A: 'Cause I have a warrant for Cali, so I know I'm goin'...
Q: You have a warrant?
A: Yeah. In Cali.
Q: Will they extradite them? You sure?
A: Yes. Mmm.
Q: I don't know about that at this point. I mean...
A: That's why I don't - that's why I'm saying I - I know I'm not goin' - 'cause I - it's a lot going on now.

Def. Exh. F, at 49-50.

Defendant's knowledge of his extradition process stemmed not only from his California warrant but his extensive criminal history, which includes multiple felony arrests and convictions dating back over the course of ten (10) years. Defendant's familiarity with the system only further substantiates his proficiency with the criminal justice system, including his rights when speaking to law enforcement.

Therefore, when looking at the totality of the circumstances involving Defendant's and the supporting case law, it is evident Defendant was not in custody for purposes of triggering Miranda when speaking with Detectives. Thus, any Miranda advisement at the time of the questioning was elective and not required pursuant to the Fifth Amendment.

ii. **Defendant's Statements Were Voluntary.**

A defendant bears the initial burden of arguing that a statement was involuntarily given and requesting the appropriate hearing. Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980). Following a challenge to the voluntariness of a confession, the State must prove by a preponderance of the evidence that the confession was voluntary. Rosky v. State, 121 Nev. 184, 192 n.18, 111 P.3d 690, 695 (2005) (citing Lynum v. Illinois, 372 U.S. 528, 534, 83 S. Ct. 917 (1963)). In such an analysis, the Court must consider whether a defendant's will is overborne by physical intimidation or psychological pressures. Id. The court must review the totality of the circumstances to determine whether a defendant's confession was voluntarily given. Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987). "Factors to be considered include: the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged

nature of questioning; and the use of physical punishment such as the deprivation of food or sleep." Id.

The United States Supreme Court has recognized that before there can be a finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment, there must first be a finding of some coercive police conduct. Colo. v. Connelly, 479 U.S. 157, 166-677, 107 S. Ct. 515, 521-22 (1986) (recognizing that absent a police conduct prong, courts would be required to "divine a defendant's motivation for speaking or acting as he did even though there be no claim that governmental conduct coerced his decision."); see also United States v. Salameh, 152 F.3d 88, 117 (2d Cir. 1998) (quoting United States v. Chrismon, 965 F.2d 1465, 1469 (7th Cir. 1992)) ("A diminished mental state is only relevant to the voluntariness inquiry if it made mental or physical coercion by the police more effective.").

As previously noted above, the totality of the circumstances surrounding Defendant's questioning clearly establish Defendant's statements were voluntary. Defendant was in a comfortable environment whereby he was questioned in the middle of the afternoon, his handcuffs were removed, he was permitted to smoke cigarettes, and even hug his child. At no point did Detectives threaten, harass, or promise Defendant any benefits in exchange for speaking with them. The conversation never grew hostile and Defendant even agreed that Detectives treated him with respect and did not harass or threaten him in any way.

Additionally, Detectives indicated they appreciated the Defendant's honesty and that he was agreeing to speak with them. Detectives even reiterated they were aware Defendant did not have to speak with them:

> I mean, I'm not gonna tell you how to feel, man, one way or the other 'cause I can't imagine what you're going through in your head. I mean, I get it. You sitting here, you talking to us and I appreciate your cooperation. And I know it ain't something that you have to do, but, uh, but you sitting here talking to us, man, and - and - and all that is a blessing in itself, man, given how things coulda transpired, right?...

Def. Exh. F, at 27.

iii.

iv. Defendant Waived His Miranda Rights.

The prosecution does not need to show that a waiver of Miranda rights was express. An "implicit waiver" of the "right to remain silent" is sufficient to admit a suspect's statement into evidence. Butler, supra, at 376, 99 S. Ct. 1755, 60 L. Ed. 2d 286. Butler made clear that a waiver of Miranda rights may be implied through "the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver." 441 U.S., at 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286. The Court in Butler therefore "retreated" from the "language and tenor of the Miranda opinion," which "suggested that the Court would require that a waiver . . . be 'specifically made. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010). The question of waiver must be determined on "the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." North Carolina v. Butler, 441 U.S. 369, 374-375 (1979).

Here, Detectives did not feel compelled to advise Defendant of his Miranda rights at the outset of the interview since Defendant was not "in custody" for purposes of their questioning. Instead, Detective Grimmett advised Defendant of his rights in order to develop a rapport, not out of legal necessity. This is further evidenced by Detective Grimmett's comments prior to reading the warnings:

> **Q**: ...there's a reason for everything, right? And that's what you explained to us. There - there's a reason for everything, man. I mean, would you - would you feel better if I read you your Miranda rights and stuff, man? I mean, I don't have, I mean, you free to go, man. I mean, you know what I'm saying? I - I'm not here to jam you up. I'm here to simply get your side of the story. And that's why I appreciate - and I'll read 'em for you, you want me to read 'em to you, man. I mean, know, uh, you got the right to remain silent. Anything you say can be used against you in a court of law. You have a right to consult with an attorney before questioning. You have a right to the presence of a attorney during questioning. If you cannot afford an attorney, one will be appointed before questioning. You understand all that? You unders- you understand all that, Dre? Yeah? Yes, no, maybe so? I mean, I ain't trying to jam you - I'm just letting you know I ain't trying to trick you with nothing. You see what I'm sayin'? Those are your rights. You know what I'm sayin'? Those are your rights. Now, I'm not saying that, uh, you're under arrest, not like that. I'm just telling you those are your rights. If you - if you feelin' some kinda way - if that makes you feel better - you understand that? Yes, no? Am I making sense?

Def. Exh. F, at 23.

Without articulating any concerns or questions regarding the rights that were just explained, the Defendant immediately resumed talking to Detectives, stating "It's just that the situation sucks so bad." Furthermore, Defendant is a thirty (30) year old man with at least four (4) prior felony convictions, one of which he had been "on the run" from since 2014. The ease at which Defendant answered questions, was familiar with the extradition process, and continued to engage with Detectives post Miranda, clearly demonstrates Defendant knowingly and voluntarily waived his rights.

In this case, Defendant's statement to detectives was not taken in violation of his Fifth Amendment rights. Defendant was not in custody for the purposes of Miranda. Inasmuch as detectives advised Defendant of his Miranda rights, such advisement was voluntary and not compelled. Even so, the totality of the circumstances indicate his statement was voluntary and that he even waived his rights. Accordingly, the State did not admit legally insufficient evidence to the grand jury and the instant Petition should be denied.

D. The State Did Not Fail To Present Exculpatory Evidence To The Grand Jury, Nor Did It Intentionally Conceal Exculpatory Evidence From The Grand Jury.

Pursuant to NRS 172.145, the State is required to present any exculpatory evidence it is aware of at the time of the Grand Jury presentment. NRS 172.145(2) (2017). Specifically, subsection (2) states that, "If the district attorney is aware of any evidence which will explain away the charge, he shall submit it to the grand jury." Id.

Thus, the statutory test is two-fold. First, was the State aware of the alleged evidence and secondly, was the alleged evidence of a nature which would explain away the charge. However, dismissal of an indictment on the basis of government misconduct is an extreme sanction that should be utilized infrequently. Sheriff v. Keeney, 106 Nev. 213, 216, 791 P.2d 55 (1990). In order to warrant dismissal of an indictment the defendant must show substantial prejudice. Id. In Lay v. State, 110 Nev. 1198, 886 P.2d 448 (1994), the Nevada Supreme

Court held that a defendant shows prejudice only when there is *a reasonable probability* that the outcome would have been different absent the misconduct. Id. at 1198. (emphasis added).

"Exculpatory evidence has been defined as that evidence which has a tendency to explain away the charge against the target of the Grand Jury investigation." Id. Several Nevada Supreme Court cases have interpreted what is considered exculpatory evidence. In State v. Babayan, 106 Nev. 155, 787 P.2d 805 (1990), the Nevada Supreme Court upheld the district court's finding that substantial exculpatory evidence had been known by the State, but that the prosecutors failed to present it to the grand jury. Id. The prosecution presented evidence that several children had been sexually assaulted and that some of the children indicated that there was complete penetration. Id. At the time of the grand jury presentation, the prosecutors were also aware that reports prepared by physicians who had examined the children indicated no clear evidence of penetrating injury. Id. The prosecution did not present these reports to the grand jury. Id.

The Court held that while not entirely dispositive of whether the children were sexually assaulted, see NRS 200.364(2) (defining sexual penetration as any intrusion, however slight), evidence that there were no physical findings of penetration would tend to explain away the charges against the defendants, or, at the very least, would suggest that any sexual abuse that might have occurred did not happen as recounted by some of the alleged victims. Id. The grand jury should have had this information before it in order for it to make an informed determination. Id. at 172. (emphasis added).

In Lay, infra., the Court held that a "prior inconsistent statement of a witness does not 'explain away [a criminal charge]' within the meaning of the exculpatory evidence statute." Lay, 107 Nev. at 1198. The simple fact that a witness has contradicted himself/herself in the past does not tend by itself to explain away the charge. Id. The State's duty to present exculpatory evidence does not require the State to present the defendant's theory of the case, nor does it obligate the State to conduct an investigation on part of the defense. Kinsey, 87 Nev. at 363, 487 P.2d at 341; Miley, 99 Nev. at 377.

Defendant argues the State failed to present requested exculpatory evidence to the Grand Jury, as reflected in Exhibit I to Defendant's Petition. However, none of the items listed within the letter sent by defense counsel are actually items of "exculpatory evidence." The State is not required to submit evidence to the grand jury merely because a defendant requests the State to do so. Rather, the evidence *must* be exculpatory for the State to be required to present it to the jurors. As detailed below, none of the items requested by the defense are exculpatory, and therefore, were not required to be presented pursuant to NRS 172.145.

Transcript of Las Vegas Justice Court Argument on Motion to Suppress

First, the content of this transcript, or the statements of counsel or legal rulings by the Justice Court judge are not exculpatory in any fashion, and furthermore, were not required to be disclosed to the Grand Jury as such statements are a legal opinion, and not evidence in the case. Second, this transcript in and of itself is not independently admissible, even if this Court finds the substance of the Justice Court's legal opinion was required to be disclosed to the Grand Jury. The transcript does not contain any statements or testimony of any witnesses, but is merely a transcript of a legal argument made before the justice court. There is nothing about this transcript that constitutes evidence, and as such, it is not admissible.

Field Interview Cards Reflecting Gang Affiliation of Murder Victim

This evidence is not exculpatory and is irrelevant to this case. Gang affiliation in and of itself is not exculpatory in nature, as it does not tend to explain away the charges against Defendant. Moreover, gang affiliation of any witness is tantamount to character evidence pursuant to NRS 48.045, and is inadmissible. Defendant in this case is not charged with murder, so to the extent this request relates to the murder victim, it is irrelevant in the instant proceedings. As such, no evidence whatsoever of the victim was presented to the Grand Jury, and the State did not violate NRS 172.145 by failing to present this irrelevant evidence to the Grand Jury.

Autopsy Photos Reflecting Gang Affiliation of Deceased

Such evidence, much like the prior request, is not exculpatory because it does not tend to explain away the charges here, and is inadmissible character evidence. Similarly, the State

notes Defendant is not charged with murder, and any tattoos of a deceased victim are not relevant to whether Defendant possessed a firearm.

Murder Victim's Criminal History

This too, is not exculpatory in nature, and is irrelevant. The deceased's criminal history does not explain away the firearm charges pending against Defendant. And again, Defendant is not charged with murder, so this request is also irrelevant.

Allegations Murder Victim Was Engaged In Sales of Drugs

This request is not exculpatory in nature, as it does not tend to explain away the firearms charge pending against Defendant, and again, is irrelevant.

Certain Elements of Testimony Of Raymond Moore

Raymond Moore did not testify, and again, the State is not charging Defendant with murder in this case, so the identified portions of Moore's testimony are completely irrelevant.

The Type of Gun Found In Defendant's Possession And Casings Recovered At The Scene Of The Murder

Such evidence does not tend to explain away the firearms charges pending against Defendant. Operability of the firearm, the type of firearm, and the shell casings from the shooting are irrelevant to the instant charge, and therefore are not exculpatory and were not required to be presented to the Grand Jury.

None of the enumerated items in Defendant's letter are exculpatory, and most are irrelevant and inadmissible. As such, the State did not fail to present exculpatory evidence to the Grand Jury.

Defendant similarly contends he was entitled to be advised of the place and time for the Grand Jury because he wanted to testify in this case. First, the letter Defendant sent to the State did not indicate Defendant was going to testify. Rather, the letter demanded to know the time and place of the proceedings because he "may" want to testify. Defendant is not entitled to simply know the time and place of the Grand Jury presentment because he "may" want to testify. Defendant is entitled to present his own statement to the Grand Jury, and had Defendant done so equivocally, the State would have reserved a time and date for Defendant to appear

and testify. Because no such request was made, the State did not violate its duties at the Grand Jury.

Second, if Defendant's complaint is in fact that he wanted to testify and wishes to do so, then the appropriate remedy is for this Court to grant Defendant an opportunity to appear before the Grand Jury and give his statement. However, dismissal of the instant Indictment is not warranted.

E. The State Did Not Elicit Impermissible Hearsay Evidence Before the Grand Jury, As Any Statements From Detective DePalma Demonstrate Effect Upon The Listener, And Fall Within An Exception To The Hearsay Rule.

Defendant claims the State presented impermissible hearsay evidence to the Grand Jury in the form of Detective DePalma's testimony. Under NRS 51.035, hearsay is generally defined as an out-of-court statement offered in evidence to prove the truth of the matter asserted. NRS 51.035 (2017). NRS 51.065 provides that as a general rule, hearsay testimony is inadmissible. NRS 51.065 (2017). Evidence establishing the effect upon the listener, however, or evidence providing context for a particular situation, does not constitute impermissible hearsay evidence when it is not offered to prove the truth of the matter asserted. Byford v. State, 116 Nev. 215, 232, 994 P.2d 700, 712 (2000).

Detective DePalma's testimony at the Grand Jury falls squarely within this exception. Detective DePalma testified as to the search he conducted within the apartment. When questioned about whether he was searching the apartment pursuant to a warrant or consent, he indicated consent as given to detectives who interviewed Defendant. He also testified he specifically searched the air vent because Defendant had indicated that was where the firearm would be located, and when asked about why he searched that apartment, he indicated it was because that was the apartment where Defendant had been staying. None of these statements are offered for the truth of the matters asserted therein, but rather were offered to illustrate why Detective DePalma conducted a particular search in that particular apartment. These statements are not inadmissible hearsay, and as such, this argument is without merit.

F. The State Did Not Present Impermissible Evidence Of Other Acts, Crimes, Or Wrongdoings By Defendant.

Defendant's next argument related to alleged character evidence admitted in violation of NRS 48.045.[4] While it is true NRS 48.045 prohibits the admission of character evidence or evidence of other acts at the time of trial to prove conformity therewith, there are nevertheless exceptions to that general rule. The State is entitled to present the complete story surrounding the facts and circumstances of a case in order to provide the grand jury with the complete story. The general rule of law pertaining to the "complete story" or *res gestae* was set forth by the Nevada Supreme Court in Dutton v. State, 94 Nev. 461, 581 P.2d 856 (1978). There the Court stated:

> "The State is entitled to present a full and accurate account of the circumstances of the commission of the crime, and if such an account also implicates the defendant or defendants in the commission of other crimes for which they have not been charged, the evidence is nevertheless admissible."

(quoting State v. Izatt, 534 P.2d 1107 (Idaho 1975).

In Dutton, the defendant and a co-offender entered a police sponsored store which was fronting as a "fencing" operation. Id. Negotiations were entered into with regard to several items of property, including some bronze wear and a camera. Id. As a result of that conduct, the defendant was indicted for possession of the stolen property, to include the stolen camera. Id. In finding no error with regard to the evidence dealing with his possession of the bronze wear, which was likewise stolen from the victim at the same time as the camera, the Court stated, "courts have long adhered to the rule that all the facts necessary to prove the crime charged in the indictment, when linked to the chain of events which support that crime, are admissible." Id.

The Nevada Supreme Court reaffirmed the doctrine in State v. Shade, 111 Nev. 887, 900 P.2d 327 (1995). Shade was charged with possession of controlled substances: Methamphetamine and Cocaine. Id. The drugs were found by officers pursuant to a vehicle stop, following an investigation involving the purchase/sale of a quantity of heroin by defendant Shade and his son-in-law. Id. The trial court prohibited the prosecution from

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[4] Again, the State notes this argument was also made in Defendant's Motion to Dismiss, and similarly, the State has included its argument from the State's Opposition here as well.

revealing to the trial jury evidence pertaining to the uncharged heroin transaction. Id. The Nevada Supreme Court in overruling the trial court stated:

> "If the agents are not allowed to testify regarding their surveillance, the State cannot inform the jury how Shade obtained the drugs or that officers suspected Shade was participating as a lookout during the purchase of the drugs that were ultimately found in the car he was driving. *Without such testimony, the State cannot effectively prosecute the transportation of illegal narcotics charges pending against Shade.*
>
> . . . .The charges at issue were contemporaneous to the heroin purchase, arose out of the same transaction, and involved the same participants. *The excluded evidence was inextricably intertwined with the charged crimes and completed a story leading up to Shade's ultimate arrest.* We conclude that the State's witnesses could not adequately testify about the methamphetamine and cocaine charges without some reference to the heroin sale and the accompanying surveillance activity. The district court, thus abused its discretion by granting the motion in limine. The district court should have admitted the evidence and issued a cautionary instruction to the jury.

(emphasis added).

It is important to note that the Shade court relied upon Allan v. State, 92 Nev. 318 (1976), a case where the defendant complained that the trial court erred by admitting evidence of uncharged lewd behavior in a Sexual Assault on Minor case. The Allan court explained the complete story doctrine:

> When several crimes are intermixed or blended with one another, or connected such that they form an indivisible criminal transaction and when full proof by testimony, whether direct or circumstantial, of any one of them can- not be given without showing the others, evidence of any or all of them is admissible against a defendant on trial for any offense which is itself a detail of the whole criminal scheme.

Id. at 7 (citing Allan, supra at 321). Ultimately, the Allan court found the evidence admissible stating:

> The testimony regarding the additional acts of fellatio, as well as the act of masturbation, was admissible as part of the *res gestae* of the crime charged. Testimony regarding such acts is admissible because the acts complete the story of the crime charged by proving the immediate context of happenings near in time and place. Such evidence has been characterized as the same transaction or the *res gestae*.

Id. at 8 (citing Allan, supra at 320).

Returning to the facts of Shade, the Court found that the district court improperly denied the undercover officer from testifying about the uncharged acts. Specifically, the district court erroneously relied on NRS 48.035(1), which provides for the weighing of the relative, probative and prejudicial value of the evidence. The Shade court recognized that when the complete story doctrine applies:

> The determinative analysis is not a weighing of the prejudicial effect of evidence of other bad acts against the probative value of that evidence. If the doctrine of *res gestae* is invoked, the controlling question is whether witnesses can describe the crime charged without referring to related uncharged acts. If the court determines that the testimony is relevant to the uncharged acts, it must not exclude the evidence of the uncharged acts.

Id. at 9.

The Shade court found that the uncharged acts should be admitted because, "the charges at issue were contemporaneous to the heroin purchase, arose out of the same transaction, and involved the same participants." Id. at 10. Therefore, it was necessary for the officer to be able to explain the events leading up to the arrest of the defendant for sale of controlled substance.

In Brackeen v. State, 104 Nev. 547, 763 P.2d 59 (1988), the defendant was convicted of Burglary and Possession of Credit Card Without Consent of the Owner. The defendant entered a pizza parlor, sat down at a table occupied by the Millers, and began eating their pizza and drinking their beer without their permission. Id. The defendant, thereafter, left the pizza parlor and was observed by the Millers to burglarize several automobiles. Id. The trial court allowed into evidence testimony that the defendant had helped himself to the Millers' pizza and beer even though the defendant had not been charged with that conduct. Id. The Nevada Supreme Court ruled that this evidence was admissible in that it bore on the identification of Brackeen by the Millers, and:

> Additionally, the description of Brackeen's pilfering was admissible as an integral part of the Millers' narration of the events leading up to Brackeen's removal of the personal property from the vehicles in the parking lot. We have adopted the rule that the State is entitled to present a full and accurate account of the circumstances surrounding the commission of a crime, and such evidence is admissible even if it

> implicates the accused in the commission of other crimes for which he has not been charged.

Apparent from the Nevada Supreme Court's holdings is the preference for permitting the State to present a full and accurate picture of the offense charged.

Here, the State did not present impermissible character evidence to the grand jury, but rather, presented such facts as part of the res gestae of the instant case. The complained of instances wherein the State discussed the shooting with Detective Mauch served to demonstrate to the grand jury why the detectives were interviewing the defendant, and why they asked specifically about whether he had a firearm in his possession. Notably, the State never once advised the Grand Jury of the facts surrounding the murder, or even the fact that the Defendant was charged with murder, or even that the victim died as a result of a gunshot wound inflicted by the Defendant. Rather, the State merely elicited very limited testimony to demonstrate the circumstances for why the detectives had spoken with Defendant, and why they were asking questions about his individual possession of the firearm. Because this evidence was elicited as part of the complete story of the case and to give context to the facts at hand, the State did not violate NRS 48.045.

Defendant further argues the State admitted character evidence when admitting evidence that Defendant was dealing with other charges when detectives first contacted him for an interview. Again, this is not character evidence, as the elements of those charges, the nature of those charges, or the circumstances of his arrest were not discussed. The State is obligated to present none but legal evidence to the grand jury, and that requires the State to lay out facts to demonstrate a foundation for admission of the evidence – including facts demonstrating Defendant was not in custody for the purposes of Miranda in order to admit his statement. As such, this testimony was not impermissible character evidence and does not warrant dismissal of the Indictment.

G. Even If This Court Finds The State Impermissibly Presented Improper Evidence To The Grand Jury, This Court Nonetheless Should Not Grant The Instant Petition Because The State Nevertheless Presented Sufficient Evidence To The Grand Jury.

Even if this Court finds the evidence admitted at the Grand Jury was improper, the appropriate remedy is not, contrary to Defendants' position, to dismiss the Indictment in its entirety. Rather, the remedy is to review the evidence without regard to any improper evidence and determine whether there is sufficient probable cause. Robertson v. State, 84 Nev. 559, 445 P.2d 352 (1968).

Although the rules of evidence governing the presentation of a jury trial are generally applicable to a grand jury proceeding, the Nevada Supreme Court has long recognized that the nature of the proceeding and the fact that guilt is not at issue before the grand jury permits the relaxation of the rules in order to accommodate the process. In Robertson, the Court stated that regardless of the presentation of inadmissible testimony if there is the slightest sufficient legal evidence and best in degree to support the indictment then the indictment will be sustained. See also Franklin v. State, 89 Nev. 387, 513 P.2d 1256, wherein the Court stated:

> The legal efficacy of an indictment will be sustained if there has been presented to the grand jury the slightest sufficient legal evidence and best in degree even though inadmissible evidence may also have been adduced . . .

Furthermore, as discussed above, in Sheriff v. Keeney, 106 Nev. 213, 791 P.2d 55 (1990), the Nevada Supreme Court specifically stated, "[p]reliminarily, we observe that dismissal of an indictment on the basis of governmental misconduct is an extreme sanction which should be infrequently utilized." Id. at 216, 791 P.2d at 57.

The evidence presented to the Grand Jury in this case far exceeds the State's burden to present "slight or marginal" evidence that Defendants committed the crime alleged in the Indictment. Here, Defendant readily admitted he had a firearm in his possession. He also advised detectives where he was residing, and where the firearm could be located, even giving consent for the search of the apartment. Thus, even if this Court finds the reference to the shooting was improper, or the reference to Defendant's other charges was improper, when striking that evidence and disregarding it, the State has nevertheless met its burden of establishing probable cause for the crime charged.

CONCLUSION

For the reasons stated above, the State presented evidence sufficient to establish probable cause in this case, and did not violate its duties at the grand jury presentment. Accordingly, the State requests this Court to dismiss Defendant's Petition.

DATED this 25th day of September, 2018.

Respectfully submitted,

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

BY _____
SARAH E. OVERLY
Deputy District Attorney
Nevada Bar #12842

CERTIFICATE OF SERVICE

I certify that on the 28th day of September, 2018, I mailed a copy of the foregoing Order to:

ADRIAN LOBO, ESQ.
adrianlobo@lobolaw.net

BY _____
M. HERNANDEZ
Secretary for the District Attorney's Office

SEO/mah/L1

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GATHRITE, DEANDRE aka GATHRITE, DEANDRE TERELLE, ID# 2592432 Defendant.	Case No.: C-18-334135-1 Dept. No.: III

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, DEANDRE GATHRITE by and through his counsel of record Adrian M. Lobo, Esq. and hereby files this Reply in Support of the Petition for a Writ of Habeas Corpus. This Reply is based on the pleadings, papers, and exhibits on file with the court, as well as any oral argument entertained at the time set for hearing.

DATED this _24th__ day of September, 2018.

ADRIAN M. LOBO, ESQ.

By: __/s/ Adrian M. Lobo_____
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

1. Clarification of Facts

The State represents to this Court that the Defendant was "residing at [the Wyandotte apartment] with his girlfriend and child." *State's Return* at 4, citing the *Grand Jury Transcript* ("GJT") at 11. This is *not* an accurate statement, as set forth in the Petition.

For clarity, the Defendant reiterates what was actually said to detectives (including the detective who gave the false testimony before the grand jury):

> Q1: And this address on Wyandotte, that's your – that's Tia's place, your girlfriend, baby mama. She's only been here a couple days? And do you – you weren't living here. You – you just stayed here last night and that was it.
> A: Yeah.
> *See Petition, Ex. D* at 45. [1]

The State's assertion that the Defendant was residing at the Wyandotte address ignores clear evidence to the contrary, the least of which is the Defendant's own statement to the detectives that it was not his residence. Despite a grand juror's inquiry to determine if the address was the primary residence of the Defendant, the State through Det. Mauch persisted in this misinformation, "At that time I believe so, but they had had just moved their recently." *See Petition, Ex. H at 13*.

2. Legal Argument

The State's argument that the justice court's ruling is limited due to the lack of a preliminary hearing ignores the common-sense outcome of such rulings. The State's entire aim is to circumvent a valid ruling of the justice court because it was adverse to the State- a quest that continues to work significant prejudice on the Defendant.

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[1]See also Petition Ex. A at 1 (noting Deandre Gathrite's address as unknown).

A. The State Did Present Inadmissible Evidence Because the Evidence Was Previously Ruled Inadmissible

The State's argument in essence is that because the preliminary hearing never took place, the justice court's order is ineffective as to the admissibility of evidence before a grand jury: "[T]he Nevada Supreme Court rules a justice court has inherent authority to suppress evidence *at the time of preliminary hearing*." *State's Return* at 8 (emphasis in original). To adopt the State's reasoning ignores three very important, very basic concepts of our justice system.

Where such evidentiary issues, such as suppression, may gut the State's ability to make a probable cause showing for bind-over, this would eliminate the necessity of a preliminary hearing. In other words, the justice court's ruling has the effect of a dismissal in that suppression of some or all of the State's evidence would make it impossible or extremely difficult to make the requisite, adequate showing of probable cause necessary to proceed. In such a case, the State is arguing that because this preliminary hearing in fact does not take place it should be free to try its luck before the grand jury, even knowing that its evidence was questionable or defective enough for a judge to have suppressed it.

Likewise, the State could, in future cases, use this loophole as a means of "forum" or "judge shopping" in order to get more favorable treatment and secure an indictment when it knows or has reason to believe that the justice court and/or a specific justice of the peace is likely to rule against it. In this case, the State saw its primary pieces of evidence—the statement and the recovered firearm—suppressed, and it had no other evidence to present. Rather than have its case dismissed (which would have presented all manner of difficulty if and when it nevertheless chose to proceed to the grand jury), the State instead dismissed its case on its own motion, thereby apparently "preserving" its ability to take a second run at the Defendant. That it now also seeks to use the same evidence for this purpose—the suppression of which led to the State's dismissing its case in the justice court—only highlights the fundamental unfairness of what the State is arguing in favor of before this Court.

Third, the issue of admissibility is not exclusive of the grand jury procedure. Here, the State's evidence was considered by the justice of the peace pursuant to a timely and proper motion filed by the Defendant, and that judge rendered a decision: the evidence is inadmissible. While the State is basing its whole opposition on its apparently ability to move back and forth between justice court and the grand jury at will, with no accountability as to any of the evidence it is presenting as "legal" evidence despite a ruling to the contrary, this ignores the *purpose* of the two arenas that the State seeks to straddle: a probable cause determination. Whether the State goes to justice court or impanels a grand jury, the ultimate goal is the showing of probable cause sufficient to support a formal charge or charges against a defendant.

With this purpose in mind, it is illogical to claim that evidentiary decisions made in one arena do not (should not, cannot, etc.) impact the other. The intent can be inferred from the statute; a prosecutor may only present legal evidence to a grand jury, it must present exculpatory evidence, there are protections for the defendant that mirror some of the protections afforded in justice court, etc. To claim that one arena exists completely independent of the other only makes sense *if in fact they are kept independent of the other*. Once the State begins hopping from one proceeding to the other, it should bear the burden of its prior missteps (such as having its evidence suppressed).

As stated in the underlying Petition, the obligation of a prosecutor to present none but legal evidence to a grand jury typically is subject to retrospective analysis. The defendant in question is provided with the grand jury transcript, the exhibits (sometimes), and other discovery to support his seeking such a writ of habeas corpus upon the challenge that there was insufficient probable cause to hold him to answer for the charges. This can, and often does, include challenges to the admissibility of evidence that the State knew or should have known was not "legal" evidence-things like hearsay, vouching, improper testimony (such as a witness testifying as an unqualified expert), etc.

In this case, no such retrospective analysis is needed; a judge has already ruled the evidence to be inadmissible and has suppressed it. The State fleeing from the justice court for the relative unassuming and much more prosecutor-friendly venue of the grand jury is telling, as the grand

jurors are not convened to make qualitative determinations as to the *admissibility* or *legality* of evidence, but merely the sufficiency and the weight of it for the purposes of a probable cause determination.

B. The State's Intent to Circumvent the Justice Court's Ruling Is Evident from the State's Efforts to Relitigate Admissibility Here

The State's proper avenue when confronted with an adverse ruling is not to seek greener pastures, but to appeal the decision. NRS 177.015 is informative on this point. According to that statute, the State when faced with an order suppressing the whole of its evidence was to appeal to the district court. *NRS 177.015(1)(a). See also NRS 189.120*. To argue that the State can merely dismiss its complaint against a defendant and then seek a more favorable forum elsewhere to evade the inadmissibility of its evidence ignores common sense and sets an unhealthy precedent.

The support for this proposition comes from the State itself. "If the justice court's interlocutory legal opinions were binding upon the grand jury, NRS 172.145 would be rendered meaningless." *State's Return* at 11-12. By this logic, then the grand jury system cannot itself render the justice court procedure meaningless- precisely what the State is attempting to do here by claiming that the grand jury is the ultimate "do over" wherein it can present the same evidence exclusive of the justice court's adverse ruling. This not only renders the justice courts ultimately meaningless for probable cause determinations, it is the State outright admitting that it will forum shop to get the result it wants (if the State loses, for whatever reason, it will just go to the grand jury where it has much more control over the proceedings).

Look no further than the State's subsection 'C' to its Return, seeking to relitigate the issue of the Defendant's statement and its admissibility. The State already fought this battle and lost; the justice court heard all of the State's extensively cut-and-paste argument that it now recycles for its Return, and ruled against it. Rather than be bound by that decision, the State went to the grand jury, presented suppressed evidence to secure an indictment, and now seeks to re-litigate the issue for its second bite at the apple.

The State's proper vehicle for this, as stated above and in the Petition, was to seek an appeal pursuant to the statute.

And indeed, all of the State's points were argued, analyzed, and decided in the justice court. The State argues that the Defendant's statement is admissible; that the Defendant was not in custody; that the Defendant's statement was voluntary; and that the Defendant waived his Miranda rights. Upon arguing all of these same points, nearly word-for-word, the justice court had the following exchange with the State:

> THE COURT: …The standard is if he is in custody, he needs to have his Miranda rights read before they interview him. It's not whether somebody feels better. That's not the way the Fifth Amendment works.
> MS. OVERLY: No, I understand that, your Honor, and I think if the detective believes he was, in fact, under custodial interrogation and in custody with regards to this case, they would have read him Miranda, either by card or memory, at the outset of the interview, but based on their position, it was the State's position in its Opposition was that he, in fact, was not. They didn't feel the need to issue these Miranda warnings at the outset or throughout any point in time in the interview, as they didn't in Fields rather.
> THE COURT: The interviews basically are voluntary. They are always voluntary interactions with the police. You cited a case where the guy's in prison, they bring him in the interview room, and he is free to leave. He may have be [sic] in prison, but in prison, his cell is his home. So they say, You are free to leave. That means go back to your cell and just go back to what is basically his home.
> MS. OVERLY: Correct.
> THE COURT: If he was free to leave, that means he was going to be uncuffed, let out, put in a police car, go back to his apartment, make a sandwich, turn on the TV, and go on with his day or by free means he is going to be in handcuffs and put in the back of the car?
> MS. OVERLY: Well, free to leave in the same respect as he was in Fields. I mean like that's why the State believes it's analogous. In that case, they even indicated that he was free to leave and by that, they meant free to leave and go back to his cell.
> THE COURT: His cell is his home.
> MS. OVERLY: Correct.
> THE COURT: Right. He's not free to go back to his home, right?
> MS. OVERLY: No, he's not because of this active parole violation where he was going to independently go back to California, as he had been doing since 2014.
> See *Petition, Ex. F* at 8-10.

The justice court expressed further dismay as the State persisted in its argument and request for a hearing to develop the record before the court:

> THE COURT: I'm not sure what issues there are to flush out. He's clearly in custody. That was all triggered by Metro. That [sic] was set in motion. They knew exactly what they were doing. They knew exactly what they were doing. They wanted to get him in custody so they could interview him on the murder case.
>
> That is the only reason how this thing starts. It's the only reason to contact San Diego. This is all a ruse. This is all a ruse by Metro to get him in custody to interview him about the murder case. So he was in custody, and when he is in custody, they should have read him his Miranda rights.
>
> Id. at. 12.

The State obviously disagreed with the justice court's ruling (it sunk the State's case). Rather than appeal, or even move for reconsideration, the State simply side-stepped the justice court. It now argues that expecting it to respect the justice court's decision somehow undermines the justice system in general, all while trying to ignore and circumvent that very same decision.

C. Substantial Prejudice Has Been Visited Upon the Defendant As a Result of the State's Ongoing Procedural Gaffes

"In order to warrant dismissal of an indictment the defendant must show substantial prejudice." *State's Return* at 23 (citing *Sheriff v. Keeney*, 106 Nev. 213, 216, 791 P.2d 55 (1990)). The State goes on to cite that "substantial prejudice" means the "'*reasonable probability*' that the outcome would have been different absent the misconduct."[2] *State's Return* at 23-24 (citing *Lay v. State*, 110 Nev. 1198, 886 P.2d 448 (1994) (emphasis in original)).

The prejudice here is extreme, both in its effect and based upon the "reasonable probability" that the grand jury would not have indicted. First, the Defendant has once more been arrested, and is presently incarcerated. This means that the Defendant, this year along, has been arrested no less

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[2] The State's misconduct is the subject of a contemporaneous Motion to Dismiss filed by the Defendant. The use here of "misconduct" comes directly from the State's Return and is quoted for the purposes of argument.

than *three* times while the State tries to figure out how to put on its case. The State first had the Defendant arrested on an inactive California warrant after the State's agents (detectives) called California authorities and requested the warrant be activated. The warrant was then turned over to the Criminal Apprehension Team for fulfillment, and the Defendant was arrested on the stale charges out of California. This is also the arrest for which the State attempts to claim that the Defendant was *not in custody* during his interrogation.

Following the Defendant's release on the aged California charges, the State then had the Defendant arrested on a newly filed open murder count. This was, apparently, based on the additional testimony of two witnesses that the State has since been unable to produce, either to support its quest for probable cause or to fulfill discovery obligations to the defense. This was the case that was dismissed in justice court once the State had its evidence suppressed.

Now, the Defendant languishes in Clark County Detention Center following his *third* arrest on the same set of facts, and owing to the State's indictment in this case.

The prejudice is not only in the State's almost obsessive need to see the Defendant in jail; it is in the utter disruption this has caused to the Defendant's life, his employment prospects, his personal life with his girlfriend and children, etc.[3]

More importantly, however, is the "reasonable probability" analysis. Here, the State presented previously suppressed evidence to the grand jury, with no mention of the court's disposition and in knowing violation of various legal and ethical obligations that otherwise prohibited it from doing so. Without going before a grand jury and presenting the Defendant's statement and the firearm in question, it is reasonably probable that the grand jury would not have indicted, if indeed any evidence was presented at all. When this evidence was suppressed in the justice court, it was sufficient to move the State into dismissing its case. Therefore, it stands to

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[3] Following the Defendant's third arrest, the Defendant's girlfriend and children were evicted from their apartment due to their association with the Defendant.

reason that the State had, and has, no other evidence with which to support a probable cause determination.

D. The State Fails to Show That DePalma's Testimony Was Excepted from Hearsay Under "Effect Upon the Listener"

The State argues that because Det. DePalma was merely following orders, the statements attributed to the Defendant as relayed through another declarant are permissible. This threatens to become an exception that swallows the rule.

First, the statements were not elicited on testimony merely to show the "effect" upon Det. DePalma (who could just as easily have testified that he searches the apartment and found the weapon). Instead, the State deliberately questioned Det. DePalma as to supposed statements from the Defendant—that he supposedly lived there, that the weapon was there, where it was, that he consented to the search, etc.—so as to bolster the State's evidence as a means of further undermining the justice court's suppression of that very same statement. Rather than ask why Det. DePalma was searching the apartment (i.e. because he was instructed to, believed there to be contraband, was serving a warrant, etc.), the State elicited hearsay testimony. The entirety of his testimony cannot be said to fall entirely within the "effect upon the listener" exception. Were this true, any prosecutor would simply need to ask why a witness did or believed something, and any hearsay statement recollected for that purpose would arguably go to its "effect on the listener."

Second, Det. DePalma did not merely recount his actions as a result of what he apparently heard; he adopted the statements wholesale. During the hearing, he testified as to what *Metro* (as an organization) knew, had been told, had heard, etc.- not merely him. This adoption of the Defendant's statements, as relayed through an intermediary (i.e. textbook hearsay), exempts Det. DePalma from the "effect on the listener" exception. The statements were elicited specifically as a means of introducing the Defendant's words into testimony.

Lastly as to this point, the State has failed to address the fact that the Defendant's apparent statements constitute hearsay within hearsay. The "effect upon the listener" exception would only apply to the statements of his fellow detectives and other colleagues. Instead, Det. DePalma

testified as to what someone else told him the Defendant had said, and therefore Det. DePalma was not acting under the effects of the Defendant's own words, but what he had been told those words were.

E. The State's Own Return Demonstrates That Its Directed, Intentional Effort to Elicit Bad Acts Testimony Was Improper

The State claims that its focused examination of Det. Mauch was part of an effort to present a complete story to the grand jurors, and therefore was not impermissible introduction of prior bad acts. *State's Return* at 28. This argument must give way to the plain meaning of the charge presented in the proposed indictment: possession of a firearm by a prohibited person. Ignoring, for a moment, the plain wording of that charge, we turn to the elements necessary to prove such a charge.

Ownership or possession of firearm by a prohibited person is covered under NRS 202.360. It states, in relevant part, that "A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person" meets certain criteria that prohibit them from having such ownership or possession of a firearm. Therefore, the two main concerns for a probable cause determination are 1) did the defendant have in his possession a firearm?; and 2) was the defendant prohibited from having in his possession a firearm? The inquiry ends there.

The State's claims that it was necessary to elicit additional testimony in order to present some "complete story" ignores the reality of the charge- simple possession. For the purposes of this type of charge, the simple act of having the firearm would constitute the offense. It is not necessary to elicit purposefully testimony that a defendant had been arrested on another charge; that a defendant had been arrested by a specialty team of officers tasked with serving warrants; that a defendant was facing "other charges" in addition to the *lone* weapons charge at issue during the instant grand jury proceedings; that the firearm in question had been fired recently; that the firearm in question had been used in a homicide recently; and/or that a defendant had used the firearm in a homicide recently.

The grand jury could have made a probable cause determination on the mere possession of a firearm without additional, prejudicial information that tended to show the Defendant was connected to other crimes, was already under arrest on unrelated charges, and that the weapon had not only been fired recently, but that it had been fired by the Defendant as part of a homicide.[4] The State also claims that it presented this extraneous information in as limited a manner as possible: "Notably, the State never once advised the Grand Jury of the facts surrounding the murder, or even the fact that Defendant was charged with murder, or even that the victim died as a result of a gunshot wound inflicted by the Defendant." *State's Return* at 31. However, the transcript speaks for itself.

One of the witnesses, Det. DePalma, testified that is a homicide detective; that he was working in that capacity pursuant to this case; and that he was working the case alongside of the *other* detective-witness who testified before the grand jury.[5] Based upon these associations, it is not too questionable of a leap for the grand jurors to have inferred that the person shot with the gun in question succumbed to his wounds (else homicide detectives would not be investigating).

Finally, this Court need look no further than the State's efforts to excuse its failure to present exculpatory evidence to see how disingenuous its *res gestae* argument is here.

When working down the defense's *Marcum* letter in list fashion, the State disposes in rote fashion of several requests.[6] For example, the State claims it had no obligation to show any gang affiliation, criminal history, or drug sales by the shooting victim, "T-Rex," because is it "irrelevant,"

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[4] The Defendant is not conceding to any of these allegations, but merely summarizing the witness's testimony for illustrative purposes.

[5] See underlying Petition, Ex. G at 16-17.

[6] It should be noted the letter, sent to the State, was drafted in anticipation that the State would proceed forward with both the Murder With Use of Deadly Weapon and the Possession of a Firearm by Prohibited Person if their comatosed witness, Raymond Moore, had come to or they acquired new legal evidence. If the State later chooses to go to the Grand Jury later for the Murder charge, as it eluded to at the Grand Jury Return Hearing, Gathrite will address those applicable issues in turn.

"tantamount to character evidence pursuant to NRS 48.045," and is "inadmissible character evidence." *State's Return* at 25-26. This is, however, precisely in the same vein of the "evidence" it impermissibly injected into the proceedings to taint the minds of the grand jurors against the Defendant.

By eliciting testimony that the Defendant was already in custody on an unrelated manner, the State was introducing evidence of prior criminal activity and what the State otherwise terms as "inadmissible character evidence" (when it is someone other than the Defendant). By eliciting testimony that the Defendant had used the gun in a shooting, the State was introducing evidence of a potentially violent person- "inadmissible character evidence" that was not necessary to support a simple weapons possession charge. By eliciting testimony that the Defendant had shot someone, and that he has being investigated by homicide detectives, the State was introducing evidence of a dangerous person who had killed someone with the very gun he was charged with possessing- not just any gun, but a *murder weapon*.

The State cannot seek to hide behind evidentiary standards when it suits its case, while simultaneously denying those protections to Defendant. The testimony was improper bad acts and character evidence that poisoned the minds of the grand jurors.

CONCLUSION

Based on the foregoing, Petitioner prays for relief by issuance of a Writ of a Habeas Corpus.

DATED this 24th day of September, 2018.

ADRIAN M. LOBO, ESQ.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Petitioner

CERTIFICATE OF ELECTRONIC TRANSMISSION

A copy of the above and foregoing **REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** was automatically served this 24th day of September, 2018 to the State at the same time that the document was filed via e-filing and sent to:

pdmotions@clarkcountyda.com

LOBO LAW PLLC

By: __*/s/ Alejandra Romero* ____
Legal Assistant to:
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Attorney for the Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GATHRITE, DEANDRE aka GATHRITE, DEANDRE TERELLE, ID# 2592432 Defendant.	Case No.: C-18-334135-1 Dept. No.: III

MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT

COMES NOW, the Defendant, DEANDRE GATHRITE aka DEANDRE TERELLE GATHRITE, by and through the undersigned counsel of record, ADRIAN M. LOBO, ESQ. of LOBO LAW PLLC and moves this Honorable Court for an Order dismissing the instant matter for Prosecutorial Misconduct.

This Motion is based on the pleadings and papers on file with the court, the attached Memorandum of Points and Authorities, and oral argument to be taken at the time set for hearing.

DATED this 7th day of September, 2018.

ADRIAN M. LOBO, ESQ.

By: __/s/ Adrian M. Lobo_____
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Defendant

DECLARATION

ADRIAN M. LOBO makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada. That I am the attorney of record for the Defendant in the above matter, and I am familiar with the facts and circumstances of this case.
2. That I am familiar with the foregoing petition, know the contents thereof, and that the same is true of our own knowledge, except for those matters therein stated on information and belief, and as to information and belief, I believe them to be true; that defendant, DEANDRE GATHRITE, personally authorizes me to commence this Motion to Dismiss for Prosecutorial Misconduct.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 7th day of September, 2018.

LOBO LAW PLLC

By: _/s/ Adrian M. Lobo_____

ADRIAN M. LOBO, ESQ.
Nevada Bar #10919
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for the Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the above entitled court on the **18th** day of September, 2018, at **9:00am** .m. in Department III of said court.

DATED this 7th day of September, 2018.

ADRIAN LOBO, ESQ.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
Attorney for Defendant

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MEMORANDUM OF POINTS AND AUTHORITIES

1. Statement of Facts

Gathrite is charged by the State, by way of an Indictment filed on August 15, 2018, with one count of Owning or possessing a gun by a prohibited person. A bit more context is necessary for the court's edification. This case stems from the February 11, 2018 shooting death of a drug dealer by the name of "T-Rex,"[1] at approximately 2612 S. Van Patten Street in Las Vegas, near the intersection of E. Sahara Ave. and Joe Brown Dr. *See Exhibit A – Officer's Report Continuation* at 1.[2]

It is difficult to follow Metro's investigation, as the Officer's Report states that "Subjects in the area were reluctant to communicate with police and no witnesses provided formal statements. *Id.* at 5. The Report goes on to say that "Gang Crimes Detectives developed information that a black male from the neighborhood known as 'Dre' was responsible for the shooting," but it does not detail how this information was developed given the above-cited reluctance and lack of formal statements. *Id.* Even more fortuitously, "Patrol Investigation Detectives familiar with the area provided information regarding the possible identity of 'Dre.'" *Id.*

"Dre" was, somehow, identified as Gathrite, and the Report also claims that he "was the subject of several active criminal investigations." *Id.* Despite apparently being the subject of "several active" investigations, ***on February 11, 2018 Gathrite did not have a warrant for his arrest in Nevada or California***. *See Exhibit B - Declaration of Arrest for Fugitive Arrest* (emphasis added). The Officer's Report states that a records check was conducted but does not say on what date this was conducted and what database was searched. Ex. A at 10. Nonetheless, it was later disclosed that Homicide detectives contacted the Criminal Apprehension Team (CAT) to locate Mr. Gathrite. *See Exhibit C – Reporter's Transcript, Case No. 18F03565X, May 25, 2018*,

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[1] T-Rex's real name was Kenyon Tyler.

[2] See concurrent filing for Petition for Writ of Habeas Corpus for Exhibits A -I

p. 4-7. The CAT team contacted the Department of Parole in California and was able to procure a warrant for Gathrite's arrest for a Parole Violation on February 14, 2018. *See Exhibit B.*

The Metro Criminal Apprehension Team (CAT) was tasked with locating Gathrite, and tracked him to 2630 Wyandotte St., Apt. #1 in Las Vegas through his girlfriend's lease (Tia Kelly). *See Exhibit D – Email correspondence- April 11, 2018 from Sarah Overly*. Gathrite was arrested on the outstanding San Diego warrant on February 16, 2018 at approximately 1:24 p.m. *See Exhibit E- CAD LOG Event #180216-2092*.

Following the CAT arrest, Metro Homicide detectives arrived at Wyandotte at 2:56 p.m. and contacted Gathrite at the scene of his arrest and began to question him surreptitiously about the T-Rex shooting. *Ex. E* at 1. This interview was only partially transcribed,[3] and is described as a "post-Miranda" interview with Gathrite. *Ex. A* at 9. The Report goes on to summarize that the interview resulted in Gathrite's statement that he fired at T-Rex, but "didn't know if he hit anyone". *Id.* Gathrite further told the detectives the location of the gun used in the shooting. *Id.*

These details were not "post-Miranda," as the Report claims. In fact, the detectives also misrepresented to Gathrite that he was free to leave at any time during the interview, despite this interview taking place immediately following Gathrite's apprehension by CAT:

> Q: Let me ask you this, man. 'Cause here's – here's the magic question, man. I mean, I know they kinda run up. You ain't out looking for trouble, you know, 'cause that ain't you 'cause I know all about your history. I know all about what you, you know, we done done our research. You e- you feel me? So, I mean, I know I ain't talking to some bad dude. That's why I came in there and took the cuffs off of you, got you comfortable, and let you hug your kid. Be cool with you. You – you feel me? 'Cause I know what kinda p- I know what kinda person you are, man. So what I'm asking, man, basically, what it boils down to is why'd you pull the trigger, man? What happened? Walk me through it, man. Walk me through how it went down.

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[3] Both the audio recording of Gathrite's questioning and the corresponding transcript clearly begin partway through the interview (and both begin at the same point). The only discernable timeline is through the CAD Log of his arrest. Homicide detectives arrive at 2:56 p.m., and then Gathrite is not booked into CCDC until 6:18 p.m. *Ex. E* at p.1-2.

> You know what I'm sayin'? So I can explain that. That's what I'm trying to say 'cause I know that wasn't what – you didn't go lookin' for it.
> *Exhibit F – Transcribed Interview with Defendant* at 3.

The detective continued to elicit details of the shooting from Gathrite:

> Q: So what point in time did you pull yours out? I mean, 'cause he got they shit out first, so at what point in time you pull yours out? Was it before or after them?
> A: Wasn't – wasn't before them.
> Q: So it was after them.
> A: Or I wouldn't have been able to be out there.
> Q: Right. Exactly. So they got they's out, and at some point in time during this whole talking that they goin' back and forth, at what point in time do you pull yours out? It was, I mean, was it…
> A: I don't know. It just – it just happened so fast.
> *Id.* at 10.

It is clear that during this questioning Gathrite was not free to leave:

> A: Can – can I smoke a cigarette? I'm just…
> Q: You got a cigarette?
> A: I do. My pack in on the counter in there [in the Wyandotte Apartment]. I…
> Q: Uh…
> Q1: Hey, you care if you have an old one? I got some old ones there if that's okay. You just wanna step out [of the patrol car]?
> A: Uh, yeah. I had just…
> Q: I'll text my boy and have him go – I'll text him to have – you said it's on the kitchen counter? All right.
> *Id.* at 10-11.

Only after Gathrite had provided numerous, inculpatory details about the T-Rex shooting did detectives finally see fit to Mirandize him, on page 23 of the interview.

Eventually, Gathrite told detectives that the firearm used in the T-Rex shooting was located in an air vent inside of the Wyandotte apartment. *Id.* at 39. The detectives asked Gathrite for consent to enter the apartment to recover the weapon, on the premise that Gathrite had dominion and control over the apartment. *Id.* at 47. Gathrite was reluctant to allow this, and stated to detectives specifically that the apartment was not actually his residence. *Id.* at 40. The detectives even acknowledged that the apartment was not Gathrite's residence:

> Q1: And this address on Wyandotte, that's your – that's Tia's place, your girlfriend, baby mama. She's only been here a couple days? And do you – you weren't living here. You – you just stayed here last night and that was it.
> A: Yeah.
> *Id.* at 45.

Detectives ultimately recovered the firearm from the apartment, where Gathrite told them it would be located (in an air conditioning vent). Once recovered, the detectives then applied telephonically for a search warrant to search for additional evidence in the premises. The warrant sought the following:

> 1. Paperwork such as rent receipts, utility bills, and addressed letters showing the name(s) of persons residing at the premises. Paperwork such as proof of insurance, DMV registration showing the name(s) of persons owning or responsible for the vehicle(s).
> 4. Photographs, video and/or audio tapes, DVD or CD's, cellular phones, Electronic Storage Devices such as lap or desk top computers, game consoles, tablets and like items. To include pass or pattern codes for the same.
> 5. Telephonic information to include; caller ID history, answering machine messages, voicemails, phone directories, contacts, call history, photographs, audio and/or video recordings stored electronically in residential or cellular phones.
> 6. A thorough, microscopic examination and documentation of the crime scene to discover trace evidence to include but not limited to: fingerprints, blood, hair, fibers and bodily fluid samples.
> 10. Epithelial cells from the mouth of [Defendant's name and date of birth are handwritten], to be collected via Buccal Swab.[4]
> *See Exhibit G – Search Warrant Application* at 1.

In addition, the Warrant Application indicated that detectives would search for additional, items that had been handwritten into the application: "Handguns and Ammunition"; "Cell phone off person of [Gathrite]"; and "Gang Parapharnalia [sic]". *Id.* The Application indicated the

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[4] Line Items 2-3, and 7-9 contained additional items to be recovered, but these lines had been crossed out. *See Ex. E* at 1.

address of "2630 Wyandotte #1"- the apartment belonging to Gathrite's girlfriend. *Id.* The Application was dated February 16, 2018 at 1735 hours (5:35 p.m.). *Id.*

No additional items were recovered from or in the apartment. *Ex. A* at 11.

Predictably, Gathrite was arrested following this chat with detectives (and despite having been told multiple times that he was free to go) and booked into the jail on the California warrant. Despite relinquishing his right to fight extradition, California never extradited Gathrite on the parole violation warrant and he was released from custody on February 21, 2018.

Finally on February 26, 2018, Gathrite was arrested on the Murder with Use of a Deadly Weapon and Ownership or Possession of Firearm By a Prohibited Person and charged under Case#18F03565X before the Honorable Eric Goodman. Gathrite moved immediately for suppression of his statement to police and suppression of the fruits of his statement due to law enforcement's failure to Mirandize Gathrite.

On May 25, 2018, Gathrite's suppression motion came before Judge Goodman. Following argument by undersigned counsel and the State, Judge Goodman ordered that the statement and the handgun be suppressed due to Metro's failure to provide Miranda warnings to Gathrite prior to his questioning:

> THE COURT: So he was in custody and, when he is [in] custody, they should have read him his Miranda Rights. They didn't, not until 28 pages into this.
>
> They violated his rights. The fact it's a murder case doesn't matter to me. It doesn't matter if he is caught with 20 pounds of weed or if it's a murder case. They violated his rights.
>
> Because they violated his rights when he was in custody, I'm going to suppress his statement. Because the gun comes from the statements made during the interview, I'm going to suppress the gun … and that's going to be this Court's ruling.
>
> *See Exhibit C – Reporter's Transcript, Case No. 18F03565X, May 25, 2018* at 12-13.

The State attempted to claim that Gathrite was not "in custody" pursuant to the murder investigation, but merely for his parole violation warrant, and thus police did not need to Mirandize him even as they sought incriminating statements from Gathrite:

THE COURT: …The standard is if he is in custody, he needs to have his Miranda rights read before they interview him. It's not whether somebody feels better. That's not the way the Fifth Amendment works.

MS. OVERLY: No, I understand that, your Honor, and I think if the detective believes he was, in fact, under custodial interrogation and in custody with regards to this case, they would have read him Miranda, either by card or memory, at the outset of the interview, but based on their position, it was the State's position in its Opposition was that he, in fact, was not. They didn't feel the need to issue these Miranda warnings at the outset or throughout any point in time in the interview, as they didn't in Fields rather.

THE COURT: The interviews basically are voluntary. They are always voluntary interactions with the police. You cited a case where the guy's in prison, they bring him in the interview room, and he is free to leave. He may have be [sic] in prison, but in prison, his cell is his home. So they say, You are free to leave. That means go back to your cell and just go back to what is basically his home.

MS. OVERLY: Correct.

THE COURT: If he was free to leave, that means he was going to be uncuffed, let out, put in a police car, go back to his apartment, make a sandwich, turn on the TV, and go on with his day or by free means he is going to be in handcuffs and put in the back of the car?

MS. OVERLY: Well, free to leave in the same respect as he was in Fields. I mean like that's why the State believes it's analogous. In that case, they even indicated that he was free to leave and by that, they meant free to leave and go back to his cell.

THE COURT: His cell is his home.

MS. OVERLY: Correct.

THE COURT: Right. He's not free to go back to his home, right?

MS. OVERLY: No, he's not because of this active parole violation where he was going to independently go back to California, as he had been doing since 2014.

Id. at 8-10.

Following the lower court's ruling, the State dismissed its case against Gathrite on June 29, 2018. However, the State then proceeded to the Grand Jury on August 15, 2018.

During the Grand Jury proceedings, the State called Det. Gerry Mauch of Metro's homicide team. The testimony elicited from Det. Mauch was carefully styled to be in-line with the State's position—previously rejected by Judge Goodman—that Gathrite was not "in custody" during Mauch's interrogation because Gathrite had been arrested on a seemingly unrelated parole violation:

> Q: And was he [Gathrite] the individual who answered the door?
> A: He was already inside the apartment with other detectives from our criminal apprehension team.
> Q: Now did you get a chance to sit down and talk with Mr. Gathrite?
> A: Yes, I did.
> Q: And when you did, was he in custody pursuant to the investigation you were pursuing?
> A: To our specific investigation, no. There were some other charges that he was dealing with at the time.
> Q: So he was technically in custody, just not pursuant to your investigation?
> A: Correct.
> *See Exhibit H – Transcript of Grand Jury Proceedings, GJ No. 18AGJ044X, August 14, 2018* at 8.

The State continued to elicit testimony from Det. Mauch regarding Gathrite's statements given during the interrogation, despite the lower court's ruling that the statement in its entirety be suppressed. The State continued to elicit testimony from Det. Mauch regarding the discovery and seizure of the firearm, despite the lower court's ruling that the fruits of Gathrite's statement—the firearm—be suppressed.

The State then called Det. Philip DePalma, the detective who actually recovered the firearm. Det. DePalma's testimony indicated that the firearm was located inside of an apartment behind a secured ventilation grate in the residence:

> Q: Now did you assist with the search and recovery of that firearm?
> A: Yes, I did.
> Q: What did you find?
> A: I was instructed that the firearm was inside a[n] air conditioning vent, the intake. I took off the grate – it was photographed first, it was in the

> hallway to the apartment. I assisted in taking off a couple of the screws to the vent, I removed that and behind that metal grate was a filter. I removed the filter, put it off to the side and inside the big duct work so to speak was a revolver. Firearm. Handgun.
> *Id.* at 18.

Furthermore, Det. DePalma confirmed that this firearm was not discoverable through ordinary observation:

> Q: And again would that firearm have been observed by the naked eye walking in the apartment?
> A: No.
> Q: So you would have had to remove the duct and the filter?
> A: I removed the actual metal grate and then behind that was the actual air conditioning filter, so you couldn't see it from the naked eye, no.
> *Id.* at 19.

Prior to the Grand Jury proceedings, undersigned counsel received a Notice of Intent to Seek Indictment on June 19, 2018. In response, defense counsel sent via U.S. mail to the State on June 21, 2018, care of Ms. Overly, a letter pursuant to *Sheriff v. Marcum*, 105 Nev. 824 (1989) (the "Marcum Letter"). *See Exhibit I – Marcum Letter, June 21, 2018* (enclosures omitted). The Marcum Letter requested that the defense be informed "of the date, time, and place of the scheduled Grand Jury proceeding," and provided multiple means of providing such information to undersigned counsel; additionally "that the State comply with its duty under NRS 172.145(2) and present any and all exculpatory evidence the State is aware of to the Grand Jury including but not limited to" the Reporter's Transcript of the lower court's hearing wherein the suppression matter was argued and decided, as well as additional information and evidence; and that any additional exculpatory evidence not known or heretofore provided to the defense was presented to the Grand Jury in accordance with statutory directives.

The defense was never provided with a notice of the date, time, and location of the Grand Jury proceeding, and no such exculpatory evidence was presented to the Grand Jury.

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2. Legal Argument

This case is a clear example of prosecution not for prosecution's sake, but out of some errant desire to punish the Defendant for perceived wrongs. Unfortunately, the State's fascination with the Defendant in this case has resulted in the State disregarding the prior order of the Justice Court, circumventing the Defendant's due process rights, and pursuing a vendetta against the Defendant in a way that compromises not only the integrity of the District Attorney's office, but the legal profession as a whole.

A. Legal Standard

As stated above, this case was previously brought by way of a Complaint filed in Justice Court under case #18F03565X, the Hon. Eric Goodman presiding. The Justice Court heard and decided a suppression motion brought by the Defendant as part of the preliminary proceedings in that matter.

The ability of a Justice Court to hear and to decide suppression motions similar to the one in this case has been recognized and affirmed by the Nevada Supreme Court in the recent decision *Grace v. Eighth Judicial Dist. Court of Nev.*, 375 P.3d 1017, 132 Nev. Adv. Op. 51 (Nev. 2016). That case—which originated from Judge Goodman's court—considered "whether Nevada's justice courts are authorized to rule on motions to suppress during preliminary hearings." 375 P.3d at 1018. The Court held that "the justice courts have express and limited inherent authority to suppress illegally obtained evidence during preliminary hearings." *Id.*

Specifically, the Court based its decision on the concept that "the evidence presented at a preliminary hearing 'must consist of legal, competent evidence,'" and "[t]herefore, justice courts' authority to make probable cause determinations includes a limited inherent authority to suppress illegally obtained evidence." *Id.* at 1021 (citation omitted).

The Nevada Supreme Court has not only taken a dim view of prosecutors ignoring a court's rulings, it has *actively admonished prosecutors for doing so*. In the case of *McGuire v. State*, 100 Nev. 153 (1984), the prosecutor made several disparaging remarks about both the defendants and defense counsel. *Id.* at 156-57. The court termed the misconduct as a "contemptuous and blatant

disregard for the trial court's rulings." *Id.* at 157. In a harsh and criticizing rebuke of the prosecutorial misconduct in the *McGuire* case, the court announced multiple policy-based reasons for ensuring prosecutors conducted their duty in an ethical manner:

> We view with grave concern the staggering cost to the taxpayer of financing our criminal justice system. Of equal concern to this court is the trauma to which victims of crime must be resubjected when a new trial is required. We accordingly approach with great sensitivity the prospect of reversing the verdicts of citizens who have been impaneled as jurors to sit in judgment of the guilt or innocence of an accused. It has nevertheless been the solemn responsibility of appellate courts to safeguard the fundamental right of every person accused of criminal behavior to a fair trial, basically free of prejudicial error. This is but a reflection of the high value our nation and state place on an individual life, and the right of each citizen to liberty and they lawful pursuit of happiness. It is the obligation of government to vouchsafe to its citizens a continuing respect for these values. We therefore conclude that it is an intolerable affront to the criminal justice system, the state and its citizens that the type of egregious conduct outline in part in this opinion be allowed to occur in our courtrooms. The waste and diversion of limited judicial and human resources are but some of the inevitable consequences of such behavior. Another is the danger that youthful prosecutors may, in their zeal to learn, be persuaded that emulation and perpetuation of such conduct may be both effective and acceptable. These and other consequences not discussed herein must be foreclosed or at least minimized.
> *Id.* at 158-59.

The Nevada Supreme Court has considered numerous cases of alleged prosecutorial misconduct, across a range of activity falling under the term. When considering prosecutorial misconduct, the court employs a two-step analysis. *Valdez v. State*, 196 P.3d 465, 476 (Nev. 2008). The first step of the analysis is to determine if the prosecutor's conduct was improper. *Id.* If the conduct was indeed improper, then the court determines whether the conduct warrants a remedy. *Id.* Where the remedy requested is dismissal of an indictment, the court will determine if the alleged prosecutorial misconduct substantially prejudiced the defendant, such that it resulted in basic unfairness that violated the defendant's right to due process. *Sheriff, Clark County v. Keeney*, 791 P.2d 55, 57, 106 Nev. 213, 216 (Nev. 1990). In Nevada, "'the dismissal of an indictment serves equally well to eliminate prejudice to a defendant and to curb the prosecutorial excesses of

a District Attorney or his staff.'" 791 P.2d at 57, 106 Nev. at 217 (quoting *State v. Babayan*, 106 Nev. 155, 171, 787 P.2d 805, 818 (1990)). "Dismissal with prejudice is warranted when the evidence against a defendant is irrevocably tainted or the defendant's case on the merits is prejudiced to the extent 'that notions of due process and fundamental fairness would preclude reindictment.'" *Keeney*, 791 P.2d at 57, 106 Nev. at 217 (quoting *Babayan*, 106 Nev. at 171, 787 P.2d at 818).

B. The State committed prosecutorial misconduct when it completely ignored the Justice Court's ruling and presented the same evidence to the Grand Jury.

Most egregiously, the State presented to the Grand Jury evidence that had already been ruled as inadmissible. The State's entire probable cause pitch to the Grand Jury in this case was predicated on the statements made by the Defendant during his improper and un-Mirandized interrogation by two Metro detectives, and the eventual discovery (based on these statements) of a firearm. As demonstrated from the record above, the admissibility of not only the Defendant's statements, but of the gun itself (as a fruit of those statements) was litigated and ruled upon by the Justice Court in no uncertain terms.

The Nevada Rules of Professional Conduct (NRPC) set forth special considerations for prosecutors. Rule 3.8 – Special Responsibilities of a Prosecutor – requires that a prosecutor "Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." *NRPC, Rule 3.8(a)*. Furthermore, the State may only present to a grand jury "none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." *NRS 172.135(2)*. Additionally NRS 179.085(2) bars the introduction of evidence in any hearing or trial, if the evidence was acquired as the product of a warrantless search, unsupported by probable cause, a defective warrant or was illegally executed.

Here, the State ignored both of its duties- first, by pursuing a charge against the Defendant that it knew was not supported by probable cause; and second, by submitting improper evidence to the Grand Jury. With regard to probable cause, the State is pursuing a charge that was already dismissed in the lower court as a direct result of that court's suppression of both the Defendant's

statement and the recovered firearm (as a fruit of the statement). This would require some other evidentiary basis to proceed, such as an independent witness, admissible statements by the Defendant, etc. The State produced no such evidence, and instead chose to rely upon evidence that a court of competent jurisdiction has already ruled as inadmissible and suppressed- thus the State is knowingly and willfully putting improper evidence before the Grand Jury for a probable cause determination.

The fact that this evidence has been suppressed renders it "irrevocably tainted" and thus dismissal of the indictment, with prejudice, is the appropriate remedy in this case. The evidence never should have been presented, and never should have been received or considered by the grand jurors. Furthermore, as the State did not present any additional or independent evidence beyond what was already suppressed, it is undeniable that the Grand Jury's probable cause determination was based solely on this tainted evidence.

The statutory duty to present only legal evidence to a grand jury is, in most cases, a retrospective analysis. As the grand jury proceedings are closed to the defense (beyond the inclusion of exculpatory evidence and possibly the defendant's choosing to testify), the first impression as to the legality of evidence presented to the grand jurors is typically after-the-fact. Here, however, we have the benefit of a prior determination as to the legality of the evidence presented- the Justice Court ruled that the evidence was inadmissible. To permit the State to proceed to a grand jury, armed and forewarned that the evidence it intended to present was inadmissible, is to undermine the purpose and authority of the Justice Court (authority that the Nevada Supreme Court has affirmed is "express" and "inherent").

And then there are the important policy bases to consider (enumerated in the *McGuire* case, above). Specifically, actions such as those the State has engaged in here violate almost every one of those policy bases announced in *McGuire*.

First, the State's actions here have incurred a "staggering cost to the taxpayer" of financing not only an untenable Justice Court action by way of the initial criminal complaint, but in the impaneling of grand jurors, the use of court resources for a grand jury hearing, the use of

prosecutor's time, and the use of two Metro detectives' time to testify, to say nothing of the costs of appointed defense counsel in fighting this frivolous, vindictive action. Second, this court is now faced with the prospect "of reversing the [determination] of citizens who have been impaneled as [grand] jurors" to make a probable cause determination in this case. Third, this case is clearly one of prejudicial error in that the State is proceeding on an unsustainable path of introducing inadmissible evidence to a grand jury, and concealing the prior court's ruling. Fourth, this whole indictment represents a "waste and diversion of limited judicial and human resources"- all for the potential prosecution of a *weapons charge,* with a potential "victory" for the State of a probationable offense.

Lastly, and perhaps most importantly, there is a danger that other "youthful prosecutors, in their zeal to learn, [may] be persuaded that emulation and perpetuation of such conduct may be both effective and acceptable." The conduct here is that if, as a prosecutor, you are unhappy with the Justice Court's ruling, you can simply "forum shop" via the grand jury and indictment process, even if you present the same evidence that was ruled inadmissible in the lower court.

The State ignored the Justice Court's ruling and attempted to circumvent that court's findings by submitting suppressed evidence to the Grand Jury. This conduct was clearly improper, and in violation of the State's special duties as a prosecutor, as well as the State's obligation to present only legal evidence to a Grand Jury. Based on the prevailing case law, as well as the policy considerations set forth by the Nevada Supreme Court, dismissal of the Indictment, with prejudice, is the appropriate remedy.

C. The State introduced improper, uncharged, prior bad acts into the Grand Jury proceedings, and prejudiced the Defendant.

During the Grand Jury proceedings, the State elicited testimony from a witness, Det. Mauch, that the Defendant had been allegedly committed a prior shooting, and that the Defendant was facing other charges. None of this testimony was relevant to the State's sole count in the proposed Indictment of Ownership or Possession of Firearm By a Prohibited Person. The mentions

of Defendant's alleged conduct and other, extraneous charges was misconduct, and unfairly prejudiced the Grand Jury.

"Reference to a defendant's prior criminal history may be reversible error." *Collman v. State*, 7 P.3d 426, 437 (Nev. 2000) (citing *Witherow v. State*, 104 Nev. 721, 724, 765 P.2d 1153, 1155 (1988)). "The test for determining if such a reference occurred is whether the jury could reasonably infer from the evidence presented that the defendant had engaged in prior criminal activity." *Id.*

In *Collman*, a State's witness testified that the defendant had previously been in jail. *Id.* at 438. In an exchange after the testimony, and outside the presence of the jury, the witness told the court that the disclosure had been inadvertent, and furthermore that the prosecution had coached the witness prior to testimony *not* to reveal that the defendant had previously been in jail. *Id.* The district court denied a motion for mistrial, finding that the "slips" in testimony were in fact inadvertent, and that the jury could easily have inferred that the defendant was in jail due to the case at bar. *Id.* This ruling was upheld on appeal, with the court finding that although the references and remarks improperly referred to the defendant's prior criminal history, the remarks were not elicited by the prosecutor and were made by an inexperienced witness. *Id.*

The *Collman* facts are significantly different from the instant matter, and amount to improper tainting of the Grand Jury.

Here, the State was pursuing only one count from the outset of the grand jury proceedings: an ex-felon in possession of a firearm charge. Accordingly, all testimony should have been limited to the elements and circumstances of that charge. Instead, the State strategically and repeatedly elicited testimony from a sophisticated, experienced detective as to other uncharged bad acts alleged against the Defendant.

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Primarily, the State elicited testimony from Det. Mauch regarding the Defendant's alleged possession of a firearm:

> Q: And did he [Gathrite] indicate if he possessed anything of interest to Metro pursuant to that involvement?
> A: Yes.
> Q: What was that?
> A: That was a I believe silver in color revolver.
> *Ex. G* at 9.

For the State's single proposed count of an ex-felon in possession of a firearm, this testimony arguably would have been sufficient.[5] Not content merely to establish the Defendant's possession of a firearm, however, the State intentionally pressed the detective for additional, extraneous, and prejudicial details about the firearm:

> Q: And specifically what did he indicate about that revolver?
> A: That he possessed it and it had been used in a shooting.
> *Id.* at 9-10.

This statement, while unnecessary, may ultimately be benign in nature as the testimony itself centers on the weapon and not the Defendant. The State was not done, though:

> Q: And specifically did he indicate that he used it in a shooting?
> A: Yes.
> Q: When would that shooting have occurred?
> A: It occurred, I believe it was February 11th.
> Q: Of 2018?
> A: Yeah, same year.
> *Id.* at 10.

Rather than merely establish probable cause to believe that the Defendant was unlawfully in possession of a firearm, the State asked multiple follow-up questions in order to introduce improper character and propensity evidence, and to indicate to the Grand Jury that the Defendant

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[5] The Defendant does not concede the charge, but is merely providing the statements for illustrative purposes.

was a violent criminal. Furthermore, this testimony cannot possibly be said to have been spontaneous testimony, as the detective was asked specific follow-up questions beyond what was necessary to provide probable cause for the jurors. In fact, the State qualified the answers it was seeking by asking the detective "And specifically…" and even asking for the date of this alleged shooting. When the detective provided the month and day, the State took the additional step of specifying the year of the shooting.

And yet the State *still* was not done with purposefully eliciting improper, prejudicial testimony. Not content merely to connect the Defendant to an uncharged, recent shooting, the State purposefully asked Det. Mauch questions designed to elicit testimony as to the Defendant's supposed overall criminal character:

> Q: Throughout that investigation did you have cause to make contact with someone by the name of Deandre Gathrite?
> A: Yes, I did.
> Q: And specifically where did you make contact with him?
> A: I was the address of 2630 Wyandotte Street, apartment number 1.
> Q: And is that located here in Clark County?
> A: Yes, it is.
> Q: And where specifically did you make contact with him? Was it in that unit or in the actual complex or where exactly?
> A: It was in the actual apartment.
> Q: Apartment number 1?
> A: Yes.
> Q: And was he the individual who answered the door?
> A: He was already inside the apartment with other detectives from our criminal apprehension team.
> Q: Now did you get a chance to sit down and talk with Mr. Gathrite?
> A: Yes, I did.
> Q: And when you did, was he in custody pursuant to the investigation you were pursuing?
> A: To our specific investigation, no. There were some other charges that he was dealing with at the time.
> *Id.* at 7-8.

The initial questions as to the detective's contact with the Defendant should have been—arguably were—sufficient. The remaining questions elicited responses that the Defendant was with the criminal apprehension team; that the Defendant was in custody; and that the Defendant was

apparently "dealing with" some "other charges" in addition to Det. Mauch's investigation. Not only is this information wholly extraneous to the State's sought-after single count of unlawful possession of a firearm, it is prejudicial in that the Grand Jury is left with the impression of the Defendant as someone who needed a special team to apprehend him, and someone who is the focus of multiple criminal investigations.

Nor can the State hide behind the inexperience of its witness, as in the *Collman* case. Det. Mauch, the witness that provided the testimony, testified to being a detective with Metro for "Going on eight years." *Id.* at 7. While it is unclear how long the detective has been a police officer overall, eight years as a detective is certainly substantial in and of itself with regard to sophistication and experience testifying in court proceedings, regardless of how long Det. Mauch was working as a patrolman.

The testimony regarding the Defendant's alleged involvement in a shooting was improper. Distressingly, it was not a fleeting bit of spontaneous testimony, or an inadvertent "slip" of an inexperienced witness. Rather, the testimony was the deliberate eliciting of prejudicial information by the State, from a savvy, experienced detective, that had absolutely no bearing on the single charge sought in the proposed Indictment. As such, eliciting this testimony impermissibly tainted the Grand Jury and prejudiced the Defendant.

Accordingly, and as a result of the prosecutor's deliberate misconduct, the Indictment should be dismissed with prejudice.

CONCLUSION

Based on the foregoing, Defendant prays for relief by way of a dismissal of the Indictment against him.

DATED this 6th day of September, 2018.

ADRIAN LOBO, ESQ.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
Attorney for Defendant

CERTIFICATE OF ELECTRONIC TRANSMISSION

A copy of the above and foregoing motion was automatically served this 7th day of September, 2018 to the State at the same time that the document was filed via e-filing and sent to: pdmotions@clarkcountyda.com

LOBO LAW PLLC

By: __*/s/ Alejandra Romero*___

Legal Assistant to :
ADRIAN M. LOBO, #10919
Attorney for Defendant

INDEX OF WITNESSES

INDEX OF EXHIBITS

12:00

LAS VEGAS, NEVADA, AUGUST 14, 2018

* * * * * * *

DANETTE L. ANTONACCI,

having been first duly sworn to faithfully and accurately transcribe the following proceedings to the best of her ability.

MS. OVERLY: Good afternoon everyone. My name is Sarah Overly and I'm a deputy district attorney with the Clark County District Attorney's Office. Today I am here presenting the case of State of Nevada versus Deandre Gathrite, otherwise known as Deandre Terelle Gathrite. This is Grand Jury case number 18AGJ044X.

There should be a proposed Indictment with the following offense of one count of ownership or possession of firearm by prohibited person. Additionally the State has marked as Exhibit 2 the instructions with regards to that count. Additionally there is an Exhibit 3 which references a certified Judgment of Conviction specifically for Deandre Gathrite under case number C271196 out of the Eighth Judicial District Court, Clark County, State of Nevada.

And the State's first witness is going to be Detective Gerry Mauch.

THE FOREPERSON: Please raise your right

hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE FOREPERSON: You may be seated.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of ownership or possession of firearm by prohibited person, involving Deandre Gathrite.

Do you understand this advisement?

THE WITNESS: Yes.

THE FOREPERSON: Please state your first and last name and spell both for the record.

THE WITNESS: Gerry Mauch. G-E-R-R-Y, last name is M-A-U-C-H.

GERRY MAUCH,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. OVERLY:

Q. Good afternoon, sir. How are you employed?

A. Detective with Las Vegas Metro Police.
Q. And how long have you been a detective with Metro?
A. Going on eight years.
Q. Now were you working as a detective on February 16th of 2018?
A. Yes.
Q. And were you working with a partner during that time?
A. Yes, I was.
Q. Who was that?
A. That day I was with Detective Jarrod Grimmett.
Q. On that date were you pursuing an investigation?
A. Yes, I was.
Q. And that was in your capacity as a detective?
A. Correct.
Q. Throughout that investigation did you have cause to make contact with someone by the name of Deandre Gathrite?
A. Yes, I did.
Q. And specifically where did you make contact with him?

A. It was the address of 2630 Wyandotte Street, apartment number 1.

Q. And is that located here in Clark County?

A. Yes, it is.

Q. And where specifically did you make contact with him? Was it in that unit or in the actual complex or where exactly?

A. It was in the actual apartment.

Q. Apartment number 1?

A. Yes.

Q. And was he the individual who answered the door?

A. He was already inside the apartment with other detectives from our criminal apprehension team.

Q. Now did you get a chance to sit down and talk with Mr. Gathrite?

A. Yes, I did.

Q. And when you did, was he in custody pursuant to the investigation you were pursuing?

A. To our specific investigation, no. There were some other charges that he was dealing with at the time.

Q. So he was technically in custody, just not pursuant to your investigation?

A. Correct.

Q. Now where is it that you spoke with Mr. Gathrite?
A. We conducted the interview in my plain, unmarked vehicle.
Q. And who was that interview conducted with?
A. Myself and Detective Grimmett.
Q. And you indicated that he was not in custody at that time?
A. Correct.
Q. Did he agree to speak with you?
A. Yes, he did.
Q. And pursuant to that discussion, did you ask him questions about this separate investigation?
A. Yes.
Q. And did he reveal his involvement in that investigation?
A. Yes, he did.
Q. And did he indicate if he possessed anything of interest to Metro pursuant to that involvement?
A. Yes.
Q. What was that?
A. That was a I believe silver in color revolver.
Q. And specifically what did he indicate about

that revolver?

A. That he possessed it and it had been used in a shooting.

Q. And specifically did he indicate that he used it in a shooting?

A. Yes.

Q. When would that shooting have occurred?

A. It occurred, I believe it was February 11th.

Q. Of 2018?

A. Yeah, same year.

Q. And again this occurred, this conversation happened on February 16th?

A. Correct.

Q. Now the specific firearm that he's referencing, what type was it?

A. I can't remember exactly the make and model.

Q. Did he indicate where it was?

A. Yes, he did.

Q. What did he say?

A. He said it was hidden inside the apartment.

Q. And just to go back a little bit. When he indicated that this firearm was inside the apartment, although you had indicated he was not in custody, had

the defendant been read his Miranda rights at that point?

A. Yes.

Q. Before he indicated where the firearm was?

A. Yes.

Q. And he indicated to you that the weapon was located inside the apartment; correct?

A. Correct.

Q. And was that the apartment that you greeted him at?

A. Yes, apartment number 1.

Q. And specifically what did he indicate about his possessory interest in that apartment?

A. He was staying with his girlfriend who resided at the apartment with her children.

Q. And the child they share in common?

A. Yes.

Q. Was she present at the apartment when you arrived?

A. No, she was not.

Q. Was he the only adult present?

A. Yes.

Q. Now did he indicate where exactly in this apartment the firearm would be located?

A. Yes.

Q. Where was that?
A. It was inside the duct work or inside the vent for the AC unit.
Q. How many bedroom unit was this?
A. I believe it was a one bedroom.
Q. Now eventually did police officers access that unit?
A. Yes.
Q. To recover the firearm?
A. Yes.
Q. And by what method was that done?
A. With consent he gave us.
Q. So he provided, Mr. Gathrite provided police consent to access the apartment?
A. Correct.
Q. Did he also consent to recover the actual firearm?
A. Yes.
Q. Did he indicate whether or not that firearm belonged to anyone else but him?
A. No.
Q. Now were you the one who actually recovered the firearm?
A. No.
Q. And who was that?

A. Detective DePalma was there to do that with a crime scene analyst.

MS. OVERLY: I have no further questions for this witness. Do any of the grand jurors have questions?

BY A JUROR:

Q. Was this apartment a primary residence of the defendant?

A. At the time I believe so, but they had just moved there somewhat recently.

THE FOREPERSON: Any other questions?

MS. OVERLY: I guess I have a couple questions to follow-up on that actually.

THE FOREPERSON: Okay.

BY MS. OVERLY:

Q. What was your understanding of who resided at that apartment?

A. Deandre Gathrite and his girlfriend.

Q. And you indicated their shared child?

A. Yes.

Q. Any other adults that you were aware of that resided there?

A. No.

Q. And specifically the air duct that you're referring to that the firearm was described as being

located in, was that something that is visible to the naked eye?

A. No.

Q. What would you have to do to then recover that?

A. You'd have to remove like the outside vent cover and then there was a filter over the vent.

Q. And the firearm would then be inside that?

A. Yes.

Q. Okay. And are you aware of whether the firearm that was recovered was in fact the same one that Deandre Gathrite was describing?

A. Yes.

MS. OVERLY: No further questions for this witness.

THE FOREPERSON: By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by up to 364 days in the Clark County Detention Center and a $2,000 fine. In addition, you may be held in contempt of court

punishable by an additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes.

THE FOREPERSON: Thank you. You're excused.

MS. OVERLY: And the State's next witness is Detective DePalma.

THE FOREPERSON: Please raise your right hand.

You do solemnly swear the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE FOREPERSON: You may be seated.

THE WITNESS: Thank you. Good afternoon.

THE FOREPERSON: Good afternoon.

You are advised that you are here today to give testimony in the investigation pertaining to the offense of ownership or possession of firearm by prohibited person, involving Deandre Gathrite.

Do you understand this advisement?

THE WITNESS: Yes, I do.

THE FOREPERSON: Please state your first

and last name and spell both for the record.

THE WITNESS: Detective Philip DePalma. P-H-I-L-I-P, last name D-E-P-A-L-M-A.

PHILIP DEPALMA,

having been first duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MS. OVERLY:

Q. Good afternoon.

A. Good afternoon.

Q. How are you employed?

A. With the Las Vegas Metropolitan Police Department.

Q. In what capacity?

A. I'm a detective in the homicide section.

Q. And how long have you been a detective?

A. I've been a detective for over ten years.

Q. Now were you working in that capacity on February 16th of this year?

A. Yes, I was.

Q. And were you investigating a case along with Detective Mauch who just left?

A. Yes, I was.
Q. And in that assistance, were you arriving at a specifically an apartment at 2630 Wyandotte Street?
A. That's correct.
Q. Is that located here in Clark County?
A. Yes, it is.
Q. And when you arrived at that location, what was your purpose of involvement?
A. I was instructed to stand by the apartment door that was open, apartment number 1, while the individual Gathrite was being interviewed by Detective Mauch and Detective Grimmett.
Q. And were you involved in that interview?
A. No, I was not.
Q. At some point did you become aware that apartment number 1 was going to be searched?
A. Yes, I was.
Q. And what was it going to be searched for?
A. A firearm.
Q. And was that pursuant to a warrant or some other means?
A. I believe we had consent to go in to retrieve a firearm that Mr. Gathrite said was inside the apartment.
Q. And who had provided consent for that?

A. Mr. Gathrite.

Q. And at that point was Mr. Gathrite the only individual at that particular apartment?

A. Yes.

Q. And was it Metro's understanding that he had a possessory interest in that apartment?

A. Yes, he did.

Q. Now did you assist with the search and recovery of that firearm?

A. Yes, I did.

Q. What did you find?

A. I was instructed that the firearm was inside a air conditioning vent, the intake. I took off the grate -- it was photographed first, it was in the hallway to the apartment. I assisted in taking off a couple of the screws to the vent, I removed that and behind that metal grate was a filter. I removed the filter, put it off to the side and inside the big duct work so to speak was a revolver. Firearm. Handgun.

Q. And specifically do you recall what kind of revolver this was?

A. It was an Amadeo Rossi 357 Magnum.

Q. And would that have also been serial number F379181?

A. Yes, I believe that's in the officer's

report as well.

Q. And was there any other firearm that was recovered from that location?

A. No, there was not.

Q. And again would that firearm have been observed by the naked eye walking in the apartment?

A. No.

Q. So you would have had to remove the duct and the filter?

A. I removed the actual metal grate and then behind that was the actual air conditioning filter, so you couldn't see it from the naked eye, no.

Q. Now are you aware if that gun was loaded or not?

A. Yes, it was.

Q. And are you familiar with how many cartridges were in that firearm?

A. There were six.

Q. Six loaded?

A. Yes.

Q. And would that have been the exact location that Mr. Gathrite indicated that the firearm was going to be located?

A. Yes, it was.

MS. OVERLY: I have no further questions

for this witness.

THE FOREPERSON: By law, these proceedings are secret and you are prohibited from disclosing to anyone anything that has transpired before us, including evidence and statements presented to the Grand Jury, any event occurring or statement made in the presence of the Grand Jury, and information obtained by the Grand Jury.

Failure to comply with this admonition is a gross misdemeanor punishable by up to 364 days in the Clark County Detention Center and a $2,000 fine. In addition, you may be held in contempt of court punishable by an additional $500 fine and 25 days in the Clark County Detention Center.

Do you understand this admonition?

THE WITNESS: Yes, I do.

THE FOREPERSON: Thank you. You're excused.

THE WITNESS: Thank you.

MS. OVERLY: Just briefly, the State does need to recall Detective Mauch for just one question.

THE FOREPERSON: As a reminder you're still under oath from your previous testimony.

THE WITNESS: Yes.

THE FOREPERSON: You can be seated.

GERRY MAUCH,

having been previously duly sworn by the Foreperson of the Grand Jury to testify to the truth, the whole truth, and nothing but the truth, testified as follows:

FURTHER EXAMINATION

BY MS. OVERLY:

Q. And Detective, I just had one additional question for you. You indicated that you had interviewed and spoke with Deandre Gathrite; correct?

A. Correct.

Q. Showing you what has been marked as State's Exhibit 4. Do you recognize that individual?

A. Yes.

Q. And who is that?

A. That's Deandre Gathrite.

Q. And that's the individual that indicated to you there was a firearm located in apartment number 1?

A. Correct.

MS. OVERLY: Okay. No further questions.

THE FOREPERSON: And the admonition still applies from the previous testimony. So you're excused.

THE WITNESS: Okay.

MS. OVERLY: And with the State's marked exhibits, I will submit it to your deliberation.

02:41 A JUROR: I have a quick question for you. Is this on the 11th or the 16th? Because in the Indictment it says the 11th, but all the testimony was for the 16th.

02:42 MS. OVERLY: You're right. This actually -- thank you for catching that. This, if I can I would like to make an amendment to the Indictment to reflect the change from the 11th to the 16th of February, 2018.

02:42 A JUROR: Line 20.

MS. OVERLY: Sorry?

A JUROR: That's line 20.

MS. OVERLY: Correct, line 20 on page 1.

(At this time, all persons, other than

02:42 members of the Grand Jury, exit the room at 2:42 p.m. and return at 2:45 a.m.)

THE FOREPERSON: Madame District Attorney, by a vote of 12 or more jurors a true bill has been returned against defendant Deandre Gathrite charging the

02:45 crime of ownership or possession of a firearm by a prohibited person, in Grand Jury case number 18AGJ044X. We instruct you to prepare an Indictment in conformance with the proposed Indictment previously submitted to us with the change of the date to February 16th in the

02:45 proposed Indictment previously submitted to us.

02:45

MS. OVERLY: Thank you.

(Proceedings concluded.)

--oo0oo--

02:45

REPORTER'S CERTIFICATE

STATE OF NEVADA)
: ss
COUNTY OF CLARK)

02:45

I, Danette L. Antonacci, C.C.R. 222, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said

02:45

shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada,

02:45

August 27, 2018.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

02:45

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 18AGJ044X:

_X_ Does not contain the social security number of any person,

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to-wit: NRS 656.250.

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

/s/ Danette L. Antonacci
_____ 8-27-18
Signature Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

EXHIBIT I

LOBO LAW PLLC

◊ Las Vegas, Nevada ◊ San Diego, California ◊

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June 20, 2018

Clark County District Attorney's Office
Ms. Sarah Overly
200 S. Lewis Street
3rd Floor
Las Vegas, Nevada 89101

Sent via U.S. Mail and hand-delivery in court on June 21, 2018

Re: State of Nevada v. Deandre Gathrite
Case No.: 18F03565X
Notice of Intent to Seek Indictment sent on June 19, 2018

Ms. Overly,

I am in receipt of the Notice of Intent to Seek Indictment against Deandre Gathrite for the alleged crimes of Possession of a Firearm by a Prohibited Person (NRS 202.360) and Murder with Use of a Deadly Weapon (NRS 200.010. 200.030 and 193.165). My client, Mr. Gathrite, may wish to exercise his right to testify at the Grand Jury proceeding. Therefore, under Sheriff v. Marcum, 105 Nev. 824 (1989), please notify me of the date, time, and place of the scheduled Grand Jury proceeding. You may send this information by email at: adrianlobo@lobolaw.net or by United States mail or hand delivery at: Adrian Lobo, Lobo Law PLLC, 400 S. 4th Street, Suite 500, Las Vegas, Nevada 89101.

Additionally, I request that the State comply with its duty under NRS 172.145(2) and present any and all exculpatory evidence the State is aware of to the Grand Jury including but not limited to the following:

1) Reporter's Transcript of the Las Vegas Justice Court proceedings on May 29, 2018 before the Honorable Eric Goodman holding both the gun and Gathrite's statement as inadmissible evidence that was seized in violation of both the Fourth and Fifth Amendment rights of the United States Constitution and the Nevada State Constitution. (Enclosed in this letter)

2) Field Interview cards documenting Kenyon Tyler AKA "T-Rex" as a Blood Gang Member from both Nevada and California.

3) Autopsy photographs that depict T-Rex's many gang tatttoos and affiliation with the Blood Gang.

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4) Tyler's prior criminal history that would be admissible under NRS 50.095

a) 2010 CA Obstructing/Resisting (felony)
b) 2010 CA Possession of Cocaine for Sale (felony)
c) 2011 CA Willful Discharge of Firearm (felony)
d) 2014 CA Willful Discharge of Firearm (felony)

5) Tyler was engaged in selling drugs at the time of the shooting out of 2612 Van Patten Street, Apartment #11 and possessed numerous guns inside of the apartment according to Moore's statement. (p.9, 21)

6) If Raymond Moore testifies at the grand jury, the jurors should be informed that

a) Moore stated that T-Rex was armed and had a gun in his left front pocket (p.5);

b) Moore stated that T-Rex's friend, Juge AKA Devin AKA Little Rick Ross, took T-Rex's gun after the shooting to make it look like he didn't have one. (p.5-6);

c) Moore stated that T-Rex kept taking his gun in and out of his pocket multiple times. (p.17-18; Inaudible on transcript but is heard at 14:50 time.);

d) T-Rex and Gathrite were face to face when the shooting took place. (p.25);

e) Moore stated that "T-Rex was the one who provoked everything." (p.18);

f) T-Rex was having problems with another apartment occupant at 2612 Van Patten who was also a percipient witness, TY (no identity has been disclosed via the Officer's Report but should be easily accessible to the District Attorney's office through Homicide Detectives.) (p.2, 21, 31);

g) Gathrite and T-Rex had not had a past problem and appeared to get along. (p.31);

h) Gathrite was not wearing blue clothing as worn by Crip gang members (p.9);

i) Gathrite did not use any gang slang or lingo to denote that he was a Crip gang member during the T-Rex incident. (p.24);

j) Moore's statement indicates that T-Rex was wearing all red. (p.4)

k) Of any benefits that the State of Nevada has provided to Moore for housing, travel or leniency in any criminal matter; and

l) Moore's criminal history that is admissible under NRS 50.095 including but not limited to: SCE298527 and FSB18001710 which are both felony offenses.

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7) The type of gun that Gathrite is alleged to have, a 357 Magnum, is incapable of automatically expending casings such as the ones recovered by CSA.

If you know of any additional evidence that may be exculpatory or if you have a question as to whether or not it is indeed exculpatory, we request that you take this matter to the Court for a ruling. Thank you in advance.

Sincerely,

Adrian M. Lobo, Esq.
LOBO LAW PLLC

ar/AML

Enclosure

CASE NO. 18F03565X
DEPT. NO. 11

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,
Vs
DEANDRE GATHRITE,
Defendant.
Case No. 18F03565X

REPORTER'S TRANSCRIPT
OF
POSSIBLE NEGOTIATIONS/MOTION

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

TAKEN ON FRIDAY, MAY 25, 2018
AT: 7:30 A.M.

APPEARANCES:
For the State: SARAH OVERLY
Deputy District Attorney
For the Defendant: ADRIAN M. LOBO, ESQ.

REPORTED BY: PATSY K. SMITH, C.C.R. #190

LAS VEGAS, NEVADA, FRIDAY, MAY 25, 2018

* * * * *

THE COURT: All right, let's go on Deandre Gathrite.

Good morning.

MS. LOBO: Good morning.

THE DEFENDANT: Good morning.

THE COURT: All right, this is basically on for possible negotiations.

You also filed a Motion to suppress the statement and the gun --

MS. LOBO: That is correct, Judge.

THE COURT: -- as being, basically, the fruit of the poisonous tree and other reasons, but really if the statement gets suppressed, the gun gets suppressed.

MS. LOBO: Correct.

THE COURT: So there was also possible negotiations. Is this going to be negotiated or are we actually just going on the Motion?

MS. LOBO: I think we're going forward on the Motion. We went back and forth and we weren't able to reach a resolution.

THE COURT: All right.

MS. LOBO: So we would wish the Court

would rule on it and then I have just brief supplementation, another tidbit I didn't put in the Reply.

THE COURT: Okay, go ahead.

MS. LOBO: Okay.

One of the things that was not fully flushed out, and forgive me because I'm in trial right now, is that I didn't state in there that it was explicit. I think the Court knows and is well aware how the CAT Team works and that they're not out there just, you know, finding who's on parole violations or probation violations or who's a fugitive in another state.

This is done at the request of another jurisdiction or it's done at the request of detectives locally here and it's a focused team that is designed to, you know, extract a particular person for a particular reason and one of the things that was a little bit -- not a little, a lot disturbing about this case was the fact that it was Homicide who contacts CAT, CAT who contacts California Parole, and has that warrant listed on NCIC in order to, you know, actually execute the arrest warrant at the house.

So I just don't know how they get around the fact that this is, you know, not something that, you know, trying to keep an arms-length distance away as either though it's parole or probation. That is not analogous to

that. This is directly at their behest and request.

THE COURT: Okay.

MS. OVERLY: And, your Honor, I want to address that and then if I can address something else as well?

THE COURT: Sure.

MS. OVERLY: With regards to the CAT Team's arrest of the defendant on his parole violation, as your Honor is well aware, the CAT Team has no control over issuing warrants. California, that jurisdiction --

THE COURT: Oh, but who triggered it?

MS. OVERLY: Triggered what?

THE COURT: Who triggered it? Who triggered the arrest? Was it San Diego? Did San Diego call Metro and say, Please don't pick him up, or was it the homicide detectives that got CAT to go pick him up so they could interview him about a murder you are interested in?

MS. OVERLY: Homicide detectives became well aware that he was on parole while this was going on, this investigation was going on.

THE COURT: Right, I understand.

MS. OVERLY: They contacted California.

THE COURT: Right.

MS. OVERLY: They indicated to California he was on parole and they said, Well, actually, we need to

issue a warrant for him because he's been MIA. He keeps doing this since 2014 where he disappears.

THE COURT: So this is triggered by Metro?

MS. OVERLY: Yes, their contact to Metro.

07:54AM THE COURT: There is triggered by Metro. They want to get him in custody.

MS. OVERLY: Yes.

THE COURT: They have information he may have committed a murder. They want to get him in custody

07:54AM so they can interview a murder, correct?

MS. OVERLY: They want to locate him, yes, the CAT Team, yes. That's what they do. They have a basis to arrest him on a parole violation, but contact with them is independent of that. They have no control of whether or

07:54AM not he is going to get arrested on a parole violation.

Ultimately, that was the circumstances under which he was located and found, but there was -- it's not like Metro contacted them and said, Hey, issue this warrant. He had a active warrant validly issued out of

07:54AM California by California's Department of Parole & Probation and the means by which they located him was that, but that warrant was an independent valid warrant nonetheless and, when he was arrested in this particular incident, he was arrested exclusively on that warrant. He was never, during

07:55AM any of the interaction, arrested on this murder.

THE COURT: But he was arrested for the sole purpose of allowing the detectives to go over and interview him about the murder.

MS. OVERLY: Well, I mean that's something

07:55AM that I think would need to be flushed out by the detectives themselves, if they were to testify at a preliminary hearing, which was kind of what I think --

THE COURT: Why do they need to flush it

07:55AM out? This is the information I have in front of me. This is what's in the application. This is everything I have in front of me is that they wanted to arrest him solely so they could get over there, talk to him because they have all this information about him, but it's on the streets. Nobody on the street is going to stand up and say, Yeah, he

07:55AM did it and I will testify.

MS. OVERLY: Right.

THE COURT: So they have to get him in custody. They have to arrest him and get him in custody so they can come interview him about the murder.

07:55AM MS. OVERLY: Well, yes, they wanted to -- I think the State's Motion is, yes, they wanted to locate him. If the means by which they located him was, in fact, he was arrested on a parole violation, then, yes, he was. He was arrested on a parole violation and that was the

07:56AM means by which CAT contacted him. They went over there and

they interviewed him, but --

THE COURT: So to get this straight, they contact San Diego, San Diego says, Okay, we will issue a warrant, now you have a basis to go arrest him.

07:56AM MS. OVERLY: That's correct.

THE COURT: Which is triggered by Metro --

MS. OVERLY: That's correct.

THE COURT: -- wanting to arrest him so that -- wanting to locate him, arrest him so they can have

07:56AM him in custody to interview him.

MS. OVERLY: That's my understanding, yes.

THE COURT: So he was in custody and he was in custody on behalf of Metro --

MS. OVERLY: No.

07:56AM THE COURT: -- so homicide detectives can go over and talk to him about this murder case.

MS. OVERLY: But I think that's where the legal issues are alleged in the Motion is that, yes, he was technically in custody, as they were in those cases cited

07:56AM in the Motion. Yes, he was in custody and that was the means and under the circumstances by which they went and interviewed him, but he was not under a custodial interrogation and in custody in reference to this case.

THE COURT: They know exactly why they

07:56AM wanted to talk to him. They know exactly why they want to

arrest him, get him in custody. Why didn't they just read him his Miranda rights?

MS. OVERLY: I mean I think that arguably they could have, at the outside, read him his Miranda

07:57AM rights.

THE COURT: They could have or should have?

MS. OVERLY: Well, the State's argument is that they were not legally required to read him Miranda at

07:57AM the time.

THE COURT: It's 28 pages into the interview with him before they even bother to read him his Miranda and it's one of the worse things I have seen, in terms of reading him his Miranda rights, and I'm just going

07:57AM to turn to page 28 on this. I think it was 28; I may be off a page.

From the detective, and this is on the third line of the page towards kind of the end of that, "I mean would you -- would you feel better if I read you your

07:57AM Miranda rights and stuff, man?"

I mean that's what the detective said. The standard isn't does it make you better if he had his Miranda rights read to him. The standard is if he is in custody, he needs to have his Miranda rights read before

07:58AM they interview him. It's not whether somebody feels

better. That's not the way the Fifth Amendment works.

MS. OVERLY: No, I understand that, your Honor, and I think if the detective believes he was, in fact, under custodial interrogation and in custody with regards to this case, they would have read him Miranda, either by card or memory, at the outset of the interview, but based on their position, it was the State's position in its Opposition was that he, in fact, was not. They didn't feel the need to issue these Miranda warnings at the outset or throughout any point in time in the interview, as they didn't in Fields rather.

THE COURT: The interviews basically are voluntary. They are always voluntary interactions with the police. You cited a case where the guy's in prison, they bring him in the interview room, and he is free to leave. He may have be in prison, but in prison, his cell is his home. So they say, You are free to leave. That means go back to your cell and just go back to what is basically his home.

MS. OVERLY: Correct.

THE COURT: If he was free to leave, that means he was going to be uncuffed, let out, put in a police car, go back to his apartment, make a sandwich, turn on the TV, and go on with his day or by free means he is going to be in handcuffs and put in the back of the car?

MS. OVERLY: Well, free to leave in the same respect as he was in Fields. I mean like that's why the State believes it's analogous. In that case, they even indicated that he was free to leave and by that, they meant free to leave and go back to his cell.

THE COURT: His cell is his home.

MS. OVERLY: Correct.

THE COURT: Right. He's not free to go back to his home, right?

MS. OVERLY: No, he's not because of this active parole violation where he was going to independently go back to California, as he had been doing since 2014.

THE COURT: And that's the ball that Metro got started rolling.

MS. OVERLY: Correct.

THE COURT: Correct.

MS. OVERLY: And the ball -- Metro's ball started rolling, but it's a ball he created for himself and had this warrant issued nonetheless.

THE COURT: All right.

MS. OVERLY: So the State's argument was similar to that case. He could have indicated, with his extensive criminal history and his knowledge about the criminal justice system, and merely say to them, I don't want to talk to you about this. They would have taken him

back to CCDC and that would have been, granted, his temporary home, but just like in Fields, it's like him going back to his cell. He was going to be extradited back to California, as he indicated he well knew in the interview.

MS. LOBO: One other thing for the Court too.

Mr. Gathrite, it was so bazaar and strange to him. He's appeared a few times before your Honor on the fugitive calendar. He's been extradited back and forth. This is the one time California didn't come to get him. California was not interested this time. He's gone back and forth like two, three times. They always come get him. Somebody said, Don't bother, he's got a murder case.

MS. OVERLY: Well, I think that's --

THE COURT: Well, no, whatever you have locally, you have to clean up the new local charges first before they come pick you up. So he does have an open murder case. They are not going to come get him.

MS. LOBO: Here's the thing, Judge. He is not booked for murder, though. It's just they don't bother to come get him. It's not until a week later.

MS. OVERLY: And, your Honor, just one brief thing.

THE COURT: Sure.

MS. OVERLY: If they were to be -- typically, as your Honor knows, these issues are litigated up in District Court as well and after they're litigated in a motion, like in Jackson V Denno, a preliminary hearing is typically ordered at that point in time.

The reason I mentioned the preliminary hearing is because it would be the State's position that given the jurisdiction in which we are in right now, if that your Honor felt that under Jackson V Denno or something of equal footing would be appropriate, that a preliminary hearing would suffice, so forth, that would flush out those issues.

THE COURT: I'm not sure what issues there are to flush out. He is clearly in custody. This was all triggered by Metro. They was all set in motion. They knew exactly what they were doing. They knew exactly what they were doing. They wanted to get him in custody so they could interview him on the murder case.

That is the only reason how this thing starts. It's the only reason to contact San Diego. This is all a ruse. This is all a ruse by Metro to get him in custody to interview him about the murder case. So he was in custody and, when he is custody, they should have read him his Miranda Rights. They didn't, not until 28 pages into this.

They violated his rights. The fact it's a murder case doesn't matter to me. It doesn't matter if he is caught with 20 pounds of weed or if it's a murder case. They violated his rights.

08:02AM Because they violated his rights when he was in custody, I'm going to suppress his statement. Because the gun comes from the statements made during the interview, I'm going to suppress the gun --

MS. OVERLY: And, your Honor --

08:02AM THE COURT: -- and that's going to be this Court's ruling.

So you can proceed to prelim, if you want to, but the statement is not coming in and the gun is not coming in.

08:02AM MS. OVERLY: And, your Honor, can I ask then what your specific ruling would be in reference to the State's Opposition in reference to how Miranda does not apply to the issue of consent with regards to the retrieval of the gun?

08:03AM THE COURT: The gun is a fruit of the poisonous tree. The only information they have is the information they gleaned while interviewing him illegally because they knew he wasn't read his Miranda rights properly. All of this is the fruit of the poisonous tree.

08:03AM MS. OVERLY: But, your Honor --

THE COURT: So the only information they have about the gun is the information he gave during the interview. So if the statement goes out, the gun goes out.

MS. OVERLY: Okay.

08:03AM So, specifically, the State's Opposition references how the Miranda warnings and any illegally obtained statements is non-testimonial for purposes of somebody's rights being violated.

So I just want to be clear that your

08:03AM Honor's ruling is independent of that, I guess, case law?

THE COURT: Do they have the gun without the statement? Do they get the gun without the statement from him as to where the gun was?

MS. OVERLY: Well, the argument is, your

08:03AM Honor, that his consent is not testimonial. So it's not technically considered his statement. It's independent of the usual Miranda suppression because it's not testimonial.

THE COURT: I have a gun that he said was hidden here. That's the information received in the

08:04AM investigation. I have the gun used in the murder. It's located here.

MS. OVERLY: I understand, but the State's argument is that he consented to them accessing the apartment to retrieve a firearm and that that consent

08:04AM allowed them to go inside and obtain that and then,

additionally, the State's Inevitable Discovery Doctrine, I'm not sure if your Honor wants to rule on that issue as well?

THE COURT: No. The statement is out, the

08:04AM gun is out. You can proceed however you want, but the statement is not coming in at prelim. The gun is not coming in at prelim. So --

MS. OVERLY: So the Inevitable Discovery Doctrine would be denied as well in that respect?

08:04AM THE COURT: Counsel, the statement is out. The gun is out.

MS. OVERLY: Okay.

THE COURT: So okay.

MS. LOBO: Thanks, Judge.

08:04AM THE COURT: Okay, do we have a prelim set?

MS. LOBO: Friday.

THE CLERK: June 8.

MS. LOBO: Next Friday, one week.

THE COURT: All right.

08:05AM MS. LOBO: Thank you.

THE CLERK: June 8, 9 A.M. stands.

(Off the record discussion not reported.)

* * * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Patsy K. Smith
PATSY K. SMITH, C.C.R. #190

RET
STEVEN B. WOLFSON
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Nevada Bar #001565
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State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application,

of

DEANDRE GATHRITE,
#2592432

for a Writ of Habeas Corpus.

CASE NO: C-18-334135-1

DEPT NO: III

STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: SEPTEMBER 25, 2018
TIME OF HEARING: 9:00 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through SARAH E. OVERLY, Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 7th day of September, 2018, and made returnable on the 25th day of September, 2018, at the hour of 9 o'clock A.M., before the above-entitled Court, and states as follows:

1. Respondent denies the allegations of Paragraph 4 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Paragraphs 1, 2, 3, 5, and 6 do not require admission or denial.

3. The Petitioner is in the actual custody of JOE LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Criminal Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this _____ day of September, 2018.

Respectfully submitted,

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

BY _____
SARAH E. OVERLY
Deputy District Attorney
Nevada Bar #12842

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On February 26, 2018, Deandre Gathrite ("Defendant") was charged by way of Criminal Complaint with one (1) count of Murder with Use of Deadly Weapon (Category A Felony) and one (1) count of Ownership or Possession of Firearm by Prohibited Person (Category B Felony) in Justice Court Case No. 18F03565X. Defendant was arraigned on February 28, 2018 and the Public Defender was appointed. Preliminary Hearing was scheduled for March 23, 2018. Subsequent to discovering a conflict in representing Defendant, the Public Defender withdrew as counsel and Adrian Lobo, Esq. was appointed. The Preliminary Hearing was reset for April 5, 2018 where defense sought to continue the hearing. The Preliminary Hearing was reset for April 20, 2018. The Defense sought to continue the preliminary hearing and the hearing was reset for May 11, 2018. On May 9, 2018 both parties continued the preliminary hearing by means of stipulation and the hearing was reset for June 8, 2018.

On May 10, 2018, Defense filed a motion to suppress evidence. The State filed an Opposition on May 23, 2018. On May 25, 2018, the Justice Court ruled that the Defendant's statements provided to police and the firearm recovered by police suppressed. On June 8, 2018, the State filed a Motion to Continue based on the unavailability of an essential witness,

Raymond Moore. The Court granted the motion and the preliminary hearing was reset for June 29, 2018 with a status check on negotiations set for June 21, 2018.

On June 21, 2018, both parties indicated the case was not resolved and that the defense counsel had received Marcum Notice from the State via email on June 19, 2018. On June 29, 2018, the State made a Motion to Dismiss the case and made additional representations regarding the unavailability of witness Raymond Moore. Defense made an oral motion to dismiss the case with prejudice, which was denied by the Justice Court. The case was instead dismissed without prejudice pursuant to the State's Motion.

On August 15, 2018, an Indictment was filed charging Defendant with one (1) count of Ownership or Possession of Firearm by Prohibited Person (Category B Felony) stemming from the facts associated with the prior Justice Court case. The Defendant was arraigned in District Court on September 4, 2018 where he pled not guilty and invoked his right to trial within sixty (60) days. Jury trial is currently scheduled for November 13, 2018, with a respective Calendar Call date of November 8, 2018.

On September 7, 2018, the Defense filed the instant Petition for Writ of Habeas Corpus. The State responds as follows.

STATEMENT OF FACTS

On February 16, 2018, Detectives with the Las Vegas Metropolitan Police Department were conducting an investigation that led them to an apartment complex located at 2630 Wyandotte Street in Clark County. "Grand Jury Transcript" GJT, 7-8. Pursuant to that investigation, Detectives made contact with the Defendant[1] at Apartment #1 of that apartment complex. GJT, 7-8. The Defendant was not in custody pursuant to the investigation police were conducting but was in custody on separate charges. GJT, 8. Detective Mauch and Grimmett spoke with the Defendant in an unmarked police vehicle. GJT, 9. Defendant indicated he was involved in the current shooting investigation being conducted by police and

[1] Defendant is a convicted felon, having previously been adjudicated in 2012 of Assault with Deadly Weapon (Category B Felony) and Discharging Firearm At or Into Vehicle (Category B Felony) in the Eighth Judicial District Court of Clark County, Nevada in Case No. C271196-1. GJT, 5; Exhibit 3.

revealed that he was in possession of a revolver involved in that shooting. GJT, 9. The Defendant indicated that the revolver was located in Apartment #1, the apartment he was residing at with his girlfriend and child. GJT, 11.

Specifically, the Defendant indicated the firearm was located in the duct work inside the air conditioning unit of the apartment. GJT, 12. Defendant subsequently gave police consent to enter the apartment and recover the firearm from the air vent. GJT, 12. Detective DePalma entered the apartment and recovered an Amadeo Rossi 357 Magnum, with serial number F379181 from inside the hallway air conditioning vent. GJT, 18.

ARGUMENT

I. STANDARD OF REVIEW

NRS 171.206 requires the magistrate to hold a defendant to answer in the district court if it appears from the evidence adduced at the preliminary examination that there is probable cause to believe that an offense has been committed and that the defendant has committed it. Marcum v. Sheriff, 85 Nev. 175, 451 P.2d 845 (1969); *citing* Beasley v. Lamb, 79 Nev. 78, 378 P.2d 524 (1963). A preliminary hearing is not a trial. Whittley v. Sheriff, 87 Nev. 614, 491 P.2d 1282 (1971); *see also* Goldsmith v. Sheriff, 85 Nev. 295, 454 P.2d 86 (1969). In a preliminary hearing, the State is only required to present enough evidence to support a reasonable inference that the accused committed the offense. LaPena v. Sheriff, 91 Nev. 692, 696, 541 P.2d 907, 910 (1975); *citing* Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971).

Furthermore, the State is not required to negate all inferences but need only present enough proof to support a reasonable inference that the accused committed the offense. Whittley, 87 Nev. 614; *see also* Lamb v. Holsten, 85 Nev. 566, 459 P.2d 771 (1969). The same standard of proof applies to proof of the corpus delicti. Sheriff v. Middleton, 112 Nev. 956, 921 P.2d 282 (1996).

Neither the preliminary hearing nor a hearing on a Petition for Writ of Habeas Corpus is designed to resolve factual disputes or matters of defense, which are functions of the trier of fact at trial. Brymer v. Sheriff, 92 Nev. 598, 555 P.2d 844 (1976); Wrenn v. Sheriff, 87 Nev.

85, 482 P.2d 289 (1971). Likewise, it is not incumbent upon the state to negate all other inferences at the preliminary hearing. Graves v. Sheriff, 88 Nev. 436, 498 P.2d 1324 (1972).

II. THE STATE PRESENTED LEGALLY SUFFICIENT EVIDENCE TO THE GRAND JURY FOR THE CHARGE OF PROHIBITED PERSON IN POSSESSION OF A FIREARM.

Defendant argues the State violated NRS 172.145(2) because it failed to present exculpatory evidence to the Grand Jury, failed to inform Defendant of a date and time to testify before the Grand Jury, and relied upon evidence that should have been suppressed. However, the evidence Defendant claims is exculpatory in nature is, in fact, not exculpatory and largely inadmissible. Furthermore, the State did not rely upon inadmissible evidence in establishing probable cause before the Grand Jury. Defendant did not request a specific time to testify before the Grand Jury and absent such a request, he is not entitled to be advised of the date and time of any other scheduled witnesses or evidence presentation before the grand jury. However, if Defendant's complaint is that he wished to testify before the Grand Jury, the appropriate remedy is to permit him to go before the Grand Jury and testify under oath before the jurors, and not to dismiss the Indictment.

A. The State Did Not Violate NRS 172.145 As A Preliminary Hearing Was Never Held And Any Evidentiary Decisions Made By The Justice Court Do Not Fall Within The Statutory Language of NRS 172.145.

NRS 172.145 governs the presentation of alleged exculpatory evidence to a sitting grand jury. In this case, the State did not fail to present exculpatory evidence warranting a dismissal of the Indictment. Defendant contends the State violated NRS 172.145 by not advising the Grand Jury of the Justice Court's ruling on a Motion to Suppress. Prior to the Grand Jury presentment, Defendant sent a letter requesting the State to "comply with its duty under NRS 172.145(2) and present any and all exculpatory evidence the State is aware of to the Grand Jury...". See Def. Motion, Exh. I, p. 1. Defendant now argues that request obligate the State to advise the Grand Jury of the Justice Court's ruling with respect to the Motion to Suppress. However, that is not what NRS 172.145 pertains to.

Pursuant to NRS 172.145, a defendant is entitled to submit a statement which the grand jury must receive providing whether a preliminary hearing was held concerning the matter and, if so, **that the evidence presented at the preliminary hearing was considered insufficient to warrant holding the defendant for trial**.

In this case, however, a preliminary hearing was never held. The Court, without the benefit of an evidentiary hearing, and without a preliminary hearing, determined the Defendant's statement should be suppressed at the time of the preliminary hearing based upon what it perceived as a constitutional violation. The Court did not rule that the evidence was insufficient to warrant holding the defendant for trial.

As previously addressed in the State's Opposition to Defendant's Motion to Suppress,[2] the State was not prohibited from presenting this case to the Grand Jury because of the Justice Court's ruling regarding evidence to be presented at the time of the preliminary hearing. The Supreme Court has ruled a legal ruling by the justice court does not render a subsequent grand jury presentation impermissible. See, Sheriff v. Harrington, 108 Nev. 869, 840 P.2d 588 (1992). In Harrington, the defendant was facing charges of felony driving under the influence ("DUI") during the course of a preliminary hearing. Id. at 870-71, 840 P.2d at 588. At the preliminary hearing, the justice court ruled the defendant's prior convictions for DUI were constitutionally invalid, and therefore, the State had failed to prove a necessary element for the felony DUI charge. Id. The justice court then dismissed the case at the preliminary hearing. Id. at 870-71, 840 P.2d at 588-89.

Following the dismissal, the State presented the case – including the same precluded prior convictions – to the grand jury, who returned an indictment for the felony DUI charge. Id. at 871, 840 P.2d at 588-89. The defendant filed a petition for writ of habeas corpus, arguing the State violated its duty to preset exculpatory evidence to the grand jury by failing to disclose the justice court had ruled the prior conviction constitutionally infirm. Id. The district court granted the petition, and the State appealed. Id. In ruling that the State did not violate its ethical

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[2] Because Defendant's instant Petition contains many of the same arguments as were made in his Motion to Dismiss, the State has included the same arguments in its Return as discussed in its opposition to the Motion to Suppress.

obligations when presenting the case to the grand jury, the Supreme Court stated a legal ruling by a justice of the peace is "not evidence regarding the charge, but was rather an opinion on a legal issue." Id. at 871, 840 P.2d at 589.

Here, the State did not violate NRS 172.145 by not advising the Grand Jury of the Justice Court's ruling. NRS 172.145 is clear and unambiguous. It provides only for a statement that the Court found insufficient evidence. As there was no such finding in in this case, there was no requirement for the State to read any such statement to the Grand Jury.

B. The State Did Not Present Legally Insufficient Evidence To The Grand Jury.

Defendant argues the State was prohibited from presenting Defendant's statement to the Grand Jury because the State is bound by the Justice Court's decision regarding the Motion to Suppress, and because of the Justice Court's determination, such evidence is inadmissible. Nevada law, however, does not support this argument.

Curiously, Defendant cites to NRS 179.085 for the proposition that the grand jury, and for that matter, the district court, is bound by the legal opinions of the justice court, and argues this statute renders the Defendant's statement inadmissible. See, Def. Motion, p. 15. NRS 172.085 provides:

> 1. A person aggrieved by an unlawful search and seizure or the deprivation of property may move the court having jurisdiction where the property was seized for the return of the property on the ground that:
> (a) The property was illegally seized without warrant;
> (b) The warrant is insufficient on its face;
> (c) There was not probable cause for believing the existence of the grounds on which the warrant was issued;
> (d) The warrant was illegally executed; or
> (e) Retention of the property by law enforcement is not reasonable under the totality of the circumstances. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.
> 2. If the motion is granted on a ground set forth in paragraph (a), (b), (c) or (d) of subsection 1, the property must be restored and it must not be admissible evidence at any hearing or trial.
> 3. If the motion is granted on the ground set forth in paragraph (e) of subsection 1, the property must be restored, but the court may impose reasonable conditions to protect access to the property and its use in later proceedings.

> 4. A motion to suppress evidence on any ground set forth in paragraphs (a) to (d), inclusive, of subsection 1 may also be made in the court where the trial is to be had. The motion must be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.
>
> 5. If a motion pursuant to this section is filed when no criminal proceeding is pending, the motion must be treated as a civil complaint seeking equitable relief.

NRS 179.085 (2017). As pointed out by defense, NRS 179.085 applies specifically to motions to return property. While Defendant may not be asking for the return of any property, NRS 179.085 is not applied or read in a section by section vacuum. NRS 179.085(2) applies only in cases where a motion to return property has been filed and granted by the trial court. Because no such motion was filed here, section 2 is not applicable to the instant case. Additionally, NRS 179.085(4) provides for the trial court to hear motions to suppress, and makes no reference to legal opinions of the justice courts. Accordingly, nothing within NRS 179.085 renders Defendant's statement inadmissible, legally insufficient evidence before the grand jury.

Defendant, as in his Motion to Dismiss, also argues the State was bound by the justice court's legal opinion based upon the Nevada Supreme Court's decision in Grace v. Eighth Judicial District Court, 132 Nev. Adv. Rep. 51, 375 P.3d 1017 (2016), wherein the Nevada Supreme Court ruled a justice court has inherent authority to suppress evidence *at the time of preliminary hearing*. Again, as discussed in the State's Opposition to Defendant's Motion to Dismiss, this argument is without merit.

In Grace, the defense made a motion at the time of the preliminary hearing to suppress narcotics found on the defendant's person at the time of her arrest because the State failed to call the officer who initially arrested the defendant pursuant to a probation warrant. Id. at 51, 375 P.3d at 1019-20. Instead, the State called only the officer who searched the defendant after the arresting officer had transferred custody of the defendant, who testified he had found the narcotics in defendant's possession after conducting a search incident to arrest. Id. At the time of the preliminary hearing, the defense moved to suppress the narcotics, arguing the State had

failed to establish a proper and valid arrest, and therefore, the search incident to arrest was invalid. Id. The justice court agreed and ordered the evidence suppressed and the case dismissed. Id. The State appealed the justice court's order, arguing the justice court was a court of limited jurisdiction, and therefore lacked the authority to rule on a motion to suppress at the time of the preliminary hearing. Id. The district court agreed and remanded the case back to the justice court for a preliminary hearing. Id.

On a writ of mandamus, the Supreme Court ruled justice courts have the limited and inherent authority to grant or deny motions to suppress because such motions are intrinsically tied to the statutory duties carried out by the justice courts – namely to conduct preliminary hearings and determine probable cause. Id. at 51, P.3d at 1020-21. The Court reasoned that in the exercise of the statutory duties conferred upon the justice courts, the courts necessarily possessed inherent authority to adjudicate evidentiary matters at issue in the context of a preliminary hearing, relying upon the statutory language in NRS 47.020 (rules of evidence apply at the time of a preliminary hearing) and NRS 48.025 (instructing that only relevant evidence is admissible). Id. at 51, P.3d at 1020. Notably, the Supreme Court focused on the authority of a justice court to rule on suppression motions in the context of a preliminary hearing for the purpose of establishing probable cause, and cautioned this inherent authority was limited in nature. Id. In fact, the Supreme Court further noted that specifically because NRS 47.020 did not mention preliminary hearings by name, the absence of such a delineated item meant the statute was intend to apply to that specific hearing. Id. The Grace decision, however, does not stand for the proposition that the State is without recourse when a motion to suppress is granted without an evidentiary hearing, and when a preliminary hearing does not actually take place. Nor does the Grace decision specifically prohibit the State from seeking a grand jury indictment in the same case. The Grace decision simply clarifies that at the time of a preliminary hearing, the justice court has the limited and inherent authority to hear motions to suppress in relation to the evidence presented at the time of the preliminary hearing.

Defendant's reliance on Grace for the proposition that the State was forever bound by the justice court's legal decision on a motion to suppress when no preliminary hearing occurred is misplaced. Indeed, the Supreme Court has ruled a legal ruling by the justice court does not render a subsequent grand jury presentation impermissible. See, Harrington, 108 Nev. at 871, 840 P.2d at 589. Similarly, there is nothing that prevents the State from seeking an indictment even when a preliminary hearing is still pending, or has been bifurcated, or even when a complaint – for any number of reasons including dismissal for lack of probable cause at preliminary hearing – is dismissed. NRS 173.015 specifically states "the first pleading on the part of the state is the indictment or information." NRS 173.015 (2017). This statute makes no distinction between when or even if the State must choose one procedure over the other. See, State v. Maes, 93 Nev. 49, 559 P.2d 1184 (1977). The Nevada Supreme Court has held the State may choose one or the other, and, may seek an indictment, even while an information may still be pending, or where a preliminary hearing has only partially taken place. Id.

In Maes, the State charged the defendant with sexual assault by way of a criminal complaint. Id. at 50, 559 P.2d at 1184. A preliminary hearing was scheduled, and prior to the preliminary hearing, the defense argued certain elements and facts of the charged crime to the justice court, suggesting the State lacked probable cause and was relying upon inadmissible evidence in their case. Id. Specifically, defense counsel argued these infirmities would negate a finding of probable cause by the justice court at the time of the preliminary hearing. Id.

Following that argument, the State presented the case to the grand jury, who issued an indictment charging defendant with the same crimes. Id. The defendant filed a motion to dismiss the indictment, arguing the State had engaged in a "contemptible procedure" when the prosecutor ignored the arguments of defense counsel, implicitly recognizing the validity of the arguments and acknowledging the inadmissibility of the evidence, and instead, bypassed the preliminary hearing. Id. The district court agreed, dismissed the indictment, and ordered the case remanded to justice court for a preliminary hearing. Id.

In reviewing NRS 173.015, the Nevada Supreme Court held the State had not engaged in "contemptible procedure" by presenting the case to the grand jury, and furthermore, had no

duty to follow the arguments of counsel before the justice court in electing to pursue either a preliminary hearing or an indictment from the grand jury even if the arguments of counsel indicated some of the evidence may be deemed inadmissible at a preliminary hearing. Id. at 51, 559 P.2d at 1185. Specifically, the Court held the State was not required to pursue one process simply because it began first, but rather, it was up to the State to elect how to proceed in charging a defendant, even if it means the State pursues an indictment while a preliminary hearing began, but had not yet finished. Id.

Further, the ruling of Grace is more limited than Defendant suggests. The Supreme Court specifically noted the justice court's authority to rule on motions to suppress is *only* derived from the inherent authority in its limited jurisdiction to conduct preliminary hearings. In so finding, the Court pointed to State v. Sargent, 122 Nev. 210, 128 P.3d 1052 (2006), noting the limitations of the jurisdiction of the justice courts and finding the jurisdiction is limited only insofar as it relates to their jurisdiction over preliminary hearings. Grace, 375 P.3d at 1018 ("Thus, the authority to even hear such motions is entirely related to, and tied solely to, the conduction of a preliminary hearing"). In Sargent, the Court determined justice courts do not have the inherent authority to even order a defendant to appear at a preliminary hearing because the physical presence of the defendant was but one of many ways the State could identify the defendant, and outside of establishing identity at the preliminary hearing, the justice courts lacked jurisdiction. Id.

There is nothing either within the NRS or Nevada case law that suggests the State is somehow bound by a legal opinion of the justice court when presenting evidence to the grand jury. Rather, Nevada law expressly grants the State the authority to seek an indictment *regardless* of the decisions by the justice court. Certainly, there are some limitations, for example, if there had been a preliminary hearing held and the justice court had failed to find probable cause based upon the evidence and dismissed the case, then a specific statement of that fact pursuant to NRS 172.145 would be required to be read to the grand jury. But even the plain language of NRS 172.145 indicates the State is not bound by even the legal rulings in presenting a case to the grand jury. If the justice court's interlocutory legal opinions were

binding upon the grand jury, NRS 172.145 would be rendered meaningless. Because Nevada law has repeatedly affirmed the State's ability to seek an Indictment separate and apart from the justice court's procedures, the State did not submit legally insufficient evidence to the grand jury simply because it presented Defendant's statement.

C. Defendant's Statement Is Admissible.

Inasmuch as Defendant's argument is that the statement itself is inadmissible – irrespective of the justice court's decision – the State nevertheless did not submit legally insufficient evidence to the Grand Jury because Defendant's statement was not taken in violation of his Fifth Amendment rights. First, the State notes this argument should be raised in a separate motion to suppress before this Court, and should be the subject of an evidentiary hearing. Because this is not in the form of a separate motion, nor addressed in substance in Defendant's Petition, this Court should not entertain Defendant's argument as to whether the statement is independently admissible. However, to the extent this Court considers the independent admissibility of Defendant's statement, the State responds as follows.

Miranda rights are required to be given to a defendant before a custodial interrogation. Mitchell v. State, 114 Nev. 1417, 1423, 971 P.2d 813, 817-818 (1998), overruled on other grounds by Sharma v. State, 118 Nev. Adv. Op. No. 69 (October 31, 2002). Custody has been defined as a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest.'" Alward v. State, 112 Nev. 141, 154, 912 P.2d 243, 252 (1996) (citing California v. Beheler, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520 (1983)). When determining whether a person who has not been arrested is "in custody," the test "'is how a reasonable man in the suspect's position would have understood his situation.'" Alward at 154 (citing Berkemer v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151-3152 (1984)).

Once voluntariness of a confession has been raised as an issue, there must be a hearing pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), before an accused's statements are brought before a jury. At this hearing, the Court must hear evidence concerning what the defendant told the police and the circumstances under which the defendant made the

statements. The Court must then decide (1) whether his statement was voluntary using the totality of the circumstances, and (2) whether Miranda was violated.

Coercive police conduct is a "necessary predicate" to a finding that a Defendant's statement is involuntary such that its admission violates the Defendant's Due Process rights. Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986). "A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement." Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980). In order to be considered voluntary, a confession must be the product of free will and rational intellect. Blackburn v. Alabama, 361 U.S. 199, 208, 80 S. Ct. 274, 280 (1960). A confession is involuntary if it is the product of physical intimidation or psychological torture. Townsend v. Sain, 372 U.S. 293, 307, 83 S. Ct. 745, 754 (1963). To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant. Passama, 103 Nev. at 213, 735 P.2d at 323. The question is whether the defendant's will was overborne when he confessed. Id.

Furthermore, it is well settled law that the interrogating police officers are entitled to an unequivocal invocation of the right to either an attorney or the right to remain silent. See Davis v. United States, 512 U.S. 452, 114 S.Ct. 2350 (1994). Even, "I think I better talk to a lawyer first," has been found not to be unequivocal. See State v. Eastlack, 883 P.2d 999 (Ariz.1994).

i. Defendant Was Not In Custody For Purposes Of Triggering Miranda Warnings.

The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here." Illinois v. Perkins, 496 U.S. 292 (1990). Instead, we simply "reject[ed] the argument that Miranda warnings are required whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent." Id. at 297.

Whether a suspect is "in custody" is an objective inquiry. J. D. B. v. North Carolina, 564 U.S. 261 (2011). Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances,

would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. Id. "Custody" is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. Id. at 508-509. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of "the objective circumstances of the interrogation," Stansbury v. California, 511 U.S. 318, 322-323 (1994) a "reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." Thompson v. Keohane, 516 U.S. 99, 112 (1995). And in order to determine how a suspect would have "gauge[d]" his "freedom of movement," courts must examine "all of the circumstances surrounding the interrogation." Howes v. Fields, 565 U.S. 499, 509 (2012).

Miranda adopted a "set of prophylactic measures" designed to ward off the "'inherently compelling pressures' of custodial interrogation," Shatzer, 559 U.S. at 103, 130 S. Ct. at 1217, 175 L. Ed. 2d at 1050 (quoting Miranda, 384 U.S., at 467), but Miranda did not hold that such pressures are always present when a prisoner is taken aside and questioned about events outside the prison walls. Indeed, Miranda did not even establish that police questioning of a suspect at the station house is always custodial. Mathiason, 429 U.S., at 495 (1977) (declining to find that Miranda warnings are required "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect"). Howes v. Fields, 565 U.S. 499, 507-508 (2012).

A prisoner is not always considered "in custody" for purposes of Miranda whenever a prisoner is isolated from the general prison population and questioned about conduct outside the prison. Id. at 508. The three elements of that rule — (1) imprisonment, (2) questioning in private, and (3) questioning about events in the outside world--are not necessarily enough to create a custodial situation for Miranda purposes. Id. A prisoner, unlike a person who has not been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing for prompt release. Id. When a person is arrested and taken to a station house for interrogation, the person who is questioned may be pressured to speak by the hope that, after doing so, he will be allowed to leave and go home. Id. On the other hand, when a prisoner is questioned, he knows that when the questioning ceases, he will remain under confinement. Id. at 511

(citing Shatzer, 559 U.S., at 124, n. 8). Third, a prisoner, unlike a person who has not been convicted and sentenced, knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence. Id. And "where the possibility of parole exists," the interrogating officers probably also lack the power to bring about an early release. Ibid. "When the suspect has no reason to think that the listeners have official power over him, it should not be assumed that his words are motivated by the reaction he expects from his listeners." Id. (citing Perkins, 496 U.S., at 297). Under such circumstances, there is little "basis for the assumption that a suspect . . . will feel compelled to speak by the fear of reprisal for remaining silent or in the hope of [a] more lenient treatment should he confess." Id. at 512 (citing Shatzer, 496 U.S., at 296-297).

In Fields, the defendant was a prisoner escorted from his prison cell into a conference room by a corrections officer. Id. at 502. Once inside, Defendant was questioned between five to seven hours by two sheriff's deputies regarding allegations of sexual conduct with a 12-year-old boy that pre-existed his prison sentence. Id. at 502-503. Sheriffs told the defendant he was free to leave and return to his cell and the conference room door sometimes remained open and other times shut. Id. at 503. During the interview, the defendant became upset and stood up shouting expletives. Id. Sheriffs told the defendant to sit down and that he could go back to his cell if he didn't want to cooperate. Id. the defendant eventually confessed to the sexual abuse. Id. The defendant even repeatedly indicated he did not wish to speak to detectives anymore but did not request to leave. Id. When the interview was over, the defendant was delayed in his transport back to his cell and did not return until well after the hours he typically retired. Id. at 503-504. At no point during Defendant's entire interaction with Sheriffs was the defendant Mirandized. Id. at 504. The defendant was later charged with criminal sexual conduct and sought to suppress his confession based on a Miranda violation. Id.

The Supreme Court determined that the defendant was not in custody for purposes of Miranda. Id. at 514. The court weighed the totality of the circumstances in making this determination:

> ...Respondent did not invite the interview or consent to it in advance, and he was not advised that he was free to decline to speak with the deputies. The following facts also lend some support to respondent's argument that Miranda's custody requirement was met: The interview lasted for between five and seven hours in the evening and continued well past the hour when respondent generally went to bed; the deputies who questioned respondent were armed; and one of the deputies, according to respondent, "[u]sed a very sharp tone,", and, on one occasion, profanity.
>
> These circumstances, however, were offset by others. Most important, respondent was told at the outset of the interrogation, and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted. ("I was told I could get up and leave whenever I wanted"). Moreover, respondent was not physically restrained or threatened and was interviewed in a well-lit, average-sized conference room, where he was "not uncomfortable." He was offered food and water, and the door to the conference room was sometimes left open. "All of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave." Yarborough, 541 U.S., at 664-665.
>
> Because he was in prison, respondent was not free to leave the conference room by himself and to make his own way through the facility to his cell. Instead, he was escorted to the conference room and, when he ultimately decided to end the interview, he had to wait about 20 minutes for a corrections officer to arrive and escort him to his cell. But he would have been subject to this same restraint even if he had been taken to the conference room for some reason other than police questioning; under no circumstances could he have reasonably expected to be able to roam free. And while respondent testified that he "was told . . . if I did not want to cooperate, I needed to go back to my cell," these words did not coerce cooperation by threatening harsher conditions. ("I was told, if I didn't want to cooperate, I could leave"). Returning to his cell would merely have returned him to his usual environment.

Id. at 515-516.

In Minnesota v. Murphy, 465 U.S. 420 (1984), the defendant sought to suppress statements made during a meeting with his probation officer on an unrelated charge. The Court held that "custody" for Miranda purposes has been narrowly circumscribed. Id. at 430. The Court reasoned that the extraordinary safeguard of Miranda warnings do not apply outside the context of the inherently coercive custodial interrogations for which it was designed. Id. The court found the defendant's situation was not unlike suspects in noncustodial settings:

> ...the nature of probation is such that probationers should expect to be questioned on a wide range of topics relating to their past criminality. Moreover, the probation officer's letter, which suggested a need to discuss treatment from which Murphy had already been excused, would have led a reasonable probationer to conclude that new information had come to her attention. In any event, Murphy's situation was in this regard indistinguishable from that facing suspects who are questioned in noncustodial settings and grand jury witnesses who are unaware of the scope of an investigation or that they are considered potential defendants.

Id. at 432.

In Junior v. State, the defendant tested positive for drugs while on parole. Junior v. State, 107 Nev. 72 (1991). After the defendant absconded, a warrant was issued for his arrest, and he was subsequently arrested and charged with three counts of being under the influence of a controlled substance. Id. at 74. The defendant asserted the parole officer should be required to have Mirandized him prior to his submission of the drug test. Id. The Supreme Court held there was no relevant authority for the proposition that evidence of an independent felony offense obtained by a parole officer in his official capacity could not be used in a subsequent prosecution for the offense. Id. at 74-75.

In Holmes v. State, 306 P.3d 415 (2013), the defendant argued that his non-Mirandized statements made while being interviewed by Nevada Detectives in his California Parole Officer's office should be suppressed. The Court held that Miranda warnings were not required since the interrogation was not custodial. Id. at 423.

In Mathiason, the Court held that a parolee who voluntarily came to a police station at the request of a police officer, who was immediately informed that he was not under arrest, who was thereafter questioned about a burglary, who confessed to the burglary after the questioning officer falsely stated that the parolee's fingerprints were found at the scene of the burglary, and who left the police station without hindrance at the close of his one-half hour interview, was not in custody or otherwise deprived of his freedom of action in any significant way for purposes of the requirement that an individual must be in custody or deprived of his freedom before police must give Miranda warnings. Oregon v. Mathiason, 429 U.S. 492 (1977). The Court held that the questioning officer's false statement about the parolee's fingerprints has nothing to do with whether he was in custody for purposes of Miranda

warnings. Id. Additionally, despite the police officer advising the parolee of his Miranda rights after he had confessed, the court held that the parolee's confession did not have to be excluded in his prosecution for burglary on the ground that it was not preceded by Miranda warnings. Id.

Here, Defendant previously argued he was "absolutely" in custody based on his arrest for the California warrant. However, the circumstances surrounding the Defendant's arrest clearly establish he was not "in custody" for purposes of triggering Miranda warnings in the instant case.

On February 14, 2018, a Sheriff's Warrant for Defendant's arrest was issued out of San Diego County, California for Defendant's 2010 felony conviction for Manufacturing and/or Possessing a Dangerous Weapon. Defendant was on parole for the offense and the warrant authorized Defendant be extradited back to California. On February 16, 2018, Defendant was located by the LVMPD Criminal Apprehension Team (CAT) and arrested. When Defendant was arrested on the warrant, he had no Nevada charges pending. In fact, after Defendant was questioned and the firearm was recovered, the Defendant was not arrested on either the Murder or Possession of Firearm by Prohibited Person charge. Instead, Defendant was transported to the Clark County Detention Center exclusively on his California warrant. Five days later, California lifted the hold and Defendant was released from the detention center. LVMPD Detectives did not obtain the Defendant's arrest warrant for the murder or firearm charge until February 26, 2018 and after interviewing two additional witnesses.[3] The LVMPD CAT team located Defendant on that day and arrested Defendant on the murder and possession of firearm charges.

Similar to Fields, where police sheriffs questioned the Defendant while he was serving a prison sentence for a separate offense, Detectives here spoke to Defendant while he was in custody on his California parole violation. Like in Fields, the Defendant's status of being in custody on his California felony offense for which he was on parole had no bearing on the independent Nevada investigation. Also similar to Fields, Detectives here had no influence on Defendant's California sentence or extradition. Additionally, questioning by Detectives had

[3] Raymond Moore was interviewed on February 21 and Towan Abrams was interviewed on February 23.

no impact on Defendant's restraint since he was going to remain in custody on his California warrant independent of whether Detectives questioned him on an unrelated event or not. At no point throughout questioning did Detectives make any promises or insinuations regarding the impact of Defendant's California sentence.

Furthermore, the objective circumstances surrounding Defendant's questioning clearly establishes his freedom of movement did not trigger Miranda. Once Detectives made contact with Defendant, his handcuffs were removed, he was permitted to smoke outside of the patrol car, he was given the opportunity to hug his child, and was repeatedly told that he could "leave at any time" and was a "free man." Similar to Fields, where police told the defendant he could leave and return to his cell, the Defendant here could have refused to speak to police and simply awaited transport to jail on his warrant. Instead, Defendant spoke with Detectives, smoked a cigarette, and never expressed any desire to end questioning.

Moreover, the circumstances here were far less coercive than those in Fields, where the court still found Defendant was not in custody for purposes of triggering Miranda. In Fields, the interview lasted between five (5) to seven (7) hours and continued well into the night. At one point during questioning, the defendant became upset and stood up from his seat as if to leave. Police used a sharp tone and even cursed throughout the interview. And most notably, at no point did police advise the defendant of his Miranda rights. Here, however, the Defendant was interviewed in the afternoon for less than three (3) hours. The conversation never turned hostile, Defendant never indicated he wanted to terminate the conversation, and Defendant was advised of his Miranda rights approximately twenty-five (25) minutes into questioning.

Finally, Defendant was fully aware of the circumstances of his arrest and what to anticipate as a result. Defendant repeatedly educated Detectives on his California case, specifically, that he had been on the run since 2014 due to his California probation violations. Defendant explained the process of getting extradited to California on the warrant where he would serve minimal time in custody before getting released. Defendant even explained to Detectives he would definitely be extradited back to California:

> **Q**: I haven't - I haven't even discussed with my boss about taking you away or even if that's - I don't know if that's - I don't know what's going on with that. I'm being honest with you, dude. I - I ain't even - that hasn't even crossed my mind at this point.

Q1: Holds even more weight when, you know, if you tell us where we can kinda get this gun, make sure it's safe, and where it's supposed to be, and...

Q: I mean, you ain't got nothing to hide- you done - you done been up front with me and kinda already told me the story. I mean, I mean, it's not gonna change the situation. It is what it is. They - they come up. They got guns out. You know, you already gave me the rundown. I mean...

A: I was scared. So...

Q: I - I - I get it.

Q1: It makes sense. They got guns.

Q: You know? I'm not here to judge you, man. I'm just here to figure out the facts, brother. Feel me? You know? And that's why we - and that's why I've come to you the way I come at you, man. You know? But I'm just being real with you. I mean, his big question is - he's gonna wanna know is where's the gun. You know, he ain't got nothing to hide, where's the gun? And I don't - I don't care if the gun is stolen or this, that, and the other. That's not my - that's not my concern right now. 'Kay. We'll be concerned about that, w- whatever with this - something funky with the gun, that - that's not - I'm not here for that. You feel me? It's kinda, like, the missing piece of the puzzle, man. We're just trying to close up all the loose ends on this thing, and - and that's one of the questions that's gonna be posed from him and his bosses and, you know, I gotta answer to it, man. My partner gotta answer to it. That's it. I know you're trying to, you

know, you feel like I've lied to you to this point? I've been up front with you about everything. First thing I said to you when I saw you was at that apartments, "Hey, man, you good? You all right?" Am - am I right? Did I not say that?

A: Yeah.

Q: And I been cool with you up front, right? You wanted a cigarette. We said - hey, sh- I told my partner, "Bring this man a cigarette." I'm not t- I'm not trying to pull no - no tricks or nothing, man. I'm up front with you, man. I'm just - I'm being 100 with you. And I'm just telling you when I get out of this car and I go talk to him, he's gonna say, "Hey, what's up?" And I - and I tell him, you know, A, B, and C. You know, he's being cooperative. He's - he's up front with me. He's being honest with me. At least I feel that way. You know, but he won't tell me where the gun's at. How's that gonna look, man? He be like, "What kinda bullshit is that, man? How is he being honest with you if he ain't - he ain't being completely honest with you?" I ain't trying to jam you up, but we gotta put the miss- the missing pieces of the puzzle together. That's all. And so we can paint the full picture. I'm not trying to jam you up on nothing or nothing like that, man. I already know you got issues with California. I'm not here for that, bro. You know, I'm here about this incident. That's why we was asking, man. I mean, I wanna be able to go tell him, you know, where the gun at.

A: Mmm.

Q: Is it inside this apartment right here where you at now?

A: I don't know.

Q: What's that?

A: Um, uh, mmm.

Q: I'm kinda getting a feeling maybe it is. I get it. 'Cause you're scared, man. You got people still after you, or at least you think that 'cause...

Q1: 'Cause of what happened.

Q: Right? I mean, am I - am - am I wrong? If I - if I'm wrong, tell me I'm wrong, man. But you still gotta be feeling some kinda way after what went down, right? I mean, that's what the normal person would feel.

Q1: Especially when you're here with your kid. You gotta protect them.

Q: Right?

A: Yeah. I know. I...

Q: So where inside the - is - I - where - where inside this apartment is that gun, man? So we can get it, we can go on by our merry little way, man.

A: It's not - it's - make sure no - no kids can get it.

Q: Okay.

A: Just - I'm just scared of what it might bring.

Q1: What it might bring?

A: Yeah. We - we get in trouble? Al- already in troubles 'cause I - it'll make it worse.

Q1: It's not really - I don't see how it's gonna make it worse. I mean, a gun's a gun. I

mean, l- like my partner said, if it's stolen or it's some stuff like that, it's not really why I'm here. You know, my job was to investigate, you know, the incident that happened out there, and why the incident happened. And so far, everything that we've talked about in here matches what everyone's kind of told us. So we just wanna put, like my partner said, the missing pieces together because like you said, if other people were shooting, and say the - the rounds are different size and stuff like that, I can say, "Yeah, these came from, you know, this gun. He was running away. That's the one, you know, that DeAndre told us about, so these other ones must belong to, you know, the people that were shooting at him and stuff like that."

Q: Kinda helps us match up the story. You know what I'm sayin'?

Q1: Ties it all together.

A: I'm just nervous right now, you know. This is - you know what the s...

Q: You said you got it up so Junior can't get to it. Where inside the apartment is it? (Unintelligible) go ahead.

A: (Unintelligible). It just - it's who I got the gun from. I don't mean...

Q: I'm not asking who you got it from. I'm just asking where it's at. I didn't even ask about where you got it from, did I? I d- I ain't ask you that.

Q1: We're not gonna probably be able to find out anyways. Guns aren't registered anymore.

Q: I just wanna know where it's at now. And I know it's inside this apartment. I

don't wanna go in there and, you know, mess, you know, just do unnecessary stuff to the apartment, man, and cause problems, you know, you or anybody else, man. You know, I'm not asking for, you know, just wanna know where it's at, man.

A: It's in there.

Q1: It's in the apartment?

Q: Is it, like, it's gotta be up somewhere, like, high or somewhere where Junior can't get to it, right? Somewhere low or something? Well, must tell me where it's at, man, and we can - we can...

Q1: Is it in - is it in, like, uh, in a cabinet?

A: Mm-mm.

Q1: Dishwasher?

Q: Where...

Q1: Like, uh, like, a vent? It's in a vent?

Q: Like, where at? Which one, man?

A: In the hallway under the AC thing.

Q1: Under the AC vent in the hallway? Okay. Is there any other - is there any other ammo in the - in the apartment for the gun?

A: Nothing. I just - I...

Q1: Is there still ammo in the gun though?

A: Yes.

Q1: Okay.

A: The apartment not gonna be tore up, is it? 'Cause my girl's still here.

Q1: No. Dude, if you're telling us it's in the AC thing, that's where we would go and look. It's there, that's it. We're - there's nothing - there's no reason for us to look at anything else for that. I mean, we're gonna look around quick maybe f- you know, for some ammo and stuff.

A: No, I don't...

Q1: Just to make sure, but...

A: I didn't bring no...

Q1: I mean, the gun - the gun is the important thing. That's pretty much what we're here for. The gun - firearms related stuff. Let me ask you. Does your family and your people know about what happened obviously? Like, do they know you're - do they know that you're involved in this?

A: No.

Q1: They don't know? Okay. Well, just so you know, the way we handle things, I don't contact them, or if they ask me, I tell them, hey, talk to you. Down the road if...

A: (Unintelligible) only Tia. She's the only person.

Q1: Tia?

A: Only person.

Q1: Was she over in that area when everything happened, or no? So this is where

Tia normally stays?

A: She just moved here a couple days ago.

Q1: Oh, okay.

A: She was in a program.

Q1: Yeah?

A: Up north. (Unintelligible).

Q: Hey, you mind if I step out and I'll let them know what - where - so they ain't tearing - I don't want them...

Q1: Yeah.

Q: ...tearing the apartment up and all that.

Q1: It's fine.

Q: 'Kay. You good, bro?

A: Mmm. Okay. Can I kiss my baby again?

Q: Yeah. You ain't goin' nowhere. You still right here, man. I'm just goin'...

A: I just...

Q: But I don't want them...

A: Before I leave though.

Q: Yeah. I just - I just don't - I don't want them, like, tearing your shit up, man. Let me, uh...

A: 'Cause they still have to live here.

Q1: So - so Tia knows and that's it?

A: Tia don't know.

Q1: Oh, she doesn't know?

A: But if you can let her know.

Q1: Okay. Well, I mean, the way I handle my cases, when - when I - when I'm - w...

A: She's the only person I trust.

Q1: Okay.

A: Nobody else but...

Q1: You got family out here or no?

A: She's my only family.

Q1: Okay. And what, you got two kids with her?

A: Yeah.

Q1: So what - what's the deal with you two? Are you guys kind of, like, you guys still see each other, or is it just here and there? It just kinda depends?

A: We see each other. Just - but me a- and this Cali stuff and me being on the run.

Q1: Yeah.

A: Situations like this.

Q1: Yeah.

A: I'm with the baby and she gotta go to work. You know that I got a warrant in Cali.

Q1: You got a warrant in Cali? What's that for?

A: My probation.

Q1: For the probation stuff? Okay. I didn't know if there was something else.

A: No. Just that.

Q1: How long - how long have you had that?

A: Since ‘14.

Q1: Oh, 2014? Oh, you’ve had that a while.

A: It’s just...

Q1: You haven’t gotten picked up on that yet?

A: Yeah. I - I been back - back and forth, but they only give you, like, ten day flashes or nine (unintelligible).

Q1: Oh. So you, like, get picked up. You go there, you spend two weeks, and then you kinda get out and then...

A: Yeah. (Unintelligible).

Q1: ...something happens again?

A: Like, for 90 days and then just come back and report.

Q1: Oh. So as long as you, like, check in and stuff, you’re good or whatever? Okay. How much longer do you got to do on that?

A: It’s never ending. I gotta stay in Cali.

Q1: Oh. Okay.

A: Stay out there for a year straight to get off of it.

Q1: Okay. So did - you just have too - too much drama there, or you couldn’t stay there?

A: I don’t have any family in that city where I’m at, where I was trying to get a move

to where my family is. They all in Cali.

Q1: Okay. So let me ask you, do you feel, like, a little relieved you kinda got all this out, we talked about this stuff? I mean, it's gotta be a lot of stress carrying all this weight around.

A: Yeah.

Q1: Yeah? And how did me and my partner treat you today?

A: All right.

Q1: Okay.

A: (Unintelligible).

Q1: We didn't threaten you or harass you or anything like that. We try to treat you with respect and everything?

A: Yeah.

Q1: Yeah?

A: It's just this whole situation suck. It's - I...

Q1: And it what?

A: The situation just sucks.

Q1: Yeah. It's a bad situation. I mean, we - we see stuff like this happen all the time. Especially in this town, I mean, a lot of people have guns or they have access to guns, and, you know, we know a lot of times with these cases, people don't even - they're not going somewhere to cause a problem, and then just one thing leads to another. Things get out of hand. The next thing you know, couple seconds

later, everything's different. It's crazy. I still can't wrap my head around it. It happens all the time.

A: (Unintelligible).

Q1: And this address on Wyandotte, that's your - that's Tia's place, your girlfriend, baby mama. She's only been here a couple days? And do you - you weren't living here. You - you just stayed here last night, and that was it.

A: Yeah.

Q1: Yeah? Okay. So let me get her info just so I have it.

A: I don't know if they gave them her phone either, so I don't know if I - I - well, I'll give you her phone number but...

Q1: Yeah. If you got it - what's her number?

A: It's 702-752-1051.

Q1: 1051? What's Tia's last name?

A: Kelly.

Q1: Kelly?

A: K-E-L-L-Y.

Q1: 'Kay. And how old are your guys' kids?

A: My daughter's 3. She'll be 4. And my son is, uh, he'll be 7 months.

Q1: Wow. He's pretty young.

A: Yeah. He came after I got shot last year.

Q1: Did you get shot in Vegas, or was that in Cali?

A: Um, down on Boulder Highway.

Q1: Oh, okay. Where you - you're livin' on Boulder?

A: January.

Q1: In January?

A: January 18.

Q1: Okay.

A: That shooting with the Mexican and black.

Q1: Okay.

A: And that was me that got shot. I was the black that got shot up there.

Q1: Okay. Who was the Mexican? Someone you knew?

A: No. He's from out here.

Q1: Oh, really?

A: Yeah.

Q1: So what happened?

A: It was over a scooter. Some guys, they took the scooter from the dude.

Q1: From - from the other guy?

A: I guess one of his friends that - if they came two days straight with guns and stuff.

Q1: Uh-huh.

A: And the second day is the day that I got hit 'cause I was around him.

Q1: Oh. Okay.

Q: I told my boss you was being cooperative. Uh, I told him, uh, I didn't want to, you know, cause any undue drama inside the apartment in there. Uh, let me ask you this. Do we have permission to just go in there and get the gun out the vent and leave, I mean, without having to search the place? Can we just go in there and get that? I mean, you - you the adult inside the apartment, so that means you in c- you in care and control of the apartment. So I'm asking you for permission without having to do a search warrant, and go in there and just grab the gun out of the vent. That's all I'm - that way we ain't gotta search through nothing. We ain't gotta go through her stuff. We ain't gotta go through all that nonsense. We can just go in there - go into the air conditioner vent. I'll even have you show me where it's at. You can go with me so you know we ain't going through all your stuff, or going through all her stuff. We can go into the vent. You can say, "Hey, it's that vent right there." We can open it up, we can get it, and we can bounce.

A: What time is it? I don't know how to read that, uh...

Q: It's 4:20.

A: Uh, my girl should be on her way. I just - I don't...

Q: I mean, I - I mean, it's just up to you, man. I mean, it's - it - I mean, it's - I'm just asking, you know, if we got your permission. I'll even write it down, dude. S- or, uh, we have permission to grab only the gun from the air conditioning vent. I'll write it down, I'll sign it. I'll have you sign it. That way we ain't - we ain't going in and searching through all her personal belongings and all that stuff. You know

what I'm saying? I mean, that way we ain't having to - like I said earlier, man, we ain't gotta cause any undue stress or, you know...

Q1: Inconvenience or anything like that.

Q: Yeah. I mean, that - that - that's all, man. I mean, we simply wanna get the gun so we can match it all up with the stuff that we found at the scene and all that, and we can finish processing what we gotta process, man. That's it. It's up to you, man, you know. I mean, you, uh, you the - you was the only adult inside the apartment. That means you have care and control of the apartment, you know, whether or not you live here or not, you was entrusted with the apartment, so, you know, and then I'm not trying to, you know, trick you or nothing like that. I'm just laying it out for you. That's just, you know, how it is, so if we got your permission - and I'll write it down for you, man. I'll write it down for you. I'll sign it. You can sign it. And it - it'll only state gun from air conditioning vent. That's all it'll say, man. And then you can watch me once we go into here and get the gun from the air conditioning vent, so there's no - you don't think we goin' through everything. You ain't giving me permission to go dig through the whole apartment. You're giving me permission to go in there (unintelligible).

Q1: And get the gun from the air conditioning vent.

Q: You see what I'm saying? I mean, it's up to you though, man. I mean, is that okay with you or...

A: Man.

Q1: You - you already told us it's there, so what are you - what are you worried about?

A: Not...

Q: Is there something else inside the air conditioning vent we need to be worried about?

A: No. What...

Q: Okay. So what - what's your concerns, man?

A: Uh, when I tried - I sh...

Q: I mean, be real with me. I mean, what's your concerns? And, I mean, you know...

A: No, no. I - I just - I - 'cause I don't know when the next time I'm gonna see my family.

Q1: Okay.

A: Like I said, I know my girl's on her way, and nobody could get in contact with her. And I just wanna see her before y'all take me away. That's...

Q: Okay.

A: So that's all I...

Q: Well, I'm not, I mean...

A: That's - and I know...

Q: I haven't - I haven't even discussed with my boss about taking you away or even if that's - I don't know if that's - I don't know what's going on with that. I'm being

honest with you, dude. I - I ain't even - that hasn't even crossed my mind at this point.

A: 'Cause I have a warrant for Cali, so I know I'm goin'...

Q: You have a warrant?

A: Yeah. In Cali.

Q: Will they extradite them? You sure?

A: Yes. Mmm.

Q: I don't know about that at this point. I mean...

A: That's why I don't - that's why I'm saying I - I know I'm not goin' - 'cause I - it's a lot going on now.

Q: Right.

A: And I know she's on her way 'cause she probably called the phone while she was on the bus, and nobody answered.

?: (Unintelligible).

Q: So are you gonna give us permission to get the gun out of the vent or not? I mean, we - we can stay here and you can - or, I mean, regardless, after we get that, I mean, I'll stick with you or whatever while I - while, uh, you know, while we figure out what's up with this California warrant. I mean, I'll make sure you still see her regardless, one way or the other. I mean, I don't, you know, whether you walk out of here on your own or - or we leave or you - or - or - or - if - or if you have to go on this California warrant...

A: I do.

Q: Well, I - I don't know that 'cause I don't - I'm not even sure what you're talking about but I haven't...

A: Yeah. This isn't my first time.

Q: Okay.

A: This - that's why the d...

Q: Well, I mean, I don't know. I'm - I'm just telling you I don't know if that's the case. If that's the case, and that's what you're tellin' me, and I'm a believe what you tellin' me, I'm telling you right now, if that's the case, we still gonna sit here like you are right now, smoking your Newports, until old girl get here regardless. I'm telling you that 'cause if you wanna see her, then I'm a - I'm a give you that because you been cool with me. But what I'm asking you is, do we have your permission to go get the gun out of the AC vent?

A: Yeah. I appreciate it.

Q: Okay. All right. I'm - I'm a write - I'll write it - I'm a write it down for you too. I mean, I ain't just gonna take your word. I'm a write it down.

A: I said I - can I - can I go in there? I don't wanna - I don't wanna sign it or nothing. I - I d- I believe what you said. I trust you.

Q: You - you believe what I say?

A: I trust you.

Q: And you - you don't wanna sign saying that it's okay for me to get the gun out?

Uh, I'm just putting that - see, this is what it is.

A: No. I - I - I know. Yeah. No. I - I'm just, uh...

Q: Okay.

A: I...

Q: Well, let me read it to you, then. Let me read it to you. I ain't gonna have you sign it since you don't wanna sign it. I know you verbally givin' me permission to go get it, but I - I'm -I'll - I'll read this to you just so you understand what I'm talking about so it's, you know, official or whatever you wanna call it. Okay. What's today's date? The 16th?

Q1: Yeah.

Q: Uh, February 16, 2018. And what this card says - it talks about - it's, uh, consent to search. It - and in this consent to search card, it lays out specifically what we can search and what we came and what we lookin' for so there's no question about what's what. So it says, "I," and your name is Andre what?

A: DeAndre.

Q: DeAndre? Last name? I know you go by Dre, but D- uh, DeAndre, and what's the last name?

A: Gathrite.

Q: How do you say that?

A: Gathrite.

Q: How you spell it?

A: G-A-T-H-R-I-T-E.

Q: Okay. Uh, having been informed of my right to have a search made of the premise or property listed hereafter, without a search warrant issued by the court of jurisdiction, and my right to refuse a consent to search for items directly or indirectly related to the investigation of, uh, a shooting, or homicide -- we're homicide detectives -- I do hereby voluntarily consent to the search of, uh, the - the address over here, which is 26...

Q1: 2630 Wyandotte Street, Unit # 1.

Q: ...for the following items: handgun located within the air conditioning vent.

Q1: In the hallway.

Q: In the hallway. And that's it. That make sense? Yes, no?

A: Yeah.

Q1: Okay.

Q: And you don't wanna sign the card? I mean, that's what the card says. It's no different than...

A: Yeah. No, I don't - yeah.

Q: Okay. Do you understand this, man? Do you, I mean, i- I just wanna make sure 'cause you signing it, it shows me that you understand what I'm talking about. A- and that - and that - that's all it is. Are you uncomfortable signing it, or you just don't wanna sign it?

A: Uncomfortable right now. Just...

Q: Okay. You're okay verbally giving it to me. You just don't wanna sign it.

A: Yeah.

Q: All right.

Q1: Okay.

Q: Well, let me let him know real quick, and then - and then...

Q1: Tia knows about your Cali stuff though, right? Obviously? 'Cause you guys have been together a while.

A: Yeah. Almost five years.

Q1: You guys meet in Cali, or she always been...

A: Cali.

Q1: Okay.

A: After her mom and them moved, this is the only place I moved where I had help from people out here that I knew from back when I was younger and stuff like that.

Q1: Yeah.

A: Help me get a job and stuff like that.

Q1: You workin' now or no?

A: No. I was just doing some under the table work for one of my friends, a older dude from Memphis. He do, uh, carpentry. Just helping me out, keep a little - couple dollars in my pocket.

Q1: Yeah.

A: That's why I was, like, man, I didn't - I'm not - I wasn't out there for no game, man. Just go out there, chill with the fellows and drink and stuff, man.

Q1: Yeah.

A: You know, you don't wanna be around your girl (unintelligible). Just - man...

Q1: Just trying to get away for a little bit?

A: Yeah, but I always drink and smoke with 'em. Uh, s- it's, like, you know, 'cause your girl don't drink and smoke, you know, I - I was doing this before I met her, you know. I'm - I'm a social guy. I just - shoot. I'm...

Q1: Oh. Well, like you said, you're just smoking a little weed and having a couple drinks. Nothing wrong with that. And now - the weed's legal now, so...

A: I know.

Q1: So what time does Tia usually get home?

A: Close to around this time.

Q1: Okay. She'll be here f- in a few, then. She have a car?

A: She rides the Sahara bus.

Q1: Sahara bus? So when your place got shot up a couple - it was what, a couple days before then?

A: Yeah.

Q1: Did you guys call the police on that or no?

A: Yeah. The police came, but I had left because of my warrant in Cali.

Q1: Oh. Yeah, you don't wanna stick around?

A: Yeah.

Q1: So what - I thought you said the kids were there. Was Tia there or no?

A: No, not those kids.

Q1: Oh, other kids?

A: Yeah.

Q1: Okay. So who were you staying with over there, then?

A: It was just a place that we used to have.

Q1: So you guys are just kinda - just crashing there? Is there anything else, then, you can - you can tell me about anyone else that was there or anything else that happened you think would be useful for us to know?

A: Well, the ones that was with ‘em, they - they stay in the abandoned apartment on the corner up there in those white apartments.

Q1: The one that was with the...

A: Yeah.

Q1: So, uh, so the guy you ended up shooting, do you know what his name is or what he goes by?

A: Uh, they called him T-Rex.

Q1: T-Rex?

A: Yeah.

Q1: Okay. And how many people were with T-Rex, then?

A: About four.

Q1: Four? They all - they all black guys? And they all stay in the abandoned...

A: Yeah, apartment. It's the white apartments down by the Sahara end of Van Patten. Right there...

Q1: White apartments. Sahara end.

A: Right there on the corner up stairs. Like, soon as you go in, if you coming from Sahara.

Q1: Uh-huh.

A: They're on your right. The first one, you go past that first alley.

Q1: Mm-hm.

A: You look upstairs, there's the windows towards the edge right there, towards the - where you come in the gate.

Q1: Mm-hm.

A: It goes right there. That apartment.

Q1: Okay.

A: And that's where supposedly they take all his guns and his work and stuff.

Q1: How do you know they went there?

A: Somebody else that stay over there was telling me on the phone.

Q1: Okay.

A: Like, no, don't come back, they said they gonna kill you.

Q1: Did you hear something about his people going to, like, y- the place you were staying, trying to find you? You heard about that? Chasing - chasing your

people out of there or something?

A: Chasing the kids and stuff.

Q1: Yeah?

A: Yeah. (Unintelligible) scared to come outside.

Q1: Yeah. I mean, you got people co- like, loo- flat out looking for you. I mean, bein' scared 'cause of what happened and trying not to get caught or stay away from us is one thing, but when you got people goin' after your people and kids and they have guns and they're looking for you, I mean, you gotta keep your head down, man. I mean, it's just a bunch of back and forth, and it's gonna keep escalating. That's the problem.

A: Tia make it?

Q1: Uh, we'll see. I mean, if she's here, dude, I'll make sure that you can talk to her quick.

A: I just wanna hug my daughter (unintelligible) get this over with.

Q1: And then the other - TY was with you, and then you said Ray Dog? Was there anyone else or no? J- just the three of you?

A: And Matrina Smith, she knows about it too.

Q1: She knows about it? Who is Latrina?

A: Matrina Smith.

Q1: Oh, Matrina?

A: Yeah. That's who kids got chased.

Q1: Oh, okay.

A: She had talked to the police when the apartment had got shot up the days before.

Q1: Okay.

A: She was - her kids that they been chasing and stuff.

Q1: How old are her kids?

A: The one that they chased was, like, 11, 8, and then...

Q1: Jesus.

A: ...seven.

Q1: Man, they're young for that shit.

A: Yeah. It was all girls.

Q1: They're chasing three kids that are under the age of 11 and they're all girls?

A: Then she knows the name of the dude that, uh, my girl actually on her phone...

Q1: Mm-hm.

A: ...if you get her phone, she'll show you the dude hit her on her phone and told her, "On Bloods I shot your baby daddy," this and that, and sent pictures to her phone.

Q1: Okay. Well, I'll talk to - I'll talk to Tia and see if she wants to forward 'em to me so we have that stuff. I mean...

A: That's the dude that's - that shot up - that shot up the place over there, and that's the one that's been coming back saying that T-Rex is his people.

Q1: Mm-hm.

A: And he - that's why he chased the kids.

Q1: Okay.

A: 'Cause she seen it and we was looking at it, but she ask me, uh, do I know 'em.

Q1: Yeah.

A: I'm like, "No, I ain't - I don't know him." And then that's when he started bragging about, "Yeah, Blood, and I shot up one of your baby daddy (unintelligible) ask him. I shot that nigga on Blood."

Q1: Is it, like, a text to her number, or is it, like, something in, like, a app?

A: It's Facebook.

Q1: It's a Facebook?

A: You know, off messenger.

Q1: Okay.

A: On his Facebook. He had - ha- he got his own and then he got another one that he made after.

Q1: Facebook messenger. Well, I think we're pretty much done, then. I'm just waiting for my partner come back quick, and see if he has anything else. Then we can finish this up. I'll talk to Tia, see where she's at. I will make sure she has my info so she can send me all that stuff from Facebook.

A: She should be here in a little bit. She's almost...

Q1: That's fine.

A: No. She'll be here.

Q1: And if not, you know, you gave me her number. I know how to get a hold of her so...

A: Gets off at 4:00. I don't know if the detectives kept her phone or not.

Q1: Well, I said I'll figure it out. I mean, it's her phone, not yours. I mean...

A: Yeah. That's her only way to contact her job and all that 'cause the phone she got, she use Wi-Fi to call us at home and check on us. And she leave us that one so we can watch TV.

Q1: Okay. Give me a second. Just hang out here. Let me check with him and see - see where we're at with things. Are you good? You have anything else?

Q: No, no. Well, uh, yeah. Hold on a second 'cause...

Q1: Okay.

Q: Tate just told me something. He's (unintelligible).

Q1: Okay. Yeah. (Unintelligible) minute. He's gonna - he think he might have another question or two for you, or something he wants to run by you.

A: Can I get a, um, a water or something?

Q1: Um, I don't have anything with me, so I can't give you anything right now.

A: Can somebody call her phone? It's - sh- 'cause she should be on the bus.

Q1: Well, you - you had her phone here though, right?

A: Yeah. She has another phone that she use the Wi-Fi on the bus while she's coming home, that I talk to her on.

Q1: Okay. Well, we're gonna be done here in a minute or two. Then I'll call her if she's not here. I'll see where she's at.

A: The number's in the phone. It's, uh, 702-213...

Q1: She got Wi-Fi on the bus?

A: Yeah.

Q1: Oh.

A: It's just...

Q1: I didn't know that.

A: ...on Wi-Fi.

Q1: Yeah. Like I said, he'll hop in quick. My partner will hop in. We'll finish up what we're talking about. She's not here by then, I'll give her a call, see where she's at. I don't mind doing it. Um, the only issue is sometimes when people get calls from the police, it kinda really throws 'em off guard. So I don't want her to freak out or anything like that.

A: But she - she understood. She don't...

Q1: Okay.

A: She knows.

Q1: Yeah. That's fine. I just, you know, I wanna do things as easy - easy as we can for everyone involved, so...

Q: All right, man. I just got a couple more questions. I talked to my - my boss and I - then I talked to my other partner who was deeply involved in the investigation.

And then, uh, they just had a couple more questions, and then we pretty much wrapping up, I guess. And then - and then I got your girl's phone. We can call her and see.

A: Yeah. Her - her number's in there, the one - she use Wi-Fi on the bus coming here.

Q: Well, I'm, uh, I'm a hook it up and you can call her. We can figure out how far she's out and where - and where she at or what the deal is and all that, but going back to the - the whole shooting incident, when those two dudes was, uh, ran up on you with, uh, with a group of dudes, and you described it, uh, one dude had his gun in his pocket. The other dude had his gun out. Do you remember what - who was wearing what? You remember what kinda clothing they was wearing or how they was dressed?

A: The one that had his gun out had a, like, a all light gray jumpsuit with a, uh, red P hat on - burgundy P hat on.

Q: Okay.

A: He was kinda chubby.

Q: Okay.

A: He probably a little shorter than me.

Q: And that's the one that had the gun out?

A: Yeah.

Q: What about the dude that had the gun in a pocket?

A: That's the one that I had shot.

Q: And what was he wearing?

A: He had on - think he had on some red - I know he had on his gold link chain.

Q: Okay. But he - he wa- he's - he was in red?

A: Yeah.

Q: Okay.

A: Yeah, yeah.

Q: Who - who was doin' most of the - most of the talkin' at you when, uh, when y'all - when they was, you know, talking all that smack?

A: The one that I had shot. And he kept - he had his hand on his gun in his pocket, like, this.

Q: Okay.

A: And he kept on going while his other homie got in his hand, and he just standing there and listening, like, I...

Q: So - so - so - but the one that did all the talking was the one in the red?

Q1: With the gold chain? Okay.

Q: Okay.

Q1: And the guy that had the gun out was in, like, the gray jumpsuit...

A: They just...

Q1: ...with the red hat?

A: He - they was just right there, like, cosigning, I guess 'cause...

Q: Right, right.

A: ...they didn't - they had a lot of guns over there. I know for sure I done seen from when I used to buy weed from 'em.

Q: And then the dudes that was with you, did any of them shoot back too?

A: I don't - I don't know. I - I didn't pay attention to it. I was - after I shot, I was - I was just - I was scared 'cause I was - didn't know what t s- we was on - I know who did have a gun was the ones that was in front of me. I don't know if anybody else had one.

Q1: Have you seen TY and Ray Dog with guns in the past though?

A: Not like that. It's not...

Q1: Okay.

A: ...something that we - you know what I'm saying? We just chill, chop it up, smoke, joke around, you know, drink. Just chill.

?: Hey, you wanna give that, uh, (unintelligible) back to those guys so they can bring the kid back in there?

Q: Is, uh, and it's my understanding - I mean, um, the, uh, the way the shooting went down, when they went out there, you know, they started gathering all the - the bullet casings and stuff like that up and all that stuff.

A: Mm-hm.

Q: When they was picking all that stuff up, you know, trying to get all the evidence and all that stuff, and they started looking at all the bullet stuff and, you know,

how many times stuff was fired, not fired, and all that stuff.

A: Mm-hm.

Q: Uh, the way you explained it, you fired a couple of rounds back. Get old boy in the red and they was firing at you as you was running away.

A: As far as what they was telling me when I called back ‘cause I was like, “Man, I heard some shots. What happened?”

Q: Okay. And who’d you call back to?

A: Uh, to Matrina and, uh, I had gave him her name. That’s who kids they were chasing around out there.

Q: Okay. So all the rounds you fired, you’re telling me are fired from the gun that’s in the air conditioning vent?

A: Yeah. I didn’t have no other gun.

Q: You wasn’t shooting a 45 or nothing else? ‘Cause there were some 45 cartridge cases and stuff.

A: Nothing like that, sir. That’s the only gun I got right there, and I had got that after they shot at our spot. That’s why I said I don’t know what - ‘cause I got it from somebody over there, and it’s a (unintelligible) they - he a Blood too. And that’s one of the ones they said was talking about he gonna shoot me in the head. And there’s, uh, uh, the guy that shot up the apartment, we was in the days we - before on that f- you got my girl phone?

Q: Mm-hm.

A: I could show you the messages he sent about shooting up the apartment. He sent it to her talking about, "Yeah, I shot your baby daddy on Blood." He said to - to her - she like, "Well, when you find my baby daddy, tell him to come to Cali. That's where his kids at." I sat there the whole time he started hitting her on messenger. I don't know how he found her on messenger.

Q: Okay.

A: It's all right there. He just - he hit her from another Facebook, and then contacted her from his, and then start sending her pictures of himself.

Q: Okay.

A: Banged it on - he banged it on his homies that he shot me, and then they said they shot me. I was just trying to hide. You know, I just...

Q: I got you.

A: And Matrina Smith, she was there when the dude shot the first spot. She seen him and all that, and people got his - had got - I guess they had got one of his backpacks. He had left it at somebody's house in the - they went through it.

Q: Okay. You wanna...

A: (Unintelligible).

Q: He - (unintelligible) let him know about the dude in the red.

Q1: Yeah.

Q: Was the one and see if there's anything else, I guess, and then (unintelligible).

Q: Call her trying to...

Q1: Okay.

Q: ...figure out where she's at and - he showed me a bunch, uh, that messenger stuff.

Q1: Mm-hm.

Q: Um, I - that you probably haven't seen as I had to - I got the phone from Jon, but in the messenger stuff, it talks about old boy is admitting to shooting at him and shooting up the place and told her he shot him. He's - he sends a picture of himself and everything else on there. But, uh, I told him he might wanna show that to you when you get back in here so you can see.

Recording: (Unintelligible).

Q1: Well, she's usually home close to this time, right?

A: Yeah.

Q1: I mean, we're - we're gonna be here for a bit, so...

A: Yeah. This is the - I think I was telling you about the dude that said that he shot me and stuff. That's...

Q: It's a whole thread that he...

A: He sent her that picture. She blocked him after the last message, but he even sent his phone number, talking about he shot me, and he the one shot up the house that...

Q1: What's that, his number?

A: Yeah. And that's when the kids was in there. That's the one that you been

hearing about him chasing the kids around. That's him. And he even sends a picture of himself on there.

Q: You get the boss, man?

A: You can, uh, even the - that dude that shot up the house, he was - my mom and them on her other phone - my uncle will tell you 'cause he lives with 'em. He was talking about coming over there, shooting they spot up. Sent them videos of guns and everything. The same dude.

Q: That same dude?

A: Same dude. If you ask my uncle, he'll tell you. But then he sends my girl a picture.

Q1: What, that's him?

A: Yeah, that's him. I show you his other Facebook 'cause he sent her that thing on the other Facebook too.

Q1: Is this that same guy?

A: Yeah, that's him. Yeah. It's another one. I showed the other - 'cause he got another Facebook on there too. It's this one right here. So - Jeremiah - this one. That's him. That's what he said. And that's all that he had sent on that one, but the other is where he sent the - all that other stuff. It's - that - Jeremiah Souljar and the other one is, uh, (unintelligible) it's the Virginia May. That's the other one. And sent her a picture of it before he...

Q1: Okay. Well, I'll talk to her when - when she gets here.

A: Oh. That's her right there.

Q1: Okay.

A: That's her. Hello. Babe.

A1: Yeah.

A: Babe, where are you?

A1: On the bus. Why?

A: Well, babe, the - the -- lost her.

Q1: Okay. Like I said, we'll - we'll talk to her if she gets here, and I'll figure out those messages when she gets here. So...

A: That's my little man right there.

?: (Unintelligible).

?: (Unintelligible).

((Crosstalk))

?: And it has more bullets (unintelligible).

Q: Yeah. Yeah, yeah. Yeah, that - that one's not it.

Q1: We good here?

Q: Yeah. I mean...

Q1: Anything else gotta go over?

Q: No. I mean, look. I - that's why I wanted you to talk to him and...

Q1: Yeah. That's fine. I'll...

Q: So we could...

Q1: (Unintelligible) yeah, for this.

Q: To get the - he got tired of bitching at me so I figured he could, uh, you know, whatever, but it's...

Q1: Yeah.

Q: Yeah. It's...

THIS SURREPTITIOUS RECORDING WAS COMPLETED AT 2630 WYANDOTTE ST LAS VEGAS, NV ON THE 16TH DAY OF FEBRUARY, 2018.

GM:NETTRANSCRIPTS
GM004

Reviewed by G. Mauch P# 8566 on 03-16-18.

EXHIBIT G

EVT# 180211-3549

DUPLICATE ORIGINAL SEARCH WARRANT
NRS 179.045

STATE OF NEVADA }
} ss.
}

The State of Nevada, to any Peace Officer in the County of Clark. Proof having been made before me by Detective Sergeant Jon Scott, P# 4532 by oral statement given under oath, that there is probable cause to believe that certain evidence, to wit:

1. Paperwork such as rent receipts, utility bills, and addressed letters showing the name(s) of persons residing at the premises. Paperwork such as proof of insurance, DMV registration showing the name(s) of persons owning or responsible for the vehicle(s).
2. ~~Written correspondence, diaries, financial records, wills and like items.~~
3. ~~Items of value such as jewelry, watches, money, credit cards, identification and like items including receipts for the same.~~
4. Photographs, video and/or audio tapes, DVD or CD's, cellular phones, Electronic Storage Devices such as lap or desk top computers, game consoles, tablets and like items. To include pass or pattern codes for the same.
5. Telephonic information to include; caller ID history, answering machine messages, voicemails, phone directories, contacts, call history, photographs, audio and/or video recordings stored electronically in residential or cellular phones.
6. A thorough, microscopic examination and documentation of the crime scene to discover trace evidence to include but not limited to: fingerprints, blood, hair, fibers and bodily fluid samples.
7. ~~Clothing to include but not limited to shirts, pants, socks, under garments, headwear, footwear and like items.~~
8. ~~Cleaning chemicals and paraphernalia such as rags, towels, mops and like items.~~
9. ~~Unknown physical items related to the cause of death.~~
10. Epithelial cells from the mouth of DEANDRE GATHRITE 11/8/88, to be collected via Buccal Swab.
11. ~~Clothing currently being worn by~~ HANDGUNS AND AMMUNITION.
12. CELL PHONES OFF PERSON OF GATHRITE
13. GANG PARAPHERNALIA

are presently located at: 2630 WYANDOTTE #1 Las Vegas, Clark County, Nevada, and as I am satisfied that there is probable cause to believe that said evidence is located as set forth above and based upon the statement of Sergeant Scott there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search and examine said premise ~~and/or vehicle~~ for said property and trace evidence, serving this warrant (at any hour) ~~(between 7 am and 7 pm)~~ and if the property is there, to seize it and leave a written inventory and make a return before me within 10 days. The attached recorded oral statement upon which this warrant is based is hereby incorporated by this reference as though fully set forth herein.

Dated this 12 ~~th~~ day of Feb, 2018, at 1735 Hours
(Print Judge's name) JERRY WIESS
Signed by Detective Sergeant Jon Scott, P# 4532 _____, acting upon oral authorization of, Judge WIESS.
ENDORSED this _____ day of _____, 20___.

_____
Judge

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION FOR TELEPHONIC SEARCH WARRANT

Event #180211-3549

The following is the transcription of the recorded Application for Search Warrant between Affiant Detective Sergeant Jon Scott (JS) and Judge J. Wiese (JW).

JS: Okay Judge Wiese, do you understand this phone call is being recorded?

JW: I do.

JS: This is Detective Sergeant Jon Scott, P number 4532, of the Las Vegas Metropolitan Police Department Homicide Section. I am making an Application for a Telephonic Search Warrant pursuant to N.R.S. 179.045, under Event Number of 180211-3549. I am talking with Judge Wiese and the date is February 16th, 2018 and the current time is now 1727 hours. Judge, would you please place me under oath?

JW: Yes. Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God?

JS: I do.

JW: Okay. Go ahead.

JS: My name is Detective Sergeant Jon Scott, P number 4532. I'm employed by the Las Vegas Metropolitan Police Department and have been so employed for 25 years. I'm currently assigned to the Homicide Section and have been so assigned for the past 7 years.

Judge, my Application is as follows:

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION FOR TELEPHONIC SEARCH WARRANT
CONTINUATION

Event #180211-3549

On February 11th, 2018, detectives from the Homicide Section began an investigation into the death of Kenyon Tyler, which occurred at 2612 Van Patten, Las Vegas, Clark County, Nevada.

There is probable cause to believe that certain property hereinafter described will be found on at the following described premises, to wit:

2630 Wyandotte, apartment number 1, Las Vegas, Clark County, Nevada. The structure is a two story multi-unit apartment building having a primarily cream colored stucco exterior with green trim. And the number 1 is affixed to the center of the front door of the residence.

The property referred to and sought to be seized consists of the following:

Paperwork such as rent receipts, utility bills, and addressed letters showing the names of persons residing at the premises, paperwork such as proof of insurance, DMV registration showing the names of persons owning or responsible for vehicles.

Photographs, video and/or audio tapes, DVD or CDs, thumb drives, cellular phones, or electronic storage devices such as laptop or desktop computers, game consoles, tablets or like items.

Epithelial cells from the mouth of Deandre Gathrite, date of birth of 11/8/'88, to be collected via buccal swab, who is currently located outside the residence in question.

Handguns and ammunition.

Cell phone off the person of Gathrite.

Also, we want to look for any gang paraphernalia inside the apartment.

In support of your Affiant's assertion to constitute the existence of probable cause, the following facts are offered:

On February 11th, 2018 at approximately 2049 hours, the L.V.M.P.D. patrol officers responded to a call that subject shot at 2612 Van Patten Street. Patrol officers arrived and located Kenyon Tyler on the sidewalk in front of the building suffering from multiple gunshot wounds to the torso. Medical personnel responded and transported Tyler to the Sunrise Hospital where he succumbed to his injuries. During the crime scene process, the investigators located several .45 caliber cartridge cases in front of the building. Several small baggies of narcotics were also located hidden in the brick wall of the building.

On February 12th, 2018 a complete autopsy was performed on the body of Kenyon Tyler. Doctor Roquero determined the cause of death was multiple gunshot wounds. The manner of his death was ruled a homicide.

The following investigation revealed Kenyon Tyler got into an argument with Deandre Gathrite in front of the building. Tyler was upset because Gathrite and several other subjects were hanging around in front of Tyler's building, which disrupted Tyler's illicit drug dealing business. Tyler was alleged to have pulled a handgun out and according to a confidential informant, and was shot by Deandre Gathrite, who also had a gun, who fired multiple times. Gathrite fled the scene and

after fleeing the scene, witnesses removed Tyler's handgun from the crime scene prior to the arrival of police officers.

On February 16th, 2018 members of the L.V.M.P.D. Criminal Apprehension Team located Deandre Gathrite at 2630 Wyandotte, apartment number 1, in Las Vegas, Nevada. Gathrite was arrested on an unrelated probation violation at that time. The apartment which Gathrite was removed from has been secured awaiting the Search Warrant for the items we have listed earlier.

Through my training and experience I've learned the examination of the crime scene and the recovering of the above described property is necessary in providing the cause and manner of death, the circumstances involved related to the death, and to potentially identify the perpetrator of the crime.

A thorough microscopic crime scene search of the premises is necessary in order to establish the location of the crime, its extent, and the circumstances surrounding the crime. This search may involve the damaging or removal of items such as carpeting, wallboard, and other interior/exterior surfaces.

The evidence of dominion and control as described is necessary in establishing dominion and control over the premises and often assists in identifying the perpetrator. Such evidence is normally left or maintained upon or within the premises.

Just one second, Judge. I want to make sure that I noted earlier that we're looking for all handguns and ammunition and the cell phone that was taken off the person of Gathrite in our Search Warrant.

JW: Okay.

JS: Your Affiant believes the collection of epithelial cells via buccal swab sought to be obtained would when submitted to laboratory analysis disclose the presence of evidence tending to demonstrate or eliminate the described person's involvement in the criminal offense of murder. In the event Deandre Gathrite refuses to cooperate with the collection of the samples, the use of reasonable force is authorized to the extent necessary to obtain these samples.

Nighttime service is necessary because my training and experience indicates that evidence is often small, sometimes invisible to the eye and is easily eliminated by the environmental changes. The residence to be searched is currently unoccupied and secured by officers during the nighttime service hours. There is no one inside to be annoyed by the nighttime service of a Search Warrant. Wherefore your Affiant requests that a Search Warrant be issued directing a search for and the seizure of the aforementioned items at the location set forth herein, executing this Warrant any time day or night.

Judge, do you find there's probable cause exists for the issuance of a Search Warrant?

JW: I do. One of the things you asked for was a buccal swab but that guy's not going to be there anymore. Does it matter?

JS: No, he is still here. He's outside the residence in a patrol car.

JW: Okay.

JS: He's being arrest on the Warrant which is not related to the investigation that we're conducting but he is still here.

JW: Okay. I didn't realize he was still there at the premises.

JS: Yes, he's still here on the premises. Do you authorize the nighttime search clause?

JW: I do.

JS: Do I have your permission to sign your name to the Duplicate Original Search Warrants?

JW: Yes, you do.

JS: One Duplicate Original will remain with me in the Search Warrant Packet. The other copies of the Duplicate Originals will be left at the premises searched. For the record now, I am signing your name Judge to the Duplicate Original Search Warrants. Judge Wiese, this ends our conversation and concludes the recording at 1735 hours on the 16th day of February, 2018. Thank you for your time, Judge.

JW: No problem. Good luck.

JS: Thank you.

JW: Bye-bye.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
APPLICATION FOR TELEPHONIC SEARCH WARRANT
CONTINUATION

Event #180211-3549

This telephonic search warrant was transcribed by Laura Claxton on 2/20/2018 at 1245, and is true and correct.

Laura Claxton 5348
Laura Claxton, P# 5348

I, Detective Sergeant Jon Scott having reviewed this transcription, affirm that it is true and correct.

4532
Detective Sergeant Jon Scott, P# 4532

Certification:

Having read the transcription of the recorded Application for the Telephonic Search Warrant issued by this Court on February 16, 2018 under Event #180211-3549, with Detective Sergeant Jon Scott, P# 4532, as Affiant, and having reviewed the Application, it appears that the transcription is accurate.

_____
Judge J. Wiese

JS:lc

JS004

Event # 180211-3549

RETURN

(Must be made within 10 days of issuance of Warrant)

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

2630 WYANDOTTE #1
LAS VEGAS NV

was executed on 2/16/18
(month, day, year)

A copy of this inventory was left with "AT PLACE OF ~~SEARCH~~"
(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

(1) "NOTHING" IN Residence

(2) BUCCAL SWABS FROM DEANDRE GATHRITE

(3) Cell phone FROM DEANDRE GATHRITE

This inventory was made by: P. DePaulis 5297 G. March 8566

(at least two officers including affiant if present. If person from whom property is taken is present include that person.)

LVMPD 718 (REV. 5-04)

EXHIBIT H

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DEANDRE GATHRITE, aka Deandre Terelle Gathrite, Defendant.	GJ No. 18AGJ044X DC No. C334135

Taken at Las Vegas, Nevada

Tuesday, August 14, 2018

2:24 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON AUGUST 14, 2018

RUSSELL WALKER, Foreperson
CAROLYN JORDAN, Deputy Foreperson
RACHEL TABRON, Secretary
MICHELE CRINE, Assistant Secretary
JOHN ASSELIN
JAMES BROWN
KATHY COX
THERESA GAISSER
DAWN HERSHEY
MICHAEL HOLLINGSWORTH
ADRIANA IONESCU
CHRISTOPHER KERCEL
JAMES MCGREGOR
ROBERT TURNER
MARYLEE WHALEN

Also present at the request of the Grand Jury:
Sarah Overly, Deputy District Attorney

On 03-15-18, Homicide Detective Mauch obtained a Computer Forensics Lab Search Warrant for the cellular telephone seized from Deandre Gathrite. The Search Warrant was approved by District Court Judge Bell and filed with the District Court Clerk's Office under SW 18-404. The Search Warrant was sent electronically to the LVMPD Computer Forensics Lab for processing.

On 04-06-18, Homicide Detective Sanborn submitted a request to the LVMPD Crime Lab to the have the evidence recovered during the follow-up investigation forensically examined.

The requested forensic examinations have not been completed at the time of this report.

EXHIBIT B

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF ARREST

Event #: 180216-2092

I.D. #: 2592432

True Name: GATHRITE, DEANDRE Date of Arrest: 2/16/18 Time of Arrest: 1430

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 19 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of **Fugitive** at the location of 2630 WYANDOTTE ST. LVN. 89102; and that the offense(s) occurred at approximately 1430 hours on the 16 day of FEBRUARY, 2018, in the:

☐ County of Clark ☒ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

GATHRITE, DEANDRE, DOB 11/8/88, BMA, 6'1" / 180 was a known wanted FUGITIVE. A full-extradition warrant was in NCIC and the details of which are as follows:

OFFENSE: PAROLE VIOLATION - WEAPON OFFENSE

CITY or COUNTY/STATE: SAN DIEGO COUNTY SHERIFF'S OFFICE, SAN DIEGO, CA.

ORI: CA CPR 140468

OCA: CA 0370001

DOW: 2018 02-14

NIC# W 823136038

CONFIRMATION BY (VERBAL/TELETYPE): 1161

IDENTITY VERIFIED BY: PHOTO, SCOPE, VERBAL, RECOGNIZED FROM PRIOR ARREST.

The subject was taken into custody at the above time, date and location then transported to CCDC where they were booked accordingly.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s) with an original signature.

S BECK
Print Declarant's Name

S. P. Beck 6275
Declarant's Signature *P#*

EXHIBIT C

CASE NO. 18F03565X
DEPT. NO. 11

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, Plaintiff,
Vs
DEANDRE GATHRITE, Defendant.
Case No. 18F03565X

REPORTER'S TRANSCRIPT
OF
POSSIBLE NEGOTIATIONS/MOTION

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

TAKEN ON FRIDAY, MAY 25, 2018
AT: 7:30 A.M.

APPEARANCES:

For the State: SARAH OVERLY
Deputy District Attorney

For the Defendant: ADRIAN M. LOBO, ESQ.

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

LAS VEGAS, NEVADA, FRIDAY, MAY 25, 2018

* * * * *

THE COURT: All right, let's go on Deandre Gathrite.

Good morning.

MS. LOBO: Good morning.

THE DEFENDANT: Good morning.

THE COURT: All right, this is basically on for possible negotiations.

You also filed a Motion to suppress the statement and the gun --

MS. LOBO: That is correct, Judge.

THE COURT: -- as being, basically, the fruit of the poisonous tree and other reasons, but really if the statement gets suppressed, the gun gets suppressed.

MS. LOBO: Correct.

THE COURT: So there was also possible negotiations. Is this going to be negotiated or are we actually just going on the Motion?

MS. LOBO: I think we're going forward on the Motion. We went back and forth and we weren't able to reach a resolution.

THE COURT: All right.

MS. LOBO: So we would wish the Court

would rule on it and then I have just brief supplementation, another tidbit I didn't put in the Reply.

THE COURT: Okay, go ahead.

MS. LOBO: Okay.

07:51AM One of the things that was not fully flushed out, and forgive me because I'm in trial right now, is that I didn't state in there that it was explicit. I think the Court knows and is well aware how the CAT Team works and that they're not out there just, you know,

07:52AM finding who's on parole violations or probation violations or who's a fugitive in another state.

This is done at the request of another jurisdiction or it's done at the request of detectives locally here and it's a focused team that is designed to,

07:52AM you know, extract a particular person for a particular reason and one of the things that was a little bit -- not a little, a lot disturbing about this case was the fact that it was Homicide who contacts CAT, CAT who contacts California Parole, and has that warrant listed on NCIC in

07:52AM order to, you know, actually execute the arrest warrant at the house.

So I just don't know how they get around the fact that this is, you know, not something that, you know, trying to keep an arms-length distance away as either

07:52AM though it's parole or probation. That is not analogous to

that. This is directly at their behest and request.

THE COURT: Okay.

MS. OVERLY: And, your Honor, I want to address that and then if I can address something else as

07:53AM well?

THE COURT: Sure.

MS. OVERLY: With regards to the CAT Team's arrest of the defendant on his parole violation, as your Honor is well aware, the CAT Team has no control over

07:53AM issuing warrants. California, that jurisdiction --

THE COURT: Oh, but who triggered it?

MS. OVERLY: Triggered what?

THE COURT: Who triggered it? Who triggered the arrest? Was it San Diego? Did San Diego

07:53AM call Metro and say, Please don't pick him up, or was it the homicide detectives that got CAT to go pick him up so they could interview him about a murder you are interested in?

MS. OVERLY: Homicide detectives became well aware that he was on parole while this was going on,

07:53AM this investigation was going on.

THE COURT: Right, I understand.

MS. OVERLY: They contacted California.

THE COURT: Right.

MS. OVERLY: They indicated to California

07:53AM he was on parole and they said, Well, actually, we need to

PA000052

issue a warrant for him because he's been MIA. He keeps doing this since 2014 where he disappears.

THE COURT: So this is triggered by Metro?

MS. OVERLY: Yes, their contact to Metro.

07:54AM THE COURT: There is triggered by Metro. They want to get him in custody.

MS. OVERLY: Yes.

THE COURT: They have information he may have committed a murder. They want to get him in custody

07:54AM so they can interview a murder, correct?

MS. OVERLY: They want to locate him, yes, the CAT Team, yes. That's what they do. They have a basis to arrest him on a parole violation, but contact with them is independent of that. They have no control of whether or

07:54AM not he is going to get arrested on a parole violation.

Ultimately, that was the circumstances under which he was located and found, but there was -- it's not like Metro contacted them and said, Hey, issue this warrant. He had a active warrant validly issued out of

07:54AM California by California's Department of Parole & Probation and the means by which they located him was that, but that warrant was an independent valid warrant nonetheless and, when he was arrested in this particular incident, he was arrested exclusively on that warrant. He was never, during

07:55AM any of the interaction, arrested on this murder.

THE COURT: But he was arrested for the sole purpose of allowing the detectives to go over and interview him about the murder.

MS. OVERLY: Well, I mean that's something

07:55AM that I think would need to be flushed out by the detectives themselves, if they were to testify at a preliminary hearing, which was kind of what I think --

THE COURT: Why do they need to flush it out? This is the information I have in front of me. This

07:55AM is what's in the application. This is everything I have in front of me is that they wanted to arrest him solely so they could get over there, talk to him because they have all this information about him, but it's on the streets. Nobody on the street is going to stand up and say, Yeah, he

07:55AM did it and I will testify.

MS. OVERLY: Right.

THE COURT: So they have to get him in custody. They have to arrest him and get him in custody so they can come interview him about the murder.

07:55AM MS. OVERLY: Well, yes, they wanted to -- I think the State's Motion is, yes, they wanted to locate him. If the means by which they located him was, in fact, he was arrested on a parole violation, then, yes, he was. He was arrested on a parole violation and that was the

07:56AM means by which CAT contacted him. They went over there and

they interviewed him, but --

THE COURT: So to get this straight, they contact San Diego, San Diego says, Okay, we will issue a warrant, now you have a basis to go arrest him.

07:56AM MS. OVERLY: That's correct.

THE COURT: Which is triggered by Metro --

MS. OVERLY: That's correct.

THE COURT: -- wanting to arrest him so that -- wanting to locate him, arrest him so they can have

07:56AM him in custody to interview him.

MS. OVERLY: That's my understanding, yes.

THE COURT: So he was in custody and he was in custody on behalf of Metro --

MS. OVERLY: No.

07:56AM THE COURT: -- so homicide detectives can go over and talk to him about this murder case.

MS. OVERLY: But I think that's where the legal issues are alleged in the Motion is that, yes, he was technically in custody, as they were in those cases cited

07:56AM in the Motion. Yes, he was in custody and that was the means and under the circumstances by which they went and interviewed him, but he was not under a custodial interrogation and in custody in reference to this case.

THE COURT: They know exactly why they

07:56AM wanted to talk to him. They know exactly why they want to

arrest him, get him in custody. Why didn't they just read him his Miranda rights?

MS. OVERLY: I mean I think that arguably they could have, at the outside, read him his Miranda

07:57AM rights.

THE COURT: They could have or should have?

MS. OVERLY: Well, the State's argument is that they were not legally required to read him Miranda at

07:57AM the time.

THE COURT: It's 28 pages into the interview with him before they even bother to read him his Miranda and it's one of the worse things I have seen, in terms of reading him his Miranda rights, and I'm just going

07:57AM to turn to page 28 on this. I think it was 28; I may be off a page.

From the detective, and this is on the third line of the page towards kind of the end of that, "I mean would you -- would you feel better if I read you your

07:57AM Miranda rights and stuff, man?"

I mean that's what the detective said. The standard isn't does it make you better if he had his Miranda rights read to him. The standard is if he is in custody, he needs to have his Miranda rights read before

07:58AM they interview him. It's not whether somebody feels

better. That's not the way the Fifth Amendment works.

MS. OVERLY: No, I understand that, your Honor, and I think if the detective believes he was, in fact, under custodial interrogation and in custody with regards to this case, they would have read him Miranda, either by card or memory, at the outset of the interview, but based on their position, it was the State's position in its Opposition was that he, in fact, was not. They didn't feel the need to issue these Miranda warnings at the outset or throughout any point in time in the interview, as they didn't in Fields rather.

THE COURT: The interviews basically are voluntary. They are always voluntary interactions with the police. You cited a case where the guy's in prison, they bring him in the interview room, and he is free to leave. He may have be in prison, but in prison, his cell is his home. So they say, You are free to leave. That means go back to your cell and just go back to what is basically his home.

MS. OVERLY: Correct.

THE COURT: If he was free to leave, that means he was going to be uncuffed, let out, put in a police car, go back to his apartment, make a sandwich, turn on the TV, and go on with his day or by free means he is going to be in handcuffs and put in the back of the car?

MS. OVERLY: Well, free to leave in the same respect as he was in Fields. I mean like that's why the State believes it's analogous. In that case, they even indicated that he was free to leave and by that, they meant free to leave and go back to his cell.

THE COURT: His cell is his home.

MS. OVERLY: Correct.

THE COURT: Right. He's not free to go back to his home, right?

MS. OVERLY: No, he's not because of this active parole violation where he was going to independently go back to California, as he had been doing since 2014.

THE COURT: And that's the ball that Metro got started rolling.

MS. OVERLY: Correct.

THE COURT: Correct.

MS. OVERLY: And the ball -- Metro's ball started rolling, but it's a ball he created for himself and had this warrant issued nonetheless.

THE COURT: All right.

MS. OVERLY: So the State's argument was similar to that case. He could have indicated, with his extensive criminal history and his knowledge about the criminal justice system, and merely say to them, I don't want to talk to you about this. They would have taken him

back to CCDC and that would have been, granted, his temporary home, but just like in Fields, it's like him going back to his cell. He was going to be extradited back to California, as he indicated he well knew in the interview.

MS. LOBO: One other thing for the Court too.

Mr. Gathrite, it was so bazaar and strange to him. He's appeared a few times before your Honor on the fugitive calendar. He's been extradited back and forth. This is the one time California didn't come to get him. California was not interested this time. He's gone back and forth like two, three times. They always come get him. Somebody said, Don't bother, he's got a murder case.

MS. OVERLY: Well, I think that's --

THE COURT: Well, no, whatever you have locally, you have to clean up the new local charges first before they come pick you up. So he does have an open murder case. They are not going to come get him.

MS. LOBO: Here's the thing, Judge. He is not booked for murder, though. It's just they don't bother to come get him. It's not until a week later.

MS. OVERLY: And, your Honor, just one brief thing.

THE COURT: Sure.

MS. OVERLY: If they were to be -- typically, as your Honor knows, these issues are litigated up in District Court as well and after they're litigated in a motion, like in Jackson V Denno, a preliminary hearing is typically ordered at that point in time.

The reason I mentioned the preliminary hearing is because it would be the State's position that given the jurisdiction in which we are in right now, if that your Honor felt that under Jackson V Denno or something of equal footing would be appropriate, that a preliminary hearing would suffice, so forth, that would flush out those issues.

THE COURT: I'm not sure what issues there are to flush out. He is clearly in custody. This was all triggered by Metro. They was all set in motion. They knew exactly what they were doing. They knew exactly what they were doing. They wanted to get him in custody so they could interview him on the murder case.

That is the only reason how this thing starts. It's the only reason to contact San Diego. This is all a ruse. This is all a ruse by Metro to get him in custody to interview him about the murder case. So he was in custody and, when he is custody, they should have read him his Miranda Rights. They didn't, not until 28 pages into this.

They violated his rights. The fact it's a murder case doesn't matter to me. It doesn't matter if he is caught with 20 pounds of weed or if it's a murder case. They violated his rights.

08:02AM Because they violated his rights when he was in custody, I'm going to suppress his statement. Because the gun comes from the statements made during the interview, I'm going to suppress the gun --

MS. OVERLY: And, your Honor --

08:02AM THE COURT: -- and that's going to be this Court's ruling.

So you can proceed to prelim, if you want to, but the statement is not coming in and the gun is not coming in.

08:02AM MS. OVERLY: And, your Honor, can I ask then what your specific ruling would be in reference to the State's Opposition in reference to how Miranda does not apply to the issue of consent with regards to the retrieval of the gun?

08:03AM THE COURT: The gun is a fruit of the poisonous tree. The only information they have is the information they gleaned while interviewing him illegally because they knew he wasn't read his Miranda rights properly. All of this is the fruit of the poisonous tree.

08:03AM MS. OVERLY: But, your Honor --

THE COURT: So the only information they have about the gun is the information he gave during the interview. So if the statement goes out, the gun goes out.

MS. OVERLY: Okay.

08:03AM So, specifically, the State's Opposition references how the Miranda warnings and any illegally obtained statements is non-testimonial for purposes of somebody's rights being violated.

So I just want to be clear that your

08:03AM Honor's ruling is independent of that, I guess, case law?

THE COURT: Do they have the gun without the statement? Do they get the gun without the statement from him as to where the gun was?

MS. OVERLY: Well, the argument is, your

08:03AM Honor, that his consent is not testimonial. So it's not technically considered his statement. It's independent of the usual Miranda suppression because it's not testimonial.

THE COURT: I have a gun that he said was hidden here. That's the information received in the

08:04AM investigation. I have the gun used in the murder. It's located here.

MS. OVERLY: I understand, but the State's argument is that he consented to them accessing the apartment to retrieve a firearm and that that consent

08:04AM allowed them to go inside and obtain that and then,

additionally, the State's Inevitable Discovery Doctrine, I'm not sure if your Honor wants to rule on that issue as well?

THE COURT: No. The statement is out, the

08:04AM gun is out. You can proceed however you want, but the statement is not coming in at prelim. The gun is not coming in at prelim. So --

MS. OVERLY: So the Inevitable Discovery Doctrine would be denied as well in that respect?

08:04AM THE COURT: Counsel, the statement is out. The gun is out.

MS. OVERLY: Okay.

THE COURT: So okay.

MS. LOBO: Thanks, Judge.

08:04AM THE COURT: Okay, do we have a prelim set?

MS. LOBO: Friday.

THE CLERK: June 8.

MS. LOBO: Next Friday, one week.

THE COURT: All right.

08:05AM MS. LOBO: Thank you.

THE CLERK: June 8, 9 A.M. stands.

(Off the record discussion not reported.)

* * * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Patsy K. Smith
PATSY K. SMITH, C.C.R. #190

EXHIBIT D

Adrian Lobo <adrianlobo@lobolaw.net>

Deandre Gathrite, 18F03565X

Sarah Overly <Sarah.Overly@clarkcountyda.com> Wed, Apr 11, 2018 at 2:25 PM
To: Adrian Lobo <adrianlobo@lobolaw.net>

Hi Adrian,

Per Detective Sanborn, the CAT team reached out to Defendant's parole officer in California. CA P&P issued a warrant for Defendant's arrest. The CAT team was able to locate him through his girlfriend's lease. However, there were no reports generated by the CAT team.

Once the warrant was issued it was put into NCIC. However, per Detective Sanborn, once the Defendant is booked on the warrant it is cleared from NCIC. Thus, any NCIC run currently done would not reflect the warrant back when it was originally issued by CA.

As for the gun, that was recovered after Defendant gave consent to retrieve it. Metro subsequently did a SW to recover other evidence, which is why the gun is not on the return. The gun will be reflected in the CSA impound report. However, that has not yet been prepared. I'll provide that as well as the autopsy report when I receive it.

Thanks.

Sarah Overly

Deputy District Attorney

(702) 671-2627 (direct)

(702) 868-2445 (fax)

Sarah.Overly@ClarkCountyDA.com

From: Adrian Lobo [mailto:adrianlobo@lobolaw.net]
Sent: Tuesday, April 10, 2018 10:34 AM
To: Sarah Overly <Sarah.Overly@clarkcountyda.com>
Subject: Re: Deandre Gathrite, 18F03565X

Hi Sarah,

[Quoted text hidden]

EXHIBIT E

LVMPD - COMMUNICATION CENTER
EVENT SEARCH

EVT : LLV180216002092	TYPE: 440	PRI : 6
LOC :	BLDG:	APT : 1
ADDR: 2630 WYANDOTTE ST	XST : 2711 KINGS WAY	CITY : LV
CADD:	CNAM:	CPHONE:
MAP : 0262337	S/B : P5	SRA : K342
P/U : MV4	OFF1: 6275	OFF2 :
DATE: 2018/02/16	INIT: 13:24:17	AREA : SV
911 : NO	CLSE: 19:36:56	DISP : A

13:24:17	CM		Primary Event: MAIN Opened: 18/02/16 13:24				00	LV6275
13:24:17	EU		INITIATED BY FRM- TO-LV6275				00	LV6275
13:24:17	USOF	MV4	463				00	LV6275
13:24:17	EU	MV4	PU FRM-	TO-LV/MV4			00	LV6275
13:24:24	USAR	MV4	2630 WYANDOTTE ST		463		00	LV6275
13:26:47	USAR	MV6	2630 WYANDOTTE ST		463		11	LV7275
13:26:47	USAR	MV8	2630 WYANDOTTE ST		463		11	LV7275
13:27:29	USAR	626MV	2630 WYANDOTTE ST		463		11	LV7275
13:29:38	USAR	MV2	2630 WYANDOTTE ST		463		11	LV7275
13:45:23	USER	MV11	2630 WYANDOTTE ST		463		37	LV16484
13:45:44	USAR	MV11	2630 WYANDOTTE ST		463		37	LV16484
14:40:09	CM		18/ 626MV - REQ UNIT FOR TRANSPORT 1440HRS				18	LV14394
14:46:22	USER	518H	2630 WYANDOTTE ST		463		11	LV7275
14:47:32	USER	H23	2630 WYANDOTTE ST		463		11	LV7275
14:48:29	CM		11/518H REQ ID. CS6 COPIED 1448HRS				11	LV7275
14:55:55	USAR	H15	2630 WYANDOTTE ST		463		11	LV7275
14:56:00	USAR	518H	2630 WYANDOTTE ST		463		11	LV7275
15:10:43	USER	3P1	2630 WYANDOTTE ST		463		18	LV14394
15:12:17	USAS	C37	2630 WYANDOTTE ST		463		11	LV7275
15:12:29	USAS	CS9	2630 WYANDOTTE ST		463		11	LV7275
15:16:01	CM		12/CA/GATHRITE, DEANDRE [redacted]88 [redacted] CONF'D TTY 1311 1515HRS				12	LV13558
15:21:12	EU	MV4	T FRM-463	TO-440			00	LV6275
15:21:12	USCL	MV4			440		00	LV6275
15:21:12	EU	MV4	D FRM-	TO-A MAIN			00	LV6275
15:21:37	USCL	MV6			440		00	LV9206
15:21:37	US	MV6	D FRM- TO-A				00	LV9206
15:23:21	USCL	626MV			440		11	LV7275
15:23:21	US	626MV	D FRM- TO-A				11	LV7275
15:23:21	USCL	MV2			440		11	LV7275
15:23:21	US	MV2	D FRM- TO-A				11	LV7275
15:23:58	USER	C37	2630 WYANDOTTE ST		440		11	LV7275
15:24:48	USER	CS9	2630 WYANDOTTE ST		440		00	LV9619
15:25:40	USAR	H23	2630 WYANDOTTE ST		440		11	LV7275
15:28:25	USAR	3P1	2630 WYANDOTTE ST		440		00	LV6593
15:53:43	USAR	CS9	2630 WYANDOTTE ST		440		00	LV9619
15:54:38	USAR	C37	2630 WYANDOTTE ST		440		11	LV7275
16:33:00	UO	MV8	Overdue: Operator: LV/13558 Console: 18					
16:56:02	USCL	C37			440		11	LV13046
16:56:06	USCL	CS9			440		11	LV13046
17:11:02	CM		18/H23 REQ ID TO RETURN 1711 HRS				18	LV9264

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RESEARCH ASSISTANT Communications Bureau

4/18/2018 12:41:57 PM

LVMPD - COMMUNICATION CENTER
EVENT SEARCH

17:13:17	CM		CS9 ADVD LL 1713HRS		11	LV14763
17:13:21	USAS	CS9	2630 WYANDOTTE ST	440	11	LV14763
17:19:21	USAS	C37	2630 WYANDOTTE ST	440	11	LV14763
17:19:41	USCL	CS9		440	00	LV9619
17:20:23	USER	C37	2630 WYANDOTTE ST	440	00	LV16064
17:39:21	USAR	C37	2630 WYANDOTTE ST	440	00	LV16064
18:13:54	USCL	C37		440	11	LV14763
18:18:32	USTB	3P1	CCDC	440	00	LV6593
18:37:42	USAB	3P1	CCDC	440	00	LV6593
18:38:07	USCL	MV11		440	18	LV9264
18:38:10	USCL	MV8		440	18	LV9264
18:41:43	USCL	H23		440	11	LV14763
18:42:46	USCL	H15		440	11	LV14763
19:18:29	USCL	518H		440	11	LV14763
19:36:56	USCL	3P1		440	00	LV6593
19:36:56	CM		Route Closed: MAIN			
19:36:56	CM		Incident Closed: 18/02/16 19:36			

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RESEARCH ASSISTANT Communications Bureau

4/18/2018 12:41:57 PM

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
UNIT LOG BY INCIDENT

For Incident Number: LLV180216002092

Unit	Event Number	P/Unit	Date Time	Code	Type	Officer 1 P# and Name	Officer 2 P# and Name	Disp	Pri	Comment
MV4	LLV180216002092	MV4	02/16/2018 13:24:17	USOF	463	6275 BECK, SEAN W.P.		A	6	2630 WYANDOTTE ST
MV4	LLV180216002092	MV4	02/16/2018 13:24:24	USAR	463	6275 BECK, SEAN W.P.		A	6	2630 WYANDOTTE ST
MV6	LLV180216002092	MV4	02/16/2018 13:26:47	USAR	463	9206 ZINGER, JUSTIN S		A	6	2630 WYANDOTTE ST
MV8	LLV180216002092	MV4	02/16/2018 13:26:47	USAR	463	8097 THEOBALD, LINDA JEAN		A	6	2630 WYANDOTTE ST
626MV	LLV180216002092	MV4	02/16/2018 13:27:29	USAR	463	4897 ERICSSON, DOUGLAS R		A	6	2630 WYANDOTTE ST
MV2	LLV180216002092	MV4	02/16/2018 13:29:38	USAR	463	5584 CORD, TRAVIS L		A	6	2630 WYANDOTTE ST
MV11	LLV180216002092	MV4	02/16/2018 13:45:23	USER	463	MV11 FORSBERG, SHANE		A	6	2630 WYANDOTTE ST
MV11	LLV180216002092	MV4	02/16/2018 13:45:44	USAR	463	MV11 FORSBERG, SHANE		A	6	2630 WYANDOTTE ST
518H	LLV180216002092	MV4	02/16/2018 14:46:22	USER	463	4532 SCOTT, JON MARK		A	6	2630 WYANDOTTE ST
H23	LLV180216002092	MV4	02/16/2018 14:47:32	USER	463	5297 DE PALMA, PHILIP H		A	6	2630 WYANDOTTE ST
H15	LLV180216002092	MV4	02/16/2018 14:55:55	USAR	463	7056 GRIMMETT, JARROD A		A	6	2630 WYANDOTTE ST
518H	LLV180216002092	MV4	02/16/2018 14:56:00	USAR	463	4532 SCOTT, JON MARK		A	6	2630 WYANDOTTE ST
3P1	LLV180216002092	MV4	02/16/2018 15:10:43	USER	463	6593 CAINE, JASON		A	6	2630 WYANDOTTE ST
C37	LLV180216002092	MV4	02/16/2018 15:12:17	USAS	463	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
CS9	LLV180216002092	MV4	02/16/2018 15:12:29	USAS	463	9619 TAYLOR, ERINMARIE K		A	6	2630 WYANDOTTE ST
MV4	LLV180216002092	MV4	02/16/2018 15:21:12	USCL	440	6275 BECK, SEAN W.P.		A	6	
MV4	LLV180216002092	MV4	02/16/2018 15:21:12	D	440	6275 BECK, SEAN W.P.		A	6	Added dispostion: A
MV6	LLV180216002092	MV4	02/16/2018 15:21:37	USCL	440	9206 ZINGER, JUSTIN S		A	6	
MV6	LLV180216002092	MV4	02/16/2018 15:21:37	D	440	9206 ZINGER, JUSTIN S		A	6	Added dispostion: A
626MV	LLV180216002092	MV4	02/16/2018 15:23:21	USCL	440	4897 ERICSSON, DOUGLAS R		A	6	
626MV	LLV180216002092	MV4	02/16/2018 15:23:21	D	440	4897 ERICSSON, DOUGLAS R		A	6	Added dispostion: A
MV2	LLV180216002092	MV4	02/16/2018 15:23:21	USCL	440	5584 CORD, TRAVIS L		A	6	
MV2	LLV180216002092	MV4	02/16/2018 15:23:21	D	440	5584 CORD, TRAVIS L		A	6	Added dispostion: A
C37	LLV180216002092	MV4	02/16/2018 15:23:58	USER	440	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
CS9	LLV180216002092	MV4	02/16/2018 15:24:48	USER	440	9619 TAYLOR, ERINMARIE K		A	6	2630 WYANDOTTE ST
H23	LLV180216002092	MV4	02/16/2018 15:25:40	USAR	440	5297 DE PALMA, PHILIP H		A	6	2630 WYANDOTTE ST
3P1	LLV180216002092	MV4	02/16/2018 15:28:25	USAR	440	6593 CAINE, JASON		A	6	2630 WYANDOTTE ST
CS9	LLV180216002092	MV4	02/16/2018 15:53:43	USAR	440	9619 TAYLOR, ERINMARIE K		A	6	2630 WYANDOTTE ST

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RESEARCH ASSISTANT Communications Bureau

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
UNIT LOG BY INCIDENT

For Incident Number: LLV180216002092

Unit	Event Number	P/Unit	Date Time	Code	Type	Officer 1 P# and Name	Officer 2 P# and Name	Disp	Pri	Comment
C37	LLV180216002092	MV4	02/16/2018 15:54:38	USAR	440	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
MV8	LLV180216002092	MV4	02/16/2018 16:33:00	UO	440	8097 THEOBALD, LINDA JEAN		A	6	Overdue: Operator: LV/13558 Console: 18
C37	LLV180216002092	MV4	02/16/2018 16:56:02	USCL	440	16064 CHEN-HUYNH,STEPHANIE		A	6	
CS9	LLV180216002092	MV4	02/16/2018 16:56:06	USCL	440	9619 TAYLOR, ERINMARIE K		A	6	
CS9	LLV180216002092	MV4	02/16/2018 17:13:21	USAS	440	9619 TAYLOR, ERINMARIE K		A	6	2630 WYANDOTTE ST
C37	LLV180216002092	MV4	02/16/2018 17:19:21	USAS	440	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
CS9	LLV180216002092	MV4	02/16/2018 17:19:41	USCL	440	9619 TAYLOR, ERINMARIE K		A	6	
C37	LLV180216002092	MV4	02/16/2018 17:20:23	USER	440	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
C37	LLV180216002092	MV4	02/16/2018 17:39:21	USAR	440	16064 CHEN-HUYNH,STEPHANIE		A	6	2630 WYANDOTTE ST
C37	LLV180216002092	MV4	02/16/2018 18:13:54	USCL	440	16064 CHEN-HUYNH,STEPHANIE		A	6	
3P1	LLV180216002092	MV4	02/16/2018 18:18:32	USTB	440	6593 CAINE, JASON		A	6	CCDC
3P1	LLV180216002092	MV4	02/16/2018 18:37:42	USAB	440	6593 CAINE, JASON		A	6	CCDC
MV11	LLV180216002092	MV4	02/16/2018 18:38:07	USCL	440	MV11 FORSBERG, SHANE		A	6	
MV8	LLV180216002092	MV4	02/16/2018 18:38:10	USCL	440	8097 THEOBALD, LINDA JEAN		A	6	
H23	LLV180216002092	MV4	02/16/2018 18:41:43	USCL	440	5297 DE PALMA, PHILIP H		A	6	
H15	LLV180216002092	MV4	02/16/2018 18:42:46	USCL	440	7056 GRIMMETT, JARROD A		A	6	
518H	LLV180216002092	MV4	02/16/2018 19:18:29	USCL	440	4532 SCOTT, JON MARK		A	6	
3P1	LLV180216002092	MV4	02/16/2018 19:36:56	USCL	440	6593 CAINE, JASON		A	6	

End of Unit Log for Incident Number: LLV180216002092

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RESEARCH ASSISTANT Communications Bureau

EXHIBIT F

EVENT #: 180211-3549
STATEMENT OF: **DEANDRE GATHRITE**

SPECIFIC CRIME: HOMICIDE

DATE OCCURRED: 02-11-18 **TIME OCCURRED:**

LOCATION OF OCCURRENCE:
CITY OF LAS VEGAS **CLARK COUNTY**

NAME OF PERSON GIVING STATEMENT: DEANDRE GATHRITE

DOB: **SOCIAL SECURITY #:**

RACE: **SEX:**

HEIGHT: **WEIGHT:**

HAIR: **EYES:**

WORK SCHEDULE: **DAYS OFF:**

HOME ADDRESS: **PHONE 1:**

WORK ADDRESS:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE G. MAUCH P# 8566, LVMPD HOMICIDE SECTION, on February 16, 2018.

Q: Hey, how do these fools roll up? I mean, paint a picture for me. How they - how they come up at you, and how they, you know, how - how that whole confrontation go down, man?

A: It was, like, two other - two or three other people. Well, it's more than that. It's - we came through.

Q: Mm-hm.

A: But he, like, I was out there minding my own. That's it.

Q: Mm-hm.

A: I was minding my own. I don't get in nobody's business.

Q: Mm-hm.

A: None of that. I don't do none of that.

Q: Mm-hm.

A: It's just, like, it just, like, it just happened, like, even, uh, the people that was out there.

Q: Mm-hm.

A: To dis you - this - but you know it - it just happened. It - nobody knew, like, nobody knew what's, like, it just - just was, like, it's - I don't know how to explain things.

Q: It all happened kinda quick, just kinda out of nowhere.

A: Yeah, but it - it was, like, not even a hour before, like, everybody was just chillin', you know.

Q: Mm-hm.

A: And then you come back with a attitude with your partners.

Q: Right.

A: Nobody paid no mind to it but, you know, hey, you got your own feelings. It's, like, I - I don't know what - I don't know what, like, I don't know.

Q: Okay. Well, let me...

A: It's, like...

Q: Let me ask you this, man. 'Cause here's - here's the magic question, man. I mean, I know they kinda run up. You ain't out looking for trouble, you know,

'cause that ain't you 'cause I know all about your history. I know all about what you, you know, we done done our research. You e- you feel me? So, I mean, I know I ain't talking to some bad dude. That's why I came in there and took the cuffs off of you, got you comfortable, and let you hug your kid. Be cool with you. You - you feel me? 'Cause I know what kinda p- I know what kinda person you are, man. So what I'm asking, man, basically, what it boils down to is why'd you pull the trigger, man? What happened? Walk me through it, man. Walk me through how it went down. You know what I'm sayin'? So I can explain that. That's what I'm trying to say 'cause I know that wasn't what - you didn't go lookin' for it.

A: No. I'm just, like, I hear everybody keep saying that, like, everybody's trying to say that I did it, and then somebody else get shot. That same night. And he was one of the ones that was out there.

Q: Right. Okay.

A: Yeah. Well, the - I don't know. It's, like, 'cause something happened a couple nights before.

Q: What was that? What happened a couple nights before?

A: Across the alley somebody shot up in a apartment.

Q: Was you there for that? Did you see that?

A: I was in that apartment.

Q: Oh, you was in the apartment that got shot up?

A: Yeah. And I left.

Q: Okay. What was that all about?

A: Just some...

Q: Competition, man? Is they shooting up the trap spot or what?

A: No, no trap.

Q: Okay.

A: I had this (unintelligible) basically homeless.

Q: Okay. Somebody roll up and just shoot it up or what?

A: Yeah, 'cause they thought whatever they was looking for was up there.

Q: Okay. Do you know who he was lookin' for?

A: I don't wanna find out.

Q: Right. Do you know who was - who d- who did the shooting up into there?

A: Yeah. They had this - they got his name and stuff. They - somebody had came up on this backpack.

Q: Okay. So you talking about the detectives or somebody got his name or just...

A: I think they might have his name, but somebody had came up on his backpack with his information in it.

Q: Okay. So after being in an apartment, man, that gets shot up, you gotta be feeling some kinda way. You in there with your people or what?

A: No. This older girl that I talk to and...

Q: Right.

A: ...all of her kids was in there.

Q: Damn.

A: And we was just in there - was just chillin'. We had barely got up. It was early in the morning.

Q: And y'all got kids and shit up in there?

A: Yeah. That's why I...

Q: Damn.

A: But then he bragged about it, talking about (unintelligible) four, five, six, Bloods, and this and that.

Q: Right, right.

A: Then this night, this dude (unintelligible) mentioning that, then keep on going, like, keep on - keep on grabbing for his gun.

Q: So what's that make you feel like? I mean, you already been shot at once the night - couple nights before, right? And then he's over here doin' that. How you - how you feelin'? Uh, man, I mean, walk me, uh, you s- you - you see what I'm getting at?

A: I'm tryin'...

Q: Ho- how you feelin' when you see that, man?

A: I was trying to walk away. I was - I kept on trying to leave...

Q: Right.

A: ...with my other two but the one that got shot - we was all trying to leave.

Q: Mm-hm.

A: And he kept on, and then he came up with his partners and they all got their hands in they pocket, grabbing they sh- stuff, talking about on Bloods, this and that.

Q, And what's that make you feel like? When people start grabbin', what you thinkin'? When - when you see people grabbin' like that, what you thinkin'?

A: I wanted to go home.

Q: All right. But what you thinkin' they grabbin' for?

A: I know. I seen it. I seen it.

Q: Seen what? That's what - you see - you see what I'm saying?

A: Man, I seen it.

Q: I'm helping you explain what you saw. So explain to me when - when you...

A: We all seen it.

Q: You seen what?

A: He had his gun in his pocket.

Q: All right. And what'd it look like?

A: It was - he had a few guns in there. I don't know which one it was, but...

Q: I mean, black, silver?

A: They said it - it was black but it fit in his pocket.

Q: Okay.

A: All those little partners are still over there.

Q: Right.

A: You know what I'm sayin'? It wasn't - I don't - no competition, nothing.

Q: Right.

A: People come through to get tree, I tell 'em - run money...

Q: Right.

A: ...to you. I'm...

Q: Yeah.

A: I'm not on that. I'm - I'm not on nothing like that. Like, you know what I'm saying?

Q: Mm-hm.

A: You making money off me.

Q: Yeah, yeah, yeah.

A: I don't get nothing but, uh, probably a dollar brew if that - if I ask.

Q: For - okay.

A: I don't want nothing. I - I didn't - it wasn't, like, I was out there trying to gang or prove anything.

Q: Mm-hm.

A: You know what I'm saying? It's, like, you know what I'm saying? You - you in the situation that you trying to leave from, and it keeps - it es- escalates when you try to defuse it.

Q: So how did it escalate? They showing you guns and, I mean, that's escalating

right there on they part, not your part. And what's next?

A: Just - I don't know, man. It just - was out there arguing too for a minute. It's, like...

Q: What's being said in the argument? Walk me through that. I mean, what they saying?

A: Like, he talking about, uh, "On Athens. Niggas ain't got no respect."

Q: Mm-hm.

A: Athens Park. Niggas don't respect what I say. This my trap spot." Like, bro, we not even - we sitting here drinking, just smoking blunts, bro. You, like, you're sitting here trippin'. For what?

Q: Mm-hm.

A: We do this every day. Every - i- if not every day, occasionally.

Q: Right, right.

A: So it's, like, uh, oh, man. Oh.

Q: I mean, you gotta be feeling, like, you know, they had already shot up the place the night before or whatever.

A: Um, just - scared.

Q: And I would - who - who wouldn't be? Right? They had already shot the place up once before. It ain't, like, they just strapped up. I mean, you see 'em strap, but shit, two nights before or night before, whatever, they done shot that other spot up. I mean, so what it's, I mean, how does that make you feel? When you

see - they had already shot the place up, and - and now you see ‘em with guns again, how does that make you feel, man? I mean, just be real. Were you scared? You concerned? I mean...

A: I was scared. Like, ‘cause...

Q: Okay. So as things escalate, and they - and they - they talkin’ all this smack and reaching for they guns, how - how do you respond, man?

A: There was a problem when they first came up ‘cause his - was in his pocket.

Q: Right.

A: And had his hand on it.

Q: Mm-hm.

A: Then he took his hand off, and that’s how I seen it.

Q: Mm-hm.

A: And now his partner stand out there, but one of ‘em got his in his hand.

Q: Mm-hm.

A: And they standing all right there. It’s, like, just four of ‘em.

Q: And with his shit out?

A: When he talk - yeah. He got it...

Q: Yeah.

A: ...in his hand.

Q: Okay. Yeah.

A: They - they talking and he - he’s sitting there. I guess he the ring leader. He - he

- and now he pacing back and forth, putting his hand in his pocket, this and that, pacing back and forth. And then his homies step in the gate behind the wall.

Q: Okay.

A: We still outside the gate. He keep goin'. Damn. Just pull up. Dead - dead homies. Like, man, bro, you trippin', man. Like, we don't even be on nothing like that. We just be out here chillin'.

Q: Right.

A: Just, like, yeah, yeah, just...

Q: So what point in time did you pull yours out? I mean, 'cause he got they shit out first, so at what point in time you pull yours out? Was it before or after them?

A: Wasn't - wasn't before them.

Q: So it was after them.

A: Or I wouldn't have been able to be out there.

Q: Right. Exactly. So they got they's out, and at some point in time during this whole talking that they goin' back and forth, at what point in time do you pull yours out? It was, I mean, was it...

A: I don't know. It just - it just happened so fast.

Q: Okay. So walk me through from the point where you pull yours out and - and that whole process. They already got they's out first from what you tellin' me, so that's...

A: Can - can I smoke a cigarette? I'm just...

Q: You got a cigarette?

A: I do. My pack is on the counter in there. I...

Q: Uh...

Q1: Hey, you care if you have an old one? I got some old ones there if that's okay. You just wanna step out?

A: Uh, yeah. I had just...

Q: I'll text my boy and have him go - I'll text him to have - you said it's on the kitchen counter? All right.

A: Yeah. They're Newport (unintelligible).

Q: So at what point in time do you - so he's got his out first, and then you pull yours out. And then, I mean, what happens? Man, walk me through it.

A: It's, like, man, I don't know how to explain it.

Q: I mean, just explain it in your words, man. I mean...

A: The guy...

Q: I mean, the important part is that...

A: Everybody don't look at it the same. It...

Q: No, but, I mean, I'm looking at it as they got their shit out first. That's what you told me. And then...

A: If - if you ask anybody that was out there...

Q: They - I - I - it - hey. Been there, done that. That - that's why I'm - they got they's out like you said. Then you pull yours out. Walk me through the whole

confrontation, man. That's all I'm saying.

A: Just - they, like, he just, uh, it's, like, he kept going, like, man. (Unintelligible).

Q: I - I just texted him, told him to bring those Newports off the counter, so - here he come right now. So what happened, man? You pull yours out and, I mean, walk me through that, man.

A: Well, when I, uh...

Q: Well, let me ask you this, man. Let me - let me ask you this, man. What made you pull the trigger? I mean, you already kinda told me a little bit from your perspective. They got they's out. They done shot up the place the night before, or a day or two before or whatever. And now you out here now. They acting all funky with you. They comin' at you all crazy. You know, they thirsty. They out there trippin. You know, they got they stuff out already.

A: It was - yeah.

Q: So what made you go, you know, pull the, you know, I mean, what...

A: It was, like, uh, it - it was, like, uh, it was, uh, out of fear 'cause I started running when I did it.

Q: Mm-hm.

A: I didn't know I really hit him until after. And they told me, like, "Man Dre." Like, "What, bro? Did I hit somebody?" And he said, "Yeah."

Q: Okay.

A: And then I just started hearing more shots. It's, like, they started shooting after

me.

Q: Right.

A: So I just kept going. I just kept going. I didn't know what else to do.

Q: Right.

A: Just wanted to come home to my baby.

Q: Right, man.

A: I wasn't (unintelligible) nobody dead. I wasn't - so wasn't real - that's - this might be - I done change from that.

Q: Right.

A: My baby was born.

Q: What's his name?

A: My son?

Q: Mm-hm.

A: Junior. He's a junior.

Q: Okay.

A: And after my daughter I just slowed down. And - and then - and that was, like, they - they laughing at me 'cause I ran in there. Like, you scary when - I wasn't trying to do that. That was - that's not my intentions. I - mmm.

Q: I get it, man.

A: I don't...

Q: I get it, man.

A: I love my kids more than that. And, like, I shot - out here - last year - just last year in January I got shot. And I didn't have nothing to do with it. It was the crowd I was in.

Q: Mm-hm.

A: And then - 'cause the crowd I'm in this side, it - it's, like, they put me in the situation where I - I mean, I didn't - I wasn't, like, just, like, that's not, you know, I'm not gang member. I don't sell drugs like that. Smoke weed. I drink a lot of alcohol.

Q: Right, right.

A: Anybody knows me know Dre is a alcoholic.

Q: Right, right, right. You ain't over there running no trap house, trying to make your ends meet or nothing, man?

A: Never.

Q: I mean - I mean, whether you is or ain't or whatever, I mean...

A: Never, bro.

Q: ...you don't...

A: I've never had a trap spot. I swear I've never had enough money to do nothing.

Q: Okay.

A: My girl been taking care of me since I been out of prison before my daughter was born.

Q: Okay.

A: I - I don't have nothing.

Q: All right.

A: And we live by her checks 'cause I keep going on the run on my probation in Cali.

Q: Oh, okay.

A: So sh- I don't - I'm not doing nothing like that.

Q: You - you ain't trying to get...

A: No. I...

Q: You ain't out looking for trouble.

A: I been there. That was when I was younger. That...

Q: Right.

A: You know what I'm saying? Eighteen, 19, 21.

Q: Yeah. Right, right.

A: Twenty-two, 23. That - all those year - that's when I was getting in trouble. Uh...

Q: Yeah.

A: I didn't care.

Q: Yeah.

A: That shit - it don't add up when you - when you in the pen, it don't add up.

Q: Yeah.

A: When I got out, stayed out the way. Then I caught a proba- a probation on a firearm in Cali.

Q: Right.

A: But I was at home.

Q: Yeah.

A: And, uh, so what I'm on probation for, for having a gun in my house to protect my family.

Q: Right.

A: Because I'm a felon.

Q: Right. And you ain't had to - you done done your dirt in the past, so for you - for you to have it, you know, you got - you got legit concerns. You know, I mean, you ain't - you ain't been Mr., you know, Mr. Perfect...

A: No. I'm not out here...

Q: ...or nothing like that, but you ain't out looking for trouble either, you know.

A: Oh, I'm not out here robbing and stealing shit from people. That's stupid.

Q: Right.

A: 'Cause now you go in there for taking little - 'cause you don't know nothing. You just doing it just 'cause you feel, like, you got a good or upper hand. That's stupid. That's what people be doing. That's what he was trying to do that night when this happened.

Q: I feel you, man.

A: I went out there. There was no problems. We was drinking, smoking, and he just...

Q: And he run up all you acting all...

A: Came through with a attitude, like, here they just shot up your spot the other day. The (unintelligible) stand right here. I'm, like, man, bro lives here. The one that got shot after that...

Q: Mm-hm.

A: ...he lives in those apartments.

Q: Okay.

A: So it was, like, we just chillin'. We drinkin' and smokin' weed.

Q: Right, right.

A: He even got a job. He go to work. We just chillin'. And he don't drink.

Q: Mm-hm.

A: This other partner was out there drink - we - we chillin'.

Q: Guys hanging out just chillin'?

A: Yeah. If they come back shooting at you, they gonna shoot up my spot. Man, why you - why you - do you have something to do with it? Like, I - I don't know what you - why you sayin' that? We just chillin'. We do this every day. Every day. Sometimes day and night. We do this - we - up and down that street. Everybody. That's how everybody up and down that street know me. And I don't - I don't be out there bullying nobody. I'm not that type of dude. All the kids I play with - everything. I'm not no - anybody that knows me over there will tell you I'm not no guy like that.

Q: So - so what, these cats thinking you bringing heat to the trap - oh, to they trap ‘cause you there and this place got shot up, so they think you the one bringing the heat to the spot. They trying to - you mess with they game. That’s how they trying to play it.

A: And they sh- they got a - they had a - they had a AR in there. They - that shot in them, uh, twice trying to put it up. I used to always go in this dude house, like, I have nothing against you. Uh, and if I did, I coulda did it to gain something, but I coulda tried to rob you or something. If I - if I was on something, like, you ha- e- you had everything. You had stuff I’ve never had.

Q: You talking about the dude’s house who got shot up?

A: No. Uh...

Q: Oh, the other - the other (unintelligible).

A: Yeah. I - I - I d- I, like, I’m not - I’m not that - I’m not on nothing like that, bro. And, like, anybody know, like, man, Dre don’t be trippin’. Like, that was crazy.

Q: Right.

Q1: So did they actually say something about shooting up your place earlier?

A: They mentioned it.

Q1: Okay.

A: But it was, like, well, everybody on the block knew ‘cause if you hear gunshots, it’s only that alley and Van Patten.

Q1: Right.

A: And we just right in the alley right across before you get to Sherwood's.

Q1: Okay.

A: And everybody was in the alley and seen the dude running off.

Q1: Did you know it was - do you know if it was the same guy or people from his group?

A: That, I don't know.

Q1: Okay.

Q: So when you - when you finally bust a round and fire a round, and you start running away to, you know, to get out of there, how many rounds did you shot?

A: I shot, like, two...

Q: Man, I know it happens quick, so...

A: I shot - I just think I shot, like, two or three. Like, but they was shooting at me while I was shooting back.

Q: Right. Right.

A: So I don't know who - I don't know which one of the other...

Q: Remember how many...

A: ...ones were shooting, but it was lot of shots fired.

Q: 'Kay. What I was gonna ask you next is how many rounds did they shoot at you? Do - do you remember or did you, I mean...

A: It was, like, at least six. Five or six or maybe - maybe more.

Q: Did you see who was shooting at you?

A: I was running already. I - I was running. When the first shot went off, I was already going across the street and shot again and kept going. Kept running.

Q: Okay.

Q1: So which way were you running? Across the street or, like, in...

A: Running away from the building.

Q1: Okay.

A: They were shooting towards - either towards where I was - I don't know where. I di- I didn't look back. Just kept goin'.

Q1: So initially, when they came up, are you, like, behind the gate, like, inside where, like, the courtyard is, or are you, like, outside - out front by the sidewalk?

A: I was inside the gate and they walked by.

Q1: Inside the gate? Okay.

A: They out the gate. We was about to go down to the other guy's friend house down the street, and then he came back out, "Hey, blood, on Athens." So he get our attention. We all look at him. "Hey, what's up, bro? What's..." "Hey, blood. Where did y'all came - y'all can't clear this out? Man, there's blood on the dead homies. Blood - all right, blood. I see what it is, blood." And he keep - but it's - so y'all really - I'm like, "Bro." I - that's the la- I turn around and talk to him, like, "Bro, why you trippin'? We not even..." We - you can't do - we left. He went in the house and came back out with his gun. He walked past us without a gun, came back out with a gun. And your homie's with you. Now you come with a

entourage. And you just walk past us and didn't say nothing 'cause he had came back from the store. The first time he said something, there was a lot of people out there. Some of 'em had left. I guess he walked through the back, went to the store, and came back. Then when he came back, he walked through us, went in the house, and came back outside.

Q1: So the first time he goes by, he's by himself?

A: No. The first time he go by, he's with his friends.

Q1: Okay.

A: And that's when he - "Oh, blood, y'all gotta clear this out. On dead homies. Too much." So we, uh, all right. You know, we - basically, you know, we drink and smoke. We do this every day.

Q1: Mm-hm.

A: We not really - all right. You live here. You have a - we done been up and down the street for - for months. You just barely been over here probably two or three months, but you used to stay across the street. Now your girl and your mom got this spot right across the street. You - you just, like, he came through, like, politicking, but I, like, we was in Cali. Right. We not in Cali, bro. You, uh, it's...

Q: Right, right. (Unintelligible).

A: We not - ain't nobody out here on that. Everybody's out here chillin'. In Cali you can't just chill in different areas. Shoot. You in somebody hood.

Q: Right.

A: And they wanna find out if you're from their hood or not, or if you're in...

Q: Yeah. Right, right.

A: And this - I got - I, like, stuff that's just, like, like, I - they know I'm - I'm - man. Even the people that was out there.

Q: Hey, man, I - I appreciate your honesty. I mean, just bein', you know, I'm just, I mean, obviously you not - you didn't have to talk to us today. You don't have to sit here with us. And we already kinda know, like, I told you that's pretty much, I mean, kinda how we - how it's been explained by others too. You know what I'm sayin'?

A: (Unintelligible).

Q: No, no, no. Dude - dude, hey, look. Hey. I know you're here talking to us. I know you got - you feel some kinda way, man, but I - I - I mean, you know, you can leave at any time, dude. We - we ain't gotta, you know, I know you here, I mean, you know, I ain't trying to - I ain't trying to jam you up. Nothing like that. That's why we let you smoke, took you, I mean, we ain't got you handcuffed, nothing. You - you - you a free man. Everything's good right now. You - you feel what I'm saying? I mean, I - I - I, you know, I'm just saying I appreciate you talking to us, man. I mean, we ain't trying to jam you up, nothing like that. We just simply kinda wanted you to explain what you just explained to us. Just, uh..

A: I know but I'm, uh...

Q: How it - how - how things went down, man, because...

A: I know. Just...

Q: ...there's a reason for everything, right? And that's what you explained to us. There - there's a reason for everything, man. I mean, would you - would you feel better if I read you your Miranda rights and stuff, man? I mean, I don't have, I mean, you free to go, man. I mean, you know what I'm saying? I - I'm not here to jam you up. I'm here to simply get your side of the story. And that's why I appreciate - and I'll read 'em for you, you want me to read 'em to you, man. I mean, know, uh, you got the right to remain silent. Anything you say can be used against you in a court of law. You have a right to consult with an attorney before questioning. You have a right to the presence of a attorney during questioning. If you cannot afford an attorney, one will be appointed before questioning. You understand all that? You unders- you understand all that, Dre? Yeah? Yes, no, maybe so? I mean, I ain't trying to jam you - I'm just letting you know I ain't trying to trick you with nothing. You see what I'm sayin'? Those are your rights. You know what I'm sayin'? Those are your rights. Now, I'm not saying that, uh, you're under arrest, not like that. I'm just telling you those are your rights. If you - if you feelin' some kinda way - if that makes you feel better - you understand that? Yes, no? Am I making sense?

A: It's just that the situation sucks so bad.

Q: Right.

A: I...

Q: Because you didn't wanna put yourself in a situation, right? Right?

A: I...

Q: I mean, you didn't start it, right?

A: No.

Q: Okay.

A: It just...

Q: Tell me this, Dre. So I know it wasn't your intent, you know, to - to have what - what happened to happen. You know, somebody being shot, all that. You was basically - from the way you describe it, they pull these guns out. You scared, so you - you trying to get the hell out of there, am I right? And if I'm wrong, tell me I'm wrong. Am I right? You trying to get out of there, right?

A: Yeah.

Q1: You're shaking your head right.

A: Yeah.

Q: Okay. Okay.

Q1: And you're running away while you're shooting, right?

A: Yeah.

Q: Okay.

Q1: So you're trying to get away.

Q: You ain't chasing them, right?

A: No.

Q: Okay.

A: Shoot. I wouldn't be here if I tried that.

Q: So you fired a couple of rounds as you runnin' away. You don't even know if you even hit anybody, is the way you explained it, right?

A: Yeah.

Q: Okay.

Q1: And you were hearing rounds still comin' at you, right?

A: I - yeah, I hear - after I went - I'm not sure no more. I just keep goin' 'cause I didn't wanna get shot.

Q: Okay.

A: In the back again.

Q: So after you get away from the scene and all that stuff, I mean, what do you do with the gun and all that?

A: Just started going to hide and stuff.

Q: Trying to hide it and stuff? Where you hide it at? The only reason I ask, man, we don't want no other kid to get a hold, uh, I mean, you know what I'm saying? I mean, we - I - it's - it's a safety issue for us, man, you know. That's - that's my thing. I don't want it to be in the wrong people's hands and shit like that. So what kinda gun was it? Was it, like, a 9, a 40, 45? What - what - what was it? 380? What was you shootin'?

A: Oh, man. I don't know if I wanna - wanna keep goin' but I - it make me seem

bad. I don't...

Q: What makes you seem bad?

A: Seem like a bad person.

Q: What makes you...

Q1: Why?

Q: ...seem like a bad person? Why you f...

A: 'Cause of what happened and it's, like, uh...

Q: You just kinda explained to me how you was trying to - you were scared. They pulled guns on you first.

A: I know, but it's just - I just feel bad about - 'cause...

Q: What do you think a reasonable person would do? Tell me that. If somebody's got a gun and they threatening you, and they talking smack to you, what do you think a reasonable person would do? Do you think a reasonable person would do the same thing that you did?

Q1: I mean, you're not - you're not supposed to wait there until you get shot first, right? Knowing the guy has a gun and he's making threats?

Q: Hello.

A: I don't - it's just - it's just something, uh, like, I wish I - it would just go all over and - and I wouldn't - I don't know. I woulda left. I woulda just (unintelligible).

Q: Would you do anything different? If you could rewind time, man, if you could rewind time and do anything different, man, I mean....

A: I wouldn't a went out that night. I wouldn't a went out. (Unintelligible).

Q: You wouldn't have went out that night?

A: I don't - I don't get it or nothing. I woulda had a bad feeling, I would never went out. I would stay home with my baby. I wouldn't be comin'. I went out, chill. We was drinkin' and smokin'. That's it.

Q: You f...

A: Then it just...

Q: Right. If you had stayed there with them dudes, with them guns out that they had and stuff, what do you think would've happened? If you hadn't - i- if you hadn't shot first, what do you think would've happened based on what you - the story you just told me, man?

A: Shot me.

Q: They woulda shot you. And we wouldn't be here talking to you today, right?

A: Yeah.

Q: I mean, I'm not gonna tell you how to feel, man, one way or the other 'cause I can't imagine what you're going through in your head. I mean, I get it. You sitting here, you talking to us and I appreciate your cooperation. And I know it ain't something that you have to do, but, uh, but you sitting here talking to us, man, and - and - and all that is a blessing in itself, man, given how things coulda transpired, right? You feel me? I mean, you - you keep talking about your kids and stuff. Things could be a lot different right now, you know. I mean, wrong,

right, or indifferent, man, you know what I'm sayin'? I mean, it's - it's - it's - I'm just being real with you. I mean, you know, and that's why I asked you. If you had stayed there, man, and not fired that first round and - and started running away and stuff, what would've happened to you? And that's why I asked you that question, because I'm trying to put myself, uh, and anybody who - who, you know, who - who - who - who reads about this - this case, man, I want them to understand that - how you was feelin'. You know what I mean? I want them to understand how you - how you feel. I wanted - I want them to understand what - how it feels to be in your shoes, and when you're standing with two or three people with - that are holding guns that you see. That make sense?

A: If - the dude that they shot that's in the hospital seen them.

Q1: What, the one that happened afterwards?

A: He was right there when that one happened.

Q1: Yeah?

A: Was right there.

Q1: Because a couple people anon- anonymously called our office about this. They didn't really wanna get involved, but a lot of people were telling us that you didn't have a choice but to do it. We're like, "Why not?" And they're like, "The other guy had a gun. So what was he supposed to do?" That's why we're out here talking to you. I mean, it - it sucks you're in this situation. We - we - we - we deal with these types of cases all the time. But, you know, unfortunately, it happened,

and un- unfortunately you're involved, so, you know, that's why we wanted to get your side of the story.

Q: Did you get injured or anything, man, when they were shooting at you? Did you get hit or anything like that?

A: Um, that's what they said happened.

Q1: Who did?

A: Somebody said that when I had called somebody that live over there, they said that I had got shot in the leg or something when I was running.

Q1: Oh.

A: But I didn't get shot.

Q1: Okay.

Q: You know how - you know how rumors go, man. You know, people...

Q1: Yeah.

Q: ...people talk shit. That's why we out here talking to you directly, man, so, I mean, who else to get the story from, uh, you know, I mean, other than the person that was there, that was involved. You know what I'm sayin'? And we hear all those rumors and stuff, man. That's why we're here talking to you, trying to figure out, you know, did you get hurt? You know, 'cause you never know, man, right? You know...

A: Mm-hm.

Q: Bullets start flying. You know, all you doing is trying to get to safety, man, you

know. You know, you're trying to protect yourself and get somewhere safe so you ain't in harm's way. So after you left and - you hid the gun where? Is it inside this apartment over here?

A: I don't know where it's at.

Q1: You don't know where it's at?

Q: You don't know where it's at? You don't wanna tell me where it's at or you don't remember where it's at or, I mean, you just don't wanna say or what, man?

A: I don't - I don't wanna say where it's at.

Q: You just don't wanna tell me where it's at?

A: I'm already...

Q: What's that?

A: I'm already in trouble.

Q: For what?

A: For this. For running away.

Q: For running away? See, don't you think that's a natural, I mean...

A: Some people don't see it that way. I - I done been locked up. Everybody don't see it that way.

Q: 'Kay. Well, what - well, that's why I'm - that's why we here talking to you, you know, right. You know what I'm saying? I mean, I'm trying to - I'm trying to paint the picture and get an understanding of the - how you feel, man, you know. And things from your perspective. 'Cause, see, I'm gonna hop out and I'm a go talk to

my boss and I'm a tell him that, you know, this is how he was feeling and this is how he said things went down, and - and, you know, kind of explain things to him, you know. And your cooperation, you know, your willingness to sit here and talk to us and - and all that goes a long way with him, man, you know? And, uh, it goes a long way - goes a long way with - a long way with me. And it - and then it - it already kinda - it's already the story we already kinda got from everybody anyway. Like my partner said, everybody's already called up, talking about you don't got no choice.

Q1: You're not saying much we haven't already heard - heard this past week.

Q: You know?

Q1: Now, is there other people that were out there with you, that would be willing to talk to us to confirm the stuff you're saying? I mean, I believe you. Just, I mean, other people are gonna say other things.

A: The one that got shot, and then this one that stay...

Q1: One that got shot?

A: Mm-hm.

Q1: Okay. The one that got shot a couple hours later, he was there with you? Do you think he'll talk to me?

A: I don't know.

Q1: Do you know what his name is?

A: I don't know his - his real name.

Q1: Okay. You know his nickname? What's he go by?

A: TY

Q1: T-Wad?

A: TY Just a...

Q1: T...

A: ...T and a Y.

Q1: TY Okay. How well do you know TY?

A: I just see him through there whenever he off of work or something. He come.

Q1: Okay.

A: We - we smoke a blunt, chill, you know, just chop it up.

Q1: Okay.

A: Sports or stuff like that. He cool.

Q1: Okay.

A: That's why when I heard I was like, "How?" And they said he was coming from the Eureka.

Q1: Okay.

A: And they said it was one of the dude that got shot homies 'cause they knew he was out there.

Q1: So the guy that shot TY was one of the guys that was out there earlier with all the stuff that happened with you?

A: Yeah.

Q1: Okay.

A: But his other friend stayed next door to those apartments. If you come down Van Patten, in those apartments on your left.

Q1: Mm-hm.

A: And the next apartment - it's on the bottom right, that first apartment in the corner, as soon as you cross the alley, that apartment at the bottom. It...

Q1: So the next - the next set of buildings after it?

A: Right next to it. His - he has the bottom in the corner. They call him, uh, like, like, Ray Dog.

Q1: Ray Dog?

A: Yeah. He stays right there. He was out there. He seen me.

Q1: So does he hang with you guys, or does he just happen to be outside too?

A: We was - it was me, him, and the guy that got shot. We were drinking and smoking.

Q1: Okay.

A: And - and dude had his little friends out there.

Q1: Well, I think it - it definitely helps that you're being honest with us, and providing us with this information, especially when I know a lot of this matches stuff we've already been told. So that's why I know you're being honest and truthful with us, so we - we definitely appreciate that. Did someone at least - someone else at least get the gun so we know it's not just hiding on the street somewhere, and

some kid's not gonna come across it or something? Like, like, my partner said, I just wanna make sure s- someone doesn't pick it up that shouldn't have it, you know, someone young, anything like that.

A: No, I don't think no kids will be able to get to it.

Q1: Okay. Why is that? 'Cause of where it's at?

Q: So where can we recover the gun from, man? I mean, you doin' the right thing. Let's do the right thing. Feel me?

A: Just have a feeling I'm - might ne- never come home.

Q: What makes you feel that way, man? I been up front with you from the get go.

A: I know - 'cause - because s- somebody else can't...

Q: Somebody what?

A: Somebody else can't go home.

Q: Well, I mean...

Q1: Mmm.

Q: Sounds like that's on him, right?

A: (Unintelligible). I don't know what to do.

Q: Well, I mean, like I said, man, I mean, I'm gonna hop out of this car, and I'm a go talk to my boss and I'm a let him know that you cooperated and - and been truthful with me and up front with me. And that holds a lot of weight with him.

A: But...

Q: You know.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANDRE GATHRITE,

Petitioner,

THE HONORABLE JUDGE DOUGLAS W. HERNDON, EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Respondent,

And

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court Docket No: 77081

DISTRICT COURT CASE NO.: CASE NO. C-18-334135-1

APPENDIX TO PETITION FOR WRIT OF PROHIBITION

(VOLUME I)

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ATTORNEYS FOR THE STATE

INDEX

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANDRE GATHRITE, aka,
Deandre Terelle Gathrite #2592432,

Defendant.

CASE NO: 18F03565X

DEPT NO: 11

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460), in the manner following, to-wit: That the said Defendant, on or about the 11th day of February, 2018, at and within the County of Clark, State of Nevada,

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought, kill KENYON TYLER, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at or into the body of the said KENYON TYLER, the said killing having been willful, deliberate and premeditated.

COUNT 2 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: Amedeo Rossi .357 caliber handgun, bearing Serial No. F379181, the Defendant being a convicted felon, having in 2012, been convicted of Assault with a Deadly Weapon and Discharging Firearm at or into a Vehicle, in Case No. C271196, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

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All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

02/26/18

18F03565X/mcb
LVMPD EV# 1802113549
(TK11)

Register of Actions
Case No. 18F03565X

State of Nevada vs. GATHRITE, DEANDRE

Case Type: **Felony**
Date Filed: **02/26/2018**
Location: **JC Department 11**

Party Information

Defendant **GATHRITE, DEANDRE**

Lead Attorneys
Adrian Lobo
Court Appointed

State of Nevada **State of Nevada**

Charge Information

Charges: GATHRITE, DEANDRE	**Statute**	**Level**	**Date**
1. Open murder, e/dw [50001]	200.010	Felony	02/11/2018
2. Own/poss gun by prohibit pers [51460]	202.360.1	Felony	02/11/2018

Events & Orders of the Court

DISPOSITIONS

06/29/2018 **Disposition** (Judicial Officer: Goodman, Eric)
1. Open murder, e/dw [50001]
Dismissed Without Prejudice
2. Own/poss gun by prohibit pers [51460]
Dismissed Without Prejudice

OTHER EVENTS AND HEARINGS

02/26/2018 **CTRACK Track Assignment JC11**
02/26/2018 **CTRACK Case Modified**
Jurisdiction/DA;
02/26/2018 **Criminal Complaint**
02/26/2018 **Filed Under Seal**
02/26/2018 **Declaration of Warrant Summons (Affidavit)**
02/26/2018 **Arrest Warrant Request** (11:00 AM) (Judicial Officer Goodman, Eric)
Result: Arrest Warrant Issued
02/26/2018 **Request for Arrest Warrant Filed**
Granted
02/26/2018 **Probable Cause Found**
02/26/2018 **Arrest Warrant Ordered to be Issued**
No Bail All Counts - Set in Court
02/26/2018 **Minute Order - Department 11**
02/26/2018 **Nevada Risk Assessment Tool**
02/26/2018 **Warrant Issued**
02/26/2018 **Arrest Warrant - Face Sheet**
02/26/2018 **Arrest Warrant Confidential**
02/26/2018 **CTRACK Case Modified**
ArrestDate/02/26/2018;
02/26/2018 **Warrant Cleared**
02/26/2018 **Warrant Arrest Documents**
02/27/2018 **Arrest Warrant Return Hearing** (7:30 AM) (Judicial Officer Goodman, Eric)
In Custody
Result: Matter Heard
02/27/2018 **Court Continuance**
Passed for Public Defender to do a conflict check.
02/27/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail Set in Court
02/27/2018 **Minute Order - Department 11**
02/27/2018 **Media Request for Electronic Coverage**
of Court proceedings received and filed
02/27/2018 **Order Regarding Media Request for Electronic Coverage Filed**
Phillip Moyer of KSNV TV
02/28/2018 **Initial Appearance** (7:30 AM) (Judicial Officer Goodman, Eric)
In Custody
Result: Matter Heard
02/28/2018 **Public Defender Appointed**
02/28/2018 **Comment**
Defendant invokes 15 day setting
02/28/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
02/28/2018 **Media Request for Electronic Coverage Granted**
02/28/2018 **Minute Order - Department 11**
02/28/2018 **Notify**
news3 via telephone/rsp
03/01/2018 **Confidential Document**
custody slip
03/06/2018 **Motion for Disclosure of Non-Public Information**
Las Vegas Sun
03/06/2018 **Motion**
defendant's motion to preserve evidence
03/12/2018 **CTRACK Case Modified**
03/13/2018 **Opposition**
State's Opposition to Defendant's motion to preserve evidence
03/15/2018 **Motion** (7:30 AM) (Judicial Officer Goodman, Eric)
In Custody
Result: Matter Heard
03/15/2018 **Motion**
by Defense to preserve evidence - objection to said motion by State. State believes Justice Court DOES NOT have jurisdiction, said matter is District Court's jurisdiction. COURT RULES STATE IS ON NOTICE.

03/15/2018 **Motion to Withdraw Due to Conflict**
filed in open Court - motion granted
03/15/2018 **Counsel Appointed**
A. Lobo, Esq
03/15/2018 **Discovery Given to Counsel in Open Court**
State provided Defense 2 additional discs of discovery including autopsy report
03/15/2018 **Future Court Date Vacated**
3/23/18 at 9 am
03/15/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
03/15/2018 **Minute Order - Department 11**
03/23/2018 *CANCELED* **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
Vacated
In Custody
03/26/2018 **Miscellaneous Filing**
Assertion of Fifth and Sixth Amendment Rights
03/26/2018 **Miscellaneous Filing**
Assertion of Medical Privacy Rights
04/05/2018 *CANCELED* **Preliminary Hearing** (1:00 PM) (Judicial Officer Goodman, Eric)
Vacated
In custody
04/05/2018 **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
In custody
Result: Matter Heard
04/05/2018 **Motion to Continue - Defense**
motion granted
04/05/2018 **Comment**
Defense missing some discovery
04/05/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
04/05/2018 **Minute Order - Department 11**
04/05/2018 **Preliminary Hearing Date Reset**
04/19/2018 **Further Proceeding - Not Calendared** (11:00 AM) (Judicial Officer Goodman, Eric)
Result: Off Calendar
04/19/2018 **Motion to Continue - Defense**
*motion granted. *Last continuance.*
04/19/2018 **Future Court Date Vacated**
4/20/18 at 9 am
04/19/2018 **Preliminary Hearing Date Reset**
04/19/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
04/19/2018 **Minute Order - Department 11**
04/20/2018 *CANCELED* **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
Vacated
In custody
05/04/2018 **Miscellaneous Filing**
Legal- Review form.
05/09/2018 **Further Proceeding - Not Calendared** (10:15 AM) (Judicial Officer Goodman, Eric)
Result: Off Calendar
05/09/2018 **Stipulation**
Parties stipulated to continue Preliminary Hearing
05/09/2018 **Future Court Date Vacated**
5/11/18 at 9 am
05/09/2018 **Continued For Negotiations**
05/09/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
05/09/2018 **Preliminary Hearing Date Reset**
05/09/2018 **Minute Order - Department 11**
05/10/2018 **Motion**
to suppress evidence acquired in violation of both the fourth and fifth amendments
05/11/2018 *CANCELED* **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
Vacated
In custody
05/23/2018 **Opposition**
State's opposition to defendant's motion to suppress evidence.
05/24/2018 **Reply**
Defendant's reply in support of motion to suppress evidence for preliminary hearing.
05/25/2018 **Negotiations** (7:30 AM) (Judicial Officer Goodman, Eric)
In custody
Result: Matter Heard
05/25/2018 **Motion**
Defendant's motion to suppress evidence acquired in violation of both the fourth and fifth amendments - objection to said motion by State - further argument by Defense and State - motion GRANTED Court suppresses statement and gun.
05/25/2018 **Future Court Date Stands**
6/8/18 at 9 am
05/25/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
05/25/2018 **Minute Order - Department 11**
05/25/2018 **Transcript of Proceedings**
Reporter's transcript of 5/25/18 proceedings, filed on 5/30/18, rsp
05/29/2018 **Order**
Ex Parte Order for Expedited Transcript
06/08/2018 **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
In custody
Result: Matter Heard
06/08/2018 **Motion**
Hill motion filed in open Court
06/08/2018 **Hill Motion by State to Continue - Granted**
No objection by Defense. Witness Not Present: Raymond Moore
06/08/2018 **Motion by Defense for an O.R. Release**
motion denied
06/08/2018 **Continued For Negotiations**
06/08/2018 **Preliminary Hearing Date Reset**
06/08/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail
06/08/2018 **Minute Order - Department 11**
06/08/2018 **Transcript of Proceedings**
Filed on 9/18/18/ rsp
06/21/2018 **Negotiations** (7:30 AM) (Judicial Officers Bixler, James, Senior/Visiting, Judge)
In custody
Result: Matter Heard
06/21/2018 **Matter Not Negotiated - Preliminary Hearing/Trial Date Set**

stands

06/21/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002 - $0.00/$0.00 Total Bail

06/21/2018 **Comment**
Case recalled. Per Defense, Marcum Notice received via mail.

06/21/2018 **Minute Order - Department 11**

06/21/2018 **Future Court Date Stands**
06/29/18 9:00AM

06/29/2018 **Preliminary Hearing** (9:00 AM) (Judicial Officer Goodman, Eric)
In custody
Result: Matter Heard

06/29/2018 **Motion to Dismiss**
by State - motion granted

06/29/2018 **State's Witness Not Present**
Name of Witness(s) Raymond Moore

06/29/2018 **Comment**
Per State, Marcum Notice served to Defense via e-mail on 6/19/18

06/29/2018 **Motion to Dismiss**
by Defense with prejudice - motion denied

06/29/2018 **Judgment Entered**

06/29/2018 **Release Order - Court Ordered due to dismissal** (Judicial Officer: Goodman, Eric)
Counts: 001; 002

06/29/2018 **Case Closed - Dismissed**

06/29/2018 **Minute Order - Department 11**

06/29/2018 **Notice of Disposition and Judgment**

06/29/2018 **Transcript of Proceedings**
Filed on 9/18/18/ rsp

09/17/2018 **Ex Parte Order**
for expedited transcript filed

09/21/2018 **Ex Parte Order**
for Expedited Transcript for 6/21/18 filed

09/28/2018 **Transcript of Proceedings**
Status Check/Negotiations 06/21/18 7:30am

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
AUG 15 2018
BY, KIMBERLY ESTALA, DEPUTY

IND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SARAH OVERLY
Deputy District Attorney
Nevada Bar #12842
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANDRE GATHRITE, aka
Deandre Terelle Gathrite, #2592432

Defendant.

CASE NO: C-18-334135-1

DEPT NO: III

INDICTMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant above named, DEANDRE GATHRITE, aka Deandre Terelle Gathrite, accused by the Clark County Grand Jury of the crime of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460), committed at and within the County of Clark, State of Nevada, on or about the 16th day of February, 2018 at and within the County of Clark, State of Nevada,

COUNT 1 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: Amedeo Rossi .357 caliber handgun, bearing Serial No. F379181, the Defendant being a convicted felon, having in 2012, been convicted of

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C-18-334135-1
IND
Indictment
4771384

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Assault with a Deadly Weapon and Discharging Firearm at or into a Vehicle, in Case No. C271196, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

DATED this 14TH day of August, 2018.

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

BY _____
SARAH OVERLY
Deputy District Attorney
Nevada Bar #12842

ENDORSEMENT: A True Bill

_____
Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

DEPALMA, PHILLIP – LVMPD

MAUCH, GERRY – LVMPD

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

18AGJ044X/18F03565X/cl -GJ
LVMPD EV# 1802113549
(TK11)

PWHC
ADRIAN M. LOBO, ESQ.
Nevada Bar # 10919
400 S. 4th Street, Ste. 500
Las Vegas, Nevada 89101
702.290.8998
702.442.2626 (fax)
adrianlobo@lobolaw.net
Attorney for the Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GATHRITE, DEANDRE aka GATHRITE, DEANDRE TERELLE, ID# 2592432 Defendant.	Case No.: C-18-334135-1 Dept. No.: III

PETITION FOR WRIT OF HABEAS CORPUS

TO: THE HONORABLE DOUGLAS W. HERNDON OF THE EIGHT JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

COMES NOW, the Petitioner, DEANDRE GATHRITE aka DEANDRE TERELLE GATHRITE, by and through the undersigned counsel of record, ADRIAN M. LOBO, ESQ. of LOBO LAW PLLC and states the following:

1. That the attorney for Petitioner is duly qualified and licensed to practice law in the State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus. Petitioner is in the actual, physical custody of the Sheriff of Clark County, Nevada, and is being incarcerated in the Clark County Detention Center (CCDC). Petitioner stands charged under the above-cited case number in a one (1) count Indictment with one (1) count of Ownership or Possession of Firearm By Prohibited Person, NRS 202.360(1).

3. Petitioner hereby waives the 60-day limitation for bringing the instant matter to trial and that if the petition is not decided within 15 days before the date set for trial, the Petitioner hereby consents that the court may, without notice or hearing, continue the trial indefinitely, or to a date designated by the court.

4. The instant criminal charge lodged against the Petitioner is without reasonable or probable cause.

5. That no other Petition for a Writ of Habeas Corpus has been filed for the Petitioner in this matter.

6. That the instant Petition is timely filed pursuant to the Reporter's Transcript of Proceedings, Grand Jury Hearing, filed on August 30, 2018.

WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue a Writ of Habeas Corpus dismissing the Indictment on file herein.

DATED this 7th day of September, 2018

ADRIAN M. LOBO, ESQ.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Petitioner

DECLARATION

ADRIAN M. LOBO makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada. That I am the attorney of record for Petitioner in the above matter, and I am familiar with the facts and circumstances of this case.

2. That I am familiar with the foregoing petition, know the contents thereof, and that the same is true of our own knowledge, except for those matters therein stated on information and belief, and as to information and belief, I believe them to be true; that Petitioner, DEANDRE GATHRITE, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 7th day of September, 2018.

LOBO LAW PLLC

By: _/s/ Adrian M. Lobo_____

ADRIAN M. LOBO, ESQ.
Nevada Bar #10919
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for the Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Petition on for hearing before the above entitled court on the **25th** day of September, 2018, at **9:00am** .m. in Department III of said court.

DATED this 7th day of September, 2018.

ADRIAN LOBO, ESQ.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Petitioner

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MEMORANDUM OF POINTS AND AUTHORITIES

1. Statement of Facts

The Petitioner is charged by the State, by way of an Indictment filed on August 15, 2018, with one count of Owning or possessing a gun by a prohibited person. A bit more context is necessary for the court's edification. This case stems from the February 11, 2018 shooting death of a drug dealer by the name of "T-Rex,"[1] at approximately 2612 S. Van Patten Street in Las Vegas, near the intersection of E. Sahara Ave. and Joe Brown Dr. *See Exhibit A – Officer's Report Continuation* at 1.

It is difficult to follow Metro's investigation, as the Officer's Report states that "Subjects in the area were reluctant to communicate with police and no witnesses provided formal statements. *Id.* at 5. The Report goes on to say that "Gang Crimes Detectives developed information that a black male from the neighborhood known as 'Dre' was responsible for the shooting," but it does not detail how this information was developed given the above-cited reluctance and lack of formal statements. *Id.* Even more fortuitously, "Patrol Investigation Detectives familiar with the area provided information regarding the possible identity of 'Dre.'" *Id.*

"Dre" was, somehow, identified as the Petitioner, and the Report also claims that he "was the subject of several active criminal investigations." *Id.* Despite apparently being the subject of "several active" investigations, on February 11, 2018 the Petitioner did not have a warrant for his arrest in Nevada or California. *See Exhibit B - Declaration of Arrest for Fugitive Arrest*. The Officer's Report states that a records check was conducted but does not say on what date this was conducted and what database was searched. Ex. A at 10. Nonetheless, it was later disclosed that Homicide detectives contacted the Criminal Apprehension Team (CAT) to locate Mr. Gathrite. *See Exhibit C – Reporter's Transcript, Case No. 18F03565X, May 25, 2018,* p. 4-7. The CAT

[1] T-Rex's real name was Kenyon Tyler.

team contacted the Department of Parole in California and was able to procure a warrant for Gathrite's arrest for a Parole Violation on February 14, 2018. *See Exhibit B*.

The Metro Criminal Apprehension Team (CAT) was tasked with locating the Petitioner, and tracked him to 2630 Wyandotte St., Apt. #1 in Las Vegas through his girlfriend's lease (Tia Kelly). *See Exhibit D – Email correspondence- April 11, 2018 from Sarah Overly*. The Petitioner was arrested on the outstanding San Diego warrant on February 16, 2018 at approximately 1:24 p.m. *See Exhibit E- CAD LOG Event #180216-2092*.

Following the CAT arrest, Metro Homicide detectives arrived at Wyandotte at 2:56 p.m. and contacted the Petitioner at the scene of his arrest and began to question him surreptitiously about the T-Rex shooting. *Ex. E* at 1. This interview was only partially transcribed,[2] and is described as a "post-Miranda" interview with the Petitioner. *Ex. A* at 9. The Report goes on to summarize that the interview resulted in the Petitioner's statement that he fired at T-Rex, but "didn't know if he hit anyone". *Id.* The Petitioner further told the detectives the location of the gun used in the shooting. *Id.*

These details were not "post-Miranda," as the Report claims. In fact, the detectives also misrepresented to the Petitioner that he was free to leave at any time during the interview, despite this interview taking place immediately following the Petitioner's apprehension by CAT:

> Q: Let me ask you this, man. 'Cause here's – here's the magic question, man. I mean, I know they kinda run up. You ain't out looking for trouble, you know, 'cause that ain't you 'cause I know all about your history. I know all about what you, you know, we done done our research. You e- you feel me? So, I mean, I know I ain't talking to some bad dude. That's why I came in there and took the cuffs off of you, got you comfortable, and let you hug your kid. Be cool with you. You – you feel me? 'Cause I know what kinda p- I know what kinda person you are, man. So what I'm asking, man, basically, what it boils down to is why'd you pull the trigger, man? What

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[2] Both the audio recording of the Petitioner's questioning and the corresponding transcript clearly begin partway through the interview (and both begin at the same point). The only discernable timeline is through the CAD Log of his arrest. Homicide detectives arrive at 2:56 p.m., and then Gathrite is not booked into CCDC until 6:18 p.m. *Ex. E* at p.1-2.

happened? Walk me through it, man. Walk me through how it went down. You know what I'm sayin'? So I can explain that. That's what I'm trying to say 'cause I know that wasn't what – you didn't go lookin' for it.
Exhibit F – Transcribed Interview with Defendant at 3.

The detective continued to elicit details of the shooting from the Petitioner:

Q: So what point in time did you pull yours out? I mean, 'cause he got they shit out first, so at what point in time you pull yours out? Was it before or after them?
A: Wasn't – wasn't before them.
Q: So it was after them.
A: Or I wouldn't have been able to be out there.
Q: Right. Exactly. So they got they's out, and at some point in time during this whole talking that they goin' back and forth, at what point in time do you pull yours out? It was, I mean, was it…
A: I don't know. It just – it just happened so fast.
Id. at 10.

It is clear that during this questioning the Petitioner was not free to leave:

A: Can – can I smoke a cigarette? I'm just…
Q: You got a cigarette?
A: I do. My pack in on the counter in there [in the Wyandotte Apartment]. I…
Q: Uh…
Q1: Hey, you care if you have an old one? I got some old ones there if that's okay. You just wanna step out [of the patrol car]?
A: Uh, yeah. I had just…
Q: I'll text my boy and have him go – I'll text him to have – you said it's on the kitchen counter? All right.
Id. at 10-11.

Only after the Petitioner had provided numerous, inculpatory details about the T-Rex shooting did detectives finally see fit to Mirandize him, on page 23 of the interview.

Eventually, the Petitioner told detectives that the firearm used in the T-Rex shooting was located in an air vent inside of the Wyandotte apartment. *Id.* at 39. The detectives asked the Petitioner for consent to enter the apartment to recover the weapon, on the premise that the Petitioner had dominion and control over the apartment. *Id.* at 47. The Petitioner was reluctant to

allow this, and stated to detectives specifically that the apartment was not actually his residence. *Id.* at 40. The detectives even acknowledged that the apartment was not the Petitioner's residence:

> Q1: And this address on Wyandotte, that's your – that's Tia's place, your girlfriend, baby mama. She's only been here a couple days? And do you – you weren't living here. You – you just stayed here last night and that was it.
> A: Yeah.
> *Id.* at 45.

Detectives ultimately recovered the firearm from the apartment, where the Petitioner told them it would be located (in an air conditioning vent). Once recovered, the detectives then applied telephonically for a search warrant to search for additional evidence in the premises. The warrant sought the following:

> 1. Paperwork such as rent receipts, utility bills, and addressed letters showing the name(s) of persons residing at the premises. Paperwork such as proof of insurance, DMV registration showing the name(s) of persons owning or responsible for the vehicle(s).
> 4. Photographs, video and/or audio tapes, DVD or CD's, cellular phones, Electronic Storage Devices such as lap or desk top computers, game consoles, tablets and like items. To include pass or pattern codes for the same.
> 5. Telephonic information to include; caller ID history, answering machine messages, voicemails, phone directories, contacts, call history, photographs, audio and/or video recordings stored electronically in residential or cellular phones.
> 6. A thorough, microscopic examination and documentation of the crime scene to discover trace evidence to include but not limited to: fingerprints, blood, hair, fibers and bodily fluid samples.
> 10. Epithelial cells from the mouth of [Defendant's name and date of birth are handwritten], to be collected via Buccal Swab.[3]
> *See Exhibit G – Search Warrant Application* at 1.

In addition, the Warrant Application indicated that detectives would search for additional, items that had been handwritten into the application: "Handguns and Ammunition"; "Cell phone

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[3] Line Items 2-3, and 7-9 contained additional items to be recovered, but these lines had been crossed out. *See Ex. E* at 1.

off person of [Petitioner]"; and "Gang Parapharnalia [sic]". *Id.* The Application indicated the address of "2630 Wyandotte #1"- the apartment belonging to the Petitioner's girlfriend. *Id.* The Application was dated February 16, 2018 at 1735 hours (5:35 p.m.). *Id.*

No additional items were recovered from or in the apartment. *Ex. A* at 11.

Predictably, the Petitioner was arrested following this chat with detectives (and despite having been told multiple times that he was free to go) and booked into the jail on the California warrant. Despite relinquishing his right to fight extradition, California never extradited Gathrite on the parole violation warrant and he was released from custody on February 21, 2018.

Finally on February 26, 2018, Petitioner was arrested on the Murder with Use of a Deadly Weapon and Ownership or Possession of Firearm By a Prohibited Person and charged under Case#18F03565X before the Honorable Eric Goodman. The Petitioner moved immediately for suppression of his statement to police and suppression of the fruits of his statement due to law enforcement's failure to Mirandize the Petitioner.

On May 25, 2018, the Petitioner's suppression motion came before Judge Goodman. Following argument by undersigned counsel and the State, Judge Goodman ordered that the statement and the handgun be suppressed due to Metro's failure to provide Miranda warnings to the Petitioner prior to his questioning:

> THE COURT: So he was in custody and, when he is [in] custody, they should have read him his Miranda Rights. They didn't, not until 28 pages into this.
>
> They violated his rights. The fact it's a murder case doesn't matter to me. It doesn't matter if he is caught with 20 pounds of weed or if it's a murder case. They violated his rights.
>
> Because they violated his rights when he was in custody, I'm going to suppress his statement. Because the gun comes from the statements made during the interview, I'm going to suppress the gun … and that's going to be this Court's ruling.
>
> *See Exhibit C – Reporter's Transcript, Case No. 18F03565X, May 25, 2018* at 12-13.

The State attempted to claim that the Petitioner was not "in custody" pursuant to the murder investigation, but merely for his parole violation warrant, and thus police did not need to Mirandize him even as they sought incriminating statements from the Petitioner:

> THE COURT: …The standard is if he is in custody, he needs to have his Miranda rights read before they interview him. It's not whether somebody feels better. That's not the way the Fifth Amendment works.
> MS. OVERLY: No, I understand that, your Honor, and I think if the detective believes he was, in fact, under custodial interrogation and in custody with regards to this case, they would have read him Miranda, either by card or memory, at the outset of the interview, but based on their position, it was the State's position in its Opposition was that he, in fact, was not. They didn't feel the need to issue these Miranda warnings at the outset or throughout any point in time in the interview, as they didn't in Fields rather.
> THE COURT: The interviews basically are voluntary. They are always voluntary interactions with the police. You cited a case where the guy's in prison, they bring him in the interview room, and he is free to leave. He may have be [sic] in prison, but in prison, his cell is his home. So they say, You are free to leave. That means go back to your cell and just go back to what is basically his home.
> MS. OVERLY: Correct.
> THE COURT: If he was free to leave, that means he was going to be uncuffed, let out, put in a police car, go back to his apartment, make a sandwich, turn on the TV, and go on with his day or by free means he is going to be in handcuffs and put in the back of the car?
> MS. OVERLY: Well, free to leave in the same respect as he was in Fields. I mean like that's why the State believes it's analogous. In that case, they even indicated that he was free to leave and by that, they meant free to leave and go back to his cell.
> THE COURT: His cell is his home.
> MS. OVERLY: Correct.
> THE COURT: Right. He's not free to go back to his home, right?
> MS. OVERLY: No, he's not because of this active parole violation where he was going to independently go back to California, as he had been doing since 2014.
> *Id.* at 8-10.

Following the lower court's ruling, the State dismissed its case against the Petitioner on June 29, 2018. However, the State then proceeded to the Grand Jury on August 15, 2018.

During the Grand Jury proceedings, the State called Det. Gerry Mauch of Metro's homicide team. The testimony elicited from Det. Mauch was carefully styled to be in-line with the State's

position—previously rejected by Judge Goodman—that the Petitioner was not "in custody" during Mauch's interrogation because the Petitioner had been arrested on a seemingly unrelated parole violation:

> Q: And was he [the Petitioner] the individual who answered the door?
> A: He was already inside the apartment with other detectives from our criminal apprehension team.
> Q: Now did you get a chance to sit down and talk with Mr. Gathrite?
> A: Yes, I did.
> Q: And when you did, was he in custody pursuant to the investigation you were pursuing?
> A: To our specific investigation, no. There were some other charges that he was dealing with at the time.
> Q: So he was technically in custody, just not pursuant to your investigation?
> A: Correct.
> *See Exhibit H – Transcript of Grand Jury Proceedings, GJ No. 18AGJ044X, August 14, 2018* at 8.

The State continued to elicit testimony from Det. Mauch regarding the Petitioner's statements given during the interrogation, despite the lower court's ruling that the statement in its entirety be suppressed. The State continued to elicit testimony from Det. Mauch regarding the discovery and seizure of the firearm, despite the lower court's ruling that the fruits of the Petitioner's statement—the firearm—be suppressed.

The State then called Det. Philip DePalma, the detective who actually recovered the firearm. Det. DePalma's testimony indicated that the firearm was located inside of an apartment behind a secured ventilation grate in the residence:

> Q: Now did you assist with the search and recovery of that firearm?
> A: Yes, I did.
> Q: What did you find?
> A: I was instructed that the firearm was inside a[n] air conditioning vent, the intake. I took off the grate – it was photographed first, it was in the hallway to the apartment. I assisted in taking off a couple of the screws to the vent, I removed that and behind that metal grate was a filter. I removed the filter, put it off to the side and inside the big duct work so to speak was a revolver. Firearm. Handgun.
> *Id.* at 18.

Furthermore, Det. DePalma confirmed that this firearm was not discoverable through ordinary observation:

> Q: And again would that firearm have been observed by the naked eye walking in the apartment?
> A: No.
> Q: So you would have had to remove the duct and the filter?
> A: I removed the actual metal grate and then behind that was the actual air conditioning filter, so you couldn't see it from the naked eye, no.
> *Id.* at 19.

Prior to the Grand Jury proceedings, undersigned counsel received a Notice of Intent to Seek Indictment on June 19, 2018. In response, defense counsel sent via U.S. Mail to the State on June 21, 2018, care of Ms. Overly, a letter pursuant to *Sheriff v. Marcum*, 105 Nev. 824 (1989) (the "Marcum Letter"). *See Exhibit I – Marcum Letter, June 21, 2018* (enclosures omitted). The Marcum Letter requested that the defense be informed "of the date, time, and place of the scheduled Grand Jury proceeding," and provided multiple means of providing such information to undersigned counsel; additionally "that the State comply with its duty under NRS 172.145(2) and present any and all exculpatory evidence the State is aware of to the Grand Jury including but not limited to" the Reporter's Transcript of the lower court's hearing wherein the suppression matter was argued and decided, as well as additional information and evidence; and that any additional exculpatory evidence not known or heretofore provided to the defense was presented to the Grand Jury in accordance with statutory directives.

The defense was never provided with a notice of the date, time, and location of the Grand Jury proceeding, and no such exculpatory evidence was presented to the Grand Jury.

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2. Legal Argument

This case is a distressing example of prosecutorial misconduct[4]and selective presentation of evidence in an effort to inconvenience (at best) or convict (at worst) the Petitioner despite questionable law enforcement tactics and practices.

A. Legal Standard

Since 1912, the Nevada courts have recognized that the Writ of Habeas Corpus is the plain, speedy, and adequate remedy by which to determine the legal sufficiency of the evidence supporting a Grand Jury Indictment. *Shelby v. Sixth Judicial Dist. Court*, 82 Nev. 204, 207, 414 P.2d 942 (1966); *see also Eureka Bank Cases*, 35 Nev. 80, 126 P. 655 (1912). It is fundamentally unfair to require a defendant to stand trial unless he is committed upon a criminal charge with reasonable or probable cause. *Shelby*, 82 Nev. at 207.

NRS 172.135 states the following:

> 1. In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them or furnished by legal documentary evidence or by the deposition of witnesses taken as provided in this title, except that the grand jury may receive any of the following:
>
> (a) An affidavit or declaration from an expert witness or other person described in NRS 50.315 in lieu of personal testimony or a deposition.
>
> (b) An affidavit of an owner, possessor or occupant of real or personal property or other person described in NRS 172.137 in lieu of personal testimony or a deposition.
>
> 2. … [T]he grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence. … *NRS 172.135(1)-(2).*

Thus the purpose of the Grand Jury process, and the function of the Writ of Habeas Corpus, is to observe and to protect the rights of the accused, and to preserve his presumption of innocence. "The purpose of the preliminary proceedings is to weed out groundless or unsupported charges of

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[4] Defendant's argument concerning prosecutorial misconduct are fully developed in Gathrite's Motion to Dismiss for Prosecutorial Misconduct.

grave offenses and to relieve the accused of the degradation and the expense of a criminal trial. Many unjustifiable prosecutions are stopped at that point, where the lack of probable cause is clearly disclosed." *State v. Von Brincken*, 86 Nev. 769, 772 (1970).

Accordingly, the Grand Jury does not determine guilt or innocence, but needs only to have before them ***legally sufficient evidence*** to establish probable cause. *Franklin v. State*, 89 Nev. 382, 388, 513 P.2d 1252, 1257 (1973), *citing Kinsey v. Sheriff*, 87 Nev. 361, 487 P.2d 340 (1971) (emphasis added).

Furthermore, NRS 171.206 states, in pertinent part, the following:

> If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold the defendant to answer in the district court; otherwise the magistrate shall discharge the defendant.

The probable cause necessary at a preliminary hearing has been defined as slight, even marginal, evidence because it does not involve a determination of guilt or innocence of an accused. *Sheriff, Washoe County v. Dhadda*, 980 P.2d 1062, 115 Nev. 175 (1999) (*rehearing denied*). The Nevada Supreme Court (NSC) has held that although the State's burden at the preliminary hearing is "slight, it remains incumbent upon the State to produce some evidence" as to each of the State's burdens. *Woodall v. Sheriff*, 95 Nev. 218, 220 (1979); *see also Marcum v. Sheriff*, 85 Nev. 175, 178 (1969) ("The state must offer some competent evidence on those points to convince the magistrate that a trial should be held"). If the State fails to meet its burden, "an accused is entitled to be discharged from custody under a writ of habeas corpus." *State v. Plas*, 80 Nev. 251, 252 (1964).

However, probable cause is not to be found in a vacuum. NRS 172.145(2) imposes a duty upon the State to present any exculpatory evidence to a grand jury: "If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury." This duty has been held by the Nevada Supreme Court to be "plain and unambiguous". *Sheriff, Clark County v. Frank*, 103 Nev. 160, 165, 734 P.2d 1241, 1244 (Nev., 1987). A violation of this duty can also be found where the State "actively discouraged the grand jury from receiving

and exploring evidence" of an exculpatory nature. *Id.* Where "'a prosecutor refuses to present exculpatory evidence, he, in effect, destroys the existence of an independent and informed grand jury.'" *Id*., 734 P.2d at 1245 (citing *United States v. Gold*, 470 F.Supp. 1336, 1353 (N.D. Ill. 1979)).

A prosecutor "cannot act in a way that overlooks inherent prejudice to the person under criminal investigation". *United States v. Gold*, 470 F.Supp at 1346. This undermines the function of the grand jury to "protect citizens from malicious prosecutions", since it is "not given information which is material to its determination." *Id.* at 1353.

Lastly, a potential defendant to a Grand Jury proceeding "is entitled to submit a statement which the grand jury must receive providing whether a preliminary hearing was held concerning the matter and, if so, that the evidence presented at the preliminary hearing was considered insufficient to warrant holding the defendant for trial." *NRS 172.145(1)*.

B. The State presented inadmissible evidence to the Grand Jury.

As set forth in NRS 172.135(2), "the grand jury can receive none but legal evidence." Thus any evidence that would not be admissible under an exception, or that has been rendered as inadmissible, is improperly presented to a grand jury. NRS 179.085(2) is in accord with NRS 172.135 stating that if a motion to suppress is granted because the property was illegally seized without warrant, the warrant is insufficient on its face, the warrant is without probable cause or the warrant was illegally executed, then the property ***must not be admissible evidence at any hearing*** or trial.[5] (Emphasis added).

First and foremost, the presentation of *any* evidence relating to, derived from, or otherwise connected with, the Petitioner's statement is a violation of NRS 172.135(2), as such evidence has already been suppressed by the lower court. The ability of a Justice Court to hear and to decide suppression motions similar to the one in this case has been recognized and affirmed by the Nevada Supreme Court in the recent decision *Grace v. Eighth Judicial Dist. Court of Nev.*, 375 P.3d 1017,

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[5]NRS 179.085 deals with Motions to Return Property and to Suppress Evidence. Petitioner is not seeking return of the property seized.

132 Nev. Adv. Op. 51 (Nev. 2016). That case considered "whether Nevada's justice courts are authorized to rule on motions to suppress during preliminary hearings." 375 P.3d at 1018. The Court held that "the justice courts have express and limited inherent authority to suppress illegally obtained evidence during preliminary hearings." *Id.*

Specifically, the Court based its decision on the concept that "the evidence presented at a preliminary hearing 'must consist of legal, competent evidence,'" and "[t]herefore, justice courts' authority to make probable cause determinations includes a limited inherent authority to suppress illegally obtained evidence." *Id.* at 1021 (citation omitted).

Second, the evidence presented to the Grand Jury was impermissible hearsay. NRS 172.135(2) states, in relevant part, that "the grand jury can receive none but legal evidence, and the best evidence in degree, *to the exclusion of hearsay or secondary evidence*" (emphasis added). Furthermore, NRS 172.135(2)(a)-(c) sets forth limits acceptable hearsay evidence to only the three exceptions, none of which apply to this case, or this set of facts.[6]

Third, the State purposefully elicited impermissible and prejudicial bad acts evidence, in violation of the Petitioner's rights and NRS 172.135(2)'s requirement for *only* legal evidence. Under NRS 48.045(2), "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." Furthermore, evidence, however relevant, is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice." *NRS 48.035(1).*

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[6] NRS 172.135(2)(a)-(c) (in relevant part) allows the following hearsay exceptions: (a) A sexual offense committed against a child who is under the age of 16 years if the offense is punishable as a felony; (b) Abuse of a child pursuant to NRS 200.508 if the offense is against a child who is under 16, and the offense is punishable as a felony; and (c) An act which constitutes domestic violence pursuant to NRS 33.018, and which is punishable as a felony and resulted in substantial bodily harm to the alleged victim. None of these exceptions apply here.

1. The Petitioner's statement, and the resulting firearm, had already been ruled inadmissible. The State's use of this evidence was not only improper, but it failed to notify the Grand Jury of the prior proceedings as well.

Here, the primary point of contention with this Petition is that the State knowingly, intentionally presented inadmissible evidence when it allowed its witness, Det. Mauch, to testify as to the Petitioner's statement- a statement that had already been ruled by Judge Goodman as suppressed and therefore inadmissible. The State called Det. Mauch and immediately laid the foundation for his testimony as having been derived *entirely* from the Petitioner's statement received pursuant to his interrogation by Det. Mauch on February 16, 2018:

> Q: Now where is it that you spoke with Mr. Gathrite?
> A: We conducted the interview in my plain, unmarked vehicle.
> Q: And who was that interview conducted with?
> A: Myself and Detective Grimmett.
> Q: And you indicated that he was not in custody at that time?[7]
> A: Correct.
> Q: Did he agree to speak with you?
> A: Yes, he did.
> Q: And pursuant to that discussion, did you ask him questions about this separate investigation?
> A: Yes.
> Q: And did he reveal his involvement in that investigation?
> A: Yes, he did.
> Q: And did he indicate if he possessed anything of interest to Metro pursuant to that involvement?
> A: Yes.
> Q: What was that?
> A: That was a I believe silver in color revolver.
> *Ex. H* at 9.

Nothing from Det. Mauch's testimony indicates that any evidence supporting the single charge in the Indictment stemmed from independent police work. Rather, the firearm is only attributed to the Petitioner by way of the Petitioner's statement- a statement, once again, that was

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[7] This question, and the Detective's response, is a gross misrepresentation of the situation, and flies in the face of Judge Goodman's ruling. It will be discussed further below.

ordered *suppressed* by the lower court, in full exercise of what the Nevada Supreme Court described as the Justice Courts' "express and limited inherent authority to suppress illegally obtained evidence" during preliminary proceedings. Rather than appeal the lower court's ruling, as set forth in NRS 177.015[8], the State instead chose to seek an indictment through the grand jury process, but did so by presenting *the exact same body of evidence* that had been ruled suppressed—and therefore inadmissible—by the justice court.

The State's use of the suppressed testimony did not constitute legal evidence, and thus the entire proceeding was defective and the Indictment must be dismissed.

Nor is this simply a matter of the State seeking an indictment as to the *sufficiency* of the evidence, as would have been proper. Instead, the State pretended that that entire lower court proceeding never took place, and did so in two ways.

First, the State did not honor its obligations under the *Marcum* case when it failed to present any of the exculpatory evidence in its possession. Not only did this violate the State's compulsory obligation under NRS 172.145(2)—a duty held by the NSC to be "plain and unambiguous"—it ignored the very specific, very detailed Marcum Letter sent to the State on June 21, 2018, wherein the State was then obligated to present to the Grand Jury information consistent with NRS 172.145(1). The defense's Marcum Letter very specifically requested that the State present to the Grand Jury the "Reporter's Transcript of the Las Vegas Justice Court proceedings on May 25, 2018 before the Honorable Eric Goodman holding both the gun and Gathrite's statement as inadmissible evidence that was seized in violation of both the Fourth and Fifth Amendment rights of the United States Constitution and the Nevada State Constitution." *Ex. H* at 1. The defense was even kind enough to enclose the referenced transcript for the State's convenience, and the State *still* failed to present it to the Grand Jury.

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[8] NRS 177.015 states that "The party aggrieved in a criminal action may appeal *only* as follows: 1. Whether the party *is the State* or the defendant: (a) To the district court of the county from a final judgment of the justice court" (emphasis added).

Second on this point, the State intentionally concealed this exculpatory information from the Grand Jury. As cited above, the transcript of Det. Mauch's examination, conducted by the same Deputy District Attorney that argued the suppression motion before Judge Goodman, wholly ignored that the Petitioner's interrogation had already been held by a court of competent jurisdiction to be a violation of *Miranda* and its progeny. Instead, the State examined Det. Mauch, and Det. Mauch played along, with the same, heretofore rejected argument that the Petitioner was not "in custody" because, despite having been arrested by Metro's Criminal Apprehension Team on a warrant that they procured from California Parole Officers, the detectives were questioning him about another case.

In not only failing to present evidence to the Grand Jury of the lower court's disposition—an act not only compelled by statute in general, but also specifically compelled once requested by the Petitioner—the State violated its duty under Nevada law. As stated in relevant case law, cited herein, the State's active concealment of the lower court's ruling (by presenting the evidence in a manner already disposed of and ruled down by Judge Goodman) constituted active discouragement of the grand jury from receiving and exploring evidence, and thus undermined the purpose and intent of "an independent and informed grand jury."

Accordingly, the only appropriate remedy is dismissal of the Indictment.

2. <u>The State elicited impermissible hearsay testimony with regard to the location and seizure of the firearm.</u>

The State's second witness, Det. DePalma, presented testimony that was impermissible hearsay in multiple areas, and thus his entire testimony should be ruled inadmissible.

Hearsay is defined under Nevada law as "a statement offered in evidence to prove the truth of the matter asserted," with certain limited exceptions. *NRS 51.035*. A "statement," under the hearsay statute, is "An oral or written assertion," or possibly nonverbal conduct if intended as an assertion. *NRS 51.045(1)-(2)*. Furthermore, it is possible to have multiple levels of hearsay with regard to the same statement- "hearsay within hearsay." "Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception to the hearsay rule" provided under Nevada law. *NRS 51.067*.

Preliminarily, Det. DePalma was not present during the Petitioner's interrogation, and the Petitioner's statements to Dets. Mauch and Grimmett:

> Q: And when you arrived at that location, what was your purpose of involvement?
> A: I was instructed to stand by the apartment door that was open, apartment number 1, while the individual Gathrite was being interviewed by Detective Mauch and Detective Grimmett.
> Q: And were you involved in that interview?
> A: No, I was not.
> *Ex. H* at 17.

Accordingly, Det. DePalma's testimony is textbook definition hearsay. Consider the following:

> Q: At some point did you become aware that apartment number 1 was going to be searched?
> A: Yes, I was.
> Q: And what was it going to be searched for?
> A: A firearm.
> Q: And was that pursuant to a warrant or some other means?
> A: I believe we had consent to go in to retrieve a firearm that Mr. Gathrite said was inside the apartment.
> *Id.*

Furthermore, Det. DePalma stated, in testimony before the Grand Jury, numerous other statements and assertions that he attributed to the Petitioner, despite not having been present during the Petitioner's interrogation:

> Q: And at that point was Mr. Gathrite the only individual at that particular apartment?
> A: Yes.
> Q: And was it Metro's understanding that he had a possessory interest in that apartment?
> A: Yes, he did.
> …
> Q: What did you find?
> A: I was instructed that the firearm was inside a[n] air conditioning vent, the intake.
> *Id.* at 18;
> Q: And would that have been the exact location that Mr. Gathrite indicated that the firearm was going to be located?
> A: Yes, it was.

Id. at 19.

This is a departure from Det. Mauch's testimony at-large, and immediately prior to Det. DePalma's testimony. Specifically, Det. Mauch merely attributed certain statements to the Petitioner—statements that, again, were suppressed in the lower court. While any statements elicited from the Petitioner by Det. Mauch would otherwise have been admissible under a valid hearsay exception (see NRS 51.035(3)(a)- the exception for statements of a party-opponent, or the accused's own statements) had they not been suppressed, this does not permit Det. DePalma to rely upon, testify to, or otherwise provide such statements during testimony as if they had been heard directly.

Det. DePalma testified that he was not present during the Petitioner's interrogation, therefore each of the statements that Det. DePalma attributed to the Petitioner, as set forth above, are impermissible hearsay either because they clearly were not statements uttered to Det. DePalma, or because they constitute layered, hearsay-within-hearsay for which the State did not offer any indication of the multiple exceptions required to render such statements admissible. In other words, Det. DePalma's testimony either falsely represents that the Petitioner gave such statements directly to Det. DePalma, or Det. DePalma is testifying in a "the other detectives told me that Petitioner said…" format- or hearsay-within-hearsay.

Thus, Det. DePalma's testimony is inadmissible, and must be stricken. As Det. DePalma's testimony concerned the location and seizure of the firearm, this results in the dismissal of the Indictment against the Petitioner.

3. <u>The State introduced improper evidence of prior bad acts, in violation of the Petitioner's rights and its duty to present legal evidence to the Grand Jury.</u>

As cited above, Nevada law prohibits the use or introduction of evidence of uncharged bad acts, due to the tendency of such bad acts to be highly prejudicial. Such mention of uncharged bad acts not only taints the jurors, it forces the accused to adapt his whole defensive strategy:

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> Moreover, '[t]he use of uncharged bad acts to convict a defendant is heavily disfavored in our system of criminal justice. Such evidence is likely to be prejudicial or irrelevant, and forces the accused to defend himself against vague and unsubstantiated charges.… Evidence of uncharged misconduct may unduly influence the jury, and result in a conviction of the accused because the jury believes he is a bad person…. The use of specific conduct to show a propensity to commit the crime charged is clearly prohibited by Nevada law, … and is commonly regarded as sufficient grounds for reversal.'"
> *Roever v. State*, 963 P.2d 503, 506, 114 Nev. 867 (Nev., 1998), citing *Taylor v. State*, 109 Nev. 849, 854, 858 P.2d 843, 847.

Here, Det. Mauch's testimony was, apparently, centered around whether the Petitioner was unlawfully in possession of a firearm. The detective testified that he interrogated the Petitioner as to the possession of a firearm; that the Petitioner indicated a firearm; that the firearm was located in the girlfriend's apartment; and that police could enter the premises and recover the firearm:[9]

> Q: And did he [the Petitioner] indicate if he possessed anything of interest to Metro pursuant to that involvement?
> A: Yes.
> Q: What was that?
> A: That was a I believe silver in color revolver.
> *Ex. H* at 9.

For the single count of "ownership or possession of firearm by prohibited person,"[10] these statements, and the testimony surrounding the statements, should have been sufficient.

Perhaps not merely content with indicting the Petitioner for the weapons charge, the State instead chose to introduce an uncharged, and highly prejudicial, prior bad act:

> Q: And specifically what did he indicate about that revolver?
> A: That he possessed it and it had been used in a shooting.
> *Id.* at 9-10.

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[9] The foregoing statements are set forth here only for illustrative purposes, and for clarity. The Petitioner still disputes the admissibility of these statements, pursuant to Judge Goodman's ruling suppressing the Petitioner's statement and the recovered firearm.

[10] *Ex. G* at 5: "There should be a proposed Indictment with the following offense of one count…"

While this arguably may have been a spontaneous statement on Det. Mauch's part, the State's follow-up question indicates that it instead was a deliberate, calculated effort to taint the proceedings with uncharged propensity evidence, suggesting the Petitioner was a violent offender:

> Q: And specifically did he indicate that he used it in a shooting?
> A: Yes.
> Q: When would that shooting have occurred?
> A: It occurred, I believe it was February 11th.
> Q: Of 2018?
> A: Yeah, same year.
> *Id.* at 10.

The State's Indictment charges the Petitioner with a violation of NRS 202.360(1). Under that statute, there is no element, requirement, or mention that such a weapon have been used in a shooting; that the weapon have been used in a shooting as recently as the same year; etc. The State merely elicited this testimony, deliberately, to cast aspersions on the Petitioner, and perhaps with knowledge of, and frustration over, its prior adverse ruling in the lower court. Given the inadmissibility of both the Petitioner's statement and the firearm itself, it is highly questionable for the State also to inject unwarranted and unfair prejudice into the proceedings by purposefully developing inadmissible testimony regarding a prior, uncharged bad act.

Furthermore, the State elicited additional testimony of a more generalized "character" of the Petitioner to commit crimes, and therefore injected even more unfair prejudice into the proceedings. This testimony, from Det. Mauch, was a direct result of the State's attempt to "sanitize" the prior Miranda challenges in the lower court:

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Q: Throughout that investigation did you have cause to make contact with someone by the name of Deandre Gathrite?
A: Yes, I did.
Q: And specifically where did you make contact with him?
A: I was the address of 2630 Wyandotte Street, apartment number 1.
Q: And is that located here in Clark County?
A: Yes, it is.
Q: And where specifically did you make contact with him? Was it in that unit or in the actual complex or where exactly?
A: It was in the actual apartment.
Q: Apartment number 1?
A: Yes.
Q: And was he the individual who answered the door?
A: He was already inside the apartment with other detectives from our criminal apprehension team.
Q: Now did you get a chance to sit down and talk with Mr. Gathrite?
A: Yes, I did.
Q: And when you did, was he in custody pursuant to the investigation you were pursuing?
A: To our specific investigation, no. There were some other charges that he was dealing with at the time.
Id. at 7-8.

Rather than elicit testimony only that Det. Mauch had interrogated the Petitioner, the State went to the additional step of asking if the Petitioner was alone in his apartment, to which the detective testified that the Petitioner was already in custody of a *criminal apprehension team*. Rather than elicit testimony only that the Petitioner was in the custody of a team specifically tasked with arresting fugitives, the State went to the additional step of asking if the Petitioner was arrested pursuant to Det. Mauch's investigation, to which the detective testified that the Petitioner was facing *other, additional charges* beyond Det. Mauch's investigation.

Not only are such additional details not necessary to lay any foundation for Det. Mauch's testimony as to his interrogation of the Petitioner (other than the aforementioned effort at "cleaning up" the lower court's suppression ruling), these details are highly and unfairly prejudicial in that they paint the Petitioner not as someone who allegedly had a gun in his possession, but as someone who was using the gun in a recent shooting, was being apprehended by a specialty team within Metro, and was dealing with additional charges beyond Det. Mauch's investigation. It is clear from

this deliberate, focused examination into these areas—in violation of Nevada statute and case authority—that the State was intentionally painting the Petitioner as someone with a propensity for criminal acts beyond the allegations of an unlawful firearm.

For the foregoing reasons, the Indictment must be dismissed.

CONCLUSION

Based on the foregoing, Petitioner prays for relief by way of a dismissal of the charges against him.

DATED this _7th__ day of September, 2018.

ADRIAN LOBO, ESQ.

By: __/s/ Adrian M. Lobo_____
Adrian M. Lobo, Esq. (#10919)
400 S. Fourth St., Ste. 500
Las Vegas, NV 89101
702.290.8998
Attorney for Petitioner

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CERTIFICATE OF ELECTRONIC TRANSMISSION

A copy of the above and foregoing motion was automatically served this 7th day of September, 2018 to the State at the same time that the document was filed via e-filing and sent to: pdmotions@clarkcountyda.com

LOBO LAW PLLC

By: */s/ Alejandra Romero*
Legal Assistant to:
ADRIAN M. LOBO, #10919
Attorney for Defendant

EXHIBIT A

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

OFFICER'S REPORT

Event #: **180211-3549**

Murder Investigation

SUBJECT

DIVISION REPORTING:	ISD – Homicide Section	DIVISION OF OCCURRENCE:	Community Policing Division – South Central Area Command
DATE & TIME OCCURRED:	02-11-18 @ 2049 hours	LOCATION OF OCCURRENCE:	2612 Van Patten Street, Las Vegas, NV 89169

VICTIM:

Kenyon "T-Rex" Tyler
LVMPD ID# 5668891
DOB: 02-15-1991
Res. Address: 2612 Van Patten Street,
Apartment 11,
Las Vegas, NV 89169
Cell. Phone: (323) 547-7647

SUSPECT:

Deandre "Dre" Gathrite
LVMPD ID# 2592432
DOB: 11-08-1988
Res. Address: Unknown

WEAPON:

Amadeo Rossi, .357 magnum revolver,
Serial number F379181

I. INCIDENT OVERVIEW:

On 02-11-18 at approximately 2049 hours, LVMPD patrol officers responded to the call of a subject shot at 2612 Van Patten Street. Patrol officers arrived and located Kenyon Tyler on the sidewalk in front of the building, suffering from multiple gunshot wounds to the torso. Medical personnel responded and transported Tyler to Sunrise Hospital, where he succumbed to his injuries at 2313 hours.

Date and Time of Report: 04-18-18 @ 1400 hours Officer: Detective T. Sanborn P#: 5450

Approved By: 4532 Officer: Detective G. Mauch P#: 8566

SIGNATURE: T. Sanborn 5450 / G. Mauch 8566

The follow-up investigation revealed Deandre Gathrite shot Tyler after an argument in front of the building. Tyler was upset because Gathrite and several other subjects were hanging around in front of Tyler's building, which disrupted Tyler's illicit drug dealing business. Tyler was armed with a .45 caliber handgun, which was in his left front pocket at the time he was shot. After being shot, Tyler attempted to return fire, but was unable. An associate of Tyler's picked up Tyler's handgun and fired nine (9) times at Gathrite as he ran away. Tyler's handgun has yet to be recovered.

II. PERSONS AT SCENE:

A. PATROL DIVISION

1. Captain Kelly McMahill	PN 5307	
2. Lieutenant Charles Jenkins	PN 3959	
3. Lieutenant Isaac Auten	PN 7938	
4. Sergeant Matthew Downing	PN 8260	
5. Sergeant Matthew Kovacich	PN 13238	
6. Officer Jeffrey Lemarbre	PN 13382	
7. Officer Matthew Pacheco	PN 15262	
8. Officer Taylor Webb	PN 15851	
9. Officer Dean Picmann	PN 15894	
10. Officer Joel Collins	PN 15332	
11. Officer John Newbold	PN 14705	
12. Officer Justen Davis	PN 16129	***(Sunrise Hospital)***
13. Officer Ryan Tablado	PN 16124	
14. Officer Andrea Mitre	PN 15863	
15. Officer Christian Sims	PN 16143	
16. Officer Jazzmin Avalos	PN 16111	
17. Officer Shane McCallum	PN 16104	
18. Officer Jerome Milton	PN 16292	
19. Officer Bryan Woolard	PN 7558	***(Air Unit)***

B. GANG CRIMES SECTION

1. Sergeant Timothy Stovall	PN 7415
2. Detective Tyler Andrus	PN 9246
3. Detective Christian Parquette	PN 13937
4. Detective Andrew Hefner	PN 14027
5. Detective Bradley Vanpamel	PN 13657
6. Detective Zackery Beal	PN 10149
7. Detective Sandon Sowers	PN 15002

C. PATROL INVESTIGATIONS SECTION

1. Sergeant Shellie Clark	PN 4261
2. Detective David Maruyama	PN 10010
3. Detective Jesse Berg	PN 7201

D. HOMICIDE SECTION

1. Lieutenant Daniel McGrath	PN 4349
2. Sergeant Jon Scott	PN 4532
3. Detective Tate Sanborn	PN 5450
4. Detective Dolphis Boucher	PN 4636
5. Detective Robert Ochsenhirt	PN 5438
6. Detective Philip DePalma	PN 5297 ***(Sunrise Hospital)***

E. CRIME SCENE INVESTIGATIONS SECTION

1. CSAS Moretta McIntyre	PN 13207
2. CSA Kristina Thomas	PN 13574
3. CSA Stephanie Thi	PN 14373
4. CSA Kathryn Biwer	PN 16190 ***(Sunrise Hospital)***

F. SUNRISE HOSPITAL

1. Doctor Stewert – ***TOD: 2313 hours on 02-11-18***

G. MEDIC WEST UNIT 586

1. Olivia Hovey
2. Benjamin Martin
3. Talia Crundwell

H. CLARK COUNTY OFFICE OF THE CORONER/MEDICAL EXAMINER

1. Investigator Gallagher PN 426
2. Case number 18-1674
3. Seal number 730715

I. HITES FUNERAL HOME ATTENDANTS

1. J. Cushman
2. M. Rivera

III. PERSONS INTERVIEWED:

Raymond "Raydog" Moore
LVMPD ID# 7054172
DOB: 06-24-1976, SSN. 561-43-2233
Res. Address: Transient
Cell. Phone: (909) 454-9565

Towan Abram
LVMPD ID# 2667384
DOB: 06-23-1989
Res. Address: 2635 Sherwood Street, Apartment 2,
Las Vegas, NV 89109

IV. PERSONS CONTACTED:

Tia Kelly
DOB: 08-29-1987, SSN. 546-99-3197
Res. Address: 2630 Wyandotte Street, Apartment 1,
Las Vegas, NV 89102
Cell. Phone: (702) 752-1051

Apollo Elaine Norman ***(Victim's girlfriend)***
DOB: 02-15-92
Res. Address: 1655 East Sahara Avenue, Apartment 109,
Las Vegas, NV 89109
Cell. Phone: (323) 690-4926

Aneshia Tyler ***(Victim's mother)***
DOB: 09/1972, SSN. 350-60-4727
Res. Address: 13432 Towne Avenue
Los Angeles, CA 90061
Res. Phone: (424) 266-9124
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Taron Holland ***(Victim's Cousin)***
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V. PRELIMINARY INVESTIGATION:

On 02-11-18 at approximately 2040 hours, LVMPD dispatch received several 9-1-1 calls reporting a subject shot at 2612 Van Patten Street in Las Vegas. Patrol officers and medical personnel were dispatched to the crime scene under LVMPD event number 180211-3549.

At approximately 2047 hours, Patrol Officer Avalos arrived and located a black male adult lying on sidewalk in front of 2612 Van Patten Street. The male, who was tentatively identified as Kenyon "T-Rex" Tyler, appeared to have been shot in the chest. Medical personnel arrived and transported Tyler to Sunrise Hospital, where he underwent emergency surgery.

Patrol Investigation Detectives, Gang Crimes Detectives, and Crime Scene Analysts responded to the crime scene to conduct the follow-up investigation. Subjects in the area were reluctant to communicate with police and no witnesses provided formal statements. Gang Crimes Detectives developed information that a black male from the neighborhood known as "Dre" was responsible for the shooting.

Patrol Investigation Detectives familiar with the area provided information regarding the possible identity of "Dre." Patrol Investigation Detectives believed Dre was Deandre Gathrite ID# 2592432. Gathrite lived in the immediate area and was the subject of several active criminal investigations.

At approximately 2231 hours, while investigators were still processing the Tyler shooting scene, several gunshots were heard one block east on Sherwood Street. Investigators responded to the area and located Jomiah "TY" Wingo at 2575 Sherwood Street suffering from multiple gunshot wounds. Wingo was transported to Sunrise Hospital with non-life threatening gunshot wounds. The preliminary information received by Gang Crimes Detectives was Wingo was shot because witnessed the Tyler shooting.

At 2313 hours, Kenyon Tyler succumbed to his injuries at Sunrise Hospital.

Gang Crimes Supervisors determined further investigation from the Homicide Section was warranted. Homicide Sergeant Scott was notified and arrived on scene at approximately 0021 hours with Homicide Detectives Sanborn, Boucher, and Ochsenhirt. Homicide detectives received a briefing from Gang Crime Detective Parquette. Detective Sanborn was assigned the responsibility of documenting the crime scene with crime scene analysts; Detectives Boucher and Ochsenhirt were assigned to interview available witnesses. Homicide Detective DePalma responded to Sunrise Hospital to conduct the follow-up investigation there.

VI. CRIME SCENE INVESTIGATION:

The crime scene analysts and Homicide Detective Sanborn examined the crime scene for evidence. The crime scene analysts documented the crime scene and any evidence with digital photographs and a crime scene diagram. Crime Scene Analyst Thomas recovered and impounded any available evidence.

A. DESCRIPTION OF SCENE AND VISIBLE EVIDENCE

The crime scene was located in front of the apartment building at 2612 Van Patten Street. The building was further described as a two story, multi-family, concrete building on the east side of Van Patten Street, between Sahara Avenue to the north and East Karen Avenue to the south. The primary crime scene was located on the west side of the building in front of the main entrance to the courtyard. The entrance was protected by a large metal gate, which stood open upon homicide detectives' arrival on the scene. A second entrance was located on the east side of the building and provided access from the rear alley parking area. The rear entrance gate also stood open. In the center of the building was a square concrete courtyard area. Apartments surrounded the courtyard on both the first and second floors. A metal stairway in the northeast corner of the courtyard provided access to the second floor apartments.

A concrete walkway led east from the east sidewalk of Van Patten Street to the front entrance of the building. Concrete curbs on both sides of the walkway, separated the walkway from the landscape planters, which were located on both sides of the walkway. The planters consisted of dirt, shrubs, and trees. A raised planter was located just north of the entrance gate. A decorative concrete block design was located in the wall above the raised planter. The area appeared dirty and neglected with garbage and debris present.

An LVMPD issued trauma kit was observed on the walkway. A small area of blood with some clothing was observed in the southeast corner of the walkway.

One (1) empty "Coca-Cola" can ***(Item 9)*** was on the planter wall, just outside (north) the gate. One (1) swab of possible DNA was recovered from the mouth area of the can. The can was chemically processed for latent prints with negative results.

Two (2) cartridge cases ***(Items 7-8)*** bearing the headstamp "G.F.L. 45 A.C.P." were located on the walkway just inside (east) of the gate.

Seven (7) cartridge cases ***(Items 1-6, 21)*** bearing the headstamp "G.F.L. 45 A.C.P." were recovered from the walkway outside (west) of the gate.

A small area of blood was observed southwest of the entry gate. One (1) black, short-sleeved t-shirt ***(Item 22)*** bearing a white and red design on the front and areas of apparent blood throughout the back was recovered near the southeast corner of the walkway leading to the entry gate. One (1) blue/multi-colored "Disney" brand blanket ***(Item 23)*** bearing areas of apparent blood was recovered near the southeast corner of the walkway leading to the entry gate.

Two (2) bullet impacts were located in the west wall of the building, south of the entry gate and east of the area of blood. One (1) bullet ***(Item 20)*** was recovered near the southeast corner of the walkway.

Five (5) cigarette butts ***(Items 10-14)*** were recovered from the landscape planter north of the walkway.

Five (5) cigarette butts/partially smoked cigarettes ***(Items 15-19)*** were recovered from the landscape planter south of the walkway.

A Las Vegas Valley Water District utility box was located in the landscape planter south of the walkway. Two (2) apparent bullet holes (entry) were observed in the south side of the box, with one (1) bullet hole (exit) on the north side. The apparent trajectory of the bullet holes did not appear to correspond with the shooting under investigation and it was possible the bullet holes were from a previous shooting. The bullet holes were photographed.

B. LOCATION AND DESCRIPTION OF THE BODY

On 02-12-18, Homicide Detective DePalma was assigned to assist with the homicide investigation, which was being conducted under LVMPD event number 180211-3549. The victim had been transported from the crime scene to Sunrise Hospital prior to the arrival of homicide detectives on the scene and Homicide Detective DePalma was assigned to respond to Sunrise Hospital.

Homicide Detective DePalma arrived at Sunrise at approximately 0025 hours, followed by Crime Scene Analyst Biwer and Clark County Coroner's Office Investigators Gallagher and Brown.

The victim had been transported to Sunrise Hospital by Medic West Unit 587. The victim appeared to have suffered gunshots wounds to the right side of the chest, the lower abdominal area and the middle of the buttocks. Sunrise Doctor Stewart pronounced the victim deceased at 2313 hours on 02-11-18 and the body remained inside the operating room (A-6).

Clark County Coroner's Office Investigator Gallagher conducted the preliminary death investigation. There was no information as to the identity of the victim, and he was tentatively identified as Trauma Moe.

The body was supine on a hospital gurney and covered with a white hospital blanket. Investigator Gallagher removed the hospital blanket, which revealed the unclothed body of a black male adult. Evidence of medical intervention was present on the body.

Crime Scene Analyst Gallagher documented the overall condition of the body with digital photographs. Evidence preservation bags were placed over the hands by Crime Scene Analyst Gallagher. The body was then placed on a clean sheet and into a body bag, which was sealed with seal 730715. The body was transported to the Clark County Office of the Coroner/Medical Examiner by Hites Funeral Home Attendants Cushman and Rivera.

Homicide Detective DePalma made contact with Apollo Elaine Norman at Sunrise Hospital. Apollo was Kenyon Tyler's girlfriend and stated she received a telephone call from Tyler, who said he was shot. Apollo did not have any information regarding the shooting and did not wish to provide a statement. Kenyon Tyler's Cousin Taron Holland responded to the hospital with Apollo, but had no information about the shooting. Apollo provided investigators with the name and telephone number of Tyler's mother in California (Anesha Tyler (323) 271-8259). The next-of-kin information was provided to Coroner's Office Investigator Gallagher.

VII. AUTOPSY:

A. PERSONS IN ATTENDANCE

1. Doctor Roquero	Forensic Pathologist
2. Brieanna Kinard	Forensic Technician
3. Rita Aiken	Forensic Technician
4. Crime Scene Analyst Noreen Charlton	PN 13572
5. Detective T. Sanborn	PN 5450

B. LOCATION OF INJURIES

1. See autopsy report

C. ITEMS OF EVIDENCE IMPOUNDED

1. White sheet with apparent blood
2. Hand preservation bag, right hand
3. Hand preservation bag, left hand
4. Fingernail clippings, right hand
5. Fingernail clippings, left hand
6. DNA, buccal swab kit
7. One (1) bullet and one (1) copper jacket

D. RESULTS OF AUTOPSY

On 02-12-18, a complete autopsy was performed on the body of Kenyon Tyler. Doctor Roquero determined the cause of death was multiple gunshot wounds; the manner of death was ruled homicide.

VIII. FOLLOW-UP INVESTIGATION:

The synopsis of witness interviews were created by the detectives conducting the interview; the substance of which was learned during contact, interview and/or from the statement of the witness.

Representative image(s) of a cartridge case recovered from the crime scene was entered into the National Integrated Ballistic Information Network (NIBIN) by LVMPD Forensic Scientist Anya Lester. Associations to other events in the network will be reported separately.

On 02-12-18, Homicide Detective Sanborn was advised representative images of the .45 caliber cartridge cases recovered at the Kenyon Tyler crime scene were associated in NIBIN to a shooting in Los Angeles California, which took place on March 03, 2017, under LAPD case number 17-1807405.

Homicide Detective Sanborn contacted LAPD Southeast Division Gang Impact Team Detective Shear, who had conducted the follow-up investigation into the aforementioned shooting. Detective Shear related the shooting had been reported by a witness, and that neither the suspect nor victim was ever located. A black male driving a silver hatchback fired several shots at a black Dodge Charger. After the shooting, both vehicles fled the scene. Detective Shear recovered two (2) .45 caliber rounds and one (1) expended round at the crime scene. The evidence was subsequently entered into NIBIN, which produced the association.

Homicide Detective Sanborn reviewed the LAPD investigative report and no investigative leads were developed as a result of the reported NIBIN association.

A police records check on possible suspect Deandre Gathrite revealed a felony parole violation warrant issued out of the San Diego County Sheriff's Office, reference a previous weapons related offense. The LVMPD Criminal Apprehension Team (CAT) was tasked with locating Gathrite.

On 02-16-18 at approximately 1440 hours, the Criminal Apprehension Team located Deandre Gathrite at 2630 Wyandotte Street, apartment 1. Homicide detectives were advised of Gathrite's location and responded.

On 02-16-18 at approximately 1547 hours, Homicide Detectives Mauch and Grimmett conducted a post-Miranda interview with Deandre Gathrite, who related the following: Gathrite identified the male he shot as T-Rex. Gathrite was outside the building with Raydog and TY. T-Rex and four other black males confronted Gathrite about them hanging out in front of the building. One of the males with T-Rex had a gun in his hand and Gathrite saw a gun in T-Rex's pocket. Gathrite described being scared and he fired his gun a couple times at T-Rex while he ran away. Gathrite didn't know if he hit anyone and he continued to hear gunfire as he ran away after he stopped shooting.

Gathrite told detectives the gun he used in the shooting was hidden inside the apartment in an air conditioning vent in the hallway. Gathrite provided detectives with verbal consent to recover the firearm from the apartment. The firearm was still loaded and no other ammunition or additional firearms in the apartment.

Gathrite showed detectives a Facebook messenger conversation between a male that contacted his girlfriend Tia Kelly on her cellular telephone after the shooting. She received numerous messages from the male, who told her he shot her baby daddy "on blood because T-Rex was his people." He also sent pictures of himself to her.

For further details refer to Deandre Gathrite's transcribed statement.

Homicide Detective DePalma, Crime Scene Analyst Chen-Huynh, and Crime Scene Analyst Supervisor Taylor entered Gathrite's apartment (2630 Wyandotte, Apt.1) to recover the handgun hidden inside the air vent. The overall condition of the apartment was documented with digital photographs prior to searching the vent. The air-conditioning intake vent was located in the hallway near the south portion of the apartment and the grate was affixed by two small bolt and nuts. The grate was removed and behind the 20x20 filter was a silver revolver. The revolver was an Amedeo Rossi S. A .357 caliber handgun with a black grip with serial number F379181. The revolver was photographed in place and then recovered by Crime Scene Analyst Chen-Huynh.

The revolver was fully loaded with six (6) rounds. The head stamp on each round was "FC357 Magnum." The revolver was swabbed for possible DNA evidence and processed for fingerprints, with negative results. The revolver and ammunition was impounded as evidence by Crime Scene Analyst Chen-Huynh.

After the firearm was located, Homicide Sergeant Scott obtained a telephonic search warrant to search the apartment for additional firearms, ammunition, and firearm related items. The search warrant also included the recovery of a DNA sample from Gathrite and the cellular telephone he had in his possession. The search warrant was approved by District Court Judge Wiese.

At approximately 1755 hours, Detective DePalma and Crime Scene Analyst Chun-Huynh re-entered the apartment. Apartment 1 was located on the first floor and consisted of one bedroom and one bathroom. The apartment was sparsely furnished and unremarkable. Homicide Detective DePalma searched the apartment and did not locate any additional items of evidentiary value.

Crime Scene Analyst Chun-Huynh recovered a sample of Deandre Gathrite's DNA via the application of a buccal swab kit. Homicide Detective Mauch recovered Gathrite's cellular telephone. The buccal swab kit and cellular telephone were later impounded as evidence by Crime Scene Analyst Chun-Huynh.

A copy of the duplicate original search warrant and search warrant return was photographed by Crime Scene Analyst Chun-Huynh and left on the kitchen counter.

On 02-21-18 at approximately 1535 hours, Homicide Detectives Sanborn and Mauch interviewed Raymond Moore (Raydog), who related the following: Moore was hanging out in front of the building on Van Patten with TY and Dre. Moore was showed a database photograph of Deandre Gathrite and confirmed he was Dre. They were hanging around outside of the gate of the courtyard, when T-Rex confronted them and said they had to leave. One other male, known as "Juge," was with T-Rex. Dre told T-Rex they always hang out there and T-Rex continued to tell the group he didn't care and they had to move. T-Rex had a gun in his left front pocket, which he continually grabbed at while arguing with Dre.

T-Rex walked up to Dre and then would take a couple steps back during the verbal arguing. Dre ultimately pulled his gun out and shot three times at T-Rex before he fled on foot. Moore described them being face to face when Dre shot T-Rex. T-Rex pulled his gun out of his pocket and was unable to fire it before falling to the ground. Juge then grabbed T-Rex's gun and fired 4-5 times at the group and TY fired his gun as well. Moore believed T-Rex and TY both had .45 caliber guns. Dre's gun was described as a .357 chrome revolver. T-Rex did not have his gun out until after Dre shot T-Rex.

For further details refer to Raymond Moore's transcribed statement.

A police records check of Gathrite revealed he was a four (4) time convicted felon. Gathrite was convicted of three (3) felonies in Nevada; once in 2011 for Larceny from Person, and twice in 2012 for Assault with a Deadly Weapon (AWDW) and Discharging a Firearm at/into a Structure. Gathrite was convicted of at least one felony in California; 2010 for Manufacture / Possess a Dangerous Weapon.

On 02-21-18, California authorities lifted the hold placed on Deandre Gathrite and he was released from the Clark County Detention Center.

On 02-23-18, SCAC Patrol Officer Ross (PN 14852) interviewed Towan Abram (ID# 2667384) reference the service of a search warrant at Abram's apartment at 2635 Sherwood Street, Apartment 2. The search warrant service was not related to the Kenyon Tyler murder investigation; however, Abram stated he had information regarding the case. Abram claimed Andre Gathrite called him on Facebook messenger the day after the murder and admitted to killing T-Rex. Gathrite told him the dude pulled his pistol and he shot him. At the conclusion of the interview Abram's was arrested on outstanding warrants and booked into the Clark County Detention Center.

For further information refer to Towan Abram's transcribed statement.

On 02-26-18, Homicide Detective Mauch obtained an arrest warrant for Deandre Gathrite for the charges of Open Murder with a Deadly Weapon and Possession Firearm by Prohibited Person. The warrant was approved by Justice Court Judge Goodman. Members of the LVMPD Criminal Apprehension Team located Deandre Gathrite and arrested him on the warrant. Gathrite was booked at the Clark County Detention Center.

On 02-28-18, LVMPD Forensic Scientist Geil completed the preliminary firearms and toolmarks examinations of the evidence. The evidence bullets were examined and were determined to be visually consistent with nominal .38 caliber class, to include .38 Special and .357 Magnum. The bullets were microscopically compared and were identified as having been fired from the same firearm.

Common firearms manufactured with rifling general characteristics similar to the ones present on the bullets; included, but were not necessarily limited to: Astra, Colt, Dan Wesson, FIE, Rossi, and Ruger firearms.

For further information refer to Forensic Scientist Geil's Report of Examination.