: NOREVIEW : 02-13-2018:13:40:20
2/13/2018	MIN	***Minutes	1/4/18 ARRAIGNMENT - Transaction 6530043 - Approved By: NOREVIEW : 02-13-2018:13:39:20
2/20/2018	2645	Opposition to Mtn ...	OPPOSITION TO MOTION TO SUPPRESS - Transaction 6538644 - Approved By: SWILLIAM : 02-20-2018:09:
2/20/2018	NEF	Proof of Electronic Service	Transaction 6540696 - Approved By: NOREVIEW : 02-20-2018:16:09:52
2/20/2018	NEF	Proof of Electronic Service	Transaction 6538921 - Approved By: NOREVIEW : 02-20-2018:09:52:25
2/20/2018	2592	Notice of Witnesses	Transaction 6540385 - Approved By: PMSEWELL : 02-20-2018:16:08:39
2/20/2018	2490	Motion ...	STATE'S MOTION TO ADMIT PRELIMINARY HEARING TESTIMONY OR, IN THE ALTERNATIVE, MOTION FO
2/21/2018	3370	Order ...	MATERIAL WITNESS ORDER - Transaction 6542153 - Approved By: NOREVIEW : 02-21-2018:12:31:34
2/21/2018	3860	Request for Submission	Transaction 6542017 - Approved By: YVILORIA : 02-21-2018:12:25:21

Case Description: STATE VS. TAREN DESHAWN BROWN (TN)(D6)

Case ID: CR17-1851 **Case Type: CRIMINAL** **Initial Filing Date: 11/15/2017**

2/21/2018	3860	Request for Submission	Transaction 6541981 - Approved By: YVILORIA : 02-21-2018:12:15:06
2/21/2018	3860	Request for Submission	- Transaction 6541955 - Approved By: PMSEWELL : 02-21-2018:12:07:15
2/21/2018	3860	Request for Submission	- Transaction 6541920 - Approved By: PMSEWELL : 02-21-2018:12:01:42
2/21/2018	3860	Request for Submission	- Transaction 6541896 - Approved By: PMSEWELL : 02-21-2018:11:59:56
2/21/2018	1302	Material Witness-Bench Warrant	Transaction 6542154 - Approved By: JMARTIN : 02-21-2018:12:37:27
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542174 - Approved By: NOREVIEW : 02-21-2018:12:38:35
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542160 - Approved By: NOREVIEW : 02-21-2018:12:33:55
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542155 - Approved By: NOREVIEW : 02-21-2018:12:32:34
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542139 - Approved By: NOREVIEW : 02-21-2018:12:26:25
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542114 - Approved By: NOREVIEW : 02-21-2018:12:16:06
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542091 - Approved By: NOREVIEW : 02-21-2018:12:08:14
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542064 - Approved By: NOREVIEW : 02-21-2018:12:02:53
2/21/2018	NEF	Proof of Electronic Service	Transaction 6542055 - Approved By: NOREVIEW : 02-21-2018:12:02:22
2/21/2018	NEF	Proof of Electronic Service	Transaction 6541333 - Approved By: NOREVIEW : 02-21-2018:09:05:47
2/21/2018	3836	Extradition and Authorization	Transaction 6542157 - Approved By: NOREVIEW : 02-21-2018:12:32:54
2/22/2018	MIN	***Minutes	2/14/18 MOTION TO CONFIRM - Transaction 6545382 - Approved By: NOREVIEW : 02-22-2018:15:48:14
2/22/2018	NEF	Proof of Electronic Service	Transaction 6545390 - Approved By: NOREVIEW : 02-22-2018:15:49:05
2/23/2018	1310	Case Appeal Statement	Transaction 6548055 - Approved By: YVILORIA : 02-26-2018:08:38:11
2/23/2018	S200	Request for Submission Complet	
2/23/2018	S200	Request for Submission Complet	
2/23/2018	S200	Request for Submission Complet	
2/23/2018	S200	Request for Submission Complet	
2/23/2018	S200	Request for Submission Complet	ORDER
2/23/2018	MIN	***Minutes	2/21/18 PRE-TRIAL MOTIONS - Transaction 6546233 - Approved By: NOREVIEW : 02-23-2018:09:32:12
2/23/2018	3060	Ord Granting Mtn ...	FOR EQUAL ACCESS TO JUROR INFORMATION - Transaction 6546549 - Approved By: NOREVIEW : 02-23-2
2/23/2018	2515	Notice of Appeal Supreme Court	Transaction 6548054 - Approved By: YVILORIA : 02-26-2018:08:37:47
2/23/2018	3060	Ord Granting Mtn ...	TO SUPPRESS OR REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LCR 7(C) - Transaction 654
2/23/2018	NEF	Proof of Electronic Service	Transaction 6546234 - Approved By: NOREVIEW : 02-23-2018:09:33:02
2/23/2018	NEF	Proof of Electronic Service	Transaction 6546555 - Approved By: NOREVIEW : 02-23-2018:10:28:30
2/23/2018	NEF	Proof of Electronic Service	Transaction 6547431 - Approved By: NOREVIEW : 02-23-2018:14:22:41
2/26/2018	NEF	Proof of Electronic Service	Transaction 6548228 - Approved By: NOREVIEW : 02-26-2018:08:38:55
2/26/2018	NEF	Proof of Electronic Service	Transaction 6548232 - Approved By: NOREVIEW : 02-26-2018:08:39:22
2/26/2018	NEF	Proof of Electronic Service	Transaction 6548259 - Approved By: NOREVIEW : 02-26-2018:08:49:41
2/26/2018	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6548256 - Approved By: N

FILED
Electronically
CR17-1851
2018-02-23 02:19:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6547422

CODE NO. 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

TAREN DESHAWN BROWN, also known as TAREN DE SHAWNE BROWN, also known as "GOLDY-LOX,"

Defendant.
_____/

Case No. CR17-1851

Dept. No. 6

ORDER GRANTING MOTION TO SUPPRESS OR REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO LCR 7(C)

Before this Court is a *Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(c)* ("*Motion*") filed by Defendant TAREN BROWN ("Mr. Brown") through his counsel Emilie Meyer, Deputy Public Defender. The State of Nevada filed its *Opposition to Motion to Suppress* ("*Opposition*") through its counsel Deputy District Attorney Adam D. Cate. No reply was filed.

On February 21, 2018, the Court held a hearing on all pretrial motions, and the parties presented oral argument on the instant *Motion*. Mr. Brown then submitted the *Motion* for decision. After hearing the evidence and argument, and analyzing the same under the applicable law, the Court finds the *Motion* should be granted/denied.

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I. FACTS AND PROCEDURAL HISTORY

On October 28, 2017, Mr. Brown was apprehended by officers with the Reno Police Department ("RPD") after Mr. Brown allegedly pointed a gun at VINTELL LAMONTTA JOHNSON ("Mr. Johnson") and pulled the trigger. See *Information*, filed November 28, 2017. Officers handcuffed Mr. Brown and conducted a search of his person. *Motion*, p. 2. Shortly after the search, Mr. Brown was placed in an RPD squad car and Sergeant Larmon Smith ("Sergeant Smith") conducted an interrogation. Id. Officer Tasheeka Claiborne ("Officer Claiborne") recorded the interrogation. Id. Said recording was disclosed by the State and provided as Audio Interview 171028_0004 ("Audio Interview"). Id.

Prior to questioning, Sergeant Smith provided the following admonishment,[1] as reflected in Audio Interview at 1:26-1:57:

> Sergeant Smith: You are in custody man. You have rights, okay, so I just want you to know that you don't have to talk to me. You have the right to remain silent, you know, and if we do talk about stuff, you know, we can use that stuff against you. Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well. Now, do you understand your rights everything (indistinct) just said, Mr. Brown?
>
> Mr. Brown: Yes, I heard you.
>
> Sergeant Smith: Okay now do you understand that your rights and stuff. Do you want to tell me your side of it and tell me what happened, what led up to this bro?

In response to Sergeant Smith's admonishment, Mr. Brown appeared to waive his rights and made a number of incriminating statements regarding the incident to Sergeant Smith and Officer Claiborne. See Audio Interview, generally. Mr. Brown now seeks to

[1] As the recording has not been professional transcribed, Sergeant Smith's admonishment, alone, was transcribed by defense counsel. The Court listened to the recording in question at the hearing on February 21, 2018 and notes the aforementioned transcription accurately reflects the admonishment given to Mr. Brown by Sergeant Smith.

suppress the recording of his interrogation based on Sergeant Brown's failure to properly Mirandize Mr. Brown and, therefore, lack of voluntariness of Mr. Brown's statements. *Motion*, p. 2.

In his *Motion*, Mr. Brown argues Sergeant Smith's Miranda warning was deficient based on three primary grounds. First, Mr. Brown contends Sergeant Smith failed to communicate Mr. Brown's right to have counsel present during questioning. *Motion*, p. 5. Mr. Brown maintains the information regarding a right to counsel during questioning is "'an absolute prerequisite to interrogation [and] [n]o amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead.'" *Motion*, p. 5, quoting Miranda v. Arizona, 384 U.S. 436, 471-72 (1966). Mr. Brown argues Sergeant Smith's statement, "[i]f you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well," suggests the right to an attorney attaches only after charges are filed and not during or before questioning. Id., p. 7.

Second, Mr. Brown contends Sergeant Smith failed to communicate Mr. Brown's ability to exercise his rights at any time. *Motion*, p. 5. While Mr. Brown concedes the language in Miranda is less absolute as to this right, Mr. Brown argues "[w]ithout the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice." Id., quoting Miranda, 384 U.S. at 474.

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Third, Mr. Brown maintains Sergeant Smith improperly warned him regarding the adverse use of his statements in the courtroom. *Motion*, p. 6. Mr. Brown contends Sergeant Smith's statement, "we can use that stuff against you" fails to convey the full exposure faced when making a statement because it omits the phrase "in court," refers to statements as "stuff," and includes the word "we." Id.

Because Sergeant Smith's Miranda warning was constitutionally ineffective, Mr. Brown argues he did not have "full awareness" of his Miranda rights and, therefore, did not voluntarily waive them. Id., p. 9.

The State opposes the *Motion*, maintaining "the precise language of the warning is not to be challenged so long as the proper information is conveyed." *Opposition*, p. 2. The State contends Sergeant Smith conveyed the proper information, as federal courts have consistently found Miranda warnings adequate where the suspect was not specifically warned his statements would be used in a court of law. Id., p. 3, citing United States v. Frankson, 83 F.3d 79, 81 (4th Cir. 1996); United States v. Castro-Higuero, 473 F.3d 880, 886 (8th Cir. 2007); United States v. Crumpton, 824 F.3d 593, 606 (6th Cir. 2016). The State emphasizes Mr. Brown provides no contrary authority.

In addition, the State contends the warning adequately conveyed Mr. Brown's right to an attorney during questioning. Id., p. 4. The State argues the Nevada Supreme Court has explicitly held a Miranda warning that conveys the right to an attorney necessarily conveys that the attorney may be present for questioning. Id.; see also Criswell v. State, 84 Nev. 459, 443 P.2d 552 (1968), disapproved on other grounds by Finger v. State, 117 Nev. 548 (2001). The State also notes various federal court cases reaching similar conclusions. Id., p. 5.

The State also maintains there is no legal requirement to inform a suspect he may terminate questioning at any time, and emphasizes Mr. Brown again provides no contrary authority for his contention. Id., p. 7.

Therefore, the State maintains Mr. Brown's acknowledgment of Sergeant Smith's Miranda warning and subsequent discussion of his participation in the incident in question constituted a valid waiver of his Fifth Amendment privilege. Id., p. 10, citing Allen v. State, 91 Nev. 568 (1975).

On February 21, 2018, the Court heard oral argument on the *Motion*, during which the parties reiterated their respective arguments and responded to the Court's inquiries. Thereafter, the Court took the *Motion* under advisement.

Accordingly, after review of the papers and pleadings filed, the oral argument of the parties, and the applicable law, the Court sets forth its Order as follows.

II. STANDARD OF REVIEW; LAW AND ANALYSIS

The admissibility of any statement given during a custodial interrogation depends on whether the police provided a suspect with four warnings: "(1) the right to remain silent, (2) that anything he says can be used against him in a court of law, (3) that he has the right to the presence of an attorney, and (4) that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." United States v. Perez-Lopez, 348 F.3d 839, 848 (9th Cir. 2003) (emphasis removed) (numbering added). The Supreme Court of the United States has "never insisted that *Miranda* warnings be given in the exact form described in [the *Miranda*] decision," and moreover, "no talismanic incantation [is] required to satisfy its strictures." Duckworth v. Eagan, 492 U.S. 195, 202-03, 109 S. Ct. 2875, 2880 (1989). The inquiry is "whether the warnings reasonably 'conve[y] to [a suspect]

his rights as required by *Miranda*.'" Florida v. Powell, 559 U.S. 50, 60, 130 S. Ct. 1195, 1204 (2010) *citing* Duckworth, *supra*. However, "thoroughness and clarity are especially important when communicating with uneducated defendants." Perez-Lopez, 348 F.3d at 848. To be constitutionally adequate, Miranda warnings must be "sufficiently comprehensive and comprehensible when given a commonsense reading." Powell, 559 U.S. at 63.

As a general rule, "suppression issues present mixed questions of law and fact." State v. Beckman, 129 Nev. Adv. Op. 51, 305 P.3d 912, 916 (2013). When ruling on a motion to suppress, a district court should set forth factual findings in support of its determination in order to aid appellate review. Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005). Pursuant to Nevada Supreme Court authority, the Court makes its findings of fact and conclusions of law on each of Mr. Brown's grounds for suppression of the *Audio Interview*.

Mr. Brown does not challenge his "right to remain silent," and therefore, the Court does not discuss it here. Instead, the Court analyzes whether Mr. Brown's right to counsel was effectively conveyed and whether Sergeant Smith effectively informed Mr. Brown that anything he said could be used against him "in a court of law."

A. Right of Subject to be Informed Statements May be Used Against Him in a Court of Law.

The second *Miranda* warning requires police to inform a defendant "that anything he says can be used against him in a court of law." Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630 (1966). As Miranda explains, in full,

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> The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.

Miranda v. Arizona, 384 U.S. 436, 469, 86 S. Ct. 1602, 1625 (1966).

The Court has not located any United States Supreme Court or Nevada Supreme Court authority directly addressing the sufficiently of a Miranda warning that omits the phrase "in court," but is persuaded by federal circuit court authority. In United States v. Franklin, 83 F.3d 79, 81 (4th Cir. 1996), the Fourth Circuit found it was not critical "that [the officer] failed to state that Frankson's statements could be used against him at a particular location, in court. [The officer]'s instruction unequivocally conveyed that all of Frankson's statements could be used against him anytime, anywhere, including a court of law, a broader warning that Miranda actually requires." In addition, in United States v. Crumpton, 824 F.3d 593, 606 (6th Cir. 2016), the Sixth Circuit found "[a] suspect who is informed of his right to remain silent and the fact that failing to do so will result in his statements being used 'against him' is sufficiently informed of the key information the warning seeks to provide" despite not being warned specifically that the statements could be used in court.

Thus, based upon the aforementioned persuasive authority, the Court finds Sergeant Smith's admonishment that "[y]ou have the right to remain silent, you know, and if we do talk about stuff, you know, we can use that stuff against you," satisfies the requirements of Miranda and does not, itself, warrant suppression of Mr. Brown's interview with Sergeant Smith.

B. Right to Counsel During Questioning.

Miranda requires all individuals "be informed, prior to custodial interrogation, 'that [they have] the right to the presence of an attorney, and that if [they] cannot afford an attorney one will be appointed for [them] prior to any questioning if [they] so desire." U.S. v. Connell, 869 F.2d 1349, 1351 (9th Cir. 1989), quoting Miranda, 348 U.S. at 479. "What Miranda requires 'is meaningful advice to the unlettered and unlearned in language which [they] can comprehend and on which [they] can knowingly act.'" Connell, 869F.2d at 1351, quoting Coyote v. U.S., 380 F.2d 305, 308 (10th Cir. 1967). In order for the warning to be valid, the combination of the wording of its warnings cannot be affirmatively misleading. Id. at 1352. "The warning must be clear and not susceptible to equivocation." U.S. v. San Juan-Cruz, 314 F.3d 384, 387 (9th Cir. 2002). In addition, "a Miranda warning must convey *clearly* to the arrested party that he or she possesses the right to have an attorney present prior to and during questioning." Id. at 388 (emphasis in original).

Here, Sergeant Smith informed Mr. Brown as follows: "Obviously if you can't afford an attorney, or something like that, regardless of what charges we have for you, we can always provide one of them for you as well." Sergeant Smith did not explicitly inform Mr. Brown that he had the right to the presence of counsel prior to and during questioning.

The State relies on the Nevada Supreme Court's decision in Criswell for the proposition that a Miranda warning that conveys the right to an attorney necessarily conveys that the attorney may be present for questioning. *Opposition*, p. 4; Criswell, 84 Nev. at 462, 443 P.2d at 554 ("While the warnings given in the district attorney's office did not specifically advise the appellant that he was entitled to have an attorney present at that moment and during all stages of interrogation, no other reasonable inference could be drawn from the

warnings as given."). The State also cites to numerous courts that have reached similar conclusions. However, those cases are easily distinguishable from the facts of this case.

In Criswell, prior to questioning, the defendant "was advised of his constitutional right to remain silent, that anything he might say could be used against him in court, that he had the right to counsel, and if he was indigent and could not afford counsel that the counsel would be provided." Id. at 461, 443 P.2d at 553. In addition, in United States v. Lamia, 429 F.2d 373, 375-76 (2nd Cir. 1970), the defendant was advised that "he need not make any statement to us at that time, that any statement he would make could be used against him in court; he had a right to an attorney, if he wasn't able to afford an attorney, an attorney would be appointed by the court." With regard to the defendant's contention that he was not apprised he had the right to the presence of an attorney during questioning, the Second Circuit found, "having just been informed that he did not have to make any statement to the agents outside of the bar, Lamia was effectively warned that he need not make any statement until he had the advice of an attorney." Id. at 377.

However, the State is incorrect that a warning that conveys the right to an attorney **necessarily** conveys that the attorney may be present for questioning. The Ninth Circuit's decision in Connell makes it clear otherwise unobjectionable Miranda warnings have not been found inadequate by courts "simply because they fail explicitly to state that an individual's right to appointed counsel encompasses the right to have that counsel present prior to and during questioning." Connell, 869 P.2d at 1351. Rather, "where individuals have been separately advised both of their right to counsel before and during questioning and of their right to appointed counsel, reviewing courts will assume that a logical inference has been made – that is, that appointed counsel is available throughout the interrogation

process." Id. at 1351-52. However, the Ninth Circuit rejected as "fatally flawed...a version of the Miranda litany if the combination or wording of its warnings is in some way affirmatively misleading, making such an inference less readily available." Id.

Unlike the cases relied upon by the State, Mr. Brown was not separately apprised of his right to an attorney and his right to have an attorney appointed to him such that "no other reasonable inference could be drawn from the warnings as given." See Criswell, at 461, 442 P.2d at 553. Rather, the Court finds the combination of words used by Sergeant Smith was both "affirmatively misleading" and "subject to equivocation." See San Juan-Cruz, 314 F.3d at 387. Sergeant Smith's warning, viewed as a whole, is subject to the reasonable interpretation that Mr. Brown did not have the right to counsel during questioning. The Court notes a defendant is entitled to be informed of **both** his right to the presence of counsel during questioning **and** his right to be appointed counsel to represent him if he is indigent. These are separate admonishments that were apparently merged into one by Sergeant Smith such that Mr. Brown was never explicitly informed he had the right to an attorney **during questioning.** In addition, Sergeant Smith's use of the phrase, "regardless of what charges we have for you, we can always provide one of them for you as well," implies Mr. Brown may have an attorney appointed to defend him against whatever charges result from his arrest. Because Mr. Brown had not yet been charged with a crime, Sergeant Smith's warning was subject to the reasonable misinterpretation that Mr. Brown had the right to have counsel appointed at some future point in time after he had been charged with a crime, not prior to and during questioning. As such, Sergeant Smith's warning was ambiguous, unclear, subject to equivocation, and was not the "fully effective equivalent" of the language used in the Miranda decision.

Thus, the Court finds the warning was constitutionally ineffective. Suppression of Mr. Brown's interview with Sergeant Smith is required and may not be used in the State's case in chief.[2]

C. Voluntariness of Statement.

In order to admit statements made during custodial interrogation, the defendant must knowingly and voluntarily waive the Miranda rights. Kroger v. State, 117 Nev. 138, 142, 17 P.3d 428, 430 (2001). The Court reviews "the facts and circumstances of each particular case weighing the totality of the circumstances to determine whether the Miranda warnings were properly given and whether the defendant waived his Miranda rights." Id.

The Court finds Sergeant Smith's admonishment did not adequately and reasonably convey the third warning to Mr. Brown such that it would make him aware that he had the right to the presence of counsel prior to and during questioning. As such, the Court similarly finds Mr. Brown did not "voluntarily, knowingly and intelligently" waive his Miranda rights, requiring suppression of Mr. Brown's interview with Sergeant Smith. See Miranda, 384 U.S. at 444.

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[2] The suppression of Mr. Brown's audio interview does not preclude the State from admitting Mr. Brown's otherwise inadmissible statements for the limited purpose of impeaching Mr. Brown's testimony. In Harris v. New York, 401 U.S. 222, 225-26 (1971) the United States Supreme Court reasoned, "[e]very criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury...The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances." (internal citations omitted); see also Allan v. State, 103 Nev. 512, 513, 746 P.2d 138, 140 (1987).

III. CONCLUSION

The Court concludes the audio interview of Mr. Brown should be suppressed for failure to properly Mirandize Mr. Brown. As such, Audio Interview 171028_0004 may not be used by the State in its case in chief.

Accordingly, and good cause appearing therefor,

IT IS HEREBY ORDERED the *Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(c)* is GRANTED.

Dated this 22nd day of February, 2018.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 23rd day of February, 2018, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

ADAM CATE, ESQ.

ERICA FLAVIN, ESQ.

EMILIE MEYER, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Brey

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2018-02-13 01:38:53 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6530043

CASE NO. CR17-1851 **STATE OF NEVADA VS. TAREN DESHAWN BROWN**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
	ARRAIGNMENT	
1/4/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 J. Martin (Clerk) D. Greco (Reporter)	Deputy District Attorney Adam Cate, Esq. was present on behalf of the State. Defendant was present with counsel, Deputy Public Defender Jennifer Mayhew, Esq. Specialist Jill Berryman was present on behalf of the Division of Parole and Probation. Defense counsel stated after speaking with the Defendant it is the Defendant's wish to proceed in the matter and continue to be represented by the Public Defender's Officer. Defense counsel requested the Letter and Petition for Writ of Habeas Corpus filed on December 1, 2017, be stricken as fugitive documents. Defense counsel further indicated the Memorandum filed December 28, 2017, will be withdrawn. **TRUE NAME: TAREN DESHAWN BROWN** Defendant acknowledged receipt of the Information; indicated to the Court that his name is accurately reflected on line 12; waived reading and entered pleas of not guilty to all charges contained within the Information. Defense counsel stated the Defendant wishes to invoke his right to a speedy Trial. **COURT** canvassed the Defendant regarding his not guilty pleas and his right to a speedy Trial. Respective counsel estimated Trial would take approximately 5 days and requested a hearing be scheduled for Pre-Trial Motions. Defense counsel indicated Counsel Meyer or Counsel Leslie will be trying the matter. **COURT FURTHER ORDERED** matter continued for Pre-Trial Motions, Motion to Confirm Trial and Jury Trial. Defendant remanded to the custody of the Sheriff.	**2/21/18 11:00 a.m. Pre-Trial Motions** **2/14/18 9:00 a.m. Motion to Confirm Trial** **2/26/18 9:00 a.m. Jury Trial (5 days)**

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Jacqueline Bryant
Clerk of the Court
Transaction # 6545382

CASE NO. CR17-1851 **STATE OF NEVADA VS. TAREN DESHAWN BROWN**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
	MOTION TO CONFIRM	
2/14/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 J. Martin (Clerk) C. Wolden (Reporter)	Deputy District Attorney Nathan MacLellan, Esq. was present on behalf of the State. Defendant was present with counsel, Deputy Public Defender Emilie Meyer, Esq. Specialist Dwayne Hamill was present on behalf of the Division of Parole and Probation. State's counsel confirmed Trial for February 26, 2018. Defense counsel confirmed Trial for February 26, 2018, and request the Court keep the matter scheduled for 5 days although it is possible it could conclude after 4. Defense counsel discussed arguments on the Motion to Suppress. State's counsel stated Counsel Cate will file the opposition upon returning to the office. **COURT** discussed Trial schedule and directed counsel to file non-opps if appropriate and replies if needed; Court further indicated it intends on granting the Motion for Equal Access to juror Information in accordance with its prior rulings in other matters. Defendant remanded to the custody of the Sheriff.	**2/21/18 11:00 a.m. Pre-Trial Motions** **2/26/18 9:00 a.m. Jury Trial (5 days)**

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Clerk of the Court
Transaction # 6546233

CASE NO. CR17-1851 **STATE OF NEVADA VS. TAREN DESHAWN BROWN**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
	PRE-TRIAL MOTIONS	
2/21/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 J. Martin (Clerk) C. Wolden (Reporter)	Deputy District Attorney Adam Cate, Esq. was present on behalf of the State. Defendant was present with counsel, Deputy Public Defender Emilie Meyer, Esq. and Chief Deputy Public Defender James Leslie, Esq. ***Exhibit A was marked prior to the hearing.*** **COURT** reviewed the procedural history of the matter and all Pre-Trial Motions filed in this matter. **COURT ORDERED** the Defendant's Request for Full Discovery filed January 5, 2018, is granted; Motion for Equal Access to Juror Information filed January 24, 2018, is granted and the State must disclose the criminal histories it gather, if any for potential venire members; the Stated shall provide copies of the criminal histories to the Court and Defense counsel may retrieve them; Motion in Limine Re: Alleged Other Bad Acts filed January 24, 2018, is granted with no opposition; Motion in Limine Re: Prior Convictions filed January 24, 2018, is granted with no opposition; Motion to Invoke Rule of Exclusion and Motion Regarding Custody During Trial filed January 24, 2018, is granted and respective counsel shall inform all witnesses they are not permitted to speak with each other regarding this matter while waiting to testify. States counsel stated if the Motion to Suppress is granted the State will seek to admit jail phone calls of the Defendant. **COURT ORDERED** the Defendant's jail phone calls are not subject to the Order regarding custody status and the jail phone calls shall be addressed separately when appropriate. Counsel Meyer indicated she intends to oppose the State's Motion to Admit Preliminary Hearing Testimony or, In the Alternative, Motion for Issuance of a Material Witness Warrant filed February 20, 2018. Counsel Meyer requested the Court allow for arguments on the Motion prior to the commencement of Trial on Monday morning. State's counsel requested the Material Witness Bench Warrant issue pending arguments on the Motion. Counsel Meyer expressed concerns regarding the Material Witness Order. **COURT ORDERED** the request for Material Witness Order is granted and a Material Witness Bench Warrant shall issue pending full arguments on the Motion. Counsel Meyer stated her opposition would be filed no later than 5:00 p.m. on Friday. Counsel Meyer argued in support of the Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(C) filed February 6, 2018. State's counsel discussed Exhibit A.	**2/26/18** **9:00 a.m.** **Jury Trial** **(5 days)**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
2/21/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 J. Martin (Clerk) C. Wolden (Reporter)	Counsel Meyer indicated she does not object to the portion regarding the Miranda warning, for purposes of this hearing only, but objects to the entirety of the recording being played and admitted. ***Defense objection overruled, Exhibit A was admitted.*** Counsel Meyer stated for the record that the State's witness had been present throughout arguments. Larman Smith was sworn to testify and directly examined by Counsel Cate. ***Exhibit A was played for the Court.*** Mr. Smith was cross examined by Counsel Meyer. State's counsel argued in opposition to the Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(C) filed February 6, 2018. Counsel Meyer further argued in support of the Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(C) filed February 6, 2018. Discussion ensued regarding proposed Jury Instructions and Trial Schedule; Court informed Respective counsel it would pull to alternate Jurors. **COURT** took the Motion to Suppress or Request for an Evidentiary Hearing Pursuant to LCR 7(C) filed February 6, 2018, under advisement. State's counsel requested the bail for the Material Witness be set at $50,000.00 cash only. Defendant remanded to the custody of the Sheriff.	

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Clerk of the Court
Transaction # 6546233

Exhibits

TITLE: **STATE OF NEVADA VS. TAREN DESHAWN BROWN**

PLAINTIFF: **STATE OF NEVADA** DA: **ADAM CATE, ESQ.**
DEFENDANT: **TAREN DESHAWN BROWN** DATY: **EMILIE MEYER, ESQ.**
JAMES LESLIE, ESQ.

Case No: **CR17-1851** Dept. No: **6** Clerk: **J. MARTIN** Date: **2/21/18**

Exhibit No.	Party	Description	Marked	Offered	Admitted
A	State	Interview of Taren Brown by Sgt. Smith	2/21/18	Obj. Overruled	2/21/18

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2018-02-26 08:48:07 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6548256

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA, **Case No. CR17-1851**

Plaintiff, **Dept. No. 6**

vs.

TAREN DESHAWN BROWN, also known as TAREN DE SHAWNE BROWN, also known as "GOLDY-LOX",

Defendant.

_____/

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 26th day of February, 2018, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 26th day of February, 2018

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Viloria
Yvonne Viloria
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

TAREN DESHAWN BROWN A/K/A,
TAREN DE SHAWNE BROWN A/K/A,
"GOLDY-LOX",

Respondent.
_____/

No.

NOTICE OF APPEAL

Notice is hereby given that Appellant above-named, hereby appeals to the Supreme Court of Nevada from the Second Judicial District Court Order granting Respondent's Motion to Suppress, signed and filed on February 23, 2018.

DATED: February 26, 2018.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

BY: JENNIFER P. NOBLE
Appellate Deputy
Nevada State Bar No. 9446
P. O. Box 11130
Reno, Nevada 89520
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on February 26, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jim Leslie
Chief Deputy Public Defender

Erica Flavin
Deputy Public Defender

Emilie Meyer
Deputy Public Defender

/s/ MARGARET FORD
MARGARET FORD

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 12, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Petty, Chief Appellate Deputy, Washoe County Public Defender

Emilie Meyer, Deputy Public Defender

/s/ Margaret Ford
MARGARET FORD