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21 Attorneys for Warren

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 THE STATE OF NEVADA,	)	CASE NO. C-17-323608-A
	)	DEPT. NO. 2
25 Plaintiff,	)	
	)	
26 vs.	)	
	)	
27 JOSEPH WARREN, JR.,	)	
28 ID 1239725,	)	
	)	
29 Defendant.	)	
_____	)	

30 NOTICE OF HEARING OF MOTION TO DISMISS APPEAL

31 DATE: JULY 27, 2017
32 TIME: 9:00 A.M.

33 TO: STATE OF NEVADA, Plaintiff; and

34 TO: District Attorney, Attorney for Plaintiff

35 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the Motion to
36 Dismiss Appeal (filed June 28, 2017), a copy of which is attached hereto, before the above
37
38 . . .

1 entitled Court on July 27, 2017 at the hour of 9:00 a.m., or as soon thereafter as counsel may be
2 heard.

3 Dated: July 12, 2017

4 RESPECTFULLY SUBMITTED:

5 /s/ JONELL THOMAS

6 JONELL THOMAS
7 MELINDA SIMPKINS
8 DANIEL PAGE
Attorneys for Warren

9 CERTIFICATE OF ELECTRONIC FILING

10 I hereby certify that service of the above and foregoing, was made on 7/12/17, by
11 Electronic Filing to:

12 DISTRICT ATTORNEY'S OFFICE
13 motions@clarkcountyda.com

14 /s/ KATHLEEN FITZGERALD

15
16 Legal Executive Assistant for
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12 DISTRICT COURT
CLARK COUNTY, NEVADA
13

14 THE STATE OF NEVADA,	)	CASE NO. C-17-323608-A
	)	DEPT NO. II
15 Plaintiff,	)	
	)	
16 vs.	)	<u>MOTION TO DISMISS APPEAL</u>
	)	
17 JOSEPH WARREN, JR.,	)	
18 # 1239725	)	
Defendant,	)	
19	)	

20
21 Comes now the Defendant, Joseph Warren, Jr., by and through his attorneys Drew R.
22 Christensen, Acting Special Public Defender, JoNell Thomas, Melinda Simpkins and Daniel
23 Page, Chief Deputy Special Public Defenders and files his Motion to Dismiss Appeal.
24
25
26
27
28

...

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1 This motion is made and based upon the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities, and any argument presented to this Court at the hearing
3 on this matter.

4 Dated this 28th day of June, 2017.


JONELLE THOMAS
MELINDA E. SIMPKINS
DANIEL PAGE
Attorneys for Defendant

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 The preliminary hearing in this case was held on April 20, 2017. After taking the matter
10 under submission, the Justice of the Peace dismissed the charges based upon the State's failure
11 to present sufficient evidence to establish probable cause that Mr. Warren committed the
12 offenses. The Justice of the Peace authored a thorough 10 page order in support of its decision.
13 The State filed an appeal from the order. That matter is currently pending before this Court. The
14 State also filed a Motion for Leave to File an Information by Affidavit. The motion was
15 docketed in case number C-17-323426-1 and was assigned to Department VI. (Exhibit A,
16 minutes). Following full briefing and argument by the parties, Department VI denied the State's
17 Motion for Leave To File an Information by Affidavit. Exhibit A. The State now seeks this
18 Court's intervention by way of appeal. There is no right to appeal, however, from a justice court
19 order refusing to bind over charges following a preliminary hearing and this Court is therefore
20 without jurisdiction to hear this appeal.

22 Nevada Procedures Following Dismissal of A Criminal Complaint At A Preliminary Hearing Based Upon A Lack of Probable Cause

23 In Nevada, after a magistrate dismisses a criminal complaint at a preliminary hearing for
24 lack of probable cause, the State is prohibited from refileing the same charge that was dismissed
25 because of insufficient evidence. Nevada criminal procedure dictates that "the discharge of a
26 person accused upon preliminary examination is a bar to another complaint against the person
27 for the same offense, but does not bar the finding of an indictment or the filing of an
28

1 information." NRS 178.562(2). If a defendant is not bound over for a charge, the State may
2 either: (1) seek an indictment by a grand jury; or (2) seek leave to file an "information by
3 affidavit" in the district court, pursuant to NRS 173.035(2).¹ State v. Sixth Judicial District
4 Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). Other cases which suggest a different scheme
5 were overruled. Id.

6 The State's challenge to a justice court's decision finding a lack of probable cause at a
7 preliminary hearing is through a motion for leave to file an information by affidavit or by
8 seeking an indictment before a grand jury. See e.g. Moultrie v. State, 364 P.3d 606 (Nev. App.
9 2015) (addressing the district court's decision on a motion for leave to file an information by
10 affidavit after the justice court found that the State did not meet its burden of proof for a felony
11 and discharged the defendant); Parsons v. State, 115 Nev. 91, 978 P.2d 963 (1999) (addressing
12 a district court's decision on a motion for leave to file an information by affidavit after the
13 justice court dismissed charges at a preliminary hearing). Other than seeking an Indictment, there
14 is no other method for challenging a justice court's probable cause determination.

15 The right to appeal is statutory; where no statute or court rule provides for an appeal, no
16 right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 729 P.2d 1133, 1135 (1990). No
17 statute or court rule provides for an appeal from a justice court order finding that the State failed
18 to present probable cause to support a charge at a preliminary hearing. In its Notice of Appeal,
19 the State cites to NRS 177.015 and Sandstrom v. Second Judicial Dist. Court, 121 Nev. 657, 119
20 P.3d 1250 (2005) as authority for the assertion that it may appeal from the justice court's finding
21 of a lack of probable cause. Neither supports the State's assertion. In Sandstrom, the Nevada
22

23 ¹NRS 173.035(2) provides:

24 If, however, upon the preliminary examination the accused has been discharged, or the
25 affidavit or complaint upon which the examination has been held has not been delivered to the
26 clerk of the proper court, the Attorney General when acting pursuant to a specific statute or the
27 district attorney may, upon affidavit of any person who has knowledge of the commission of an
28 offense, and who is a competent witness to testify in the case, setting forth the offense and the
name of the person or persons charged with the commission thereof, upon being furnished with
the names of the witnesses for the prosecution, by leave of the court first had, file an
information, and process must forthwith be issued thereon. The affidavit need not be filed in
cases where the defendant has waived a preliminary examination, or upon a preliminary
examination has been bound over to appear at the court having jurisdiction.

1 Supreme Court considered an original petition for a writ of certiorari, filed by a defendant, who
2 argued that a district court lacked jurisdiction to entertain an appeal by the State from a justice
3 court order granting a motion to dismiss a misdemeanor criminal complaint. Id. at 658, 119 P.3d
4 at 1251. Sandstrom did not address felony charges for which no probable cause was found, but
5 instead concerned only misdemeanor complaints over which the justice court has final decision
6 making authority. Specifically, the Nevada Supreme Court noted that under the Nevada
7 Constitution, the legislature has the authority to “prescribe by law the manner, and determine
8 the cases in which appeals may be taken from Justices and other courts.” Id. at 659, 119 P.3d
9 at 1252 (quoting Nev. Const. art. 6, § 8). The legislature defined “the parameters of the district
10 courts’ appellate jurisdiction respecting criminal misdemeanor cases originating in just court [by
11 enacting NRS 177.015, which] provides in pertinent part: “The parties aggrieved in a criminal
12 action may appeal only as follows: 1. Whether that party is the State or the defendant: (a) To the
13 district court of the county from a final judgment of the justice court.” Id. The Court found that
14 dismissal of a misdemeanor complaint was a final judgment because it “dispose[d] of all issues
15 and [left] nothing for future consideration.” Id.

16 Sandstrom does not apply, by either its plain language or by its rationale, to a justice
17 court’s finding of a lack of probable cause to support felony charges. Such an order does not
18 dispose of all issues and it does not leave nothing for future consideration. Rather, as set forth
19 above, following an order like that at issue here, the State may seek an indictment by a grand
20 jury; or (2) seek leave to file an “information by affidavit” in the district court, pursuant to NRS
21 173.035(2). State v. Sixth Judicial District Court, 114 Nev. at 743, 964 P.2d at 50. These
22 statutory remedies were provided by the Legislature, rendering NRS 177.015 inapplicable to this
23 type of order.

24 There is no rule providing for an appeal to the district court from an order of the justice
25 court finding a lack of probable cause to support felony charges. Likewise, there is no case
26 authority finding that such an appeal is possible. This Court lacks jurisdiction over this appeal
27 and it must therefore be dismissed.

28

1 **Conclusion**

2 The State's appeal must be dismissed as this Court lacks jurisdiction over this matter.
3 There is no right to appeal from the dismissal of charges following a preliminary hearing. The
4 State had the opportunity to seek redress by filing a Motion for Leave to File Information by
5 Affidavit, and it did so. There is no second mechanism for allowing the State yet another bite
6 at the apple.

7 DATED this 28th day of JUNE, 2017.

8 DREW CHRISTENSEN
9 ACTING SPECIAL PUBLIC DEFENDER

10 
11 JONELL THOMAS
12 MELINDA E. SIMPKINS
13 DANIEL R. PAGE
14 Attorneys for Defendant

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that service of the above and foregoing was made pursuant to EDCR
17 7.26 on the attorney for the named parties by means of electronic mail to the email address
18 provided to the court's electronic filing system for this case. Proof of Service is the date
19 service is made by the court's electronic filing system by email to the parties and contains a
20 link to the file stamped document.

21 PARTY

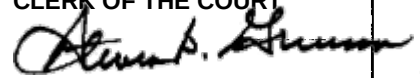
EMAIL

22 STATE OF NEVADA

DISTRICT ATTORNEY'S OFFICE email:

23 Motions@clarkcountynvda.com

24
25 
26 Secretary for the Special Public Defender's Office
27
28



1 **ANSB**

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21 Attorneys for Warren

22 DISTRICT COURT
23 CLARK COUNTY, NEVADA

24 THE STATE OF NEVADA,

25 Plaintiff,

26 vs.

27 JOSEPH WARREN, JR.,
28 ID 1239725,

Defendant.

CASE NO. C-17-323608-A
DEPT. NO. 2

ANSWERING BRIEF

DATE: JULY 27, 2017
TIME: 9:00 A.M.

29 Comes now the Defendant, Joseph Warren, Jr., by and through his attorneys, JoNell
30 Thomas, Melinda Simpkins and Daniel Page, Chief Deputy Special Public Defenders, and files
31 his Answering Brief in response to the Opening Brief filed by the State in its appeal from an
32 order of the Justice Court finding a lack of probable cause to support charges sought by the
33 State.

1 This Brief is made and based upon the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities, and any argument presented to this Court at the hearing
3 on this matter.

4 Dated this 13 day of July, 2017.


JONELL THOMAS
MELINDA E. SIMPKINS
DANIEL PAGE
Attorneys for Defendant

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 The preliminary hearing in this case was held on April 20, 2017. After taking the matter
10 under submission, the Justice of the Peace dismissed the charges based upon the State's failure
11 to present sufficient evidence to establish probable cause that Mr. Warren committed the
12 offenses. The Justice of the Peace authored a thorough 10 page order in support of its decision.

13 The State filed a Motion for Leave to File an Information by Affidavit. The motion was
14 docketed in case number C-17-323426-1 and was assigned to Department VI. (Exhibit A,
15 minutes). Following full briefing and argument by the parties, Department VI denied the State's
16 Motion for Leave To File an Information by Affidavit. Exhibit A.

17 The State now seeks to appeal the Justice Court's order to this Court. Mr. Warren has
18 filed a motion to dismiss this appeal because there is no statute or rule authorizing an appeal in
19 this matter, and this Court is therefore without jurisdiction to hear this appeal.

20 In the event that this Court finds jurisdiction, the ruling of the Justice Court should be
21 affirmed.

22 Introduction

23 The State seeks to charge Joseph Warren with kidnapping and sexual assault. At the
24 preliminary hearing, the State failed to call the alleged victim as a witness, even though the State
25 claimed she was in fact available, and instead relied upon the testimony of a SANE nurse and
26 a recording of a garbled 911 call to justify its charges. After thoroughly considering the issues,
27 the justice court found that statements made by the alleged victim to the SANE nurse were not
28

1 admissible under NRS 171.196 and that the State failed to present sufficient evidence to
2 establish probable cause that Warren committed the alleged offenses.

3 The State now seeks this Court's intervention by way of appeal, even though it failed in
4 its previous effort to pursue these charges through its motion to file an Information by Affidavit.
5 This appeal is also without merit as the justice court's legal ruling concerning the admission of
6 hearsay evidence was correct and there was a lack of evidence to find probable cause for the
7 charges.

8 Review Standard

9 A suspect may not be bound over for trial unless the State demonstrates that there exists
10 probable cause that the suspect committed the charged crime. Sheriff, Washoe County v. Milton,
11 109 Nev. 412, 414 (1993). Probable cause to support a criminal charge "may be based on 'slight,'
12 even 'marginal' evidence,. . . because it does not involve a determination of the guilt or
13 innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To
14 commit an accused for trial, the State is not required to negate all inferences which might explain
15 his conduct, but only to present enough evidence to support a reasonable inference that the
16 accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

17 A district court's review of a justice court's probable cause determination is governed by
18 an "egregious error" standard. Cranford v. Smart, 92 Nev. 89, 91, 545 P.2d 1162, 1163 (1976)
19 (addressing NRS 173.035(2)). The question is whether the magistrate made an egregious error
20 by not finding probable cause, not whether the facts presented at preliminary hearing show
21 probable cause. See State v. District Court, 114 Nev. 739, 741-42, 964 P.2d 48, 49 (1998);
22 Cipriano v. State, 111 Nev. 534, 539-40, 894 P.2d 347, 251 (1995), overruled on other grounds
23 by State v. District Court, 114 Nev. 739, 964 P.2d 48 (1998); Murphy v. State, 110 Nev. 194,
24 198, 871 P.2d 916, 918 (1994).

25 The United States Supreme Court has defined egregious errors as "those errors that
26 seriously affect the fairness, integrity or public reputation of judicial proceeding." United States
27 v. Young, 470 U.S. 1, 15, 105 S. Ct. 1038, 1046, 84 L. Ed. 2d 1, 12 (1985). An egregious error
28 is more than simply disagreeing with the outcome. Allowing the State to supersede the

1 magistrate's decision at a preliminary hearing simply because the State was not satisfied with
2 the decision could effectively void the magistrate's power to make the decision in the first place.
3 Justice courts perform an important function in our system. "[V]etting the State's probable cause
4 evidence is an important part of the justice courts' judicial function." Grace v. District Court,
5 375 P.3d 1017, 1021 (Nev. 2016). The determination made here is entitled to respect and may
6 only be reversed based upon a showing of egregious error. Warren submits that the State fails
7 far short of meeting this standard in this case.

8 **Statement of Facts**

9 The State contends that Defendant Joseph Warren Jr. sexually assaulted Kearstin Ellis.
10 Warren contests that allegation and asserts that he had consensual sex with Ellis in exchange for
11 methamphetamine. After the exchange was completed, Ellis reported that she had been sexually
12 assaulted at Freedom Park¹. She was transported to University Medical Center where she
13 underwent a SANE evaluation by Jeri Dermanelian, a registered nurse, who owns a company
14 called Rose Heart that provides sexual assault nurse examinations. (PHT pg. 8, ln. 23 - pg. 9, ln.
15 9) (included as an Exhibit to the State's Opening Brief). Her specific duties and responsibilities
16 are to provide options for patients that come in with a chief complaint of sexual assault. (PHT
17 pg. 9, ln. 10-13). During that examination, evidence was collected and turned over to the Las
18 Vegas Metropolitan Police Department. (PHT pg. 19-22).

19 Joseph Warren, Jr. was subsequently arrested and charged with one count of First Degree
20 Kidnapping, one count of Sexual Assault, one count of Battery with Intent to Commit Sexual
21 Assault and two counts of Open and Gross Lewdness. The Preliminary Hearing was held on
22 April 20, 2017. During that hearing, counsel stipulated to the admission of DNA reports. (PHT
23 pg. 5, ln. 9-12). The State called only one witness, Jeri Dermanelian, the SANE nurse, who
24 testified, over objection, as to what Kearstin Ellis allegedly told her during the examination. This
25 testimony was allowed pursuant to the hearsay exception regarding statements made for purposes

26
27 ¹Although Kearstin Ellis allegedly made a call to 911 to report the alleged sexual assault, the 911
28 telephone call presented by the State at the Preliminary Hearing is unintelligible due to the garbled
language used by the caller. In addition, the caller never states their name during the call and the 911
operator never asks.

1 of medical diagnosis or treatment. It was during this examination that Ellis allegedly told
2 Dermanelian that:

3 [S]he was walking home. She was going to go to her fiance's house. She was
4 stopped. When she stopped, she went to have a cigarette. A male came up to her
5 that she didn't know and asked her if he could have a cigarette. She gave him a
6 cigarette. And she stated that she was forced to have finger to vagina and then
7 penis to vagina intercourse in a bathroom. She stated she was in a standing
8 position and bent over. She stated that the male used a garbage bag to wrap as a
9 possible condom. The garbage bag came off, and there was penis to vagina
intercourse without the wrapper. The ejaculation took place in the vagina.

The patient states that she was forced to smoke methamphetamines. The male told
her that the methamphetamines would make her wet. And she stated that she was
not hit with an open hand or closed fist. There was no gun or knife used in the
sexual assault.

10 (PHT pg. 10). Dermanelian went on to state that Ellis did, in fact, test positive for both
11 methamphetamine and marijuana. (PHT pg. 13, ln. 1).

12 Dermanelian also described the options that Ellis was given at the time of her forensic
13 examination:

14 A. The patient, as an adult, is given four options – or four choices – as to which
15 type of examination they want done.

16 Q. And what are those four options?

17 A. Briefly, the first option is to decline the exam at the end of the conversation,
18 after they have more knowledge on what's included in each one of the options.
If they choose not to go forward, they can just simply say they don't want the
exam,, and the exam will stop at that time.

19 The second option is what I term medical only. It's a medical exam that does a
20 head-to-toe assessment. Sexually transmitted and infection testing is done,
including blood and pelvic exam, if it's a female, and potentially an anal exam
21 also. The patient would be given antibiotics to prevent gonorrhea and chlamydia.
Morning-after medication would be discussed, and a urine pregnancy and urine
22 drug screen would be done on a medical. What's made clear to the patient is that
with a medical-only exam, there's no forensics evidence collected, no sexual
23 assault kit obtained, and that there would be no photographs of their body taken.

24 The third choice is called an anonymous or a Jane Doe sexual assault exam. Jane
Doe for the females. John Does for the males. And that's an anonymous sexual
25 assault kit that would be completed. And all of the medical examinations, testing,
and head-to-toe assessment that's offered in Option 2 would be also included in
26 Option 3. The 30-day window would be given to the patient so they could decide
if they wanted to go forward from a legal perspective. They have 30 days to
27 activate their case. So photographs would be taken with that exam and a sexual
assault kit would be completed.

1 The fourth option is the full, forensic sexual assault kit, the medical. And then
2 that includes the law enforcement where the patient is going to be notified that
3 they're going to request a criminal investigation to be initiated regarding a sexual
4 assault complaint.

5 Q. And which of those options did Miss Ellis choose?

6 A. Fourth.

7 (PHT pg. 13-14).

8 On cross examination, Dermanelian testified that she strictly does forensic examinations
9 (PHT pg. 20, ln. 2-3) and that she does them primarily for police departments (PHT pg. 20, ln.
10 9-12). She also admitted that law enforcement was involved with the instant examination, she
11 received information from law enforcement, Ellis was transported to her examination by law
12 enforcement, she sent a sexual assault kit to the Las Vegas Crime Lab, and she collected
13 evidence for the Las Vegas Metropolitan Police Department. (PHT pg. 19-22). Dermanelian
14 also testified that, upon meeting Ellis, she knew that the chief complaint was sexual assault
15 because "*That was her chief complaint to the triage nurse.*" (PHT pg. 22, ln. 22), indicating
16 that Dermanelian was not the only medical professional to see and speak with Ellis at the
17 hospital.

18 At that point, counsel renewed the objection to Dermanelian's testimony because it was
19 not for the purposes of medical diagnosis and treatment. In their argument opposing, the State
20 cited to Medina v. State, 122 Nev. 346, 143 P.3d 471 (Nev. 2006) for the proposition that
21 because the confrontation clause does not apply at preliminary hearings, Dermanelian's
22 testimony should stand.² At the end of extensive argument and additional testimony regarding
23 the medical treatment provided to Kearstin Ellis,³ the justice court allowed Dermanelian's

24 ²In Medina v. State, 122 Nev. 346, 350, 143 P.3d 417 (Nev. 2006), the Nevada Supreme Court
25 stated "SANE nurses are funded by the State of Nevada Department of Social Services and are trained
26 to conduct sexual assault examinations. A particular duty of a SANE nurse is to gather evidence for
27 possible criminal prosecution in cases of alleged sexual assault. SANE nurses do not provide medical
28 treatment."

³This "medical treatment" consisted of: "The medical history was obtained, the history of the
event was obtained, the sexually transmitted infection blood testing was drawn, urine was obtained, the
antibiotics were administered, the morning-after medication was administered, and the discharge
information was given to the patient. Referral information was given to the patient for the 12-week
follow-up for the second HIV and syphilis test." Of note, however, is that had Kearstin Ellis been

1 testimony to remain in evidence as a statement made for the purpose of medical diagnosis or
2 treatment.

3 After calling counsel to the bench and expressing concern about the issue of consent, the
4 Court questioned the State regarding the whereabouts of their witness. The State asserted that
5 they knew where Kearstin Ellis was, however, they were proceeding solely on the evidence and
6 testimony presented. Thereafter, the State entered into evidence a 911 call over objection and
7 attempted to enter into evidence the transcript of that 911 call - which was denied. The State then
8 rested without calling any other witnesses or presenting any other evidence. The justice court
9 then took the matter under advisement and issued its written decision, which is discussed in
10 detail below, dismissing all counts.

11 On May 10, 2017, the State filed a Notice of Appeal which was docketed in this Court.
12 The State also filed a Motion asking for permission to file the information based upon affidavit,
13 which was filed in Department VI. Judge Cadish received full briefing on the State's motion and
14 ruled in Mr. Warren's favor. The State now attempts to litigate the same issues again through
15 this appeal. As previously stated, Mr. Warren respectfully submits that the notice of appeal filed
16 in this matter suffers from a jurisdictional defect as the exclusive remedies for the refusal of a
17 justice court to find probable cause are (1) a filing of an Indictment through the Grand Jury; and
18 (2) a motion for leave to file an Information by affidavit pursuant to NRS 173.035(2). State v.
19 Sixth Judicial District Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). There is no statute
20 providing for an appeal in the situation presented here. In the event that this Court disagrees, Mr.
21 Warren submits that the State's motion is procedurally barred and wrong on the merits.

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27 seeking only medical treatment, she could have chose the option that allowed only for medical treatment.
28 She did not. She chose the criminal investigation option so, even though this "medical treatment" was
given to her, it was done for the purpose of criminal investigation.

1 **The State Has Already Litigated The Issue Presented And Having Lost May Not Relitigate**
2 **In A New Forum**

3 As demonstrated by Exhibit A, the State has already presented the issue presented here
4 and it lost that litigation before Judge Cadish. A second bite at the apple is prohibited by this
5 Court's rules.

6 Nevada District Court Rule 13(7) provides that "No motion once heard and disposed of
7 shall be renewed in the same cause, nor shall the same matters therein embraced be reheard,
8 unless by leave of the court granted upon motion therefor, after notice of such motion to the
9 adverse parties." Likewise, DCR 18(1) and DCR 19 preclude this Court's consideration of an
10 issue which was already heard by Judge Cadish. The Eighth Judicial District Court Rules also
11 preclude the State's actions here. EJDRC Rule 7.12 provides that "When an application or a
12 petition for any writ or order shall have been made to a judge and is pending or has been denied
13 by such judge, the same application, petition or motion may not again be made to the same or
14 another district judge, except in accordance with any applicable statute and upon the consent in
15 writing of the judge to whom the application, petition or motion was first made." The State's
16 efforts here to multiply the proceedings is also akin to forum shopping. Judicial economy
17 mandates that the State not be given repetitive opportunities to present arguments which have
18 already been dismissed by another court.

19 **The State Has Already Agreed To Dismiss Any Charges In This Case, So This Appeal Is**
20 **Moot**

21 As explained at length in Exhibit B, which is a Reporter's Transcript of Unconditional
22 Waiver of Preliminary Hearing, in Justice Court Case No. 17F04527X, the State agreed in the
23 context of another case against Mr. Warren that if Judge Cadish denied the State's motion for
24 leave to file an Information by affidavit, this case would be dismissed, the State would not
25 proceed on it and the State would not appeal Judge Cadish's ruling. Exhibit B at page 4. They
26 further agreed that Mr. Warren would then plead guilty to attempt sexual assault in Justice Court
27 Case No. 17F04527X, the parties would stipulate to a sentence of two-to-five years, and would
28 stipulate that the sentence would run concurrent with two other cases involving open and gross

1 lewdness. On June 13, 2017, Mr. Warren fulfilled his obligations under this agreement by
2 entering his plea in the other case. Exhibit C. According to the terms of the State's agreement,
3 as stated in open court, it must now end prosecution of this case.

4 In essence, the State is seeking an advisory decision from this Court as this matter is
5 moot. An appellate court's duty, however, is not to render advisory opinions but to resolve actual
6 controversies by an enforceable judgment. In re: Serota, 309 P.3d 1037, 1040 (Nev. 2013). See
7 also State v. Viers, 86 Nev. 385, 386, 469 P.2d 53, 54 (1970) (finding that Nevada Constitution
8 Article 6, Section 4 prohibits appellate jurisdiction over moot questions of law). The Court
9 explained:

10 The Supreme Court of the United States in the case of Mills v. Green, 159 U.S.
11 651 (1895), said: "The duty of this court, as of every other judicial tribunal, is to
12 decide actual controversies by a judgment which can be carried into effect, and not
13 to give opinions upon moot questions or abstract propositions, or to declare
14 principles or rules of law which cannot affect the matter in issue in the case before
15 it. It necessarily follows that when, pending an appeal from the judgment of a
16 lower court, and without any fault of the defendant, an event occurs which renders
17 it impossible for this court, if it should decide the case in favor of the plaintiff, to
18 grant him any effectual relief whatever, the court will not proceed to a formal
19 judgment, but will dismiss the appeal."

20 Id. at 386-87, 469 P.2d at 54.

21 Based upon the State's agreement in the companion case, and Mr. Warren's compliance
22 with the terms of that agreement, further prosecution of this matter is not allowed and the only
23 available remedy is dismissal of this appeal.

24 **The Justice Court Correctly Ruled On The Merits As NRS 171.196(6) Does Not Allow For**
25 **Admission Of Hearsay Evidence At A Preliminary Hearing, Absent Certain Circumstances**
26 **Which Are Not Present Here.**

27 Although this Court should not reach the merits of the State's appeal, should it do so,
28 dismissal is mandated because the State's appeal lacks merit. The State contends that the justice
court erred in finding that NRS 171.196 prohibits the introduction of hearsay evidence at a
preliminary hearing, absent certain exceptions which are not relevant here. The State is wrong.
The justice court's reading of the statute was correct.

1 NRS 171.196 addresses preliminary hearings and how they are to be conducted in
2 Nevada. In 2015, the Nevada Legislature enacted AB 193, which amended NRS 171.196 by
3 adding subsection (6) to the statute:

4 Hearsay evidence consisting of a statement made by the alleged victim of the
5 offense is admissible at a preliminary examination conducted pursuant to this
6 section only if the defendant is charged with one or more of the following
7 offenses:

8 (a) A sexual offense committed against a child who is under the age of 16 years
9 if the offense is punishable as a felony. As used in this paragraph, "sexual
10 offense" has the meaning ascribed to it in NRS 179D.097.

11 (b) Abuse of a child pursuant to NRS 200.508 if the offense is committed against
12 a child who is under the age of 16 years and the offense is punishable as a felony.

13 (c) An act which constitutes domestic violence pursuant to NRS 33.018, which
14 is punishable as a felony and which resulted in substantial bodily harm to the
15 alleged victim.

16 Mr. Warren is not charged with any of the enumerated offenses set forth in NRS 171.196(6).

17 The State contends that NRS 171.196 does not supplant traditional hearsay rules, while
18 Warren contends that it does. In considering this issue, the justice court first considered the title
19 of NRS 171.196 and the plain language of the statute. (Order, Exhibit 4 to the State's Motion,
20 at Page 7). Specifically, the justice court noted that the title of the statute is:

21 Preliminary examination: Waiver; time for conducting; postponement;
22 introduction of evidence and cross-examination of witnesses by defendant;
23 **admissibility of hearsay evidence.**

24 NRS 176.196 (emphasis added). The justice court explained the significance of this title:

25 That title is indicative of what the Legislature intended to accomplish. See Coast
26 Hotels & Casinos v. Nev. State Labor Comm'n, 117 Nev. 835, 841-42 (2001)
27 (recognizing that a title is typically prefixed to a statute in the form of a
28 descriptive heading of a brief summary of the contents of the statute and that
"[t]he title of a statute may be considered in determining legislative intent").

Id. at pg. 7. The justice court then addressed the plain language of the statute:

In addition, the preamble to NRS 171.196(6) declares that "hearsay
evidence consisting of a statement made by the alleged victim of the offense is
admissible at a preliminary examination conducted pursuant to this section **only**
if the defendant is charged with one or more of the enumerated offenses.
[Emphasis added]. In order to give meaning to every word and phrase in NRS
171.196(6), the Court must interpret "only if" to mean what it says. A hearsay
statement from a victim is admissible at a preliminary hearing "only if" one or
more enumerated offenses is charged.

1 Id. at pp. 7-8 (footnotes omitted) (citing Slade v. Caesar's Entm't Corp., 373 P.3d 74, 75 (Nev.
2 2016) (emphasizing that "[a] statute must be construed as to 'give meaning to all of [its] parts
3 and language, and this court will read each sentence, phrase, and word to render it meaningful
4 within the context of the purpose of the legislation'"); Law Offices of Barry Levinson, P.C. v.
5 Milko, 124 Nev. 355, 366 (2008) (declaring that "[o]ne tenet of statutory construction requires
6 statutes to be 'construed as a whole and not be read in a way that would render words or phrases
7 superfluous and make a provision nugatory.'"). The justice court also noted that the State's
8 interpretation of NRS 171.196 would essentially delete the word "only" out of the statute, in
9 contrast to the rule that it is improper to "cherry-pick" the language that should be deemed
10 operative in a Nevada statute." Id. at 8 fn. 7. It found that the State's interpretation of the statute
11 would create an additional hearsay exception for victim statements, while the actual language
12 of NRS 171.196(6) creates the *only* hearsay exception that applies to victim statements at
13 preliminary hearings. Id. (emphasis in original).

14 In addition to considering the plain language of the statute, the justice court also
15 addressed, at length, the legislative history of the statute and statements made during hearings
16 on Assembly Bill 193. Id. at 8-9. The court noted that the new statute did not take away or erode
17 trial rights, but only addressed evidence at a preliminary hearing. Id. The justice court concluded
18 that under NRS 171.196(6) statements allegedly made by Ellis to the SANE nurse and on the 911
19 call were inadmissible because they were hearsay and that without that evidence the State was
20 unable to satisfy even a "slight-or-marginal" evidence standard to obtain a bindover to District
21 Court. Id. at 10.

22 The State contests the justice court's conclusions concerning NRS 171.196(6) and argues
23 that the new statute is an expansion of existing well-settled hearsay exceptions. Opening Brief
24 at pg. 6. The State contends that the plain language of the statute provides for an expansion of
25 the admission of hearsay evidence. Opening Brief at pp. 6-7. The State fails, however, to address
26 the actual language of the statute, which clearly states that "Hearsay evidence consisting of a
27 statement made by the alleged victim of the offense is admissible at a preliminary examination
28 conducted pursuant to this section *only if* the defendant is charged with one ore more of the

1 [enumerated] offenses.” NRS 171.196(6) (emphasis added). Under the State’s analysis, the
2 statute would be expected to state something akin to “in addition to other rules allowing
3 admission of hearsay evidence, hearsay statements are also admissible at a preliminary hearing
4 if the statements are made by the alleged victim of the offense and the defendant is charged with
5 one or more of the [enumerated] offenses. . . “The statute, however, is not written in this manner.

6 “Statutory language must be given its plain meaning if it is clear and unambiguous.”
7 Grace v. District Court, 375 P.3d 1017, 1020 (Nev. 2016); Kingdomware Techs., Inc. v. United
8 States, 136 S.Ct. 1969, 1976 (2016). Here, the Legislature used the term “only if” and that term
9 is clear in its meaning that hearsay statements made by the alleged victim of the offense are
10 admissible at a preliminary hearing if they meets the requirements of the NRS 171.196(6). There
11 is no other plausible interpretation for the use of the term “only if” in this statute. Certainly the
12 State fails to cite any authority explaining why the term “only if” means that it is an expansion
13 of hearsay rules, rather than a restriction.

14 Even if there were some ambiguity in the statute, a point not conceded by Mr. Warren,
15 the State’s argument would still lack merit as the rule of lenity requires that the statute be
16 interpreted in favor of the defendant in a criminal case. State v. Lucero, 127 Nev. 92, 95, 249
17 P.3d 1226, 1227 (2011); Yates v. United States, 135 S.Ct. 1074, 1088 (2015); Bell v. United
18 States, 349 U.S. 81, 83 (1955).

19 The State contends that the Legislative History of the AB 193 (2015), supports its
20 expansive reading of the statute. Opening Brief at 6-7. The State cites to statements made by
21 prosecutors concerning the intent of the bill. The statements of the prosecutors presented to the
22 Legislature are not reflective of the intent of the legislature in enacting this statute. Of critical
23 importance is the fact that original bill, as presented by the prosecutors, would have allowed all
24 hearsay to be introduced at a preliminary hearing, but the legislature rejected this language and
25 thereby rejected the prosecutors’ position on this issue.

26 The justice court correctly applied the law. The State’s argument to the contrary lacks
27 merit and the justice court’s order should therefore be affirmed.

1 **The State Failed To Present Probable Cause To Support The Charges**

2 The State asserts that it presented evidence to support the charge of kidnapping and
3 sexual assault. Opening Brief at 7. The State's evidence, however, was woefully insufficient to
4 establish probable cause that Mr. Warren committed these offenses.

5 The State relies upon the "victims statements in the 9-1-1 call." Opening Brief at 8. The
6 Exhibit relied upon by the State belongs to another case and was not filed in the justice court in
7 this proceeding. No transcript of a 911 call was admitted in this case and the State fails to
8 provide this Court with the audio recording which was admitted, thereby precluding this Court
9 from meaningfully reviewing this matter.

10 In addition to the fact that this hearsay evidence was not admissible under NRS
11 171.196(6), the recording was garbled and difficult to understand. The alleged victim did not
12 identify herself during the call and no other efforts were made to authenticate the call. The call
13 was not made contemporaneously with the alleged offense. See Davis v. Washington, 547 U.S.
14 813, 827-28 (2006) (distinguishing a 911 call as non-testimonial when the declarant was
15 speaking about the events as they were happening in order to call for help, not recording a past
16 event).

17 The State also relies on statements allegedly made by Ellis to Demanelian and argues that
18 they are admissible as statements made for the purpose of medical diagnosis or treatment under
19 NRS 51.115. Opening Brief at pg. 7. This evidence was not properly admitted under NRS
20 171.196(6). Moreover, the State fails to address the Nevada Supreme Court's opinion in Medina
21 v. State, 122 Nev. 346, 143 P.3d 471 (2006). In that case, the Court held that a SANE nurse is
22 an operative of the police, who gathers evidence for the prosecution, and that her testimony
23 during trial violated the Confrontation Clause of the federal constitution. Id. at 354-55, 143 P.3d
24 476. The record here supports a finding that Demanelian was working hand in hand with law
25 enforcement officers and was focused on preparing evidence for use at trial. The statements do
26 not fall within the parameters of NRS 51.115. See Walker v. State, 113 Nev. 853, 871, 944 P.2d
27 762, 774 (1997).

1 **Conclusion**

2 The State's appeal must be dismissed as this Court lacks jurisdiction over this matter.
3 There is no right to appeal from the dismissal of charges following a preliminary hearing. The
4 State had the opportunity to seek redress by filing a Motion for Leave to File Information by
5 Affidavit, and it did so. There is no second mechanism for allowing the State yet another bite
6 at the apple. This appeal is moot and must therefore be dismissed. Finally, the justice court's
7 legal ruling was correct and there was no probable cause to support the charges.

8 DATED this 13th day of July, 2017.

9
10 
11 JONELL THOMAS
12 MELINDA E. SIMPKINS
13 DANIEL R. PAGE
14 Attorneys for Defendant

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that service of the above and foregoing was made pursuant to EDCR
17 7.26 on the attorney for the named parties by means of electronic mail to the email address
18 provided to the court's electronic filing system for this case. Proof of Service is the date
19 service is made by the court's electronic filing system by email to the parties and contains a
20 link to the file stamped document.

21 PARTY	EMAIL
22 STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE email:
	<u>Motions@clarkcountyda.com</u>

23
24 
25 Secretary for the Special Public Defender's Office
26
27
28

EXHIBIT A

argued the police had zero knowledge of crime, did investigation and his investigation was subsequent to the crime. Further, Ms. Simpkins argued it is not an affidavit but a declaration of arrest. Court FINDS detective cannot testify because whatever knowledge he has about it is all from hearsay information from the victim, hearsay from the DNA analysis, does not meet the requirement of NRS 173.035 and ORDERED, motion DENIED. CUSTODY

Parties Present

Return to Register of Actions

EXHIBIT B

1 CASE NO. C323820

2 DEPARTMENT NO. 1

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6 * * * * *

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 JOSEPH WARREN,)

11 Defendant.)

CASE NO. 17F04527X

12
13 REPORTER'S TRANSCRIPT

14 OF

15 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

16 BEFORE THE HONORABLE DEBORAH LIPPIS
17 JUSTICE OF THE PEACE

18 WEDNESDAY, MAY 24, 2017

19 7:45 A.M.

20 APPEARANCES:

21 For the State: JACOB VILLANI, ESQ.
22 Deputy District Attorney

23 For the Defendant: NADIA HOJJAT, ESQ.
24 Deputy Public Defender

25 Reported by: Shawna J. McIntosh, CCR No. 770

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 LAS VEGAS, NEVADA, MAY 24, 2017

2 * * * * *

3
4
5 THE COURT: Ms. Hojjat? We will trail for
6 her.

7 (Break in proceedings)

8 THE COURT: A re-call -- is Ms. Hojjat here?
9 Oh, there you are.

10 MS. HOJJAT: Hi, Your Honor.

11 THE COURT: A re-call for 17F04527X.

12 MS. HOJJAT: Thank you.

13 THE COURT: Joseph Warren, Junior.

14 MS. HOJJAT: Good morning, Your Honor.

15 MR. VILLANI: Good morning, Your Honor.
16 Jake Villani on behalf of the State.

17 MS. HOJJAT: Nadia Hojjat, No. 12401, on
18 behalf of Mr. Warren. This matter has been
19 negotiated. I apologize. I left the e-mail with the
20 negotiations on my desk, so I'm going to read it off
21 my phone.

22 THE COURT: Go ahead.

23 MS. HOJJAT: My apologies to the Court.

24 Today Mr. Warren will be
25 unconditionally waiving his preliminary hearing in

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(702) 671-3464

1 this case. This is going to be an unconditional
2 waiver. In district court -- it's going to be a
3 little bit of a convoluted negotiation. The following
4 will be occurring, all of which is conditional, so if
5 any judge in any case does not follow these
6 negotiations, Mr. Warren will be allowed to withdraw
7 his plea in all of the cases and proceed to trial.

8 THE COURT: But not coming back for a prelim.

9 MS. HOJJAT: But not come back for a prelim,
10 correct.

11 THE COURT: Go ahead.

12 MS. HOJJAT: After waiver of preliminary
13 hearing in this case, we will go up to district court
14 and ask that this case await a decision in
15 C-17-323426-1. Right now, that case is in front of
16 Judge Cadish on a motion to file affidavit -- or to
17 file information by affidavit. There is also an
18 appeal pending from the justice court, originating
19 from the same justice -- I'm sorry -- appeal pending
20 in the district court, originating from the same
21 justice court number. Based upon what Judge Cadish's
22 ruling is -- if Judge Cadish does not allow for an
23 information by affidavit to be filed, then that case
24 will be dismissed, and there will be -- the State will
25 not proceed on it. The State will not appeal

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1 Judge Cadish's ruling.

2 THE COURT: Is that a case different than
3 this one?

4 MR. VILLANI: Yes, Your Honor.

5 MS. HOJJAT: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. HOJJAT: That's a different case than
8 this one.

9 If that case -- if Judge Cadish allows
10 the information by affidavit to be filed in that case,
11 then the defendant will plead guilty in C-17-323426-1
12 to two counts of attempt sex assault. The parties
13 stipulate to two- to five-years in the Nevada
14 Department of Corrections on each count. The parties
15 stipulate that the two counts will run concurrent, and
16 will also run concurrent to all other cases and all
17 counts.

18 Additionally, the defendant will plead
19 guilty in C-17-322850-1 and C-16-2313900-1. The
20 parties stipulate to a 19- to 48-month sentence in
21 each case, to run concurrent to each other, and also
22 to run concurrent to all other cases and all other
23 counts.

24 And, for the record, each of those is
25 simply one count of open and gross lewdness that he

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1 will be pleading to.

2 In the event that the information by
3 affidavit is not filed and the State is not able to
4 proceed in that case, then the defendant will plead
5 guilty to attempt sexual assault in this case,
6 whatever the eventual district court number is, but
7 the justice court number is 17F045267X. The parties
8 stipulate to two- to five-years in the Nevada
9 Department of Corrections. The parties stipulate that
10 this case will run concurrent with all other cases and
11 all other counts.

12 So the anticipation of the
13 negotiations is that whatever happens, the defendant
14 will serve two- to five-years in the Nevada Department
15 of Corrections, aggregate total, between all cases and
16 all counts. And where he pleads, will depend on
17 Judge Cadish's ruling.

18 In addition to Judge Cadish's case, as
19 I mentioned, there is an appeal pending. I believe
20 that's in front of Judge Scotti right now --

21 Is that correct?

22 MR. VILLANI: Yes.

23 MS. HOJJAT: Judge Scotti's ruling will not
24 affect this. In the event that Judge Cadish and
25 Judge Scotti issue differing opinions, Judge Cadish's

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1 opinion will be the controlling opinion as to where
2 the defendant needs to plead. If she gives them leave
3 to file information by affidavit, he will plead in
4 that case. If she does not, then he will not be
5 pleading in that case.

6 THE COURT: If he pleads in that case, what
7 happens to this case?

8 MS. HOJJAT: If he pleads in that case, then
9 the counts in this case will simply move over to that
10 case, and he will be pleading to two counts in that
11 case.

12 THE COURT: Okay.

13 MS. HOJJAT: If that case is dismissed, then
14 he will be pleading to one count in that case. So,
15 basically, that negotiation will charge either one
16 count or two counts of attempt sex assault.

17 THE COURT: Correct statement?

18 MR. VILLANI: That's correct, Your Honor.
19 For this Court's purposes, he's unconditionally
20 waiving the preliminary hearing.

21 THE COURT: I've got that part already.

22 Is what she said accurate?

23 MR. VILLANI: Yes, what she said is accurate,
24 Your Honor.

25 THE COURT: Do you understand, Mr. Warren?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you accept this agreement?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: I'm going to send you to district
5 court where you may enter your plea as outlined by
6 your attorney and as agreed to by the State. And, as
7 your attorney indicated, if the negotiations break
8 down in any fashion because of certain district court
9 rulings, then you may go directly to trial.

10 What you cannot do is come back to
11 this court for a preliminary hearing.

12 Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Here's your date in
15 district court.

16 THE CLERK: May 26th, 10:00 a.m., lower
17 level, district court arraignment.

18 MS. HOJJAT: Thank you, Your Honor.

19 And, just for the record, the
20 District Attorney and I have spoken. I did inquire
21 whether he was aware of any other investigation in
22 which Mr. Warren was the target of the investigation
23 or was an active suspect, and I was told that he was
24 not. And that went into --

25 THE COURT: As of today.

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(702) 671-3464

1 MS. HOJJAT: As -- yes.

2 THE COURT: Because who knows what happens
3 tomorrow.

4 MR. VILLANI: Correct.

5 MS. HOJJAT: But, as of today, that was what
6 I was informed.

7 THE COURT: All right.

8 MS. HOJJAT: Thank you.

9 THE COURT: Our hearing for June 2nd is
10 vacated.

11 MS. HOJJAT: Thank you very much, Your Honor.

12 THE COURT: Thank you very much.

13 The prelim for 5/31 is also vacated.

14 MS. HOJJAT: Thank you very much, Your Honor.

15 (Proceedings concluded)

16 --o0o--

17

18 Attest: Full, true, and accurate transcript of
19 proceedings.

20

21 /s/ Shawna J. McIntosh

22 Shawna J. McIntosh, CCR No. 770

23

24

25

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

EXHIBIT C

CASE No. C-17-323820-1

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.

Metro Event Number: 1604142205

| | | | |
|-----------|-----------------|-----------------|---|
| Defendant | Warren, Joseph | DOB: 08/16/1982 | Lead Attorneys
Public Defender
Public Defender
702-455-4685(W) |
| Plaintiff | State of Nevada | | Steven B Wolfson
702-671-2700(W) |

| Charges: Warren, Joseph | Statute | Level | Date |
|---|------------|-------------------|------------|
| 1. ATTEMPT SEXUAL ASSAULT | 200.366.2b | Felony | 04/14/2016 |
| 2. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT | 200.400.4a | Felony | 04/14/2016 |
| 3. SEXUAL ASSAULT | 200.366.2b | Felony | 04/14/2016 |
| 4. COERCION SEXUALLY MOTIVATED | 207.190.2a | Felony | 04/14/2016 |
| 5. OPEN OR GROSS LEWDNESS | 201.210.1a | Gross Misdemeanor | 04/14/2016 |

| | |
|------------|---|
| | DISPOSITIONS |
| 06/13/2017 | (Judicial Officer: Johnson, Eric) |
| | 2. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT |
| | Amended Information Filed/Charges Not Addressed |
| | 3. SEXUAL ASSAULT |
| | Amended Information Filed/Charges Not Addressed |
| | 4. COERCION SEXUALLY MOTIVATED |
| | Amended Information Filed/Charges Not Addressed |
| | 5. OPEN OR GROSS LEWDNESS |
| | Amended Information Filed/Charges Not Addressed |
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REGISTER OF ACTIONS

CASE No. C-17-323820-1

State of Nevada vs Joseph Warren

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Case Type: **Felony/Gross Misdemeanor**
Date Filed: **05/24/2017**
Location: **Department 20**
Cross-Reference Case Number: **C323820**
Defendant's Scope ID #: **1239725**
ITAG Booking Number: **1700141000**
ITAG Case ID: **1864115**
Lower Court Case # Root: **17F04527**
Lower Court Case Number: **17F04527X**
Metro Event Number: **1604142205**

PARTY INFORMATION

Defendant Warren, Joseph

DOB: 08/16/1982

Lead Attorneys
Public Defender
Public Defender
702-455-4685(W)

Plaintiff State of Nevada

Steven B Wolfson
702-671-2700(W)

CHARGE INFORMATION

| Charges: Warren, Joseph | Statute | Level | Date |
|---|------------|-------------------|------------|
| 1. ATTEMPT SEXUAL ASSAULT | 200.366.2b | Felony | 04/14/2016 |
| 2. BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT | 200.400.4a | Felony | 04/14/2016 |
| 3. SEXUAL ASSAULT | 200.366.2b | Felony | 04/14/2016 |
| 4. COERCION SEXUALLY MOTIVATED | 207.190.2a | Felony | 04/14/2016 |
| 5. OPEN OR GROSS LEWDNESS | 201.210.1a | Gross Misdemeanor | 04/14/2016 |

EVENTS & ORDERS OF THE COURT

06/06/2017 Arraignment Continued (10:00 AM) (Judicial Officer Henry, Jennifer)
06/06/2017, 06/13/2017

Minutes

06/06/2017 10:00 AM

- Deputized Law Clerk, Gerard Gosioco, present on behalf of the State. Ms. Hojjat stated this case should have been referred to the Department. COURT ORDERED, matter CONTINUED. CUSTODY (COC) 6/13/17 8:30 AM ARRAIGNMENT CONTINUED (DEPT 20)

06/13/2017 8:30 AM

- Conference at the Bench. Guilty Plea Agreement and Amended Information FILED IN OPEN COURT. NEGOTIATIONS: Parties agree that this plea is conditional on all Courts following the negotiations. Both parties stipulate to Defendant serving a term of 2-5 years in prison to run concurrently with the sentence in C322850, C313900 and 17F08461X with credit for time served beginning March 7, 2017. Mr. Villani concurred. DEFENDANT WARREN WITHDREW NOT GUILTY PLEAS and PLED GUILTY to ATTEMPT SEXUAL ASSAULT (F). Court ACCEPTED plea; referred matter to the Division of Parole and Probation for a Pre-sentence Investigation Report and ORDERED, matter SET for sentencing. CUSTODY (COC) 9/12/17 8:30 AM

SENTENCING CLERK'S NOTE: Court requested a Pre-sentence Report be prepared for this case.

[Parties Present](#)

[Return to Register of Actions](#)

ORIGINAL

FILED IN OPEN COURT

STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 13 2017

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSEPH WARREN, JR.,
#1239725

Defendant.

CASE NO: C-17-323820-1

DEPT NO: XX

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **ATTEMPT SEXUAL ASSAULT (Category B Felony - NRS 200.364, 200.366, 193.330 - NOC 50119)** as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

Both parties stipulate to Defendant serving a ~~minimum~~ term of two (2) to five (5) years in the Nevada Department of Corrections, concurrently to sentencing in Case Nos. C322850, C313900 and 17F08461X with credit for time served beginning March 7, 2017.

I agree to the forfeiture of any and all electronic storage devices, computers, and/or related equipment and/or weapons or any interest in any electronic storage devices, computers and/or related equipment and/or weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

C-17-323820-1
GPA
Guilty Plea Agreement
4657488



W:\2017\2017F045127\17F04527-GPA-(WARREN_JOSEPH)-001.DOCX

1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation (P&P), fail to appear at any subsequent hearings in this case, or an independent
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
4 including reckless driving or DUI, but excluding minor traffic violations, the State will have
5 the unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, Life without
8 the possibility of parole, Life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 I understand that as a consequence of my plea of guilty the Court must sentence me to
16 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
17 two (2) years and a maximum term of not more than twenty (20) years. The minimum term
18 of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.
19 I understand that the law requires me to pay an Administrative Assessment Fee.

20 I understand that, if appropriate, I will be ordered to make restitution to the victim of
21 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
22 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
23 reimburse the State of Nevada for any expenses related to my extradition, if any.

24 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
25 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
26 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
27 and may receive a higher sentencing range.

28 //

1 I understand that pursuant to NRS 176.139 and my plea of guilty to a sexual offense for
2 which the suspension of sentence or the granting of probation is permitted, P&P shall arrange
3 for a psychosexual evaluation as part of the Division's Presentence Investigation (PSI) Report
4 to the court.

5 I understand that I am not eligible for probation pursuant to NRS 176A.110 unless the
6 psychosexual evaluation certifies that I do not represent a high risk to reoffend based upon a
7 currently accepted standard of assessment. I understand that, except as otherwise provided by
8 statute, the question of whether I receive probation is in the discretion of the sentencing judge.

9 I understand that, before I am eligible for parole a panel consisting of the Administrator
10 of the Mental Health and Developmental Services of the Department of Human Resources or
11 his designee; the Director of the Department of Corrections or his designee; and a psychologist
12 licensed to practice in this state or a psychiatrist licensed to practice medicine in this state
13 certifies that I was under observation while confined in an institution of the department of
14 corrections and that I do not represent a high risk to reoffend based upon a currently accepted
15 standard of assessment.

16 I understand that, pursuant to NRS 176.0931, the Court must include as part of my
17 sentence, in addition to any other penalties provided by law, a special sentence of lifetime
18 supervision commencing after any period of probation or any term of imprisonment and period
19 of release upon parole.

20 I understand that the Court will include as part of my sentence, in addition to any other
21 penalties provided by law, pursuant to NRS 179D.441 to 179D.550, inclusive, I must register
22 as a sex offender within forty-eight (48) hours of release from custody onto probation or parole.

23 I understand that I must submit to blood and/or saliva tests under the direction of P&P
24 to determine genetic markers and/or secretor status.

25 I understand that if more than one sentence of imprisonment is imposed and I am
26 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
27 the sentences served concurrently or consecutively.

28 //

1 I understand that information regarding charges not filed, dismissed charges, or charges
2 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

3 I have not been promised or guaranteed any particular sentence by anyone. I know that
4 my sentence is to be determined by the Court within the limits prescribed by statute.

5 I understand that if my attorney or the State of Nevada or both recommend any specific
6 punishment to the Court, the Court is not obligated to accept the recommendation.

7 I understand that if the State of Nevada has agreed to recommend or stipulate a
8 particular sentence or has agreed not to present argument regarding the sentence, or agreed not
9 to oppose a particular sentence, such agreement is contingent upon my appearance in court on
10 the initial sentencing date (and any subsequent dates if the sentencing is continued). I
11 understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal
12 offense prior to sentencing the State of Nevada would regain the full right to argue for any
13 lawful sentence.

14 I understand if the offense(s) to which I am pleading guilty to was committed while I
15 was incarcerated on another charge or while I was on probation or parole that I am not eligible
16 for credit for time served toward the instant offense(s).

17 I understand that if I am not a United States citizen, any criminal conviction will likely
18 result in serious negative immigration consequences including but not limited to:

- 19 1. The removal from the United States through deportation;
- 20 2. An inability to reenter the United States;
- 21 3. The inability to gain United States citizenship or legal residency;
- 22 4. An inability to renew and/or retain any legal residency status; and/or
- 23 5. An indeterminate term of confinement, with the United States Federal
24 Government based on my conviction and immigration status.

25 Regardless of what I have been told by any attorney, no one can promise me that this
26 conviction will not result in negative immigration consequences and/or impact my ability to
27 become a United States citizen and/or a legal resident.

28 //

1 I understand that P&P will prepare a report for the sentencing judge prior to sentencing.
2 This report will include matters relevant to the issue of sentencing, including my criminal
3 history. This report may contain hearsay information regarding my background and criminal
4 history. My attorney and I will each have the opportunity to comment on the information
5 contained in the report at the time of sentencing. Unless the District Attorney has specifically
6 agreed otherwise, then the District Attorney may also comment on this report.

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waiving and forever giving up the
9 following rights and privileges:

- 10 1. The constitutional privilege against self-incrimination, including the right
11 to refuse to testify at trial, in which event the prosecution would not be
12 allowed to comment to the jury about my refusal to testify.
- 13 2. The constitutional right to a speedy and public trial by an impartial jury,
14 free of excessive pretrial publicity prejudicial to the defense, at which
15 trial I would be entitled to the assistance of an attorney, either appointed
16 or retained. At trial the State would bear the burden of proving beyond
17 a reasonable doubt each element of the offense(s) charged.
- 18 3. The constitutional right to confront and cross-examine any witnesses who
19 would testify against me.
- 20 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 21 5. The constitutional right to testify in my own defense.
- 22 6. The right to appeal the conviction with the assistance of an attorney,
23 either appointed or retained, unless specifically reserved in writing and
24 agreed upon as provided in NRS 174.035(3). I understand this means I
25 am unconditionally waiving my right to a direct appeal of this conviction,
26 including any challenge based upon reasonable constitutional,
27 jurisdictional or other grounds that challenge the legality of the
28 proceedings as stated in NRS 177.015(4). However, I remain free to
challenge my conviction through other post-conviction remedies
including a habeas corpus petition pursuant to NRS Chapter 34.

24 VOLUNTARINESS OF PLEA

25 I have discussed the elements of all of the original charge(s) against me with my
26 attorney and I understand the nature of the charge(s) against me.

27 I understand that the State would have to prove each element of the charge(s) against
28 me at trial.

1 I have discussed with my attorney any possible defenses, defense strategies and
2 circumstances which might be in my favor.

3 All of the foregoing elements, consequences, rights, and waiver of rights have been
4 thoroughly explained to me by my attorney.

5 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
6 that a trial would be contrary to my best interest.

7 I am signing this agreement voluntarily, after consultation with my attorney, and I am
8 not acting under duress or coercion or by virtue of any promises of leniency, except for those
9 set forth in this agreement.

10 I am not now under the influence of any intoxicating liquor, a controlled substance or
11 other drug which would in any manner impair my ability to comprehend or understand this
12 agreement or the proceedings surrounding my entry of this plea.

13 My attorney has answered all my questions regarding this guilty plea agreement and its
14 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

15 DATED this 13th day of June, 2017.

16
17 Joseph Warren Jr.
18 JOSEPH WARREN, JR.
19 Defendant

20 AGREED TO BY:

21 Jacob Villani
22 JACOB VILLANI
23 Chief Deputy District Attorney
24 Nevada Bar #011732
25
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28

1 CERTIFICATE OF COUNSEL:

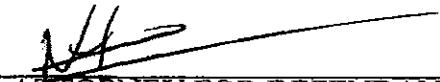
2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration
9 status and explained to Defendant that if Defendant is not a United States
10 citizen any criminal conviction will most likely result in serious negative
11 immigration consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status;
16 and/or
17 e. An indeterminate term of confinement, by with United States
18 Federal Government based on the conviction and immigration
19 status.

20 Moreover, I have explained that regardless of what Defendant may have
21 been told by any attorney, no one can promise Defendant that this
22 conviction will not result in negative immigration consequences and/or
23 impact Defendant's ability to become a United States citizen and/or legal
24 resident.

- 25 4. All pleas of guilty offered by the Defendant pursuant to this agreement
26 are consistent with the facts known to me and are made with my advice
27 to the Defendant.
28 5. To the best of my knowledge and belief, the Defendant:
a. Is competent and understands the charges and the consequences of
pleading guilty as provided in this agreement,
b. Executed this agreement and will enter all guilty pleas pursuant
hereto voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant
as certified in paragraphs 1 and 2 above.

Dated: This 13th day of June, 2017.


ATTORNEY FOR DEFENDANT

hjc/SVU

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACOB VILLANI
6 Chief Deputy District Attorney
7 Nevada Bar #011732
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-17-322850-1

11 -vs-

DEPT NO: X

12 JOSEPH WARREN, JR.,
13 #1239725
14 Defendant.

AMENDED
INFORMATION

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

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JOSEPH WARREN, JR., the Defendant above named, having committed the
20 crimes of ATTEMPT SEXUAL ASSAULT (Category B Felony - NRS 200.364, 200.366,
21 193.330 - NOC 50119) in the manner following:

22 That the said Defendant, on or about the 14th day of April, 2016, at and within the
23 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such
24 cases made and provided, and against the peace and dignity of the State of Nevada, did then
25 and there, willfully, unlawfully, and feloniously attempt to sexually assault and subject G.V.
26 to sexual penetration, to wit:

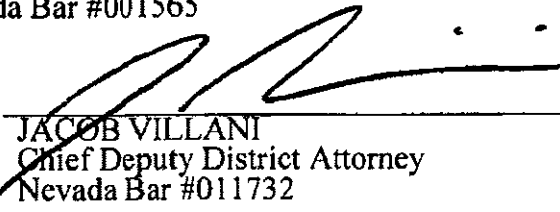
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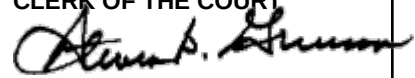
1 sexual intercourse, by Defendant attempting to insert his penis into the genital opening of the
2 said G.V., against the will of G.V., or under conditions in which Defendant knew, or should
3 have known, that G.V. was mentally or physically incapable of resisting or understanding the
4 nature of Defendant's conduct.

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

8 BY


9 JACOB VILLANI
10 Chief Deputy District Attorney
11 Nevada Bar #011732

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26 DA#17F04527X/hjc/SVU
27 LVMPD EV#1604142205;
28 160218000288
(TK01)



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732
GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #013469
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Petitioner,

-vs-

THE LAS VEGAS JUSTICE COURT
AND THE HONORABLE KAREN P.
BENNETT HARON, JUSTICE OF THE
PEACE

CASE NO: C-17-323608-A

DEPT NO: II

Respondent,

and

JOSEPH WARREN, JR.,
#1239725

Real Party in Interest.

STATE'S OPPOSITION TO RESPONDENT'S

MOTION TO DISMISS APPEAL

DATE OF HEARING: JULY 27, 2017
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney and GENEVIEVE CRAGGS, Deputy District Attorney, and hereby submits the attached Points and Authorities in support of its Opposition to Defendant's Motion to Dismiss Appeal.

1 **PROCEDURAL HISTORY**

2 On March 6, 2017, Respondent Joseph Warren (“Respondent”) was charged by way of
3 Criminal Complaint with First Degree Kidnapping (Category A Felony - NRS 200.310,
4 200.320), Sexual Assault (Category A Felony - NRS 200.364, 200.366), Battery with Intent
5 to Commit Sexual Assault (Category A Felony - 200.400.4), and two counts of Open or Gross
6 Lewdness (Gross Misdemeanor – NRS 201.210). Respondent pleaded not guilty to the
7 aforementioned charges on March 9, 2017.

8 On April 20, 2017, Respondent’s preliminary hearing was held. The justice court took
9 the matter under advisement and dismissed the case on May 4, 2017 via the written order
10 which is the subject of the State’s Appeal.

11 On May 10, 2017, the State filed a Motion for Leave to File Information by Affidavit
12 in District Court (Case C-17-323436-1).

13 Also on May 10, 2017, the State filed its Notice of Appeal.

14 On June 5, 2017, the District Court denied the State’s Motion for Leave to File
15 Information by Affidavit.

16 On June 15, 2017, this Court set a briefing schedule for the parties regarding the State’s
17 appeal.

18 On June 28, 2017, the State filed its Opening Brief in accordance with the briefing
19 schedule set by this Court.

20 Also on June 28, 2007, Respondent filed the instant Motion to Dismiss Appeal.

21 On July 12, 2017, Respondent filed a Notice of Hearing of Motion to Dismiss Appeal.

22 On July 13, 2017, Respondent filed their Answering Brief.

23 **ARGUMENT**

24 Respondent claims that “[t]here is no right to appeal from the dismissal of charges
25 following a preliminary hearing.” However, NRS 177.015 states, in relevant part:

26 The party aggrieved in a criminal action may appeal only as follows:

27 1. Whether that party is the State or the defendant:

28 //

1 (a) To the district court of the county from a final judgment of the justice
2 court.

3 In Sandstrom v. Second Judicial District Court, 121 Nev. 657, 119 P.3d 1250 (2005),
4 the Nevada Supreme Court ruled that NRS 177.015 vests jurisdiction in the District Court
5 from a dismissal by a justice court of a misdemeanor. The Court ruled that a dismissal by the
6 lower court is a final judgement and the plain language of the statute allowed for an appeal.

7 The plain language of NRS 177.015 provides the State the right to appeal from a final
8 judgment of the justice court. NRS 173.035(2) additionally provides the State with the remedy
9 of seeking leave to file an Information by Affidavit. In the instant case, the State chose to
10 pursue both options, each of which has very different consequences. This isn't a case of the
11 State getting "another bite at the apple," as each of the remedies pursued by the State have
12 different standards of review and requirements for filing.¹ If the State's motion seeking leave
13 to file an information by affidavit were granted, the case at issue would have been set for trial
14 in district court and the justice court's order would not have been addressed. If the instant
15 appeal is granted, the justice court's Order would be vacated and the case sent back to the
16 justice court for further proceedings. Assuming, *arguendo*, both the State's motion and appeal
17 were granted, the justice court would need to determine whether probable cause exists to bind
18 the case over to district court in light of this Appellate Court's findings. This is similar to when
19 the State has a case bound over to district court following a preliminary hearing, then presents
20 the same case to the grand jury. While a defendant cannot be convicted on both cases, there is
21 no procedural issue with the State having two cases pending against the same defendant for
22 the same underlying acts. Respondent's interpretation of the statute would leave no recourse
23 for the State to pursue and overturn erroneous justice court orders. While these orders are not
24 binding, they are certainly presented by the defense as persuasive authority to other justice
25 courts. This is problematic when, as here, the legal analysis underlying the order is lacking.

26 //

27 _____
28 ¹ It should be noted that District Court Department 6 did not reach the merits of the State's argument, instead deciding that
an affidavit from the lead detective was not sufficient under the statute because the detective's knowledge that a crime was
committed relied upon hearsay evidence.

1 The only difference between Sandstrom and the instant matter is the charges in the
2 instant case are felonies. The only argument made by Respondent in opposition to the plain
3 language of the statute is to point out that Sandstrom was a misdemeanor case. This argument
4 does not overcome the statutory language that the party aggrieved in a criminal action, whether
5 the State or the defendant, may appeal to the district court from a final judgment of the justice
6 court. Nothing in the statute makes a distinction between a misdemeanor and a felony, and
7 Sandstrom did not expressly exclude felony cases from its analysis. The State's notice of
8 appeal was filed within the statutory time period. Therefore, this Court has jurisdiction to hear
9 the State's appeal.

10 CONCLUSION

11 Based upon the foregoing analysis, the State respectfully requests that this Court deny
12 Respondent's Motion to Dismiss Appeal.

13 DATED this 24th day of July, 2017.

14 Respectfully submitted,

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

17
18 BY /s/ JACOB VILLANI
19 JACOB J. VILLANI
20 Chief Deputy District Attorney
Nevada Bar #11732
21 GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #0013469
22
23
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CERTIFICATE OF SERVICE

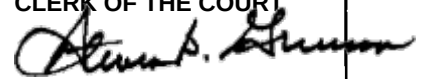
I hereby certify that service of the above and foregoing was made this 24th day of JULY 2017, to:

HONORABLE KAREN BENNET-HARON
DeLois.Williams@clarkcountynv.gov

MELINDA SIMPKINS, SPD
sscurry@ClarkCountyNV.gov

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU



1 **SUPP**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACOB J. VILLANI
6 Chief Deputy District Attorney
7 Nevada Bar #011732
8 GENEVIEVE CRAGGS
9 Deputy District Attorney
10 Nevada Bar #013469
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorney for Plaintiff

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 THE STATE OF NEVADA,

18 Petitioner,

19 -vs-

20 **THE LAS VEGAS JUSTICE COURT**
21 **AND THE HONORABLE KAREN P.**
22 **BENNETT HARON, JUSTICE OF THE**
23 **PEACE**

CASE NO: C-17-323608-A

DEPT NO: II

24 Respondent,

25 and

26 **JOSEPH WARREN, JR.,**
27 **#1239725**

28 Real Party in Interest.

29 **STATE'S SUPPLEMENT TO OPENING BRIEF IN SUPPORT OF AN APPEAL**
30 **FROM A JUSTICE COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW,**
31 **AND ORDER DISMISSING ALL CHARGES AGAINST RESPONDENT**

32 DATE OF HEARING: JULY 27, 2017
33 TIME OF HEARING: 9:00 AM

34 //

35 //

36 //

37 //

EXHIBIT "6"

1 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
2 District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney and
3 GENEVIEVE CRAGGS, Deputy District Attorney, and hereby submits the attached Exhibit
4 to replace Exhibit 6 in the State's Opening Brief. Exhibit 6 as it appears in the Opening Brief
5 is incorrect and was attached as the result of a clerical error.

6 DATED this 24th day of July, 2017.

7 Respectfully submitted,

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

10
11 BY /s/ JACOB J. VILLANI
12 JACOB J. VILLANI
13 Chief Deputy District Attorney
14 Nevada Bar #11732
15 GENEVIEVE CRAGGS
16 Deputy District Attorney
17 Nevada Bar #0013469

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that service of the above and foregoing was made this 24th day of JULY
20 2017, to:

21 HONORABLE KAREN BENNET-HARON
DeLois.Williams@clarkcountynv.gov

22 MELINDA SIMPKINS, SPD
23 sscurry@ClarkCountyNV.gov

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

28 hjc/SVU

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 1

EVENT No. 170301-0486

SPECIFIC CRIME: SEXUAL ASSAULT

The following is the transcription of a 9-1-1 recording:

Recording: Wednesday, March 1, 2017, 03:26:00 seconds.

Q: 911 Emergency, Leslie, 6165.

A: (Unintelligible)...

Q: Hello?

A: (Unintelligible).

Q: Hello?

A: Hello?

Q: Hi, what is the address?

A: I'm at Freedom Park, heading across the street to Rebel (unintelligible) and Washington and Pecos.

Q: Okay, what happened? Why are you crying?

A: I was walking down the street and the man asked for a cigarette and I gave him one, and when we were walking he pulled me across into Freedom Park and he raped me. I tried to go but he put his arm around me and I was screaming. There was a homeless person that was sleeping and he didn't even do anything about it.

Q: Okay, how long ago did this happen?

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- A: And he just walked away. He's in blue jeans and a blue - he's in blue jeans, a blue - and a blue plaid jacket.
- Q: Okay, so what - what did he do to you?
- A: At first I tried to go but then he grabbed me and he (unintelligible)...
- Q: Okay (unintelligible)...
- A: And he said he just wanted to nut off (unintelligible) that he wouldn't rape me (unintelligible)...
- Q: I'm having a hard time understanding you. What - what did he do to you?
- A: At first he grabbed me because I was screaming and he put his hand across my - he put his arm across my neck and then he said he just wanted to nut off and begged me to do it and he'd go, and then he put - he put it inside me and then he wiped me off with a wet rag when he was done. He wanted to go (unintelligible) to the apartments - I don't know what they're called.
- Q: Okay, so this happened, like, five minutes ago?
- A: Yes, ma'am.
- Q: And you don't know who he is?
- A: No.
- Q: What race was he?
- A: He's African American. He was wearing blue jeans and a plaid jacket that had a hoodie over it, and some (unintelligible).

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EVENT No. 170301-0486

Q: Which direction was he walking?

A: He was walking behind me and at first I didn't...

Q: Okay.

A: I didn't know where I was heading, it was late at night. I told him I was meeting my boyfriend at Rebel, and then he pulled me inside into the Freedom Park restroom.

Q: Okay, so he - he pulled you from the Rebel gas station?

A: No - no. I was walking up the street by Freedom Park and he pulled me into Freedom Park restroom.

Q: Okay, what side of the park was it - was it closer to the Rebel gas station?

A: Yes ma'am.

Q: Hold on one second. Do you know what color shirt he was wearing?

A: No, he had a plaid blue jacket on.

Q: A black jacket?

A: A plaid blue jacket.

Q: And what kind of pants?

A: Blue jeans.

Q: Blue jeans?

A: Yes ma'am.

Q: Okay, do you need medical? Are you bleeding or?

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9-1-1 RECORDINGS
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EVENT No. 170301-0486

A: No, I'm fine.

Q: Huh?

A: No.

Q: Okay. Can you tell me how old he looked or was he wearing a hat?

A: He was just wearing his hoodie.

Q: Huh?

A: He was just wearing his hoodie and he looked like he was in about his 30's or 40's.

Q: Okay, I can't understand you, I'm sorry.

A: He was just wearing his hoodie and he looked like he was in his 30's or 40's.

Q: In his 40's?

A: 30's or 40's, yes, ma'am.

Q: Okay, and you said the plaid jacket had a hood up hoodie on it?

A: Yes, ma'am.

Q: Okay, was he wearing a baseball cap or?

A: No.

Q: Did he have the hood on?

A: Yes.

Q: Okay, and how tall was he, do you know?

A: What?

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EVENT No. 170301-0486

- Q: How - I'm sorry, how tall was he?
- A: Um, probably about, like, 5'7" - I don't know.
- Q: I'm sorry?
- A: I don't know, probably about 5'7" (unintelligible).
- Q: Okay, and how - are you at the Rebel right now?
- A: Yes, ma'am.
- Q: Okay, what race are you?
- A: Huh?
- Q: Hello?
- A: Hello.
- Q: What race are you?
- A: I'm white.
- Q: And what color shirt are you wearing?
- A: I'm wearing a white Aeropostale shirt.
- Q: I'm sorry?
- A: A white Aeropostale shirt.
- Q: A white?
- A: Aeropostale jacket. I'm about to be heading to my boyfriend's house but I can stay on the phone with you until then.
- Q: Okay, can you wait, 'cause we should be there shortly?

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EVENT No. 170301-0486

A: I don't know where to get in contact with him - I don't know his number.

Q: Okay, what - what - I'm sorry, what kind o- what color's your jacket?

A: It's white.

Q: And what color pants are you wearing?

A: Um, camouflage pants.

Q: Is that camouflage green or brown?

A: Green.

?: (Unintelligible) ma'am, did you call?

Q: Is that the officer?

A: (Unintelligible).

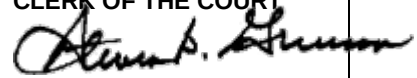
Q: Huh?

A: Yes. Yes, ma'am.

Q: Okay, go ahead and, uh, hang up and I'll get medical to you, okay?

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,) CASE #: C-17-323608-A
9)
10 Plaintiff,) DEPT. II
11)
12 vs.)
13 JOSEPH WARREN, JR.,)
14 Defendant.)

15 BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE
16 THURSDAY, JULY 27, 2017

17 **HEARING: APPEAL FROM LOWER COURT; DEFENDANT'S MOTION TO**
18 **DISMISS APPEAL**

19 APPEARANCES:

20 For the State:

JACOB VILLANI, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

22 JONELL THOMAS, ESQ.
23 MELINDA E. SIMPKINS, ESQ.
24 Deputy Special Public Defenders

25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 THURSDAY, JULY 27, 2017; 9:29 A.M.

2
3 THE COURT: State versus Joseph Warren, Junior, C323608-A. This is
4 two things: there's an appeal from lower court, and Defendant's Motion to
5 Dismiss the Appeal. Give me a moment to get my file. Why don't you guys
6 make your appearances?

7 MR. VILLANI: Good morning, Your Honor, Jake Villani on behalf of the
8 State.

9 MS. THOMAS: Good morning, Your Honor, JoNell Thomas and Melinda
10 Simpkins for Mr. Warren.

11 THE COURT: Alright, additional argument, please.

12 MR. VILLANI: And, Your Honor, I assume we're gonna address the
13 Motion to Dismiss Appeal first?

14 THE COURT: Yea, let's address the Motion to Dismiss the Appeal. So,
15 this is Defense's Motion to Dismiss the Appeal on the grounds that the Justice
16 of the Peace dismissed the complaint against the Defendant on the grounds that
17 there was not slight or marginal evidence presented at the preliminary hearing,
18 and the State appealed that determination to this Court. And Defense is now
19 contending that it's not an appealable determination because the dismissal does
20 not constitute a final judgment for two reasons, because the State still has two
21 remedies. Number one would be to go to the grand jury to get an indictment,
22 or number two to file the felony information, which would identify additional
23 facts to support binding the Defendant over; alright? So, let's hear your
24 argument.

25 MS. THOMAS: That's correct Your honor. You've said it all very well.

1 This is different than a misdemeanor appeal where there is no other remedy
2 remaining for the State.

3 THE COURT: Which was the Sanborn case.

4 MS. THOMAS: Exactly, the Sandstrom?

5 THE COURT: Yea.

6 MS. THOMAS: The fact that Nevada's been a state for a long time and
7 there's not a single published opinion suggesting that this remedy exists, I
8 think, is reflective of the fact that this is not a proceeding that's recognized
9 under our statutes or court rules. There is no grounds for an appeal here or no
10 rule and no jurisdiction, and the appeal should be dismissed on those basis.

11 THE COURT: Mr. Villani, why can't the State just go get an indictment?

12 MR. VILLANI: Well, Your Honor, we do have multiple remedies and those
13 remedies have different consequences and different standards that we have to
14 meet. We did try to seek an information by affidavit, that's one remedy.

15 THE COURT: And Judge Cadish denied that, I believe.

16 MR. VILLANI: She, yes, she refused to hear it based upon her finding of
17 the affidavit being insufficient.

18 THE COURT: That determination is challengeable by writ to the Supreme
19 Court.

20 MR. VILLANI: It is. What we're looking to do here, though, is we do
21 have a mechanism to challenge Justice Court orders, final Justice Court order.
22 There's no order more final than dismissal of all charges against the Defendant.
23 The reason, and something you can take into account, for the purpose we have
24 that is the fact that we're standing here before you. Misdemeanor appeals go
25 to Judge Bare. There is an entire procedure in place for this Court to hear

1 appeals. It was randomly assigned to this Court. That goes into the hopper,
2 it's randomly assigned. So the fact that we're here is one thing.

3 And the other fact is that the statute specifically states that either
4 side can appeal for a final judgment of Justice Court. Now, the statute doesn't
5 specify a misdemeanor case or a felony case, it says either side can appeal from
6 a final judgment. That's what we're doing here.

7 Now, the Sandstrom, I believe, case was a misdemeanor case that
8 it was addressing, but it didn't say in that case that you can't do this in a
9 felony case.

10 THE COURT: Well, I saw it but what that case did it's limited to a
11 misdemeanor by its expressed terms. I can see you could read some language
12 either you could extrapolate to maybe suggest that the appeal was proper, but
13 it's unclear. So, the ultimate question is, is the dismissal a final judgment? Can
14 it be a final judgment where double jeopardy doesn't attach because you have
15 all these other remedies to still pursue claims against or complaint against the
16 Defendant?

17 MR. VILLANI: Well, I mean, Your Honor, it's final in the sense that we
18 have no proceedings down in the Justice Court now. It's done. Without the
19 State going back and doing the equivalent, which is a refile of this case, so,
20 start from ground zero, go through the grand jury. We have three methods to
21 get up into District Court. We can either do grand juries, we can either do
22 preliminary hearing, or we can do an information by affidavit. Now, we've
23 sought two of those. The information by affidavit and the grand jury -- or, I'm
24 sorry, and the preliminary hearing.

25 The information by affidavit is a third way for us to get up into

1 District Court, it's not an appeal. The Justice Court's order would never have
2 been addressed. Had that been granted, we would have just proceeded to trial
3 in District Court based upon the affidavit's file.

4 So, what we're saying is, the Justice Court order basically divested
5 us of any ability to go forward with that case as filed in Justice Court. That's a
6 final order, and that's what we're appealing here before you today.

7 THE COURT: So I searched long and hard trying to find a case where the
8 Nevada Supreme Court approved of the District Court entertaining an appeal
9 from a dismissal of the complaint before the Justice Court.

10 MR. VILLANI: Right.

11 THE COURT: And I couldn't find anything except I did find one case,
12 which I just wanted to get your guy's take on it. Closest thing I could find.
13 Just give me a moment. Here it is, alright.

14 Well, tell me how this case would apply: State versus Sixth Judicial
15 District Court, its 114 Nevada 739. In this case there was a preliminary hearing
16 in Justice Court. The justice of the peace determined that there was
17 insufficient evidence, and dismissed. Then the State did the felony affidavit
18 and filed an information based upon the new facts in the affidavit; alright?
19 Then the defense sought to dismiss the information, the new information,
20 arguing that it was an improper use that felony information or felony affidavit
21 statute. The District Court held that that felony affidavit statute was intended
22 not to give the State a second bite at the apple to come up with new evidence
23 that it should have presented to the preliminary hearing, but to correct
24 egregious errors by the magistrate; alright?

25 And so, the District Court judge or, I'm sorry, the magistrate then

1 dismissed the felony -- the new information. So now, the new information was
2 dismissed. So what happened there is then the State appealed that to the
3 District Court. It was actually an appeal of the dismissal. So, that's kind of the
4 same procedural context we have here, an appeal of the dismissal of the
5 information there. And the District Court then looked at the appeal, entertained
6 the appeal but then denied the appeal on the grounds that it agreed with the
7 magistrate that this was an improper use of the felony affidavit statute.

8 So then what happened is, the State appealed that to the Supreme
9 Court. Supreme Court said an appeal is not proper, so then the State did a
10 writ, a petition for habeas corpus. The Supreme Court did consider it. The
11 Supreme Court ultimately held that there was no error by the District Court. No
12 error by the District Court in considering the appeal and then dismissing the
13 appeal based upon its interpretation of the felony affidavit statute.

14 So, I know it's not exactly on all fours but that case suggests to me
15 at least that the Supreme Court thinks that the District Court can entertain an
16 appeal from a dismissal by the lower court of a complaint.

17 So, that's my analysis of that case. Are you guys familiar with this
18 case, and what are your thoughts on that?

19 MS. THOMAS: I am, Your Honor, and I believe we cited to it in the
20 Motion to Dismiss Appeal. At page 743 of that opinion what the court says is
21 that there are two remedies to the State available when a Justice Court finds a
22 lack of probable cause. And that is to file a motion for leave to file an
23 information by affidavit, or to take the case to the grand jury. That was the
24 opportunity for the court to say -- or you could also file an appeal, there in fact
25 three remedies. But that's not what the court said.

1 The court said you have two available remedies. You can seek an
2 information by affidavit, you can go to the grand jury. That set out the
3 limitations of the State's remedies. There is no rule, there is no statute, there is
4 nothing in the history of this state saying that an appeal is a third alternative.
5 And again, that's at 114 Nevada, page 743.

6 THE COURT: Well, you know I'm familiar with that. They were
7 discussing the remedies available under 178.562 (2) which apply if the
8 defendant's not bound over, so, yea.

9 MS. THOMAS: Exactly.

10 THE COURT: So the fact that they didn't discuss the appeal suggests to
11 you that appeal is not a valid remedy. And that would suggest to you that the
12 reason behind that is because the dismissal is not a final judgment.

13 MS. THOMAS: Exactly. There remain alternatives.

14 THE COURT: Well, Mr. Villani, what's your take on that?

15 MR. VILLANI: Well, here's the thing. We're getting into all this case law
16 that doesn't mention anything about the issue that we're here on when we're
17 overlooking the plain reading of the statute which reads, and I'll quote it, the
18 party aggrieved in a criminal action may appeal only as follows, Subsection 1
19 says whether the party is the State or the Defendant, Subsection A says to the
20 District Court of the County from a final judgment of the Justice Court. That's
21 the plain language of the statute. We don't need to look beyond that to case
22 law.

23 And I know we, both sides, and Your Honor has been reaching to
24 see well, has the Supreme Court ever actually addressed the felony --

25 THE COURT: Yea, how could this issue have never been squarely

1 addressed?

2 MR. VILLANI: I have no idea, but the plain reading of the statute doesn't
3 say anything about except in felony cases or only in misdemeanor cases. It's
4 not in any section to suggest such. So, our position is that, yes, we have a
5 right to appeal and we're exercising that right in front of Your Honor.

6 THE COURT: So, does the dismissal by Judge -- who is the justice
7 below?

8 MR. VILLANI: Bennett-Haron, Your Honor.

9 THE COURT: Alright, Bennett-Haron, does that dismissal, was it with or
10 without prejudice; first of all?

11 MR. VILLANI: It was -- just the title says it all, Your Honor. The title of
12 her --

13 THE COURT: Well, regardless, does that dismissal end all further
14 proceedings at that point in time before the Justice Court?

15 MR. VILLANI: Right, it ends all further proceedings. We've had the
16 option to again exercise our third option to get up to District Court, which is the
17 information by affidavit, but that is not an appeal. That is we attach an
18 affidavit to a motion and the District Court judge then makes the determination
19 as to whether or not there's probable cause to proceed.

20 THE COURT: See, I tend to think that an order of the court that resolves
21 all remaining issues that are before it is a final judgment. Why would that be
22 wrong?

23 MS. THOMAS: The key to a final judgment is that it leaves nothing for
24 further consideration. There is further consideration --

25 THE COURT: Only if the State takes more action though, right?

1 MS. THOMAS: Exactly. But the State has its remedies. It has two
2 available options. One of those is the information by affidavit. And where the
3 State lost, the State could have appealed that decision to the Nevada Supreme
4 Court. That would have been a final ruling because there was nothing left. But
5 the fact --

6 THE COURT: How is that different from, say, in the civil context where
7 you have a judgment that is subject to review or attack later at the District
8 Court level by a motion for reconsideration, or some collateral attack upon the
9 judgment based on fraud or mistake or some kind of error; Rule 59, Rule 60?
10 There are other remedies but it's still a final judgment.

11 MS. THOMAS: And there's specific rules and statutes in or at 4B I
12 believe addresses that; what's a tolling motion, what I believe it's the
13 Honeycutt procedure. It's been a long time since I've done civil law.

14 THE COURT: Of course. No, you got it.

15 MS. THOMAS: But there are mechanisms for dealing with the dual
16 jurisdiction issue. The fact that we're here in the year 2017 after a hundred
17 and fifty years of statehood, and surely the State has lost other cases before
18 the Justice Court, this is not the first one, and there is no discussion of this as
19 a valid remedy. I would expect a good dozen, two dozen opinions talking about
20 these types of orders if this were truly an appealable order.

21 I discussed this with defense attorneys; ever see this before? No
22 one has ever seen this before. This is because a State v District Court says
23 there are two remedies; grand jury, information by affidavit. There's no
24 discussion of a third alternative. There's no example of this third alternative. It
25 doesn't exist. There is no jurisdiction.

1 MR. VILLANI: And, Your Honor?

2 THE COURT: So, yea?

3 MR. VILLANI: I'm sorry. If we're gonna be arguing that it's law because
4 it's never been addressed, we have done this before. This isn't the first time
5 the State's filed an appeal out of the Justice Court. It recently happened out of
6 Judge Tobiasson within the past year. And so, it's just that nobody's bothered
7 to then take that order up to the Supreme Court is why we don't have it under
8 case law, but this isn't the first time our office is ever doing this.

9 THE COURT: So, I have to reconcile NRS 177.015 which vests
10 jurisdiction in the District Court to consider appeals from a final judgment of the
11 Justice Court with NRS 178.562 which provides for two additional remedies to
12 the State in the event that there's a finding of insufficient evidence at the
13 preliminary hearing. I don't think that the remedies set forth in 178.562 (2) are
14 intended to eclipse or erode or otherwise impair the State's rights that would
15 otherwise exist under 177.015; after I've thought about all this.

16 So, I'm going to deny the motion to dismiss. I'm finding that, for
17 the record in case you want to take this up to the Supreme Court on a writ or
18 appeal, whatever is appropriate, to get some finality or some clarity in the law
19 here I'm making a finding that the Justice of the Peace's dismissal was a final
20 judgment, for purposes of NRS 177.015. And it's proper for the State to
21 appeal that dismissal to this Court, and this Court does have jurisdiction to then
22 consider that appeal.

23 MS. THOMAS: Respectfully, Your Honor, I would like to take that up on
24 a writ of prohibition. And I guess it's the Court's preferences to whether we go
25 ahead and entertain the other issues today or whether we come back.

1 THE COURT: I don't want to consider the appeal, the underlying appeal,
2 today. Can we put that off and how quickly -- are you asking for a stay? And
3 if so then apply the factors and allow Mr. Villani to argue whether the factors
4 warrant a stay in this case.

5 MS. THOMAS: Your Honor, the reason is, in the light most favorable to
6 the State, there's a very valid question as to whether this is an appealable
7 order. Everyone's agreed there's nothing directly on point. I think it's a
8 question that should be answered by the Nevada Supreme Court to make clarity
9 not just for this case but for all cases. I could have a writ filed by tomorrow.
10 It's a simple, easy, well, as soon as we get this transcript, I would say two
11 days after the transcript in this matter is prepared I could have the writ
12 prepared.

13 I think it's a straight forward issue that should be addressed. I can
14 go ahead and answer the merits of the answer in brief, I'm prepared for that.
15 But Mr. Warren has already entered, as we set out in the plea, a plea in another
16 case that I also think is dispositive of the appeal today. So it's not -- I don't
17 think there's any harm to the State in doing the bifurcated procedure.

18 THE COURT: So you're asking for what? What are you asking for?

19 MS. THOMAS: Sixty days.

20 THE COURT: Mr. Villani, what do you think we should do here, sir?

21 MR. VILLANI: Your Honor, I think a stay is unnecessary here because if
22 this Court does grant the appeal, that is still an appealable order that they can
23 take up to the Supreme Court. I think the Supreme Court's likely to kick this
24 back on that basis that the Court's decision to hear this appeal is not dispositive
25 in its entirety. Turning the argument that was just used against me back

1 around, that's not a final order. That's not a final order because they can
2 appeal the appeal itself. And then in that appeal they can then argue that well,
3 the Court shouldn't have heard the appeal anyway, and if they're looking for a
4 decision in that respect, fine. But there's no damage done to the Defendant by
5 the Court hearing the appeal today.

6 THE COURT: I don't see any irreparable harm in the event I don't grant a
7 stay. So let's do this. I'm gonna deny your request for a stay but set this
8 down for oral argument on the appeal in front of me in two weeks; alright?

9 MR. VILLANI: That's fine Your Honor, thank you.

10 THE COURT: So, we'll be back here then and then if I grant the appeal
11 you can appeal from two things.

12 MR. VILLANI: Your Honor, could I get three weeks? I'm going to be out
13 of town the week of -- in two weeks.

14 THE COURT: Sure, three weeks is fine.

15 THE COURT CLERK: August 17th at 9 A.M.

16 MR. VILLANI: Thank you, Your Honor.

17 THE COURT: So, thanks for you guys educating me on a new issue.

18 MS. THOMAS: Thank you.

19 MR. VILLANI: Thank you, Your Honor.

20 MS. SIMPKINS: Thank you, Your Honor.

21 [Proceedings concluded, 9:48 A.M.]

22 * * * * *

23 ATTEST: I do hereby certify that I have truly and correctly transcribed the
24 audio/video proceedings in the above-entitled case to the best of my ability.

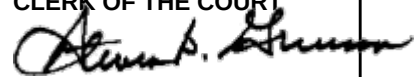
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DALYNE EASLEY

Court Recorder

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Steven D. Grierson
CLERK OF THE COURT



ORDR

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Petitioner,

-vs-

THE LAS VEGAS JUSTICE COURT AND
THE HONORABLE KAREN P. BENNETT
HARON, JUSTICE OF THE PEACE

CASE NO: C-17-323608-A

DEPT NO: II

Respondent,

and

JOSEPH WARREN, JR.,
#1239725

Real Party in Interest.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
(Reversing and Remanding)**

DATE OF HEARING: August 17, 2017
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable Richard Scotti, District Judge, on the 17th day of August, 2017, the Petitioner being present, represented by STEVEN B. WOLFSON, Clark County District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney, the Respondent being represented by JONELL THOMAS and MELINDA SIMPKINS, Special Public Defenders, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein,

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FILES\CONTENT.OUTLOOK\L88NJQNX\JOSEPH WARREN ORDR REVERSING AND REMANDING.DOCX

1 now therefore, the Court reverses and remands the decision of the justice court, making the
2 following findings of fact and conclusions of law:

3 FINDINGS OF FACT

- 4 1. On March 6, 2017, the State of Nevada ("State") charged Respondent Joseph Warren
5 ("Respondent") by way of Criminal Complaint with First Degree Kidnapping
6 (Category A Felony - NRS 200.310, 200.320), Sexual Assault (Category A Felony -
7 NRS 200.364, 200.366), Battery with Intent to Commit Sexual Assault (Category A
8 Felony - 200.400.4), and two counts of Open or Gross Lewdness (Gross Misdemeanor
9 – NRS 201.210).
- 10 2. On March 9, 2017, Respondent pleaded not guilty to the aforementioned charges.
- 11 3. On April 20, 2017, a preliminary hearing was held in justice court in front of the
12 Honorable Justice of the Peace Karen Bennett Heron.
- 13 4. At the preliminary hearing, the State presented testimony from Sexual Assault Nurse
14 Examiner ("SANE") Jeri Dermanelian, a 9-1-1 call, and DNA reports indicating that
15 DNA consistent with Respondent's DNA was found in the vagina of the alleged
16 victim (the DNA reports were admitted by stipulation of the parties).
- 17 5. The justice court took the matter under advisement and dismissed the case on May 4,
18 2017 via written order.
- 19 6. In her written order, Justice of the Peace Bennett-Haron provided the
20 following analysis:

21 The State's entire case rests upon the admissibility of hearsay
22 statements from the victim. The traditional requirements relating
23 to hearsay statements would be satisfied by the statements at
24 issue here. For example, K.E.'s statements to Dermanelian
25 constitute 'statements for purposes of medical diagnosis or
26 treatment' under NRS 51.115. Moreover, K.E.'s statements
during her 9-1-1 call constitute 'present sense impressions' and
also 'excited utterances.' However, the Court must also consider
how a recent legislative change has altered the traditional hearsay
requirements at preliminary hearings.

- 27 7. The justice court's order ultimately held that, because of the 2015 amendments to
28 NRS 171.196, victim hearsay of any kind is no longer admissible – even if it qualifies

1 under a recognized hearsay exception provided in Chapter 51 of the Nevada Revised
2 Statutes – unless a defendant is charged with one of the enumerated felonies under
3 NRS 171.196(6)(a)-(c).

- 4 8. The justice court reasoned that because NRS 171.196(6) now reads: “Hearsay
5 evidence consisting of a statement made by the alleged victim of the offense is
6 admissible at a preliminary examination conducted pursuant to this section **only if** the
7 defendant is charged with one or more of the following offenses: ...,” the statement
8 “only if” excludes all previous statutory hearsay exceptions from consideration when
9 offered as to the victim of an offense, unless the defendant is charged with one of the
10 three enumerated felonies under NRS 171.196(6)(a)-(c).
- 11 9. Based on the above analysis, the justice court ruled that the hearsay testimony
12 presented at the preliminary hearing would not be considered, and dismissed all
13 charges against Defendant Joseph Warren, Jr.
- 14 10. The justice court’s order was a final judgement of the justice court which left the State
15 with no alternative remedy with regard to the justice court case.
- 16 11. The justice court abused its discretion by interpreting NRS 171.196(6) to exclude
17 any victim hearsay whatsoever from the probable cause determination unless a
18 defendant is charged with one of the enumerated offenses under NRS 171.196(6)(a)-
19 (c).
- 20 12. The justice court misapplied NRS 171.196(6) and this resulted in otherwise
21 admissible
22 evidence not being considered by the Justice of the Peace. The written order of the
23 justice court was arbitrary, capricious, and an abuse of discretion.

24 CONCLUSIONS OF LAW

- 25 1. NRS 177.015 provides, in pertinent part:

26 The party aggrieved in a criminal action may appeal only as
27 follows:

- 28 1. Whether that party is the State or the defendant:

1 (a) To the district court of the county from a final judgment
2 of
3 the justice court.
4 ...

- 5 2. In Sandstrom v. Second Judicial District Court, 121 Nev. 657, 659-660 (2005), the
6 Nevada Supreme Court stated:

7 The plain language of NRS 177.015(1)(a) clearly vests the district court with
8 final appellate jurisdiction over a final judgment of the justice court, regardless
9 of whether the party appealing is the State or the defendant. The only
10 remaining question is whether the justice court order granting Sandstrom's
11 motion to dismiss the complaint constituted a final judgment. We conclude that
12 it did.

13 We have defined a final order as one that disposes of all issues and leaves
14 nothing for future consideration. Here, the order of the justice court finally
15 resolved the criminal prosecution by dismissing the complaint and left nothing
16 for future consideration. Accordingly, we conclude that the order granting
17 Sandstrom's motion to dismiss constituted a final, appealable judgment
18 pursuant to NRS 177.015(1)(a).

- 19 3. In Sheriff v. Kinsey, 87 Nev. 361, 363, 487 P.2d 340 (1971), the Nevada Supreme
20 Court stated:

21 To commit an accused for trial, the State is not required to negate all inferences
22 which might explain his conduct, but only to present enough evidence to
23 support a reasonable inference that the accused committed the offense.

- 24 4. Similarly, in Schuster v. Eighth Judicial Dist. Court ex rel. County of Clark, 160 P.3d
25 873, 876-877 (2007), the Nevada Supreme Court explained:

26 The finding of probable cause "does not involve a determination of the
27 guilt or innocence of an accused," and this court has consistently held
28 that to secure an indictment, the State is not required to negate all
 inferences which might explain away an accused's conduct.

(footnotes omitted).

5. NRS 171.196(6) provides:

6. Hearsay evidence consisting of a statement made by the
alleged victim of the offense is admissible at a preliminary
examination conducted pursuant to this section only if the
defendant is charged with one or more of the following offenses:

(a) A sexual offense committed against a child who is under
the age of 16 years if the offense is punishable as a felony. As
used in this paragraph, "sexual offense" has the meaning ascribed
to it in NRS 179D.097.

1 (b) Abuse of a child pursuant to NRS 200.508 if the offense
2 is committed against a child who is under the age of 16 years and
3 the offense is punishable as a felony.

4 (c) An act which constitutes domestic violence pursuant to
5 NRS 33.018, which is punishable as a felony and which resulted
6 in substantial bodily harm to the alleged victim.

- 7 6. When interpreting a statute, this Court must give its terms their plain meaning,
8 considering its provisions as a whole so as to read them in a way that would not
9 render words or phrases superfluous or make a provision nugatory.
10 S. Nev. Homebuilders Ass'n v. Clark Cty., 121 Nev. 446, 449, 117 P.3d 171, 173
11 (2005).
- 12 7. Statutory language should not be read to produce absurd or unreasonable results.
13 Anthony Lee R. v. State, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997) (citing Alsenz v.
14 Clark Cty. School Dist., 109 Nev. 1062, 1065, 864 P.2d 285, 286 (1993)).
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DATED this 31st day of August, 2017.



BY

JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #11732

Criminal Appeal

COURT MINUTES

June 15, 2017

C-17-323608-A Nevada State Of, Appellant(s)
vs
Joseph Warren Jr, Respondent(s)

June 15, 2017 09:00 AM Appeal From Lower Court

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Landwehr, Shelly

RECORDER: Easley, Dalyne

REPORTER:

PARTIES PRESENT:

Melinda E. Simpkins Attorney for Respondent

Jonell Thomas Attorney for Respondent

Jacob J. Villani Attorney for Appellant

JOURNAL ENTRIES

Parties stipulated to waive defendant's presence, this date. At the request of the parties, COURT ORDERED, briefing schedule SET as follows:

Brief due: 6/29/17

Reply due: 7/13/17

HEARING: 7/27/17 9:00 AM

COC

CLERK'S NOTE: Return date given in open court, changed to 7/27/17. Interested parties notified via e-mail./6/15/17/stl

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Criminal Appeal

COURT MINUTES

July 27, 2017

C-17-323608-A Nevada State Of, Appellant(s)
vs
Joseph Warren Jr, Respondent(s)

July 27, 2017 9:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Elizabeth Vargas

RECORDER: Dalyne Easley

| | | |
|-----------------|----------------------|------------------------|
| PARTIES | Nevada State Of | Appellant |
| PRESENT: | Simpkins, Melinda E. | Attorney for Defendant |
| | Thomas, Jonell | Attorney for Defendant |
| | Villani, Jacob J. | Attorney for State |
| | Warren Jr, Joseph | Respondent |

JOURNAL ENTRIES

- Arguments by counsel regarding Defendant's Motion to Dismiss Appeal. Court reviewed applicable case law. COURT ORDERED, Motion to Dismiss DENIED. Ms. Thomas stated they could have a writ filed by the following day, and requested a continuance. COURT FURTHER ORDERED, oral request for stay DENIED and matter SET for appeal hearing.

8/17/17 9:00 AM APPEAL FROM LOWER COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Criminal Appeal

COURT MINUTES

August 17, 2017

C-17-323608-A Nevada State Of, Appellant(s)
vs
Joseph Warren Jr, Respondent(s)

August 17, 2017 9:00 AM Appeal From Lower Court

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Louisa Garcia

RECORDER: Dalayne Easley

PARTIES

PRESENT: Simpkins, Melinda E. Attorney
 Thomas, Jonell Attorney
 Villani, Jacob J. Attorney
 Warren Jr, Joseph Respondent

JOURNAL ENTRIES

- Court noted this was an appeal from Justice Court asserting there was insufficient evidence to bind over Defendant at preliminary hearing, on the theory that the hearsay evidence was inadmissible. Court summarized case history and indicated it does not believe the issue was resolved; therefore, that proceeding was not binding on the Court. Discussion regarding stipulation of the parties. Mr. Villani stated he has always retained the right to appeal this decision. The case was not included in the Plea Agreement as being dismissed. However, if the Court does not rule in his favor he has agreed not to proceed any further. Upon Court's inquiry, Mr. Villani stated the case was still active and Defendant has not been sentenced on anything; he may try and withdraw his plea. Arguments by counsel regarding whether or not Judge Bennett-Heron's Order was appropriate or an abuse of discretion. COURT FINDS there is a live case or controversy that is pending. COURT FINDS under 171.196(6) that provision does not bar the introduction of hearsay in this case and is admissible at Preliminary Hearing. Based thereon, COURT FINDS there was probable cause to bind over Defendant and ORDERED, Decision REVERSED and matter REMANDED back to Justice Court. COURT FURTHER ORDERED, oral request for stay pending sentencing. State to prepare Order.

PRINT DATE: 08/21/2017

Page 1 of 1

Minutes Date: August 17, 2017

Randall H. Pike
Asst. Special Public Defender
State Bar No. 1940
JoNell Thomas
Chief Deputy Special Public Defender
State Bar No. 4771
Melinda E. Simpkins
Chief Deputy Special Public Defender
State Bar No. 7911
330 South 3rd Street, Suite 800
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Petitioner Joseph Warren Jr.

Electronically Filed
Sep 13 2017 10:49 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH WARREN, JR.,

Petitioner,

vs.

**EIGHTH JUDICIAL DISTRICT
COURT JUDGE, THE
HONORABLE RICHARD SCOTTI,**

Respondents,

and

THE STATE OF NEVADA,

Real Parties in Interest.

Supreme Court No. _____

District Court No. C-17-323608-A

Dept. No. 2

**APPENDIX IN SUPPORT OF
PETITION FOR WRIT OF
CERTIORARI OR, IN THE
ALTERNATIVE, WRIT OF
PROHIBITION, OR IN THE
ALTERNATIVE WRIT OF
MANDAMUS,**

INDEX TO APPENDIX

| VOLUME | PLEADING | PAGE NUMBER |
|--------|--|-------------|
| 1 | ANSWERING BRIEF (7/13/17) | 173-212 |
| 1 | APPEAL FROM LAS VEGAS JUSTICE
COURT 17F03940X (5/16/17) | 1-101 |
| 1 | CRIMINAL COURT MINUTES-UNFILED | 246-48 |
| 1 | FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER (REVERSING AND
REMANDING) (9/8/17) | 240-45 |
| 1 | MOTION TO DISMISS APPEAL (6/28/17) | 104-08 |
| 1 | NOTICE OF HEARING OF MOTION TO
DISMISS APPEAL (7/12/17) | 166-72 |
| 1 | RECEIPT FOR DOCUMENTS AND NOTICE
OF HEARING (5/16/17) | 102-03 |
| 1 | STATE’S OPENING BRIEF IN SUPPORT OF AN
APPEAL FROM A JUSTICE COURT’S FINDING
OF FACT, CONCLUSION OF LAW, AND ORDER
DISMISSING ALL CHARGES AGAINST
RESPONDENT (6/28/17) | 109-65 |
| 1 | STATE’S OPPOSITION TO RESPONDENT’S
MOTION TO DISMISS APPEAL (7/24/17) | 213-17 |
| 1 | STATE’S SUPPLEMENT TO OPENING BRIEF IN
SUPPORT OF AN APPEAL FROM A JUSTICE
COURT’S FINDINGS OF FACT, CONCLUSION
OF LAW, AND ORDER DISMISSING ALL
CHARGES AGAINST RESPONDENT (7/24/17) | 218-26 |
| 1 | TRANSCRIPT OF HEARING 7/27/17 (8/9/17) | 227-39 |

CERTIFICATE OF SERVICE

I hereby certify that on SEPTEMBER 13, 2017 a true and accurate copy of this
APPENDIX OF RECORD was served on the following,

BY ELECTRONIC FILING TO

Jacob Villani, Chief Deputy District Attorney
Genevieve Craggs
District Attorney's Office
200 Lewis Ave 3rd Floor
Las Vegas, NV 89101

BY HAND DELIVERY TO

The Honorable Richard Scotti
200 Lewis Ave., 11th Floor, Dept. 2
Las Vegas NV 89101

Dated: 9/13/17

/s/ JONELL THOMAS

JONELL THOMAS
Chief Deputy Special Public Defender

Heather S. Gustin
CLERK OF THE COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

C-17-323608-A

Dept. II

June 15, 2017 @ 9 AM

STATE OF NEVADA

Appellant,

-vs-

JOSEPH WARREN

Respondent.

District Court Case No.:

Justice Court Case No.: 17F03940X

**APPEAL FROM
LAS VEGAS JUSTICE COURT**

APPEARANCES

FOR APPELLANT:

STEVE WOLFSON
DISTRICT ATTORNEY
CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA

FOR RESPONDENT:

JOSEPH WARREN JR
2028 CARVER AVE
NORTH LAS VEGAS NV 89031

CERTIFICATION

I hereby certify the following to be the original proceedings of the above case.
WITNESS my hand this date: May 15, 2017

William J. Hansen
FOR KAREN P. BENNETT-HARON
Justice of the Peace, Las Vegas Township

17F03940X
APA
Appeal from LVJC - Appearances
7995949



ORIGINAL

dis

FILED

MAY 10 3 23 PM '17

JUSTICE COURT
LAS VEGAS NEVADA

AMDEPUB

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #13469
200 Lewis Avenue
Las Vegas, NV 89101
(702) 671-2500
Attorney for Plaintiff

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSEPH WARREN JR. #1239725

Defendant.

CASE NO. 17F03940X

DEPT NO. 7

NOTICE OF APPEAL

TO: JOSEPH WARREN, Defendant, and

TO: MELINDA SIMPKINS, ESQ., Deputy Public Defender, Attorney for
Defendant; and

TO: KAREN BENNETT-HARON, Justice of the Peace, Las Vegas Township,
County of Clark, State of Nevada, Dept. 7.

NOTICE IS HEREBY GIVEN that THE STATE OF NEVADA, Plaintiff in the above
entitled matter, appeals to the Eighth Judicial District Court of the State of Nevada, in and for
the County of Clark, from the decision of the Honorable KAREN BENNETT-HARON,
Justice of the Peace, rendered on May 4, 2017, The Findings of Fact and Conclusions of Law
dismissing the instant case. The State files this notice pursuant to NRS 177.015 and Sandstrom

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17F03940X
APF
Notice of Appeal
7983166

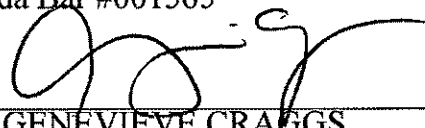


1 v. Second Judicial District Court, 121 Nev. 657, 119 P.3d 1250 (2005) as that is the remedy
2 which the Justice Court determined was the only avenue to attack her ruling.

3 DATED this 10 day of May, 2017.

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

7 BY


8 GENEVIEVE CRAGGS
9 Deputy District Attorney
10 Nevada Bar #13469
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1 STEVEN B. WOLFSON
Clark County District Attorney
2 Nevada Bar #001565
GENEVIEVE CRAGGS
3 Deputy District Attorney
Nevada Bar #13469
4 200 Lewis Avenue
Las Vegas, NV 89101
5 (702) 671-2500
Attorney for Plaintiff

7 JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JOSEPH WARREN JR. #1239725
12 Defendant.

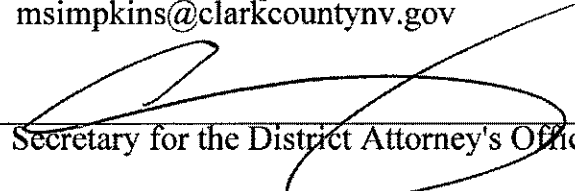
CASE NO. 17F03940X

DEPT NO. 7

13
14 CERTIFICATE OF SERVICE

15 I hereby certify that service of the above and foregoing, was made this 10th day of
16 May, 2017, by e-mail to:

17
18 MELINDA SIMPKINS, Special Public Defender.
E-mail: msimpkins@clarkcountynv.gov

19
20 
Secretary for the District Attorney's Office

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

2017 MAR -6 P 2:37

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSEPH WARREN, JR. #1239725,

Defendant.

CASE NO: 17F03940X

DEPT NO: 7

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of FIRST DEGREE KIDNAPPING (Category A Felony - NRS 200.310, 200.320 - NOC 50051); SEXUAL ASSAULT (Category A Felony - NRS 200.364, 200.366 - NOC 50095); BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT (Category A Felony - NRS 200.400.4 - NOC 50157); and OPEN OR GROSS LEWDNESS (Gross Misdemeanor - NRS 201.210 - NOC 50971), in the manner following, to-wit: That the said Defendant, on or about the 1st day of March, 2017, at and within the County of Clark, State of Nevada,

COUNT 1 - FIRST DEGREE KIDNAPPING

did willfully, unlawfully, and feloniously, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away K.E., a human being, with the intent to hold or detain K.E. against her will, and without her consent, for the purpose of committing sexual assault.

COUNT 2 - SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously sexually assault and subject K.E., a female person, to sexual penetration, to wit: sexual intercourse: by placing his penis into the genital opening of the said K.E., against her will, or under conditions in which Defendant knew, or should have known, that K.E. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 3 - BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT

did then and there willfully, unlawfully, and feloniously use force or violence upon the person of another, to wit: K.E., with intent to commit sexual assault by dragging the said K.E.

17F03940X
CRM
Criminal Complaint
7711762



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005

1 by the hood of her sweatshirt and choking her.

2 COUNT 4 - OPEN OR GROSS LEWDNESS

3 did willfully and unlawfully commit an act of open or gross lewdness, by masturbating
4 his penis.

5 COUNT 5 - OPEN OR GROSS LEWDNESS

6 did willfully and unlawfully commit an act of open or gross lewdness, by rubbing his
7 penis against K.E.'s buttocks.

8 All of which is contrary to the form, force and effect of Statutes in such cases made and
9 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
10 this declaration subject to the penalty of perjury.

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27 17F03940X/cg
28 LVMPD EV# 1703010486
(TK7)

WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS
*** DO NOT MANUALLY ENTER INTO NCJIS ***

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

| | | |
|---------------------|---|----------------------------|
| THE STATE OF NEVADA |) | CASE NO: 17F03940X |
| |) | |
| PLAINTIFF |) | DEPT. NO: 7 |
| VS. |) | |
| |) | AGENCY: METRO-YOUTH/FAMILY |
| WARREN, JOSEPH JR |) | |
| ID# 01239725 |) | |
| |) | |
| DEFENDANT |) | ARREST WARRANT |
| |) | ----- |

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER
IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID
BEFORE ME ACCUSING WARREN, JOSEPH JR, OF THE CRIME(S):

| COUNTS | CHARGE | BAIL: CASH | SURETY | PROPERTY |
|--------|------------------------|------------|--------|----------|
| 1 | KIDNAPPING, 1ST DEGREE | NO BAIL | | |
| 1 | SEX ASSLT | NO BAIL | | |
| 1 | BATTERY TO COMMIT SEX | NO BAIL | | |
| 2 | OPEN/GROSS LEWDNESS, (| NO BAIL | | |

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 6TH DAY OF MARCH, 2017.



JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
DEBORAH LIPPIS

17F03940X
AWF
Arrest Warrant -- Face Sheet
7711963



007

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

| | | |
|---------------------|---|----------------------------|
| THE STATE OF NEVADA |) | CASE NO: 17F03940X |
| |) | |
| PLAINTIFF |) | DEPT. NO: 7 |
| VS. |) | |
| |) | AGENCY: METRO-YOUTH/FAMILY |
| WARREN, JOSEPH JR |) | |
| ID# 01239725 |) | |
| |) | |
| |) | ARREST WARRANT |
| DEFENDANT |) | ----- |
| _____ |) | |

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE _____ DAY OF _____, _____, AND SERVED THE SAME BY
ARRESTING AND BRINGING DEFENDANT, _____, INTO COU
COURT THIS _____ DAY OF _____.

JOSEPH LOMBARDO, SHERIFF, CLARK COUNTY, NEVADA

BY: _____, DEPUTY

DEFENDANT WARREN, JOSEPH JR

DEFENDANT ID# 01239725

CASE NO: 17F03940X

DEPARTMENT JCRT7

JUDGE DEBORAH LIPPIS

AGENCY: METRO-YOUTH/FAMILY

ORI [REDACTED] VRI [REDACTED] NAME WARREN, JOSEPH JR
DOB [REDACTED] SOC [REDACTED] SID
RAC B SEX M HGT 509 WGT 145 HAI BLK EYE BRO

-----WARRANT-----

HOI COI WNM WARREN, JOSEPH JR
NOC 50051 AOC OFC F FTF TRF JUV DSO DOW 03062017
OCA 1703010486 CCN 17F03940X BAIL NO BAIL
TRA MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#:MP7570 NAME: LAFRENIERE, JASON W

| COUNTS | CHARGE |
|--------|---|
| 1 | KIDNAPPING, 1ST DEGREE |
| 1 | SEX ASSLT |
| 1 | BATTERY TO COMMIT SEX ASSLT, VICTIM 16+ |
| 2 | OPEN/GROSS LEWDNESS, (1ST) |

***** C O N F I D E N T I A L *****

17F03940X
AWA
Arrest Warrant Confidential
7711964



**Justice Court, Las Vegas Township
Clark County, Nevada**

Custody Status Slip



L007728475

Housed At: ST-4P-63-L

Clerk: meccc

Date: 3/9/2017: Initial Appearance

Department: 07

Judge: Bennett-Haron, Karen P.

Name: Warren, Joseph, Jr.

Case: 17F03940X

Defendant ID: 1239725

001: Kidnapping, 1st degree [50051] (F) (0030133304-002)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

002: Sex asslt [50095] (F) (0030133304-001)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

003: Battery to commit sex asslt, victim 16+ [50157] (F) (0030133304-003)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

004: Open/gross lewdness, (1st) [50971] (G) (0030133304-004)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

005: Open/gross lewdness, (1st) [50971] (G) (0030133304-005)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

Future Justice Court Hearings

4/6/2017 9:00:00 AM: Preliminary Hearing (JC Department 07)

Added

**Justice Court, Las Vegas Township
Clark County, Nevada**

Custody Status Slip



L007763796

Housed At: ST-4P-46-S

Clerk: meccc

Date: 3/20/2017: Motion

Department: 07

Judge: Bennett-Haron, Karen P.

Name: Warren, Joseph

Case: 17F03940X

Defendant ID: 1239725

001: Kidnapping, 1st degree [50051] (F) (0030133304-002)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

002: Sex asslt [50095] (F) (0030133304-001)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

003: Battery to commit sex asslt, victim 16+ [50157] (F) (0030133304-003)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

004: Open/gross lewdness, (1st) [50971] (G) (0030133304-004)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

005: Open/gross lewdness, (1st) [50971] (G) (0030133304-005)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

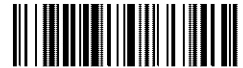
Other Case Conditions

Future Court Date Stands

4/6/17 9:00 AM

**Justice Court, Las Vegas Township
Clark County, Nevada**

Custody Status Slip



L007837670

Housed At: NV-1F-31-L

Clerk: meccc

Date: 4/6/2017: Preliminary Hearing

Department: 07

Judge: Bennett-Haron, Karen P.

Name: Warren, Joseph

Case: 17F03940X

Defendant ID: 1239725

001: Kidnapping, 1st degree [50051] (F) (0030133304-002)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

002: Sex asslt [50095] (F) (0030133304-001)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

003: Battery to commit sex asslt, victim 16+ [50157] (F) (0030133304-003)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

004: Open/gross lewdness, (1st) [50971] (G) (0030133304-004)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

005: Open/gross lewdness, (1st) [50971] (G) (0030133304-005)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

Future Justice Court Hearings

4/20/2017 9:00:00 AM: Preliminary Hearing (JC Department 07)

Added

**Justice Court, Las Vegas Township
Clark County, Nevada**

Custody Status Slip



L007895550

Housed At: NV-1F-31-L

Clerk: meccc

Date: 4/20/2017: Preliminary Hearing

Department: 07

Judge: Bennett-Haron, Karen P.

Name: Warren, Joseph

Case: 17F03940X

Defendant ID: 1239725

001: Kidnapping, 1st degree [50051] (F) (0030133304-002)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

002: Sex asslt [50095] (F) (0030133304-001)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

003: Battery to commit sex asslt, victim 16+ [50157] (F) (0030133304-003)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

004: Open/gross lewdness, (1st) [50971] (G) (0030133304-004)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

005: Open/gross lewdness, (1st) [50971] (G) (0030133304-005)

Bail Stands - Cash or Surety: Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

Future Justice Court Hearings

5/4/2017 9:00:00 AM: Decision (JC Department 07)

Added

**Justice Court, Las Vegas Township
Clark County, Nevada**

Custody Status Slip



L007956269

Housed At: LVMPD-NV-1F-31-L

Clerk: meccc

Date: 5/4/2017: Decision

Department: 07

Judge: Bennett-Haron, Karen P.

Name: Warren, Joseph

Case: 17F03940X

Defendant ID: 1239725

001: Kidnapping, 1st degree [50051] (F) (0030133304-002)

Disposition: Dismissed

Release Order - Court Ordered due to dismissal: Counts: 001; 002; 003; 004; 005

002: Sex asslt [50095] (F) (0030133304-001)

Disposition: Dismissed

Release Order - Court Ordered due to dismissal: Counts: 001; 002; 003; 004; 005

003: Battery to commit sex asslt, victim 16+ [50157] (F) (0030133304-003)

Disposition: Dismissed

Release Order - Court Ordered due to dismissal: Counts: 001; 002; 003; 004; 005

004: Open/gross lewdness, (1st) [50971] (G) (0030133304-004)

Disposition: Dismissed

Release Order - Court Ordered due to dismissal: Counts: 001; 002; 003; 004; 005

005: Open/gross lewdness, (1st) [50971] (G) (0030133304-005)

Disposition: Dismissed

Release Order - Court Ordered due to dismissal: Counts: 001; 002; 003; 004; 005

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106) **FILED**
(N.R.S. 53 amended 7/13/1993)

2017 MAR -6 P 2:37

Event Number: 170301-0486

STATE OF NEVADA) Joseph Warren Jr

) ss: ID#: 1239725

COUNTY OF CLARK) DOB: [REDACTED] SS#: [REDACTED]

NEVADA
LG

DEPUTY

J. Lafreniere, being first duly sworn, deposes and says:

That he is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 15 years, assigned to investigate the crime(s) of Sexual Assault, Kidnapping 1st Degree, Battery w/Intent to Commit Sexual Assault, Open and Gross Lewdness (2 counts) committed on or about 03/01/17, which investigation has developed Joseph Warren Jr as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

On 3/1/17, I Detective J. Lafreniere P# 7570, with the Sexual Assault Unit of the Las Vegas Metropolitan Police Department (LVMPD) was advised of a possible sexual assault, which occurred earlier that morning at Freedom Park; 850 N. Mojave Road Las Vegas, NV 89101.

Initial Report

I was informed of the following details:

The victim was identified as Kearstin Ellis DOB [REDACTED] and the suspect is unknown.

On 3/1/17, at approximately 0328 hours, Kearstin contacted LVMPD to report that she was sexually assaulted at Freedom Park; located at 850 N. Mojave LV, NV 89101. Kearstin reported that she was pulled to a bathroom area inside the park, where she was sexually assaulted by an unknown black male. After the assault, the subject fled and Kearstin called 911.

Kearstin was transported to UMC Hospital by Patrol Officers N. Harding P# 14807 and Hinckley P# 14891.

A possible scene was located and LVMPD Officers secured the scene.

I was advised that patrol officers made contact with two homeless people in the area, who said they heard the victim screaming.

Interview with Kearstin Ellis

17F03940X
DWS
Declaration of Warrant Summons (Affidavit)
7711766



CONTINUATION

Event #: 170301-0486

LVMPD Sergeant Roberson P# 6028 and I responded to UMC Hospital where we met with and interviewed Kearstin Ellis DOB [REDACTED]. The interview was recorded and will be transcribed for full, specific content. The following is a summary of my recorded interview with Kearstin, and not verbatim:

During the early morning hours of 03/01/17, she was walking on the sidewalk, near Freedom Park. She was coming from her friend Manny Garcia's house, which she said was in the area of 28th Street and Constantine. Prior to leaving Manny's house, Kearstin sent her boyfriend, Taylor Washington, a message on Facebook Messenger, asking him to meet her at the Rebel Station, located at Pecos and Washington. Taylor agreed and Kearstin set out on foot to meet him. Kearstin was wearing a white hooded sweatshirt, camouflage jeans, and sandals.

Kearstin was carrying a plastic grocery bag containing a box of Carne Asada Fries and she was smoking a cigarette. As she was walking, Kearstin pulled her phone out of her sweatshirt pocket and she dropped \$20 on the ground. When she stopped to pick up her money, the suspect (further described as a Black male adult, 30's-40's, approximately 5'7"-5'8", skinny build, short hair, hazel or "greenish brown" eyes, with a deep voice, wearing a blue plaid jacket, over a black hooded sweatshirt, blue jeans, possibly black boots, and "you could tell he was on drugs") was walking behind her and asked her for a cigarette. Kearstin provided him with a cigarette and she continued walking. The subject continued to walk behind her and asked what she was doing out so late. Kearstin told him that she was going to her boyfriend's, and the subject continued to walk next to her. When they approached the restrooms, near the gates to the park and inside of the park, the subject told her to "hold on", that he wanted to hangout, and that he first needed to use the restroom. Kearstin told him she was walking to meet her boyfriend at the Rebel Station (Pecos and Washington) and she was going to keep walking. The subject then grabbed Kearstin by the hood of her sweatshirt and he pulled her through the gates, to the bathroom building (**1 count Kidnapping/first degree**). Kearstin said she screamed for him to stop and for help, and she tried to pull away from the subject but he was too strong for her. The subject wrapped his arm around her neck, from behind, and he choked her as he pulled her toward the restroom (**1 count Battery with Intent to Commit Sexual Assault**).

Kearstin said dropped to the ground and curled up, and the subject pulled her up by her arm and the sleeve of her sweatshirt. Kearstin told the subject to stop and she told him that she was pregnant and that she would "comply". The subject then pushed her up against a wall to the exterior of the restrooms (they never entered the bathroom building) and he pulled out a pipe with "crystal" methamphetamine and forced Kearstin to smoke it.

After Kearstin smoked the meth (she said she took one "hit") the subject pulled down her pants and underwear, to her knees. Kearstin told him no but said there was nothing she could do. The subject told Kearstin that he was not going to hurt her, that he was only going to "jack off", and he instructed her to turn around. Kearstin turned toward the wall (facing away from the suspect) and the subject asked Kearstin if she had another bag with her. He then looked inside of the grocery bag she had been carrying and did not find another bag. He then retrieved a "grocery" style bag from a trash can and he exposed his penis and he began masturbating inside of the bag (**1 count Open and Gross Lewdness**). The subject then began rubbing his penis on her butt with the bag over his penis and then without the bag on his penis (**2nd count Open and Gross Lewdness**). The subject then inserted his penis into Kearstin's vagina (**1 count Sexual Assault**). Kearstin kept asking the subject to "please stop" and he told her to "arch" her back and he began getting angry at her for not arching her back. Kearstin recalled the

CONTINUATIONEvent #: 170301-0486

subject telling her that she was making it worse than it needed to be. Kearstin said she kept trying to stand up but the subject "bent" her back over. Kearstin recalled while this was occurring, the subject bent her over, and her cigarettes and a nail polish fell out of her sweatshirt pocket and the nail polish shattered on the ground under her.

The subject continued to put his penis inside of her vagina until he ejaculated inside of her. After he ejaculated, the subject retrieved an unknown item (possible a rag or a napkin and Kearstin does not know where he retrieved it from) and he used a water fountain to wet the item. He then used the item to wipe Kearstin's vaginal area and she does not know what he did with the item.

The subject then told Kearstin to walk with him and they walked toward the exit/entrance of the park. As they walked, the suspect told Kearstin that he was going to smoke the rest of the "crystal" with his "hommie" at their apartment. He told Kearstin that he lived in an apartment behind the Rainbow Market. The subject then crossed the street alone and he walked toward an apartment complex. As soon as he was out of sight, Kearstin immediately called 911 from her cell phone. Kearstin said her phone does not have service to make regular phone calls but she is able to make emergency calls.

Kearstin denied that any of the sexual acts with the subject were consensual.

Kearstin said she was not sure what the suspect did with the "grocery" bag he used to masturbate into, or with the "rag" he used to wipe her after he ejaculated. Kearstin said the subject did pick up her cigarette box and put it back in her pocket after they fell out of her pocket.

Kearstin agreed to allow detectives to look at the call log on her cell phone and to look at her messages on her "Messenger App", to help get a more specific time frame.

Kearstin agreed to later go with detectives to Freedom Park and show exact locations and directions of where the incident occurred, where she saw the suspect, and where they traveled.

Kearstin consented to have a sexual assault examination.

Kearstin denied any drug or alcohol usage, other than the "crystal" she was forced to smoke.

Kearstin said she would be able to identify the subject if she saw him again but she did not think she would be able to describe him to a sketch artist.

This concludes the interview with Kearstin.

LVMPD Crime Scene Analyst (CSA) S. Lynch P# 13206 responded to UMC Hospital and she collected the bag Kearstin was carrying (same bag the suspect looked through). She also fingerprinted the Cigarette box which fell from Kearstin's sweatshirt pocket and that the suspect picked up.

Possible Witnesses

I was advised that when patrol officers arrived on scene, they made contact with two homeless subjects, who identified themselves as Amber McQueen and Troy De La Cruz, just west of the scene. Amber said she heard the victim screaming that morning.

CONTINUATIONEvent #: 170301-0486

I then contacted LVMPD Patrol Officer Kennoy P# 14825 (officer securing the possible scene). Officer Kennoy informed me that Amber was no longer located at the scene and it was not known where she went. Officer Kennoy did not know if Amber completed a written statement and he advised me that he Officer Celaya was the person who spoke with Amber.

I then made contact with LVMPD Patrol Officer Celaya P# 13524. Officer Celaya said he spoke with a homeless individual who identified herself as Amber McQueen; DOB [REDACTED] SSN [REDACTED] Phone number 702-[REDACTED]. Officer Celaya said Amber was reluctant to provide information and to speak with officers. Amber asked him if she had to provide her real name. Amber told Officer Celaya that she and her boyfriend were asleep in the park and they heard screaming for approximately 20 minutes. After the screaming stopped, she saw a figure run past her. Amber provided no other information.

I asked Officer Celaya to complete an Officer's Report detailing his interaction with Amber and Troy. Officer Celaya provided me with the following report:

Under event number 170301-0486 Kearstin Ellis reported she was sexually assaulted at Freedom Park. While looking for a crime scene I, Officer K. Celaya contacted Amber McQueen. Amber stated she was sleeping in the park with her boyfriend Troy De-La Cruz. I asked Amber if she had heard any screaming earlier in the day and she stated she heard a female screaming for about 20 minutes. Amber believed the screams were coming from the apartment complex across the street. After the screams stopped she saw a shadow running west through the park. Amber asked if she had to give her real name because she was scared. Troy stated he didn't hear or see anything. Troy and Amber appeared to be transients. Amber is a black female adult, with black hair. Troy is a Hispanic adult approximately 5'5 130 pounds with brown hair.

Sexual Assault Examination

Kearsten's Sexual Assault Examination was administered by SANE Nurse Jeri Dermanelion. Per Nurse Dermanelion there were no obvious signs of visible trauma noted to Kearsten's genital area. There was notable bruising to Kearsten's upper arm.

Kearsten did test positive for amphetamines.

Please refer to the Sexual Assault report for further details.

The clothing Kearstin during the sexual assault was collected by Nurse Dermanelion. The clothing was given to Sergeant Roberson, by Nurse Dermanelion, and Sergeant Roberson placed the clothing into locked temporary evidence lockers at LVMPD Headquarters.

Scene; Freedom Park, 850 North Mojave Road, Las Vegas, NV 89101; Big League Dreams Park, 3151 E. Washington, Las Vegas, NV 89101

After the Sexual Assault Examination, Sergeant Roberson and LVMPD Investigative Specialist N. Zucker P# 5048 transported Kearstin to the scene of the incident. Kearstin directed detectives through the route traveled by her and the suspect prior to the incident, showed us exactly where the incident occurred, and showed us the direction traveled by her and the suspect after the incident occurred.

The following is a summary of the identified locations and route traveled:

Kearstin was first approached by the suspect while she was walking east bound on Washington, toward Pecos, from Mojave, on the south side of the street.

CONTINUATIONEvent #: 170301-0486

Kearstin and the suspect continued walking east and when they approached an iron pedestrian and vehicle gate to the entrance to Big League Dreams Park (3151 E Washington, Las Vegas, NV 89101). This is where the suspect said he had to use the restroom.

The suspect then pulled her to the restroom building located inside of the park, just west of the identified entrance.

Kearstin identified a broken bottle of nail polish located on the ground to the north of the building, against the north wall, as the bottle which fell from her pocket during the incident.

Kearstin pointed out a sink located right next to the incident location, where she said the suspect wet the rag he used to clean her off after the incident.

Kearstin said she saw the homeless person to the west of the restroom building, prior to the incident.

Kearstin showed detectives that she and the suspect then walked east, back out the same pedestrian gate they entered, and back onto east bound Washington. The suspect then crossed Washington, northwest bound, and disappeared into the apartment complex (Park Vista Apartments; 1001 N. Pecos Las Vegas, NV 89101).

Kearstin identified a "Bike Lane" sign on Washington as the sign she was near when she called 911.

CSA Lynch responded and photographed the scene and route identified by Kearstin.

Possible DNA evidence was located at the scene. We located five, apparently used, white paper towels on the ground, around the identified scene. It is unknown if any of the towels located was the towel used by the suspect to wipe Kearstin, after the sexual assault. All the recovered towels were collected by CSA Lynch as potential evidence.

I drove around the areas identified by Kearstin to try and locate possible video surveillance. I did not notice any obvious video cameras on any residences or on the apartment complex.

Kearstin's Phone

Kearstin consented to allow detectives to look at and photograph her call log and messages to/from Taylor. Sergeant Roberson photographed these and sent them to me via email. Kearstin claimed that the time stamp on her phone was inaccurate and her call log showed that she made a 911 call on "Today" at "6:26 AM". The call log showed that the call lasted "6 min 48 sec". LVMPD Call records show that Kearstin made a call to 911 at 0326 hours, on 3/1/17 (a three hour difference between her phone's timestamp and the actual call time).

Kearstin's Messenger Records show that her boyfriend (screen name "Lud Snook") sent her a message at "6:08 AM" (actual time 3:08 AM) asking her "wya" (stands for "where you at?"). Prior to that message, Kearstin and her boyfriend discussed meeting at the Rebel Station and her being at Freedom Park (these messages do not show a time stamp).

Kearstin identified the Rebel Station they planned on meeting at as being located on Washington and Pecos (actual address is 890 N. Pecos Las Vegas, NV 89101).

CONTINUATIONEvent #: 170301-0486**Interview/Elimination DNA from Taylor Washington**

During her interview, Kearstin said she did have consensual sexual intercourse with her boyfriend, the evening prior to the sexual assault.

On 03/03/17, I contacted Kearstin's boyfriend, Taylor Washington [REDACTED]. Taylor was at his place of work and agreed to meet with me and provide a DNA sample via buccal swab, for elimination purposes. I then responded to Taylor's location and Taylor signed a consent form, indicating the same. I collected a sample of his DNA via epithelial cells and buccal swab kit.

The sample was sealed and I delivered the sample to the LVMPD Forensic Lab where I impounded the DNA sample.

Due to him being at work, I briefly spoke with Taylor regarding the incident, and the conversation was not recorded.

Taylor said he and Kearstin have been in a dating relationship since 2014.

Taylor was aware of the allegations but did not know details. He wanted me to know that he was not the person texting Kearstin during the early morning hours of March 1st. Taylor said he went to sleep between midnight and 2 am. His cousin, Steven Bell, was pretending to be Taylor and was using Taylor's phone to message Kearstin. At one point Taylor woke up and told Steven to quit texting his girlfriend. Taylor said he would have never allowed Kearstin to walk home alone.

Taylor said he did recall that Steven woke him between 2-3 am and told him that he was going to meet Kearstin at the Rebel Station. Because he was sleeping, Taylor shrugged it off and went back to sleep. When he woke later that morning Taylor asked Steven if he went to meet Kearstin and Steven said Kearstin was not at the Rebel when he showed up.

Taylor then read his messages and learned about the allegations and that Kearstin went to the hospital.

Interview with Manuel Garcia (Manny)

Kearstin identified Manny's residence as being located at 2804 Willoughby, Las Vegas, NV 89101. I then responded to the residence and made contact with Manuel Garcia (Manny) DOB [REDACTED]. I identified myself and explained why I was there and Manny agreed to speak with me. My interview with Manny was recorded and will be transcribed for full, specific content. The following is a summary of my interview with Manny, and not verbatim:

On 03/01/17, at approximately 0130 hours, Manny returned home from Circus Circus with his brother, to find Kearstin at his house. Manny did not know Kearstin was coming over and they do not regularly associate with each other, but he did not mind her being there.

Kearstin was not acting unusual and he thought she just needed a place to sleep for the night. Manny was fine with this and they watched a movie together. After the movie ended (approximately 1 ½ hours later), Kearstin asked Manny if he would give her a ride to her "home girl's" house. Manny said it was too late and he did not want to drive and he told Kearstin that she could just stay the night and go tomorrow. Kearstin said she wanted to leave and she took her belongings (a bag with a box of carne asada fries) and she left.

Manny was not sure where Kearstin's friend lived or whose house she was going to.

CONTINUATION

Event #: 170301-0486

Manny said he did not believe Kearstin to be using any drugs or alcohol while she was at his house and she was acting normal.

This concludes the interview with Manny.

Interview with Shekeitha McQueen

LVMPD Officers never received a written voluntary statement, or was able to obtain a recorded statement, from the homeless female who identified herself as Amber McQueen. I was also not able to find any type of record of Amber, based on the information she provided. On 03/01/17, I put an entry into LVMPD Briefing requesting patrol officer to try and locate the same homeless couple and to positively identify them and contact me, once they did.

On 03/02/17, at approximately 0430 hours, I was contacted by LVMPD Patrol Officer Celaya. Officer Celaya again returned to the bathroom area at Freedom Park (scene of the sexual assault) and he again located the same homeless female sleeping against the west wall of the structure. Officer Celaya again spoke with the female and he again explained the circumstances. The female explained she was "scared" the previous day and she did not provide officers with her correct information. The female identified herself as Shekeitha McQueen DOB [REDACTED] and she said she would be willing to provide a written statement and to speak with Detectives.

I then responded to Freedom Park, where I made contact with and interviewed Shekeitha McQueen DOB [REDACTED]. The interview was recorded and will be transcribed for full, specific content. The following is a summary of my interview with Shekeitha, and not verbatim:

Shekeitha said she is homeless and she has been sleeping against the same restroom area in Freedom Park, for the past year and a half.

The previous morning (3/1/17) she was asleep and she awoke around 2:30 AM-3 AM, to a female screaming. Shekeitha said she regularly hears people fighting and screaming from the apartments directly across the street and the fights sometimes move to the park. Shekeitha said she assumed the screaming was just another fight from the apartments and she did not do anything about it.

Shekeitha described the woman as "just screaming" and she does not know if any words were said. She described the screaming lasted approximately 20 minutes and then the screaming stopped. A short time later the female began screaming again and it sounded "closer", like it was "right next to" her, and sounded like it "echoed" near her.

After the screaming stopped, the police her woke her up and asked her about the incident.

Shekeitha did not see any of the people involved in the screaming and did not hear any other voices at the time.

Shekeitha said her boyfriend, Troy, was sleeping next to her while this occurred but Troy slept right through it. Troy was not with Shekeitha when I met with her but she said she would pass on my phone number to him and ask him to call me.

This concludes the interview with Shekeitha.

Shekeitha also completed a written statement, prior to my arrival.

CONTINUATIONEvent #: 170301-0486**DNA Request**

The pants (green camouflage jeans), the t-shirt (black t-shirt, worn under Kearstin's hooded sweatshirt), and the bra (black bra, worn under her black t-shirt) which Kearstin wore at the time of the incident, were collected by SANE Nurse Dermanelion and the given to Sergeant Roberson. On 03/01/17, Sergeant Roberson placed the items into locked temporary evidence lockers located at LVMPD Headquarters.

On 03/02/17, I retrieved the items from temporary evidence and impounded the t-shirt and bra into LVMPD Evidence.

On 03/02/17, a priority rush was made to the LVMPD Forensic DNA Lab for analysis of the victim's pants and the victim's Sexual Assault Examination Kit for possible suspect DNA. I transported the victim's pants to the LVMPD Forensic Laboratory, located at 5605 W. Badura; Suite 120-B, where I impounded them so they could immediately be entered into Property Connect.

On 03/02/17, SANE Nurse Jeri Dermanelion transported the Sexual Assault Examination Kit to the LVMPD Forensic Laboratory so it could be immediately entered into Property Connect.

On 03/02/17, a request was made through Property Connect, asking for Kearstin's Sexual Assault Examination Kit and the pants she was wearing at the time of the assault be checked for possible suspect DNA.

DNA Hit/Suspect Identification

On 03/05/17, I was notified that several items from my DNA Analysis Request returned positive for sperm and/or semen and DNA Profiles were able to be obtained.

The cervical swabs obtained from Kearstin during her Sexual Assault Examination returned positive for sperm, and a full DNA profile was able to be obtained from the sperm. I was provided with a Forensic Laboratory Report of Examination and the report indicates the same.

The full DNA profile obtained from the recovered sperm fraction was uploaded into CODIS. A CODIS Hit returned identifying the DNA Profile being consistent with DNA belonging to Joseph Warren Jr. DOB [REDACTED] ID # 1239725. A received a Forensic Laboratory Report of Examination indicating the same. The report further noted that "The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 174 quadrillion."

The CODIS Hit came from a solved Sexual Assault case from 2006, LVMPD Event # 060121-3369.

Criminal History/Additional Sexual Related Arrest of Joseph Warren Jr.

Joseph Warren Jr.; DOB [REDACTED] ID # 1239725 shows to be a registered Sexual Offender for Coercion with Force-Sexually Motivated, out of Nevada, from 2006.

Joseph Warren Jr. has a prior arrest out of North Las Vegas for Peering/Peeping/Spying Through the Opening of a Dwelling, on 10/15/15.

Joseph Warren Jr. has a prior arrest with LVMPD for Open and Gross Lewdness and Peering/Peeping/Spying Through the Opening of a Dwelling, on 02/18/16.

CONTINUATIONEvent #: 170301-0486

Joseph Warren Jr. has a prior arrest with LVMPD for Sexual Offender Failure to Change Address, on 05/01/11.

Joseph Warren Jr. has a prior arrest with LVMPD for Sexual Assault on 01/25/06; LVMPD Event # 060123-3369.

Open Investigations of Sexual Related Cases involving Joseph Warren Jr**LVMPD Event # 170129-0100**

As of the time of this declaration, LVMPD Detective A. Parrish P# 8877 was actively working a case of Open and Gross Lewdness and he has identified Joseph Warren Jr; DOB [REDACTED] ID # 1239725 as the suspect of the case. Joseph was positively identified by (2) witness in his case; LVMPD Event # 170129-0100. Joseph was witnessed masturbating in the driveway of a home located at 2921 Jansen Las Vegas, NV 89101 (approximately 0.3 miles from 850 N. Mojave; Freedom Park).

LVMPD Event # 160414-2205

As of the time of this declaration, LVMPD Detective L. Cho P# 7073, was actively working a case of a Sexual Assault and she has developed Joseph Warren Jr.; DOB [REDACTED] ID# 1239725 as the suspect of the case. The details of Detective Cho's case are similar to the details provided by Kearstin. The victim on Detective Cho's case reported that the suspect is a black male adult with hazel eyes, the suspect choked the victim from behind, the suspect pulled her to the side of the building, the suspect first masturbated into a condom and then penetrated the victim from behind, and the suspect told the victim to "stick her ass in the air". The victim identified Joseph Warren as the suspect in a Photo Line-up. The victim submitted to a Sexual Assault Examination and Detective Cho has submitted the case to the LVMPD Forensic Lab for DNA analysis. As of the time of this declaration, the analysis has not been completed.

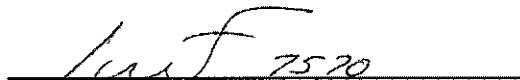
As of the time of this Declaration 03/6/17, Joseph Warren's whereabouts are unknown.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Joseph Warren Jr on the charge(s) of Sexual Assault, Kidnapping 1st Degree, Battery w/Intent to Commit Sexual Assault, Open and Gross Lewdness (2 counts).

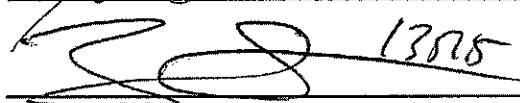
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 6th day of March, 2017.

DECLARANT:

 7520

WITNESS:

 13815DATE: 03/06/17

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

2017 MAR -6 P 2:37

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -VS-

6 JOSEPH WARREN, JR. #1239725,

7 Defendant.

CASE NO: 17F03940X

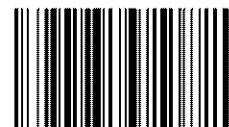
DEPT NO: 7

FILED UNDER SEAL

8
9 All materials, except the Criminal Complaint, are being filed under seal in obedience to
10 Section 239B.030 of the Nevada Revised Statutes and pursuant to the Order issued by the
11 Honorable Douglas E. Smith, signed December 28, 2006.
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17F03940X
CRMFS
Filed Under Seal
7711783





L007951440

17F03940X

Warren, Joseph Attorney: Special Public Defender

5/4/2017 9:00 AM

ScopeID: 1239725

Hearing: Decision

In Custody

Case Summary

Case Flags: In Custody CCDC - As Of: May 3 2017 1:01PM

Sentencing Information

1 Kidnapping, first degree (3/1/2017) (F) PCN/SEQ: 0030133304 002

Plea:

Disp:

2 Sexual assault (3/1/2017) (F) PCN/SEQ: 0030133304 001

Plea:

Disp:

3 Battery with intent to commit sexual assault upon victim age 16 or older (3/1/2017) (F) PCN/SEQ: 0030133304 003

Plea:

Disp:

4 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 004

Plea:

Disp:

5 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 005

Plea:

Disp:

Hearing Summary

05/04/2017 09:00 AM: Decision - (In Custody)

Judge: Bennett-Haron, Karen P.

04/20/2017 09:00 AM: Preliminary Hearing - Matter Heard (In custody)

Judge: Bennett-Haron, Karen P.

| | |
|-----------------|----------------------|
| State Of Nevada | Craggs, Genevieve |
| State Of Nevada | Villani, Jake |
| Attorney | Simpkins, Melinda E. |
| Defendant | Warren, Joseph, Jr. |

Preliminary Hearing Held

Motion to Exclude Witnesses by Defense - Motion Granted

States Witnesses:

1 - Jeri Der Minelian

Side bar conference held

State Rests

Defendant Advised of His Statutory Right to call witnesses, present evidence and/or to testify on his own behalf. Defendant understands his rights and following the advice of his defense counsel, waives his rights at preliminary hearing Defense Rests

Motion to dismiss by Defense - Case Taken Under Advisement

Court Continuance

for Decision

Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

04/06/2017 09:00 AM: Preliminary Hearing - Matter Heard (In custody)

Judge: Bennett-Haron, Karen P.

| | |
|-----------------|----------------------|
| State Of Nevada | Rose, Steven |
| Attorney | Simpkins, Melinda E. |
| Defendant | Warren, Joseph, Jr. |

Motion to Continue - Defense

Motion granted

Preliminary Hearing reset

Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

03/20/2017 08:00 AM: Motion - Matter Heard (In Custody)

Judge: Bennett-Haron, Karen P.

| | |
|-----------------|----------------------|
| State Of Nevada | O'Halloran, Rachel |
| Attorney | Simpkins, Melinda E. |
| Attorney | IP, TRACY |
| Defendant | Warren, Joseph, Jr. |

Motion to Withdraw Due to Conflict

by Public Defender - Motion granted

Special Public Defender Appointed**Future Court Date Stands**

4/6/17 9:00 am

Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

03/09/2017 08:00 AM: Initial Appearance - Matter Heard (In Custody)

Judge: Bennett-Haron, Karen P.

| | |
|-----------------|---------------------|
| State Of Nevada | Holthus, Mary |
| Attorney | Bakhtary, Zohra |
| Defendant | Warren, Joseph, Jr. |

Initial Appearance Completed

Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

Public Defender Appointed**Defense waives the 15 day rule****Bail Stands - Cash or Surety**

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

03/06/2017 02:50 PM: Arrest Warrant Request - Arrest Warrant Issued

Judge: Lippis, Deborah J.

Arrest Warrant Ordered to be Issued

No Bail All Counts - Set in Court

Other Active Cases

| File Date | Case | Dept | Offense Dt | Status | Next Hrg. | Warrant Collections | Balance |
|-----------|----------------|---------|------------|--------|--------------------------|---------------------|---------|
| 3/15/2017 | 17F04527X (FE) | Dept 01 | 3/13/2017 | Active | 05/10/2017 10:00 AM (PH) | | |

17F03940X

Warren, Joseph, Jr. *P*

3.7

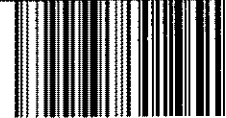
Tues

3/9/2017 8:00 AM

ScopeID: 1239725

Hearing Type

Hearing Comment



L007722589

Initial Appearance

In Custody

| Date | Related Event | Comment |
|----------|-------------------------------------|-----------------------------------|
| 3/6/2017 | Arrest Warrant Ordered to be Issued | No Bail All Counts - Set in Court |

Case Flags: In Custody CCDC - As Of: Mar 8 2017 1:01PM; Original Track 07

Sentencing Information

1 Kidnapping, first degree (3/1/2017) (F) PCN/SEQ: 0030133304 002

Plea:

Disp:

2 Sexual assault (3/1/2017) (F) PCN/SEQ: 0030133304 001

Plea:

Disp:

3 Battery with intent to commit sexual assault upon victim age 16 or older (3/1/2017) (F) PCN/SEQ: 0030133304 003

Plea:

Disp:

4 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 004

Plea:

Disp:

5 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 005

Plea:

Disp:

*AC**ADA 1232M**By Waver 15**PH 4-6-17 9:00**BSZ**CS**amp*

17F03940X

Warren, Joseph Attorney: Public Defender

3/20/2017 8:00 AM

ScopeID: 1239725

Hearing Type

Hearing Comment



L007760218

Motion

In Custody

Future Hearings

4/6/2017 9:00:00 AM: Preliminary Hearing

| Date | Related Event | Comment |
|------|---------------|---------|
|------|---------------|---------|

| | | |
|-----------|--|--|
| 3/16/2017 | Motion to Withdraw Due to Conflict (By: Public Defender) | |
|-----------|--|--|

Case Flags: In Custody CCDC - As Of: Mar 17 2017 1:01PM; Original Track 07

Sentencing Information

1 Kidnapping, first degree (3/1/2017) (F) PCN/SEQ: 0030133304 002

Plea:

Disp:

2 Sexual assault (3/1/2017) (F) PCN/SEQ: 0030133304 001

Plea:

Disp:

3 Battery with intent to commit sexual assault upon victim age 16 or older (3/1/2017) (F) PCN/SEQ: 0030133304 003

Plea:

Disp:

4 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 004

Plea:

Disp:

5 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 005

Plea:

Disp:

AD
MUR - Y
SPP appd
FCAS

BSIS 00/00
CSS
Cup

Other Active Cases

| File Date | Case | Dept | Offense Dt | Status | Next Hrg. | Warrant Collections | Balance |
|-----------|----------------|---------|------------|--------|--------------------------|--|---------|
| 3/9/2017 | 17F04037X (G) | Dept 12 | 1/29/2017 | Active | 03/30/2017 09:30 AM (PH) | Open Gun | |
| 3/15/2017 | 17F04527X (FE) | Dept 01 | 3/13/2017 | Active | 04/20/2017 10:00 AM (PH) | Alex under 2 cts
Death by Strangulation
1st Int
Arson
Open Gun | |

17F03940X

Warren, Joseph Attorney: Simpkins, Melinda E.

4/6/2017 9:00 AM

ScopeID: 1239725

Hearing Type

Hearing Comment



L007832911

Preliminary Hearing

In custody

| Date | Related Event | Comment |
|-----------|------------------------------|--|
| 3/20/2017 | Bail Stands - Cash or Surety | Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail |
| 3/13/2017 | Media Request and Order | KSNV-TV |

Case Flags: In Custody CCDC - As Of: Apr 5 2017 1:02PM; Original Track 07

Sentencing Information**1 Kidnapping, first degree (3/1/2017) (F) PCN/SEQ: 0030133304 002**

Plea:

Disp:

2 Sexual assault (3/1/2017) (F) PCN/SEQ: 0030133304 001

Plea:

Disp:

3 Battery with intent to commit sexual assault upon victim age 16 or older (3/1/2017) (F) PCN/SEQ: 0030133304 003

Plea:

Disp:

4 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 004

Plea:

Disp:

5 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 005

Plea:

Disp:

MOCUS - M

Ptt Asset 4-20-17 9m /

Bates

CS

Cup

Other Active Cases

| File Date | Case | Dept | Offense Dt | Status | Next Hrg. | Warrant Collections | Balance |
|-----------|----------------|---------|------------|--------|--------------------------|---------------------|---------|
| 3/15/2017 | 17F04527X (FE) | Dept 01 | 3/13/2017 | Active | 04/20/2017 10:00 AM (PH) | | |

17F03940X

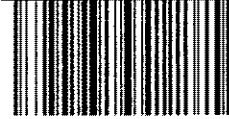
Warren, Joseph Attorney: Special Public Defender

5/4/2017 9:00 AM

ScopeID: 1239725

Hearing Type

Hearing Comment



L007951500

Decision

In Custody

Case Flags: In Custody CCDC - As Of: May 3 2017 1:01PM; Original Track 07

Sentencing Information

1 Kidnapping, first degree (3/1/2017) (F) PCN/SEQ: 0030133304 002

Plea:

Disp:

2 Sexual assault (3/1/2017) (F) PCN/SEQ: 0030133304 001

Plea:

Disp:

3 Battery with intent to commit sexual assault upon victim age 16 or older (3/1/2017) (F) PCN/SEQ: 0030133304 003

Plea:

Disp:

4 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 004

Plea:

Disp:

5 Open or gross lewdness, first offense (3/1/2017) (G) PCN/SEQ: 0030133304 005

Plea:

Disp:

OFFCL Filed 10c
CC Del
Clerk
JE
ROD
CBS
Camp
Munro

Other Active Cases

| File Date | Case | Dept | Offense Dt | Status | Next Hrg. | Warrant Collections | Balance |
|-----------|----------------|---------|------------|--------|--------------------------|---------------------|---------|
| 3/15/2017 | 17F04527X (FE) | Dept 01 | 3/13/2017 | Active | 05/10/2017 10:00 AM (PH) | | |

RECEIVED

MAR 10 2017

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

State of Nevada

Plaintiff,

vs,

Joseph Warren

Defendant.

CASE NO.: 17F03940X

DEPT. NO.: 7

MEDIA REQUEST & ORDER ALLOWING
CAMERA ACCESS TO COURT
PROCEEDINGS (CLARK COUNTY, NEVADA)Civil Cases: DEPUTY (702) 388-4461
Criminal Cases: Fax to (702) 671-3175

Jonathan Cisowski

KLAS-TV

(name), of (media organization), hereby requests permission to begin:

(CHECK ALL THAT APPLY:)

☒ Televising/Recording ☐ Photographing ☐ Broadcasting/Recording (audio only) ☐ Other:

proceedings in the above entitled case, in Department No. 7, the Honorable Judge Bennett-Haron
presiding, on the 6th day of April, 2017, at the hour of 9am, M.
I hereby certify that I am familiar with, and will comply with, the Nevada Supreme Court's RULES ON
ELECTRONIC COVERAGE OF COURT PROCEEDINGS (Supreme Court Rules 229-246, inclusive).

If this request is being submitted less than twenty-four (24) hours before the above-described proceedings
commence, the following facts provide good cause for the Court to grant the request on such short notice:

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and
must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 9th day of March, 2017.

SIGNATURE:

PHONE:

702-792-8870

ADDRESS:

3328 Channel 8 Drive

FAX:

IT IS HEREBY ORDERED THAT:

[] The media request is **denied** because it was submitted less than 24 hours before the scheduled proceeding
was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.

[] The media request is **denied** for the following reason(s):

☒ The media request is **granted**. The requested media access will remain in effect for each and every hearing
in the above-entitled case, at the discretion of the Court, and unless otherwise ordered. This Order is made
in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to
reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that
access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering
with the administration of justice.

[] OTHER:

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 10th day of March, 2017.

JUSTICE OF THE PEACE

RECEIVED

MAR 1 2017

JUSTICE COURT DEPT. 7

17F03940X

MDRO

Media Request and Order

7729633



034

**JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA**

RECEIVED
MAR 13 2017
LAS VEGAS JUSTICE COURT

STATE OF NEVADA

Plaintiff,

vs.

Joseph Warren Jr.

Defendant.

FILED

CASE NO.: 1703940X

2017 MAR 13 A 9:24

**MEDIA REQUEST & ORDER ALLOWING
CAMERAS ACCESS TO COURT**BY **PROCEEDINGS** (Rev. 8/22/12)

DEPUTY

Civil Cases:

Fax to (702) 388-4461

Criminal Cases:

Fax to (702) 671-3175

KSNV TV Jami Seymore (name), of
(media organization), hereby requests permission to begin:
(CHECK ALL THAT APPLY:)

☐ Televising/Recording ☐ Photographing ☐ Broadcasting/Recording (audio only) ☐ Other: _____

proceedings in the above entitled case, in Department No. 7, the Honorable Judge Bennett-Haron
presiding, on the 6 day of April, 2017, at the hour of 9 M.
I hereby certify that I am familiar with, and will comply with, the Nevada Supreme Court's RULES ON
ELECTRONIC COVERAGE OF COURT PROCEEDINGS (Supreme Court Rules 229-246, inclusive).

If this request is being submitted less than twenty-four (24) hours before the above-described proceedings
commence, the following facts provide good cause for the Court to grant the request on such short notice:

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and
must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 10 day of March, 2017.

SIGNATURE:

ADDRESS:

1500 Foremaster Ln, Las Vegas, NV 89101

PHONE:

702-657-3150

FAX:

702-657-3152

IT IS HEREBY ORDERED THAT:

☐ The media request is **denied** because it was submitted less than 24 hours before the scheduled proceeding
was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.

☐ The media request is **denied** for the following reason(s): _____

☒ The media request is **granted**. The requested media access will remain in effect for each and every hearing
in the above-entitled case, at the discretion of the Court, and unless otherwise ordered. This Order is made
in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to
reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that
access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering
with the administration of justice.

☐ **OTHER:** _____

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 13th day of March, 2017.

Bennett Haron
JUSTICE OF THE PEACE

RECEIVED**MAR 13 2017**

JUSTICE COURT DEPT

17F03940X
MDRO
Media Request and Order
7735408



**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes

Department: 07



L007711777

17F03940X State of Nevada vs. Warren, Joseph, Jr.

3/6/2017 2:50:00 PM Arrest Warrant Request

Result: Arrest Warrant Issued

**PARTIES
PRESENT:**

Judge: Lippis, Deborah J.

PROCEEDINGS

Events: **Arrest Warrant Ordered to be Issued**

No Bail All Counts - Set in Court

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes

Department: 07



L007728400

17F03940X State of Nevada vs. Warren, Joseph, Jr.

Lead Atty: Public Defender

3/9/2017 8:00:00 AM Initial Appearance (In Custody)

Result: Matter Heard

| | | |
|-------------------------|-----------------|---------------------|
| PARTIES PRESENT: | State Of Nevada | Holthus, Mary |
| | Attorney | Bakhtary, Zohra |
| | Defendant | Warren, Joseph, Jr. |

Judge: Bennett-Haron, Karen P.

Court Reporter: O'Neill, Jennifer

Court Clerk: Meccia, Cherie

| |
|--------------------|
| PROCEEDINGS |
|--------------------|

| | | | |
|-------------------|------------------------|---------------------|-------|
| Attorneys: | Bakhtary, Zohra | Warren, Joseph, Jr. | Added |
| | Public Defender | Warren, Joseph, Jr. | Added |

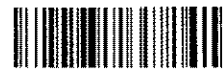
| | | |
|------------------|--|-------|
| Hearings: | 4/6/2017 9:00:00 AM: Preliminary Hearing | Added |
|------------------|--|-------|

Events: **Initial Appearance Completed**
Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint
Public Defender Appointed
Defense waives the 15 day rule
Bail Stands - Cash or Surety
Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 07

Court Minutes



L007763603

17F03940X State of Nevada vs. Warren, Joseph, Jr.

Lead Atty: Melinda E. Simpkins

3/20/2017 8:00:00 AM Motion (In Custody)

Result: Matter Heard

| | | |
|-----------------|-----------------|----------------------|
| PARTIES | State Of Nevada | O'Halloran, Rachel |
| PRESENT: | Attorney | Simpkins, Melinda E. |
| | Attorney | IP, TRACY |
| | Defendant | Warren, Joseph, Jr. |

Judge: Bennett-Haron, Karen P.

Court Reporter: O'Neill, Jennifer

Court Clerk: Meccia, Cherie

| |
|--------------------|
| PROCEEDINGS |
|--------------------|

| | | | |
|-------------------|--------------------------------|----------------|-------|
| Attorneys: | IP, TRACY | Warren, Joseph | Added |
| | Simpkins, Melinda E. | Warren, Joseph | Added |
| | Special Public Defender | Warren, Joseph | Added |

Events: **Motion to Withdraw Due to Conflict**

by Public Defender - Motion granted

Special Public Defender Appointed

Future Court Date Stands

4/6/17 9:00 am

Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 07

Court Minutes



L007837657

17F03940X State of Nevada vs. Warren, Joseph, Jr.

Lead Atty: Special Public Defender

4/6/2017 9:00:00 AM Preliminary Hearing (In custody)

Result: Matter Heard

| | | |
|-------------------------|-----------------|----------------------|
| PARTIES PRESENT: | State Of Nevada | Rose, Steven |
| | Attorney | Simpkins, Melinda E. |
| | Defendant | Warren, Joseph, Jr. |

Judge: Bennett-Haron, Karen P.

Court Reporter: O'Neill, Jennifer

Court Clerk: Meccia, Cherie

PROCEEDINGS

Attorneys:

| | | |
|------------------|---|-------|
| Hearings: | 4/20/2017 9:00:00 AM: Preliminary Hearing | Added |
|------------------|---|-------|

Events: Motion to Continue - Defense

Motion granted

Preliminary Hearing reset

Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes

Department: 07



L007895541

17F03940X State of Nevada vs. Warren, Joseph, Jr.

Lead Atty: Special Public Defender

4/20/2017 9:00:00 AM Preliminary Hearing (In custody)

Result: Matter Heard

| | | |
|-----------------|-----------------|----------------------|
| PARTIES | State Of Nevada | Craggs, Genevieve |
| PRESENT: | State Of Nevada | Villani, Jake |
| | Attorney | Simpkins, Melinda E. |
| | Defendant | Warren, Joseph, Jr. |

Judge: Bennett-Haron, Karen P.

Court Reporter: O'Neill, Jennifer

Court Clerk: Meccia, Cherie

PROCEEDINGS

| | | | |
|------------------|---|---------------------------------------|-----------|
| Exhibits: | Document, Photograph, Etc. (ID: 1) | <i>Copy of Judgment of Conviction</i> | Admitted |
| | | | Offered |
| | Document, Photograph, Etc. (ID: 2) | <i>Copy of Forensic Lab Report</i> | Admitted |
| | | | Offered |
| | Document, Photograph, Etc. (ID: 3) | <i>Copy of Forensic Lab Report</i> | Admitted |
| | | | Offered |
| | Other (ID: 4) | <i>Compact Disc of 911 call</i> | Admitted |
| | | | Objection |
| | | | Offered |
| | Document, Photograph, Etc. (ID: 5) | <i>Transcript of 911 call</i> | Objection |
| | | | Offered |
| | | | Returned |
| | Document, Photograph, Etc. (ID: 6) | <i>Copy of Forensic Lab Report</i> | Admitted |
| | | | Offered |
| Hearings: | 5/4/2017 9:00:00 AM: Decision | | Added |

**Justice Court, Las Vegas Township
Clark County, Nevada**

Events: Preliminary Hearing Held

Motion to Exclude Witnesses by Defense - Motion Granted

States Witnesses:

1 - Jeri Der Minellian

Side bar conference held

State Rests

Defendant Advised of His Statutory Right to call witnesses, present evidence and/or to testify on his own behalf. Defendant understands his rights and following the advice of his defense counsel, waives his rights at preliminary hearing Defense Rests

Motion to dismiss by Defense - Case Taken Under Advisement

Court Continuance

for Decision

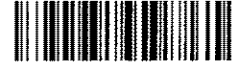
Bail Stands - Cash or Surety

Counts: 001; 002; 003; 004; 005 - \$0.00/\$0.00 Total Bail

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes



L007956010

17F03940X State of Nevada vs. Warren, Joseph, Jr.

Lead Atty: Special Public Defender

5/4/2017 9:00:00 AM Decision (In Custody)

Result: Matter Heard

PARTIES PRESENT:
State Of Nevada
Attorney
Defendant
Smith, Tyler
Simpkins, Melinda E.
Warren, Joseph, Jr.

Judge: Bennett-Haron, Karen P.

Court Reporter: O'Neill, Jennifer

Court Clerk: Meccia, Cherie

PROCEEDINGS

Events: **Order - Findings of Fact and Conclusions of Law**
filed in open court - Decision is that the case is dismissed
Case Closed - Dismissed
Judgment Entered
Release Order - Court Ordered due to dismissal
Counts: 001; 002; 003; 004; 005

Plea/Disp: **001: Kidnapping, 1st degree [50051]**
Disposition: Dismissed
002: Sex asslt [50095]
Disposition: Dismissed
003: Battery to commit sex asslt, victim 16+ [50157]
Disposition: Dismissed
004: Open/gross lewdness, (1st) [50971]
Disposition: Dismissed
005: Open/gross lewdness, (1st) [50971]
Disposition: Dismissed

ORIGINAL

FILED

NCA
DAVID M. SCHIECK
Special Public Defender
NSB 0824
MELINDA E. SIMPKINS
Chief Deputy Special Public Defender
NSB 7911
330 S. Third Street Ste. 800
Las Vegas, NV 89155
702-455-6266
Fax 702-455-6273
msimpkins@clarkcountynv.gov
Attorneys for Defendant

MAR 23 2 28 PM '17

JUSTICE COURT
LAS VEGAS NEVADA
AMC
DEPT 17

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSEPH WARREN, JR.,
#1239725

Defendant,

17F03940X
CASE NO. ~~16F00198A~~
DEPT NO. ~~2-17~~

Assertion of Medical Privacy Rights

I, Joseph Warren, Jr., the above named defendant, hereby assert my authority to protect the confidentiality of my health information pursuant to Nevada and Federal law. I do not waive and hereby rescind any prior waiver of my rights to the confidentiality and privacy of my health information. This includes any waiver of health privacy rights signed by me prior to the

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MISF
Miscellaneous Filing
7783627



043

1 assertion of my privacy rights memorialized by this document. See 45 C.F.R. 164.508(b)(5).
2 Any future waiver of medical privacy rights signed by me after the date of the issuance of this
3 Assertion of Medical Privacy Rights, is a valid waiver of said rights. I do not wish to and will
4 not waive, any of my medical privacy rights except in the presence of counsel. I do not want the
5 State of Nevada or others acting on behalf of the State of Nevada to question me about, or to
6 contact me seeking my waiver of any rights, unless my counsel is present. This assertion of
7 medical privacy is made pursuant to 45 C.F.R. 164.508, NRS 629.061, NRS 49.215 thru NRS
8 49.245.
9

10
11 Joseph Warren Jr.
12 Joseph Warren, Jr.
Dated: 3/20/17

13 SUBMITTED BY:

14 Melinda Simpkins
15 MELINDA E. SIMPKINS
16 Attorney for Defendant
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ORIGINAL

FILED

MAR 23 2 29 PM '17

JUSTICE COURT
LAS VEGAS, NEVADA
DEPT NO. 7

NCA
DAVID M. SCHIECK
Special Public Defender
NSB 0824
MELINDA E. SIMPKINS
Chief Deputy Special Public Defender
NSB 7911
330 S. Third Street Ste. 800
Las Vegas, NV 89155
702-455-6266
Fax 702-455-6273
msimpkins@clarkcountynv.gov
Attorneys for Defendant

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSEPH WARREN, JR.,
1239725

Defendant,

CASE NO. 17F03940X
DEPT NO. 7

Assertion of Fifth and Sixth Amendment Rights

I, Joseph Warren, Jr., the above named defendant, hereby assert my Fifth and Sixth Amendment rights to remain silent and to have counsel present at any and all of my interactions with the State of Nevada or others acting on behalf of the State of Nevada. I do not wish to, and will not, waive any of my constitutional rights except in the presence of counsel.

...

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Miscellaneous Filing
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045

1 I do not want the State of Nevada or others acting on behalf of the State of Nevada to question
2 me, or to contact me seeking my waiver of any rights, unless my counsel is present.
3
4

5 Joseph Warren Jr.
6 Joseph Warren, Jr.
7 Dated: 3/20/17

8 SUBMITTED BY:

9 Melinda Simpkins
10 MELINDA E. SIMPKINS
11 Attorney for Defendant
12
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FILED

Mar 13 9 25 AM '16
CLERK OF COURT
CLARK COUNTY, NEVADA

JUSTICE COURT, LAS VEGAS
CLARK COUNTY, NEVADA

State of Nevada

Plaintiff,

vs. JOSEPH WARREN

Defendant(s).

Case No. 17F03940X

Dept. No. 7

MOTION FOR DISCLOSURE OF
NON-PUBLIC INFORMATION

DECLARATION

(1) PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:

This Motion is being brought by:

- ☒ A member of the following media organization: KTNV
☐ The following criminal Defendant: _____
☐ An attorney for the following client: _____
☐ OTHER: _____

(2) PLEASE COMPLETE THE LINE BELOW:

Court staff has indicated that the following document(s) currently in the file are deemed to be presumptively non-public and confidential:

Arrest report



(3) PLEASE EXPLAIN WHY THE COURT SHOULD ALLOW ACCESS TO THE DOCUMENT(S) LISTED ABOVE :

(NOTE: If you need more space, please attach additional pages.)

We require these documents to report the
story fairly & completely.

(4) PLEASE SIGN BELOW:

Under the penalty of perjury under the law of the State of Nevada, I swear or affirm that the above information is true and correct, and that the Court should allow access to the requested document(s).

Signature: Madelaine Date: 702-871-3345, 3/31/16

Phone Number: _____

ORDER

☐ This matter will be set for hearing, and all parties will be notified. The hearing date will be at _____ M on the _____ day of _____, 20____.

☐ The motion is denied as to the following documents _____
for the following reason(s):

☒ The motion is granted as to the following documents _____

You may bring a copy of this order to the front counter to obtain the requested information.

☐ OTHER: _____

DATED THIS 10th DAY OF March, 20 17

Bennett Haron
JUSTICE OF THE PEACE

FILED
MAR 13 9 26 PM '16
CLERK OF DISTRICT COURT
JAS. YERGEN, NEVADA

JUSTICE COURT, LAS VEGAS
CLARK COUNTY, NEVADA

FILED
Mar 13 9 25 PM '16
TOWNSHIP

JUSTICE COURT
LAS VEGAS NEVADA
BY

STATE OF NEVADA)
)
)

Plaintiff,)
)
)

vs.)
)
)

Joseph Warren)
)
)

Defendant(s).)
)
)

Case No. 17F03940X

Dept. No. 10 7

MOTION FOR DISCLOSURE OF
NON-PUBLIC INFORMATION

DECLARATION

(1) PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:

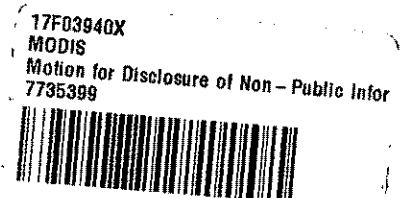
This Motion is being brought by:

- ☒ A member of the following media organization: KSNV TV
- ☐ The following criminal Defendant: _____
- ☐ An attorney for the following client: _____
- ☐ OTHER: _____

(2) PLEASE COMPLETE THE LINE BELOW:

Court staff has indicated that the following document(s) currently in the file are deemed to be presumptively non-public and confidential:

Arrest report of Joseph Warren, facing sex assault charges.



(3) PLEASE EXPLAIN WHY THE COURT SHOULD ALLOW ACCESS TO THE DOCUMENT(S) LISTED ABOVE :

(NOTE: If you need more space, please attach additional pages.)

KSNV is looking into the case of Warren

(4) PLEASE SIGN BELOW:

Under the penalty of perjury under the law of the State of Nevada, I swear or affirm that the above information is true and correct, and that the Court should allow access to the requested document(s).

Signature: Jamie S. Sepman Date: 3/9/17

Phone Number: 702-657-3150

ORDER

☐ This matter will be set for hearing, and all parties will be notified. The hearing date will be at _____ M on the _____ day of _____, 20____.

☐ The motion is denied as to the following documents:

for the following reason(s):

☒ The motion is granted as to the following documents:

You may bring a copy of this order to the front counter to obtain the requested information.

☐ OTHER:

DATED THIS 10th DAY OF March, 2017

Bennett Haron
JUSTICE OF THE PEACE

FILED
MAR 13 9 26 PM '16
CLERK OF DISTRICT COURT
LAS VEGAS, NEVADA

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED

9 25 PM '16

JUSTICE COURT
LAS VEGAS NEVADA

The State of Nevada

Plaintiff,

vs.

Joseph Warren

Defendant(s).

Case No. 17F03940X

Dept. No. 07

**MOTION FOR DISCLOSURE OF
NON-PUBLIC INFORMATION**

DECLARATION

(1) PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:

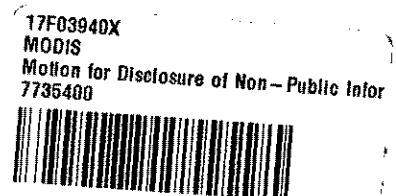
This Motion is being brought by:

- ☒ A member of the following media organization: Las Vegas Sun
- ☐ The following criminal Defendant: _____
- ☐ An attorney for the following client: _____
- ☐ OTHER: _____

(2) PLEASE COMPLETE THE LINE BELOW:

Court staff has indicated that the following document(s) currently in the file are deemed to be presumptively non-public and confidential:

Criminal complaint/arrest report



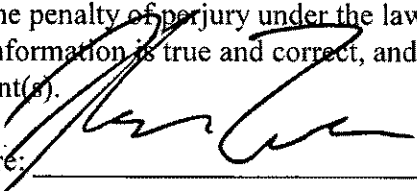
(3) PLEASE EXPLAIN WHY THE COURT SHOULD ALLOW ACCESS TO THE DOCUMENT(S) LISTED ABOVE :

(NOTE: If you need more space, please attach additional pages.)

A matter of public safety. Mr. Warren is accused of sexually assaulting a woman who was a stranger to him and police say they believe more victims are involved.

(4) PLEASE SIGN BELOW: Ricardo Torres

Under the penalty of perjury under the law of the State of Nevada, I swear or affirm that the above information is true and correct, and that the Court should allow access to the requested document(s).

Signature:  Date: March 9, 2017

Phone Number: 702-789-9801

ORDER

☐ This matter will be set for hearing, and all parties will be notified. The hearing date will be at _____ M on the _____ day of _____, 20____.

☐ The motion is denied as to the following documents:

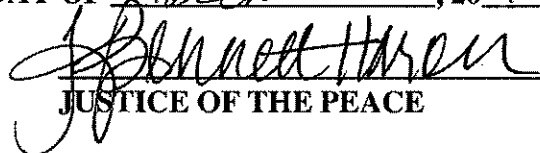
for the following reason(s):

☒ The motion is granted as to the following documents:

You may bring a copy of this order to the front counter to obtain the requested information.

☐ OTHER:

DATED THIS 10th DAY OF March, 20 17


JUSTICE OF THE PEACE

FILED
Mar 13 9 26 PM '16
CLERK OF COURT
LAS VEGAS, NEVADA

FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

9 25 PM '16

State of Nevada

Plaintiff,

vs.

Joseph Warren

Defendant(s).

JUSTICE COURT
LAS VEGAS NEVADA

Case No.

17F-03940X

Dept. No.

7

MOTION FOR DISCLOSURE OF
NON-PUBLIC INFORMATION

AFFIDAVIT

(1) PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:

This Motion is being brought by:

- ☒ A member of the following media organization: KLAS-TV
- ☐ The following criminal Defendant: _____
- ☐ An attorney for the following client: _____
- ☐ OTHER: _____

(2) PLEASE COMPLETE THE LINE BELOW:

Court staff has indicated that the following document(s) currently in the file are deemed to be presumptively non-public and confidential:

Arrest Report / Criminal Complaint

17F03940X
MODIS
Motion for Disclosure of Non-Public Infor
7736402



(3) PLEASE EXPLAIN WHY THE COURT SHOULD ALLOW ACCESS TO THE DOCUMENT(S) LISTED ABOVE :

(NOTE: If you need more space, please attach additional pages.)

Suspect sexually assaulted at least
1 victim with others possibly to come
forward

(4) PLEASE SIGN BELOW:

Under the penalty of perjury under the law of the State of Nevada, I swear or affirm that the above information is true and correct, and that the Court should allow access to the requested document(s).

Signature: [Handwritten Signature] Date: 3-9-17

Phone Number: 702-792-8870

ORDER

☐ This matter will be set for hearing, and all parties will be notified. The hearing date will be at _____ M on the _____ day of _____, 20 _____.

☐ The motion is denied as to the following documents _____
for the following reason(s):

☒ The motion is granted as to the following documents _____

You may bring a copy of this order to the front counter to obtain the requested information.

☐ OTHER: _____

DATED THIS 10th DAY OF March, 20 17

[Handwritten Signature]
JUSTICE OF THE PEACE

FILED
MAR 13 9 26 PM '16
CLERK OF DISTRICT COURT
JULIA A. HARRIS

ORIGINAL

FILED

Mar 16 9 32 AM '17

**JUSTICE COURT
LAS VEGAS NEVADA
DEPUTY**

0042

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
NADIA HOJJAT, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12401
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant

JUSTICE COURT, LAS VEGAS

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSEPH WARREN,

Defendant,

CASE NO. 17F03940X

DEPT. NO. 7

DATE: March 20, 2017

TIME: ~~7:30 a.m.~~ 8 Am

MOTION TO WITHDRAW DUE TO CONFLICT

COMES NOW, the Defendant, JOSEPH WARREN JR., by and through NADIA HOJJAT, Deputy Public Defender and respectfully moves this Honorable Court to determine whether the Public Defender should withdraw and whether independent counsel should be appointed due to a conflict of interest.

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

DATED this 16th day of March, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By:

NADIA HOJJAT #12401
Deputy Public Defender

17F03940X

MWC

Motion to Withdraw Due to Conflict
7752680



()

DECLARATION

NADIA HOJJAT, makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

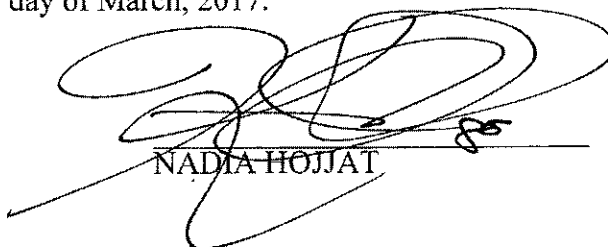
2. That effective representation of the Defendant in the instant matter would necessarily prejudice the interests of any persons mentioned in this declaration.

3. Therefore, Defendant asks this Court to allow the Clark County Public Defender's Office to withdraw in this case due to conflict of interest and to appoint independent counsel to represent the Defendant.

4. The Defendant has been notified of the presentation of this motion.

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

EXECUTED on this 16th day of March, 2017.


NADIA HOJJAT

()

FACTS

Joseph Warren Jr. is charged by way of Criminal Complaint with First Degree Kidnapping, Sexual Assault, Battery with Intent to Commit Sexual Assault, and Open or Gross Lewdness. Per the police report, the alleged victim, Kearstin Ellis, claims that she was walking by Freedom Park while going to meet her boyfriend nearby at a Rebel Gas Station. Ms. Ellis had left the home of Manuel Garcia, a male friend she had spent most of the night with. Ms. Ellis told Mr. Garcia that she was going to meet a female friend.

Ms. Ellis claims that she did not make it to meet her boyfriend, Taylor Washington, because she was pulled into a bathroom area inside the park, forced to smoke methamphetamine against her will, and then sexually assaulted.

Two transient individuals, Shekeitha McQueen, and Troy De-La Cruz, were sleeping in Freedom Park against the restrooms where this sexual assault allegedly occurred during the time of the alleged sexual assault. Mr. De-La Cruz says he did not see or hear anything. Ms. McQueen says she heard screaming, but said she believed it was coming from the apartments directly across the street. She further stated that she routinely hears people fighting loudly at the apartments across the street and that such fights sometimes move to the park. Ms. McQueen believes the screaming she heard was another fight from the apartments.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to the Nevada Rules of Professional Conduct 1.7:

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) The representation of one client will be directly adverse to another client;
- or
- (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a **former client** or a third person or by a personal interest of the lawyer. (emphasis added).

Additionally, the Nevada Rules of Professional Conduct 1.16(b)(1)(5) provides that:

1 A lawyer may withdraw from representing a client if withdrawal can be
2 accomplished without material adverse effect on the interest of the client, or
3 if... other good cause for withdrawal exists.

4 Where a conflict exists between an appointed attorney and a client, the Court must allow
5 counsel to withdraw and appoint conflict-free counsel. The Nevada Supreme Court has found
6 "Every defendant has a constitutional right to the assistance of counsel unhindered by conflicting
7 interests." Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). *See also* Holloway v.
8 Arkansas, 435 U.S. 475 (1978); Harvey v. State, 96 Nev. 850, 619 P.2d 1214 (1980). When
9 conflicting duties of an attorney to a client are present, the Supreme Court has found that such
10 conflicts may deny a defendant their Sixth Amendment right to effective assistance of counsel.
11 Mannon v. State, 98 Nev. 224, 226, 645 P.2d 433, 434 (1982). Counsel thus has an "ethical
12 obligation to inform the court immediately that a conflict had arisen" that may require withdraw.
13 Id.

14 Requiring a defendant to negotiate a case or face trial with an attorney who has a conflict
15 of interest constitutes reversible error. *See, e.g.,* Clark, 108 Nev. 324; Koza v. District Court, 99
16 Nev. 535, 540-41, 665 P.2d 244, 247 (1983) (concluding that the district court abused its
17 discretion in appointing the public defender to represent defendant where the defendant had a
18 conflict with a former client). The Nevada Supreme Court has found that "an actual conflict of
19 interest which adversely affects a lawyer's performance will result in a presumption of prejudice
20 to the defendant." Clark, 108 Nev. at 326. *See also* Strickland v. Washington, 466 U.S. 668
21 (1984); Cuyler v. Sullivan, 446 U.S. 335 (1980); Coles v. Arizona Charlie's, 973 F.Supp. 971,
22 975 (D.Nev.1997) (holding that any doubts as to the existence of a conflict of interest should be
23 resolved in favor of disqualification); Mannon, 98 Nev. at 226. The need for conflict-free
24 counsel also arises from the difficulty faced by an appellate court in "measuring the effect of
25 representation tainted by conflicting interests." Clark, 108 Nev. at 326.

26 When considering whether a conflict exists, a court must evaluate "the specific facts of
27 each case" because "[c]onflict of interest and divided loyalty situations can take many forms."

1 Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). In general, however, the Nevada
2 Supreme Court has found that "a conflict exists when an attorney is placed in a situation
3 conducive to divided loyalties." Clark, 108 Nev. at 326 (citing Smith v. Lockhart, 923 F.2d
4 1314, 1320 (8th Cir. 1991)).

5 Therefore, where counsel identifies a conflict in representing a defendant in a specific
6 criminal matter, the Court should grant a motion to withdraw due to conflict to ensure that a
7 defendant's 6th Amendment right to counsel is not violated in a manner constituting reversible
8 error.

9 In this case, the Public Defender's office has previously represented one of the above
10 named individuals in multiple juvenile matters. Discussing those juvenile matters at trial would
11 go to the Defense's theory of the case. Because the Defense only knows about such matters via
12 the attorney-client relationship, a conflict of interest arises.

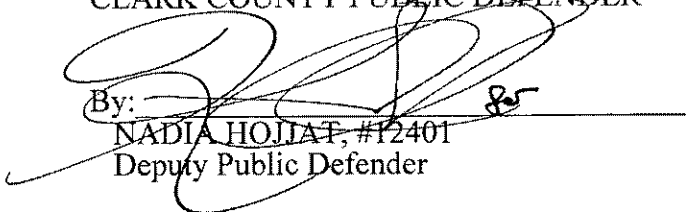
13 To protect both the rights individuals arrested and adjudicated in juvenile court, and the
14 confidentiality of the defense theory of the case, Defense counsel requests to be allowed to
15 communicate the conflict *in camera* so that this Honorable Court can make a ruling as to whether
16 a conflict of interest exists necessitating removal of the Public Defender's Office from this case.

18 CONCLUSION

19 The Defense asks to be allowed to convey the specifics of the conflict in this case *in*
20 *camera* so that a determination can be made whether independent counsel should be appointed to
21 represent Mr. Warren Jr. in this case.

22 DATED this 16th day of March, 2017.

24 PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

26 By: 
27 NADIA HOIYAT, #12401
Deputy Public Defender
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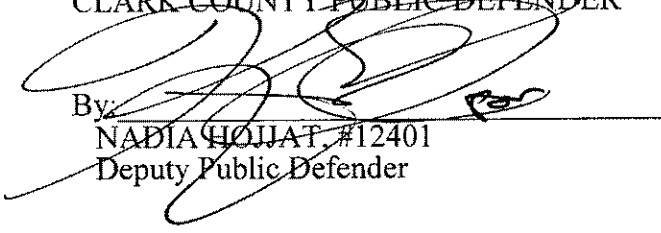
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion To Withdraw Due To
Conflict will be heard on 20th day of March, 2017, at 7:30 a.m., Justice Court Department 7.

DATED this 16th day of March, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

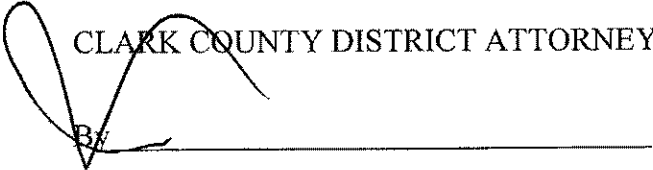
By: 
NADIA HOJJAT, #12401
Deputy Public Defender

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion is hereby acknowledged
this 16 day of March, 2017.

CLARK COUNTY DISTRICT ATTORNEY

By: 

MAY 04 2017

CLERK

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSEPH E. WARREN, JR., #1239725,

Defendant.

Case No.: 17F-03940X

Dept. No.: 7

ORDER

17F03940X

OFFCL

Order - Findings of Fact and Conclusions
7955971



This matter, having come before the Court for Preliminary Hearing on April 20, 2017,
and the Court being fully advised of the premises herein, does hereby find the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 6, 2017, the State of Nevada filed a Criminal Complaint against Joseph E.
Warren, Jr. (hereinafter "Defendant") for conduct allegedly committed against a victim who will
be designated as "K.E." The Complaint includes the following five counts:

Count One: First-Degree Kidnapping
Count Two: Sexual Assault
Count Three: Battery with Intent to Commit Sexual Assault
Count Four: Open or Gross Lewdness
Count Five: Open or Gross Lewdness¹

On April 20, 2017, the Court presided over the Preliminary Hearing in this matter. The
Court will summarize the proceedings in the following sections.

¹ The Complaint alleges that Defendant committed each of the above acts on or about March 1, 2017.

1 I. Introductory Arguments

2
3 At the commencement of the Preliminary Hearing, Exhibit 1 was admitted without
4 objection. Exhibit 1 is a prior Judgment of Conviction in Case #C-220286.

5 Additionally, the parties stipulated to the admission of Exhibits 2, 3, and 6, all of which
6 are various DNA reports.

7
8 II. Testimony of Jeri Dermanelian

9
10 A. Direct Examination by the State

11
12 Jeri Dermanelian (hereinafter "Dermanelian") is a certified sexual-assault nurse examiner
13 ("SANE nurse") for a company called Rose Heart.

14
15 On March 1, 2017, at approximately 4:35 AM, Dermanelian treated eighteen-year-old
16 K.E. at University Medical Center (UMC). K.E. reported that she had been the victim of a
17 sexual assault, and Dermanelian testified to the following:

18 The patient stated that she was walking home. She was going to go to her fiancé's
19 house. She was stopped. When she stopped, she went to have a cigarette. A male came
20 up to her that she didn't know and asked her if he could have a cigarette. She gave him a
21 cigarette. And she stated that she was forced to have finger to vagina and then penis to
22 vagina intercourse in a bathroom. She stated she was in a standing position and bent
over. She stated that the male used a garbage bag to wrap as a possible condom. The
garbage bag came off, and there was penis to vagina intercourse without the wrapper.
The ejaculation took place in the vagina.

23 The patient states that was forced to smoke methamphetamines. The male told her that
24 the methamphetamines would make her wet. And she stated that she was not hit with an
open hand or closed fist. There was no gun or knife used in the sexual assault.

1 *Transcript of Proceedings (April 20, 2017), at 10:4-10:22.*²

2 K.E. also told Dermanelian that K.E.'s last date of consensual sexual intercourse was on
3 February 27, 2017.

4 Moreover, K.E. indicated that she was not a user of street drugs. A subsequent drug
5 screen of K.E.'s urine showed marijuana and amphetamines in her system.

6 K.E. and Dermanelian discussed the four types of medical examinations to which K.E.
7 could be subjected, and K.E. chose "the full, forensic sexual assault kit" which includes
8 notification to law enforcement for the purpose of requesting a criminal investigation.

9 *Transcript, at 14:16-14:24.* Dermanelian impounded the underwear worn by K.E. and also
10 performed swabs of K.E.'s mouth, vagina, and cervex.

11
12
13 B. Cross-Examination by Defense Counsel

14
15 After brief questioning, Defense Counsel renewed her objection to the admission of the
16 hearsay statements from Dermanelian's direct examination. Defense Counsel argued that K.E.'s
17 statements were made "for the purposes of a police investigation, not for purposes of treatment."
18 *Transcript, at 24:13-24:19.*

19 The State asked the Court to reserve its ruling until further questions had been asked of
20 the witness, and the Court agreed.

21
22 C. Redirect Examination by the State

23
24
25 ² During the Preliminary Hearing, the Court admitted the above hearsay statements pursuant to NRS 51.115.
This statute will be addressed in greater detail infra.

1 On redirect, Dermanelian testified to the following types of "treatment" that she had
2 administered to K.E.:

3 The medical history was obtained, the history of the event was obtained, the sexually
4 transmitted infection blood testing was drawn, urine was obtained, the antibiotics were
5 administered, the morning-after medication was administered, and the discharge
6 information was given to the patient. Referral information was given to the patient for
7 the 12-week follow-up for the second HIV and syphilis test.

8 *Transcript*, at 25:8-25:16.

9 After further arguments, the Court overruled the renewed objection and allowed the
10 hearsay testimony from the direct examination to be admitted.

11 III. Evidence Relating to a 9-1-1 Call

12 At this point in the Preliminary Hearing, the State asked that the 9-1-1 call from K.E. be
13 admitted into evidence. The State argued that K.E.'s statements during the 9-1-1 call were
14 admissible under hearsay principles as either "present-sense impressions" or "excited
15 utterances." The State further argued that the 9-1-1 call corroborates the sequence of events
16 which K.E. described to Dermanelian.

17 In response, Defense Counsel argued that the 9-1-1 call was not admissible under NRS
18 171.196. Defense Counsel also argued that that 9-1-1 call is "basically unintelligible."

19 *Transcript*, at 29:19-29:21.

20 After further argument, the Court allowed the 9-1-1 tape to be admitted, but not the
21 transcript of the 9-1-1 call.

22 IV. DNA Evidence

1
2 The State referred to the admitted DNA reports which showed that the results connected
3 Defendant to the charged offenses with a potential likelihood of error of "1 in 174 quadrillion."
4 *Transcript*, at 32:13-33:2.

5
6 V. Conclusion

7 At the conclusion of the Preliminary Hearing, the Court indicated that it would prepare
8 this written Order.

9
10 **DISCUSSION**

11
12 After carefully reviewing the applicable legal arguments raised by the parties, the Court
13 is now prepared to set forth its reasoning as follows.

14
15 I. Traditional Requirements Relating to Hearsay Statements

16
17 The State's entire case rests upon the admissibility of hearsay statements from the victim.
18 The traditional requirements relating to hearsay statements would be satisfied by the statements
19 at issue here. For example, K.E.'s statements to Dermanelian constitute "statements for purposes
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25

1 of medical diagnosis or treatment” under NRS 51.115.³ Moreover, K.E.’s statements during her
2 9-1-1 call constitute “present-sense impressions”⁴ and also “excited utterances.”⁵

3 However, the Court must also consider how a recent legislative change has altered the
4 traditional hearsay requirements at preliminary hearings.

5 6 II. Recent Legislation

7
8 In 2015, the Nevada Legislature enacted **Assembly Bill 193 (2015)** (hereinafter
9 “AB 193”). This bill amended NRS 171.196, Nevada’s statute which deals with preliminary
10 hearings. NRS 171.196(6) now provides as follows:

11 **NRS 171.196. Preliminary examination: Waiver; time for conducting;**
12 **postponement; introduction of evidence and cross-examination of witnesses by**
13 **defendant; admissibility of hearsay evidence.**

14 ...

15 6. Hearsay evidence consisting of a statement made by the alleged victim of the offense
16 is admissible at a preliminary examination conducted pursuant to this section only if the
17 defendant is charged with one or more of the following offenses:

18 (a) A sexual offense committed against a child who is under the age of 16 years if
19 the offense is punishable as a felony. As used in this paragraph, “sexual offense”
20 has the meaning ascribed to it in NRS 179D.097.

21 (b) Abuse of a child pursuant to NRS 200.508 if the offense is committed against
22 a child who is under the age of 16 years and the offense is punishable as a felony.

23 (c) An act which constitutes domestic violence pursuant to NRS 33.018, which is
24 punishable as a felony and which resulted in substantial bodily harm to the
25 alleged victim. [*Emphasis added*].

21 ³ See NRS 51.115 (“Statements made for purposes of medical diagnosis or treatment and describing
22 medical history, or past or present symptoms, pain or sensations, or the inception or general character of the
23 cause or external source thereof are not inadmissible under the hearsay rule insofar as they were reasonably
24 pertinent to diagnosis or treatment”).

25 ⁴ See NRS 51.085 (“A statement describing or explaining an event or condition made while the declarant
was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay
rule.”).

⁵ See NRS 51.095 (“A statement relating to a startling event or condition made while the declarant was under
the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule.”).

1 The parties in this case recognize that Defendant is not charged with any of the
2 enumerated offenses in NRS 171.196(6). However, they disagree as to whether NRS
3 171.196(6) supplants the traditional requirements relating to hearsay in the context of a
4 preliminary hearing.

5 For at least two reasons, the Court finds that NRS 171.196(6) **does** supplant the
6 traditional requirements relating to hearsay in the context of a preliminary hearing.

7
8 A. The Text of NRS 171.196(6) as Amended by AB 193

9
10 NRS 171.196 is the Nevada statute which defines the applicable procedure at a
11 preliminary hearing. The title for this statute appears as follows:

12
13 **NRS 171.196 Preliminary examination: Waiver; time for conducting;
14 postponement; introduction of evidence and cross-examination of witnesses by
15 defendant; admissibility of hearsay evidence. [*Emphasis added*].**

16 The Legislature has structured the title so that it regulates the general “admissibility of
17 hearsay evidence” at a preliminary hearing. This title is indicative of what the Legislature
18 intended to accomplish. See Coast Hotels & Casinos v. Nev. State Labor Comm’n, 117 Nev.
19 835, 841-42 (2001) (recognizing that a title is typically prefixed to a statute in the form of a
20 descriptive heading or a brief summary of the contents of the statute and that “[t]he title of a
21 statute may be considered in determining legislative intent”).

22 In addition, the preamble to NRS 171.196(6) declares that “hearsay evidence consisting
23 of a statement made by the alleged victim of the offense is admissible at a preliminary
24 examination conducted pursuant to this section **only if** the defendant is charged with one or
25

1 more” of the enumerated offenses. [*Emphasis added*]. In order to give meaning to every word
2 and phrase in NRS 171.196(6)⁶, the Court must interpret “only if” to mean what it says. A
3 hearsay statement from a victim is admissible at a preliminary hearing “only if” one or more
4 enumerated offenses is charged.⁷

5
6
7 B. Explicit Statements of Legislative Intent
8

9 On April 10, 2015, AB 193 was heard by the Assembly Committee on Judiciary.
10 Committee Counsel Brad Wilkinson testified as follows:

11 The revised proposed conceptual amendment for A.B. 193 would revise the bill to
12 include only the following provisions:

13 ...

14
15 (3) it would provide that hearsay would be allowed in preliminary examinations and
16 grand jury proceedings, **but only in** cases involving felony child abuse, sexual offenses
17 committed against children under the age of 16, and felony domestic violence involving
18 substantial bodily harm to the victim.

19 ⁶ See Slade v. Caesar’s Entm’t Corp., 132 Nev. Adv. Op. No. 36, 373 P.3d 74, 75 (May 12, 2016)
20 (emphasizing that “[a] statute must be construed as to ‘give meaning to all of [its] parts and
language, and this court will read each sentence, phrase, and word to render it meaningful within the
context of the purpose of the legislation”).

21 ⁷ The Court notes that the State’s interpretation of NRS 171.196 would essentially delete the word “only”
22 out of the statute so that “[h]earsay evidence consisting of a statement made by the alleged victim of the
offense is admissible at a preliminary examination conducted pursuant to this section [] if the defendant is
charged with one or more of the following offenses.” However, the State cannot “cherry-pick” the
23 language that should be deemed operative in a Nevada statute. See Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 366 (2008) (declaring that “[o]ne tenet of statutory construction requires statutes to
be ‘construed as a whole and not be read in a way that would render words or phrases superfluous or make
24 a provision nugatory.’”).

25 While the State’s interpretation would apparently create *additional* hearsay exceptions for victim
statements at preliminary hearings, the actual language of NRS 171.196(6) creates the *only* hearsay
exception that applies to victim statements at preliminary hearings.

1 *Hearing on AB 193 Before the Assembly Committee on Judiciary (April 10, 2015), at*
2 Page 56 [*Emphasis added*].

3 Later, on May 6, 2015, AB 193 came before the Senate Committee on Judiciary.

4 Assistant Attorney General Wes Duncan testified as follows:

5 Assembly Bill 193 allows hearsay evidence for certain offenses at preliminary hearings
6 and grand jury proceedings. This bill is important for a number of reasons. This is a
7 victim-centered bill. It is focused on enumerated offenses. Certain victims will only have
8 to face the accused when the constitutional Confrontation Clause is applicable to the
9 proceeding. Assembly Bill 193 is important because it puts Nevada in line with the
10 majority of states. Thirty-six states allow hearsay evidence at preliminary hearings.
11 Hearsay evidence is allowed at federal grand jury and preliminary hearings. The military
also allows hearsay evidence at preliminary hearings. Assembly Bill 193 touches on the
efficiency of the system and results in cost savings. *Gerstein v. Pugh*, 420 U.S. 103
(1975), says there is no constitutional right to an adversarial hearing at the preliminary
hearing stage. **Assembly Bill 193 does not take away or erode trial rights at a district
court level. The bill only addresses evidence at a preliminary hearing at the justice
court level** and grand jury proceedings.

12 *Hearing on AB 193 Before the Senate Committee on Judiciary (May 6, 2015), at Page 8.*
13 [*Emphasis added*].

14 The above passage illustrates the legislative intent to focus on “evidence at a preliminary
15 hearing at the justice court level.” Because AB 193 “does not take away or erode trial rights at a
16 district court level,” victim statements are still admissible at trial under traditional hearsay
17 exceptions, as long as a defendant’s confrontation rights are satisfied.

18 19 III. Conclusion

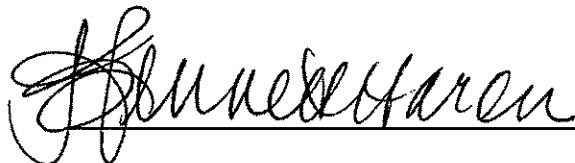
20
21 In enacting AB 193, the Nevada Legislature could have simply created additional hearsay
22 exceptions for victim statements and added those exceptions to NRS Chapter 51 (“Hearsay”), but
23 the Legislature did not take that approach. Instead, the Legislature amended NRS 171.196 and
24 crafted a new rule that applies specifically to preliminary hearings. The evidence offered by the
25

1 State in this case runs afoul of NRS 171.196(6) because the enumerated offenses in that statute
2 are not being charged in this case. Therefore, K.E.'s hearsay statements to Dermanelian and
3 K.E.'s hearsay statements in the 9-1-1 call were not admissible at the preliminary hearing, and,
4 as a result, the State is unable to satisfy even a "slight-or-marginal" evidence standard to obtain a
5 bindover to District Court.

7 **ORDER**

9 Pursuant to the statements of fact and the arguments of law submitted, it is hereby
10 ordered, adjudged, and decreed that all charges against Defendant are dismissed.

14 Dated this 2nd day of May, 2017.

22 

24 JUDGE KAREN BENNETT-HARON

ORIGINAL

5/4

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JUSTICE COURT
LAS VEGAS NEVADA
BY DB DEPUTY

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSEPH WARREN, JR.,
#1239725

Defendant.

CASE NO: 17F03940X

DEPT NO: 7

ORDER FOR TRANSCRIPT

Upon the ex-parte application of the State of Nevada, represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through, JACOB VILLANI, Chief Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that a transcript of the preliminary hearing heard on the 20th day of April, 2017, be prepared by JENNIFER O'NEILL, Court Reporter for the above-entitled Court.

DATED this 24th day of April, 2017.


JENNIFER O'NEILL
JUSTICE OF THE PEACE

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

BY


JACOB VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

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JUSTICE COURT DEPT. 7

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17F03940X
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Order for Transcript
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071

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE # DEPT # REQUESTED BY:

17F03940X

JC-7

NAME:

ID #

Joseph Warren Jr.

1239725

CHARGES:

Kidnapping, 1st degree, Sex asslt, Battery to commit sex asslt, victim 16+, Open/gross lewdness,
(1st)(2 CTS)

CURRENT BAIL:

SIC/NO BAIL

VERIFIED: ADDRESS: [REDACTED]
WITH WHOM/HOW LONG: / 7Y

VERIFIED: EMPLOYMENT STATUS: UNEMPLOYED / SUPPORT: SSID
LENGTH: 20Y

VERIFIED: RELATIVES - LOCAL : NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 03 NV ATT THEFT; 04 NV FORG; 06
NV COERCION-FORCE - SEXUALLY MOTIVATED
MISDEMEANOR CONVICTIONS: 3 03 NV BDV

FAIL TO APPEAR: 4

ALSO I/C: C-16-313900-1 DC-10 04/05/2017

PENDING CASE: 17F04037X IN SCREENING

RECOMMENDATION:

DATE: 3/8/2017

PRETRIAL SERVICES: Jonah Battie

17F03940X
IVS
Pretrial Information Sheet
7724831



CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE #
17F03940X

DEPT #
JC-7

REQUESTED BY:

NAME:
Joseph Warren Jr.

ID #
1239725

CHARGES:

KIDNAPPING, 1ST DEGREE; SEX ASSAULT; BATTERY TO COMMIT SEX ASSAULT,
VICTIM 16+; OPEN/GROSS LEWDNESS, (1ST)(2cts)

CURRENT BAIL:
NO BAIL

VERIFIED: ADDRESS: [REDACTED]
WITH WHOM/HOW LONG: / 7Y

VERIFIED: EMPLOYMENT STATUS: UNEMPLOYED / SUPPORT: SSID
LENGTH: 20Y

VERIFIED: RELATIVES - LOCAL: NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 03 NV ATT THEFT; 04 NV FORG; 06
NV COERCION-FORCE - SEXUALLY MOTIVATED

MISDEMEANOR CONVICTIONS: 3 03 NV BDV

FAIL TO APPEAR: 4

ALSO I/C: 17F04527X JC-1 04/20/2017; 17F04037X JC-12 03/30/2017 & C-16-313900-1 DC-10
04/05/2017

RECOMMENDATION:

DATE: 3/29/2017

PRETRIAL SERVICES: Stephanie Rapel

17F03940X
IVS
Pretrial Information Sheet
7805863



073

CONFIDENTIAL

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

PRETRIAL SERVICES INFORMATION SHEET

CASE # 17F03940X DEPT # JC-7 REQUESTED BY:

NAME: Joseph Warren Jr. ID # 1239725

CHARGES:
KIDNAPPING, 1ST DEGREE; SEX ASSAULT; BATTERY TO COMMIT SEX ASSAULT,
VICTIM 16+; OPEN/GROSS LEWDNESS, (1ST)(2cts)
CURRENT BAIL:
NO BAIL

VERIFIED: ADDRESS: [REDACTED]
WITH WHOM/HOW LONG: / 7Y

VERIFIED: EMPLOYMENT STATUS: UNEMPLOYED / SUPPORT: SSID
LENGTH: 20Y

VERIFIED: RELATIVES - LOCAL : NOT LOCAL:

FELONY/GROSS MISDEMEANOR CONVICTIONS: 03 NV ATT THEFT; 04 NV FORG; 06
NV COERCION-FORCE - SEXUALLY MOTIVATED
MISDEMEANOR CONVICTIONS: 3 03 NV BDV

FAIL TO APPEAR: 4

ALSO I/C: 17F04527X JC-1 04/20/2017 & C-16-313900-1 DC-10 05/03/2017.

RECOMMENDATION:

DATE: 4/13/2017

PRETRIAL SERVICES: Stephanie Rapel

17F03940X
IVS
Pretrial Information Sheet
7867637



074

2017 MAR -6 P 2:37
Event Number: 170301-0486

STATE OF NEVADA) Joseph Warren Jr
) ss: ID#: 1239725
COUNTY OF CLARK) DOB: [REDACTED] SS#: [REDACTED]

That he is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 15 years, assigned to investigate the crime(s) of Sexual Assault, Kidnapping 1st Degree, Battery w/Intent to Commit Sexual Assault, Open and Gross Lewdness (2 counts) committed on or about 03/01/17, which investigation has developed Joseph Warren Jr as the perpetrator thereof.

On 3/1/17, I Detective J. Lafreniere P# 7570, with the Sexual Assault Unit of the Las Vegas Metropolitan Police Department (LVMPD) was advised of a possible sexual assault, which occurred earlier that morning at Freedom Park; 850 N. Mojave Road Las Vegas, NV 89101.

The victim was identified as [REDACTED] [REDACTED] DOB [REDACTED] and the suspect is unknown.

On 3/1/17, at approximately 0328 hours, [REDACTED] contacted LVMPD to report that she was sexually assaulted at Freedom Park, located at 850 N. Mojave LV, NV 89101. [REDACTED] reported that she was pulled to a bathroom area inside the park, where she was sexually assaulted by an unknown black male. After the assault, the subject fled and [REDACTED] called 911.

██████████ was transported to UMC Hospital by Patrol Officers N. Harding P# 14807 and Hinckley P# 14891.

I was advised that patrol officers made contact with two homeless people in the area, who said they heard the victim screaming.

17F03940X
RDPJ
Redacted paperwork approved by Judge
7735404



CONTINUATION

Event #: 170301-0486

LVMPD Sergeant Roberson P# 6028 and I responded to UMC Hospital where we met with and interviewed [REDACTED] DOB [REDACTED]. The interview was recorded and will be transcribed for full, specific content. The following is a summary of my recorded interview with [REDACTED] and not verbatim:

During the early morning hours of 03/01/17, she was walking on the sidewalk, near Freedom Park. She was coming from her friend Manny Garcia's house, which she said was in the area of 28th Street and Constantine. Prior to leaving Manny's house, [REDACTED] sent her boyfriend, Taylor Washington, a message on Facebook Messenger, asking him to meet her at the Rebel Station, located at Pecos and Washington. Taylor agreed and [REDACTED] set out on foot to meet him. [REDACTED] was wearing a white hooded sweatshirt, camouflage jeans, and sandals.

[REDACTED] was carrying a plastic grocery bag containing a box of Carne Asada Fries and she was smoking a cigarette. As she was walking, [REDACTED] pulled her phone out of her sweatshirt pocket and she dropped \$20 on the ground. When she stopped to pick up her money, the suspect (further described as a Black male adult, 30's-40's, approximately 5'7"-5'8", skinny build, short hair, hazel or "greenish brown" eyes, with a deep voice, wearing a blue plaid jacket, over a black hooded sweatshirt, blue jeans, possibly black boots, and "you could tell he was on drugs") was walking behind her and asked her for a cigarette. [REDACTED] provided him with a cigarette and she continued walking. The subject continued to walk behind her and asked what she was doing out so late. [REDACTED] told him that she was going to her boyfriend's, and the subject continued to walk next to her. When they approached the restrooms, near the gates to the park and inside of the park, the subject told her to "hold on", that he wanted to hangout, and that he first needed to use the restroom. [REDACTED] told him she was walking to meet her boyfriend at the Rebel Station (Pecos and Washington) and she was going to keep walking. The subject then grabbed [REDACTED] by the hood of her sweatshirt and he pulled her through the gates, to the bathroom building (1 count Kidnapping/first degree). [REDACTED] said she screamed for him to stop and for help, and she tried to pull away from the subject but he was too strong for her. The subject wrapped his arm around her neck, from behind, and he choked her as he pulled her toward the restroom (1 count Battery with Intent to Commit Sexual Assault).

[REDACTED] said dropped to the ground and curled up, and the subject pulled her up by her arm and the sleeve of her sweatshirt. [REDACTED] told the subject to stop and she told him that she was pregnant and that she would "comply". The subject then pushed her up against a wall to the exterior of the restrooms (they never entered the bathroom building) and he pulled out a pipe with "crystal" methamphetamine and forced [REDACTED] to smoke it.

After [REDACTED] smoked the meth (she said she took one "hit") the subject pulled down her pants and underwear, to her knees. [REDACTED] told him no but said there was nothing she could do. The subject told [REDACTED] that he was not going to hurt her, that he was only going to "jack off", and he instructed her to turn around. [REDACTED] turned toward the wall (facing away from the suspect) and the subject asked [REDACTED] if she had another bag with her. He then looked inside of the grocery bag she had been carrying and did not find another bag. He then retrieved a "grocery" style bag from a trash can and he exposed his penis and he began masturbating inside of the bag (1 count Open and Gross Lewdness). The subject then began rubbing his penis on her butt with the bag over his penis and then without the bag on his penis (2nd count Open and Gross Lewdness). The subject then inserted his penis into [REDACTED] vagina (1 count Sexual Assault). [REDACTED] kept asking the subject to "please stop" and he told her to "arch" her back and he began getting angry at her for not arching her back. [REDACTED] recalled the

CONTINUATION

Event #: 170301-0486

subject telling her that she was making it worse than it needed to be. [REDACTED] said she kept trying to stand up but the subject "bent" her back over. [REDACTED] recalled while this was occurring, the subject bent her over, and her cigarettes and a nail polish fell out of her sweatshirt pocket and the nail polish shattered on the ground under her.

The subject continued to put his penis inside of her vagina until he ejaculated inside of her. After he ejaculated, the subject retrieved an unknown item (possible a rag or a napkin and [REDACTED] does not know where he retrieved it from) and he used a water fountain to wet the item. He then used the item to wipe [REDACTED] vaginal area and she does not know what he did with the item.

The subject then told [REDACTED] to walk with him and they walked toward the exit/entrance of the park. As they walked, the suspect told [REDACTED] that he was going to smoke the rest of the "crystal" with his "hommie" at their apartment. He told [REDACTED] that he lived in an apartment behind the Rainbow Market. The subject then crossed the street alone and he walked toward an apartment complex. As soon as he was out of sight, [REDACTED] immediately called 911 from her cell phone. [REDACTED] said her phone does not have service to make regular phone calls but she is able to make emergency calls.

[REDACTED] denied that any of the sexual acts with the subject were consensual.

[REDACTED] said she was not sure what the suspect did with the "grocery" bag he used to masturbate into, or with the "rag" he used to wipe her after he ejaculated. [REDACTED] said the subject did pick up her cigarette box and put it back in her pocket after they fell out of her pocket.

[REDACTED] agreed to allow detectives to look at the call log on her cell phone and to look at her messages on her "Messenger App", to help get a more specific time frame.

[REDACTED] agreed to later go with detectives to Freedom Park and show exact locations and directions of where the incident occurred, where she saw the suspect, and where they traveled.

[REDACTED] consented to have a sexual assault examination.

[REDACTED] denied any drug or alcohol usage, other than the "crystal" she was forced to smoke.

[REDACTED] said she would be able to identify the subject if she saw him again but she did not think she would be able to describe him to a sketch artist.

This concludes the interview with [REDACTED]

LVMPD Crime Scene Analyst (CSA) S. Lynch P# 13206 responded to UMC Hospital and she collected the bag [REDACTED] was carrying (same bag the suspect looked through). She also fingerprinted the Cigarette box which fell from [REDACTED] sweatshirt pocket and that the suspect picked up.

Possible Witnesses

I was advised that when patrol officers arrived on scene, they made contact with two homeless subjects, who identified themselves as Amber McQueen and Troy De La Cruz, just west of the scene. Amber said she heard the victim screaming that morning.

CONTINUATION

Event #: 170301-0486

I then contacted LVMPD Patrol Officer Kennoy P# 14825 (officer securing the possible scene). Officer Kennoy informed me that Amber was no longer located at the scene and it was not known where she went. Officer Kennoy did not know if Amber completed a written statement and he advised me that he Officer Celaya was the person who spoke with Amber.

I then made contact with LVMPD Patrol Officer Celaya P# 13524. Officer Celaya said he spoke with a homeless individual who identified herself as Amber McQueen; DOB [REDACTED] SSN [REDACTED] Phone number [REDACTED]. Officer Celaya said Amber was reluctant to provide information and to speak with officers. Amber asked him if she had to provide her real name. Amber told Officer Celaya that she and her boyfriend were asleep in the park and they heard screaming for approximately 20 minutes. After the screaming stopped, she saw a figure run past her. Amber provided no other information.

I asked Officer Celaya to complete an Officer's Report detailing his interaction with Amber and Troy. Officer Celaya provided me with the following report:

Under event number 170301-0486 [REDACTED] [REDACTED] reported she was sexually assaulted at Freedom Park. While looking for a crime scene I, Officer K. Celaya contacted Amber McQueen. Amber stated she was sleeping in the park with her boyfriend Troy De-La Cruz. I asked Amber if she had heard any screaming earlier in the day and she stated she heard a female screaming for about 20 minutes. Amber believed the screams were coming from the apartment complex across the street. After the screams stopped she saw a shadow running west through the park. Amber asked if she had to give her real name because she was scared. Troy stated he didn't hear or see anything. Troy and Amber appeared to be transients. Amber is a black female adult, with black hair. Troy is a Hispanic adult approximately 5'5 130 pounds with brown hair.

Sexual Assault Examination

[REDACTED] Sexual Assault Examination was administered by SANE Nurse Jeri Dermanelion. Per Nurse Dermanelion there were no obvious signs of visible trauma noted to [REDACTED] genital area. There was notable bruising to [REDACTED] upper arm.

[REDACTED] did test positive for amphetamines.

Please refer to the Sexual Assault report for further details.

The clothing [REDACTED] during the sexual assault was collected by Nurse Dermanelion. The clothing was given to Sergeant Roberson, by Nurse Dermanelion, and Sergeant Roberson placed the clothing into locked temporary evidence lockers at LVMPD Headquarters.

Scene: Freedom Park, 850 North Mojave Road, Las Vegas, NV 89101; Big League Dreams Park, 3151 E. Washington, Las Vegas, NV 89101

After the Sexual Assault Examination, Sergeant Roberson and LVMPD Investigative Specialist N. Zucker P# 5048 transported [REDACTED] to the scene of the incident. [REDACTED] directed detectives through the route traveled by her and the suspect prior to the incident, showed us exactly where the incident occurred, and showed us the direction traveled by her and the suspect after the incident occurred.

The following is a summary of the identified locations and route traveled:

[REDACTED] was first approached by the suspect while she was walking east bound on Washington, toward Pecos, from Mojave, on the south side of the street.

CONTINUATION

Event #: 170301-0486

██████████ and the suspect continued walking east and when they approached an iron pedestrian and vehicle gate to the entrance to Big League Dreams Park (3151 E Washington, Las Vegas, NV 89101). This is where the suspect said he had to use the restroom.

The suspect then pulled her to the restroom building located inside of the park, just west of the identified entrance.

██████████ identified a broken bottle of nail polish located on the ground to the north of the building, against the north wall, as the bottle which fell from her pocket during the incident.

██████████ pointed out a sink located right next to the incident location, where she said the suspect wet the rag he used to clean her off after the incident.

██████████ said she saw the homeless person to the west of the restroom building, prior to the incident.

██████████ showed detectives that she and the suspect then walked east, back out the same pedestrian gate they entered, and back onto east bound Washington. The suspect then crossed Washington, northwest bound, and disappeared into the apartment complex (Park Vista Apartments; 1001 N. Pecos Las Vegas, NV 89101).

██████████ identified a "Bike Lane" sign on Washington as the sign she was near when she called 911.

CSA Lynch responded and photographed the scene and route identified by ██████████

Possible DNA evidence was located at the scene. We located five, apparently used, white paper towels on the ground, around the identified scene. It is unknown if any of the towels located was the towel used by the suspect to wipe ██████████ after the sexual assault. All the recovered towels were collected by CSA Lynch as potential evidence.

I drove around the areas identified by ██████████ to try and locate possible video surveillance. I did not notice any obvious video cameras on any residences or on the apartment complex.

██████████ Phone

██████████ consented to allow detectives to look at and photograph her call log and messages to/from Taylor. Sergeant Roberson photographed these and sent them to me via email. ██████████ claimed that the time stamp on her phone was inaccurate and her call log showed that she made a 911 call on "Today" at "6:26 AM". The call log showed that the call lasted "6 min 48 sec". LVMPD Call records show that ██████████ made a call to 911 at 0326 hours, on 3/1/17 (a three hour difference between her phone's timestamp and the actual call time).

██████████ Messenger Records show that her boyfriend (screen name ██████████) sent her a message at "6:08 AM" (actual time 3:08 AM) asking her "wya" (stands for "where you at?"). Prior to that message, ██████████ and her boyfriend discussed meeting at the Rebel Station and her being at Freedom Park (these messages do not show a time stamp).

██████████ identified the Rebel Station they planned on meeting at as being located on Washington and Pecos (actual address is ██████████ Pecos Las Vegas, NV 89101).

CONTINUATION

Event #: 170301-0486

Interview/Elimination DNA from Taylor Washington

During her interview, [REDACTED] said she did have consensual sexual intercourse with her boyfriend, the evening prior to the sexual assault.

On 03/03/17, I contacted [REDACTED] boyfriend, Taylor Washington [REDACTED]. Taylor was at his place of work and agreed to meet with me and provide a DNA sample via buccal swab, for elimination purposes. I then responded to Taylor's location and Taylor signed a consent form, indicating the same. I collected a sample of his DNA via epithelial cells and buccal swab kit.

The sample was sealed and I delivered the sample to the LVMPD Forensic Lab where I impounded the DNA sample.

Due to him being at work, I briefly spoke with Taylor regarding the incident, and the conversation was not recorded.

Taylor said he and [REDACTED] have been in a dating relationship since 2014.

Taylor was aware of the allegations but did not know details. He wanted me to know that he was not the person texting [REDACTED] during the early morning hours of March 1st. Taylor said he went to sleep between midnight and 2 am. His cousin, Steven Bell, was pretending to be Taylor and was using Taylor's phone to message [REDACTED]. At one point Taylor woke up and told Steven to quit texting his girlfriend. Taylor said he would have never allowed [REDACTED] to walk home alone.

Taylor said he did recall that Steven woke him between 2-3 am and told him that he was going to meet [REDACTED] at the Rebel Station. Because he was sleeping, Taylor shrugged it off and went back to sleep. When he woke later that morning Taylor asked Steven if he went to meet [REDACTED] and Steven said [REDACTED] was not at the Rebel when he showed up.

Taylor then read his messages and learned about the allegations and that [REDACTED] went to the hospital.

Interview with Manuel Garcia (Manny)

[REDACTED] identified Manny's residence as being located at [REDACTED]. I then responded to the residence and made contact with Manuel Garcia (Manny) [REDACTED]. I identified myself and explained why I was there and Manny agreed to speak with me. My interview with Manny was recorded and will be transcribed for full, specific content. The following is a summary of my interview with Manny, and not verbatim:

On 03/01/17, at approximately 0130 hours, Manny returned home from Circus Circus with his brother, to find [REDACTED] at his house. Manny did not know [REDACTED] was coming over and they do not regularly associate with each other, but he did not mind her being there.

[REDACTED] was not acting unusual and he thought she just needed a place to sleep for the night. Manny was fine with this and they watched a movie together. After the movie ended (approximately 1 ½ hours later), [REDACTED] asked Manny if he would give her a ride to her "home girl's" house. Manny said it was too late and he did not want to drive and he told [REDACTED] that she could just stay the night and go tomorrow. [REDACTED] said she wanted to leave and she took her belongings (a bag with a box of carne asada fries) and she left.

Manny was not sure where [REDACTED] friend lived or whose house she was going to.

CONTINUATION

Event #: 170301-0486

Manny said he did not believe [REDACTED] to be using any drugs or alcohol while she was at his house and she was acting normal.

This concludes the interview with Manny.

Interview with Shekeitha McQueen

LVMPD Officers never received a written voluntary statement, or was able to obtain a recorded statement, from the homeless female who identified herself as Amber McQueen. I was also not able to find any type of record of Amber, based on the information she provided. On 03/01/17, I put an entry into LVMPD Briefing requesting patrol officer to try and locate the same homeless couple and to positively identify them and contact me, once they did.

On 03/02/17, at approximately 0430 hours, I was contacted by LVMPD Patrol Officer Celaya. Officer Celaya again returned to the bathroom area at Freedom Park (scene of the sexual assault) and he again located the same homeless female sleeping against the west wall of the structure. Officer Celaya again spoke with the female and he again explained the circumstances. The female explained she was "scared" the previous day and she did not provide officers with her correct information. The female identified herself as Shekeitha McQueen DOB [REDACTED] and she said she would be willing to provide a written statement and to speak with Detectives.

I then responded to Freedom Park, where I made contact with and interviewed Shekeitha McQueen DOB [REDACTED]. The interview was recorded and will be transcribed for full, specific content. The following is a summary of my interview with Shekeitha, and not verbatim:

Shekeitha said she is homeless and she has been sleeping against the same restroom area in Freedom Park, for the past year and a half.

The previous morning (3/1/17) she was asleep and she awoke around 2:30 AM-3 AM, to a female screaming. Shekeitha said she regularly hears people fighting and screaming from the apartments directly across the street and the fights sometimes move to the park. Shekeitha said she assumed the screaming was just another fight from the apartments and she did not do anything about it.

Shekeitha described the woman as "just screaming" and she does not know if any words were said. She described the screaming lasted approximately 20 minutes and then the screaming stopped. A short time later the female began screaming again and it sounded "closer", like it was "right next to" her, and sounded like it "echoed" near her.

After the screaming stopped, the police her woke her up and asked her about the incident.

Shekeitha did not see any of the people involved in the screaming and did not hear any other voices at the time.

Shekeitha said her boyfriend, Troy, was sleeping next to her while this occurred but Troy slept right through it. Troy was not with Shekeitha when I met with her but she said she would pass on my phone number to him and ask him to call me.

This concludes the interview with Shekeitha.

Shekeitha also completed a written statement, prior to my arrival.

CONTINUATIONEvent #: 170301-0486**DNA Request**

The pants (green camouflage jeans), the t-shirt (black t-shirt, worn under [REDACTED] hooded sweatshirt), and the bra (black bra, worn under her black t-shirt) which [REDACTED] wore at the time of the incident, were collected by SANE Nurse Dermanellion and the given to Sergeant Roberson. On 03/01/17, Sergeant Roberson placed the items into locked temporary evidence lockers located at LVMPD Headquarters.

On 03/02/17, I retrieved the items from temporary evidence and impounded the t-shirt and bra into LVMPD Evidence.

On 03/02/17, a priority rush was made to the LVMPD Forensic DNA Lab for analysis of the victim's pants and the victim's Sexual Assault Examination Kit for possible suspect DNA. I transported the victim's pants to the LVMPD Forensic Laboratory, located at 5605 W. Badura; Suite 120-B, where I impounded them so they could immediately be entered into Property Connect.

On 03/02/17, SANE Nurse Jeri Dermanellion transported the Sexual Assault Examination Kit to the LVMPD Forensic Laboratory so it could be immediately entered into Property Connect.

On 03/02/17, a request was made through Property Connect, asking for [REDACTED] Sexual Assault Examination Kit and the pants she was wearing at the time of the assault be checked for possible suspect DNA.

DNA Hit/Suspect Identification

On 03/05/17, I was notified that several items from my DNA Analysis Request returned positive for sperm and/or semen and DNA Profiles were able to be obtained.

The cervical swabs obtained from [REDACTED] during her Sexual Assault Examination returned positive for sperm, and a full DNA profile was able to be obtained from the sperm. I was provided with a Forensic Laboratory Report of Examination and the report indicates the same.

The full DNA profile obtained from the recovered sperm fraction was uploaded into CODIS. A CODIS Hit returned identifying the DNA Profile being consistent with DNA belonging to Joseph Warren Jr. DOB [REDACTED] ID # 1239725. A received a Forensic Laboratory Report of Examination indicating the same. The report further noted that "The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 174 quadrillion."

The CODIS Hit came from a solved Sexual Assault case from 2006, LVMPD Event # 060121-3369.

Criminal History/Additional Sexual Related Arrest of Joseph Warren Jr.

Joseph Warren Jr.; DOB [REDACTED] ID # 1239725 shows to be a registered Sexual Offender for Coercion with Force-Sexually Motivated, out of Nevada, from 2006.

Joseph Warren Jr. has a prior arrest out of North Las Vegas for Peering/Peeping/Spying Through the Opening of a Dwelling, on 10/15/15.

Joseph Warren Jr. has a prior arrest with LVMPD for Open and Gross Lewdness and Peering/Peeping/Spying Through the Opening of a Dwelling, on 02/18/16.

CONTINUATION

Event #: 170301-0486

Joseph Warren Jr. has a prior arrest with LVMPD for Sexual Offender Failure to Change Address, on 05/01/11.

Joseph Warren Jr. has a prior arrest with LVMPD for Sexual Assault on 01/25/06; LVMPD Event # 060123-3369.

Open Investigations of Sexual Related Cases Involving Joseph Warren Jr**LVMPD Event # 170129-0100**

As of the time of this declaration, LVMPD Detective A. Parrish P# 8877 was actively working a case of Open and Gross Lewdness and he has identified Joseph Warren Jr; DOB [REDACTED] ID # 1239725 as the suspect of the case. Joseph was positively identified by (2) witness in his case; LVMPD Event # 170129-0100. Joseph was witnessed masturbating in the driveway of a home located at [REDACTED] [REDACTED] (approximately 0.3 miles from 850 N. Mojave; Freedom Park).

LVMPD Event # 160414-2205

As of the time of this declaration, LVMPD Detective L. Cho P# 7073, was actively working a case of a Sexual Assault and she has developed Joseph Warren Jr.; DOB [REDACTED] ID# 1239725 as the suspect of the case. The details of Detective Cho's case are similar to the details provided by [REDACTED]. The victim on Detective Cho's case reported that the suspect is a black male adult with hazel eyes, the suspect choked the victim from behind, the suspect pulled her to the side of the building, the suspect first masturbated into a condom and then penetrated the victim from behind, and the suspect told the victim to "stick her ass in the air". The victim identified Joseph Warren as the suspect in a Photo Line-up. The victim submitted to a Sexual Assault Examination and Detective Cho has submitted the case to the LVMPD Forensic Lab for DNA analysis. As of the time of this declaration, the analysis has not been completed.

As of the time of this Declaration 03/6/17, Joseph Warren's whereabouts are unknown.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Joseph Warren Jr on the charge(s) of Sexual Assault, Kidnapping 1st Degree, Battery w/Intent to Commit Sexual Assault, Open and Gross Lewdness (2 counts).

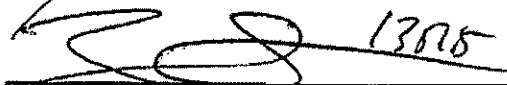
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 6th day of March, 2017.

DECLARANT:



WITNESS:

DATE: 03/06/17

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

2017 MAR -6 P 2:37

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSEPH WARREN, JR.
#1239725,

Defendant.

CASE NO: 17F03940X

DEPT NO: 7

REQUEST FOR ARREST WARRANT

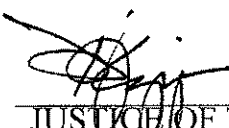
COMES NOW, STEVEN B. WOLFSON, District Attorney, and requests that a Warrant of Arrest be issued for the above named Defendant pursuant to NRS 171.106 and the Complaint and/or Affidavit(s) attached hereto and incorporated herein by this reference.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #001565

PROBABLE CAUSE FOUND: ☒

BAIL: No Bail sic

PROBABLE CAUSE NOT FOUND: ☐



JUSTICE OF THE PEACE,
LAS VEGAS TOWNSHIP

17F03940X
AWR
Request For Arrest Warrant
7711764



DATE OF ARREST: 3/17/17 TIME OF ARREST: 0815
I.D. ESTAB. BY: NV ED / SCOPE

INTAKE NAME (AKA, ALIAS, ETC.) Last First Middle
WARRICK JOSEPH
ADDRESS BLDG./APT. # CITY NOEN LAS VEGAS NV 89031
DATE OF BIRTH RACE SEX HEIGHT WEIGHT HAIR EYES SOCIAL SECURITY #
B M M 5'9 145 BLK BAO
LOCATION OF CRIME (# - Street - City - State - Zip) CC Citizen Arrest LOCATION OF ARREST NV 21ST / SEAVLES
WARRANTS

BKG. CHARGE ORD / NRS # M GM F ARR. TYPE EVENT NUMBER WARR / NCIC NUMBER COURT LV JC DC OTHER
KIDNAPPING, 1ST DEGREE BACUIN NRS 200.310.1 WA 619400440075 17E03940X 17E03940X 17E03940X
SEX ASSAULT NRS 200.366.2 WA 17E03940X 17E03940X 17E03940X
BATTERY TO COME SEX BACUIN NRS 200.100.4 WA 17E03940X 17E03940X 17E03940X
OPEN / GROSS LEWENTESS BACUIN NRS 201.210.1 WA 17E03940X 17E03940X 17E03940X

ARREST TYPE: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GIJ - GRAND JURY IND.
CONFIDENTIAL

17E03940X
WADS
Warrant Arrest Documents
7719205
Arresting Officer's Signature
Transporting Officer's Signature
(Print Name) A. SEITZ / 16006 / WMAP
(Print Name) S/A
P # Agency
APPROVAL CONTROL # FOR ADDITIONAL CHARGES:

Time Stamp at BOOKING

FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAIL
BENCH WARRANT SERVED ON
WARRANT SERVED ON
GRAND JURY INDICTMENT SERVED ON
TYPE OF I.D. FOR VERIFICATION
52:11 P L - RAN 1102
JUDGE:

DECLARATION OF ARREST

Page 1 of 1I.D. #: 1239725True Name: WARREN JOSEPHDate of Arrest: 3/7/17Time of Arrest: 0815

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 LUMPD (Department), ClarkCounty, Nevada, being so employed for a period of 7 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of WARRANTS at the location of 21ST / SEARLES LUN 89031 (ADDRESS / CITY / STATE / ZIP)and that the offense occurred at approximately 0815 hours on the 7 day of MARCH, 2017, in the county of ☒ Clark or ☐ City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

ON MARCH 7 2017 AT APPROXIMATELY 0800 HOURS I OFFICER SEITZ
 #16006 ALONG WITH OFFICER BEASON #14181 OPERATING AS MARKED PATROL
 UNIT 2831 WERE CONDUCTING ROUTINE PATROL ACTIVITY IN THE AREA OF
 SEARLES AND LAKE MEAD. ON THIS MORNING DURING BRIEFING AT NORTH EAST AREA
 COMMAND WE WERE GIVEN THE NAME JOSEPH WARREN DOB [REDACTED] AND A RECENT
 BOOKING PHOTO OF WARREN REFERENCE A SEXUAL ASSAULT CASE. WHILE PATROLLING
 ON SEARLES AND 21ST STREET I SAW A MALE WALKING ON 21ST STREET THAT
 MATCHED THE DESCRIPTION OF THE SEXUAL ASSAULT SUSPECT. A PERSON STOP WAS
 CONDUCTED ON THE MALE. AFTER MAKING CONTACT WITH THE MALE HE VOLUNTARILY
 IDENTIFIED HIMSELF AS JOSEPH WARREN. WARREN WAS IDENTIFIED BY HIS
 NEVADA ID AND CONFIRMED BY SCOPE. A RECORDS CHECK REVEALED THAT WARREN
 HAD FOUR ELECTRONIC NO BAIL WARRANTS FOR HIS ARREST. AT THIS TIME
 WARREN WAS PLACED INTO HANDCUFFS AND WAS TRANSPORTED TO HEADQUARTERS
 TO BE INTERVIEWED BY DETECTIVES. AFTER THE INTERVIEW WAS CONDUCTED
 WARREN WAS TRANSPORTED TO CCDC WHERE HE WAS 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 a misdemeanor).

Declarant must sign second page with original signature.

Declarant's Signature

A. SEITZ

Print Declarant's Name

16006

P#

W400440075

CLARK COUNTY DETENTION CENTER
ARREST WARRANT ABSTRACT

03/07/2017
12:51

WARRANT NAME: WARREN, JOSEPH JR

DOB: [REDACTED] SSN: [REDACTED]

RAC: B SEX: M HGT: 5'09" WGT: 145 HAI: BLK EYE: BRO

WARRANT #: 17F03940X

EVENT #:

CLARK COUNTY ONLY:

| | CHRG | NRS | | | CASH | ASSUR |
|-----|-------|---------|----------------------------------|---------|------|-------|
| CNT | CODE | CODE | CHARGE LITERAL | | BAIL | BAIL |
| 01 | 50051 | 200.310 | F KIDNAPPING, 1ST DEGREE | NO BAIL | | |
| | | | PCN#0030133304-002 | | | |
| 02 | 50095 | 200.366 | F SEX ASSLT | NO BAIL | | |
| | | | PCN#0030133304-001 | | | |
| 03 | 50157 | 200.400 | F BATTERY TO COMMIT SEX ASSLT, V | NO BAIL | | |
| | | | PCN#0030133304-003 | | | |
| 04 | 50971 | 201.210 | G OPEN/GROSS LEWDNESS, (1ST) | NO BAIL | | |
| | | | PCN#0030133304-004 | | | |
| 05 | 50971 | 201.210 | G OPEN/GROSS LEWDNESS, (1ST) | NO BAIL | | |
| | | | PCN#0030133304-005 | | | |

ISSUED BY JUDGE: DEBORAH LIPPIS
COURT: LAS VEGAS JUSTICE COURT

DOW: 03/06/2017
DEPT: JCRT7

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE 7 DAY OF MARCH, 2017, AND SERVED THE
SAME BY ARRESTING THE WITHIN DEFENDANT,
AND BRINGING HIM INTO COURT THIS 7 DAY OF MARCH,
2017.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEVADA

BY: [Signature] 16006, DEPUTY

***** C O N F I D E N T I A L *****

[Signature] 16006

REBOOK

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD

Page 1 of 1 13
DATE OF ARREST 03-08-17 TIME OF ARREST 1600
I.D. # 1239725 Event # 160414-2205
I.D. ESTAB. BY: SCORE

INTAKE NAME (AKA, ALIAS, ETC.) Last First Middle TRUE NAME Last First Middle
WARRREN JOSEPH WARREN, Joseph JR

ADDRESS BLDG./APT. # CITY STATE ZIP PRESENT OR LAST PLACE OF EMPLOYMENT
1130 10TH ST NW 89101 LV NV 89032 UNK.

DATE OF BIRTH RACE SEX HEIGHT WEIGHT HAIR EYES SOCIAL SECURITY # PLACE OF BIRTH
03-08-17 B M 5'9 145 BRN BLU ██████████ LV, NV.

LOCATION OF CRIME (# - Street - City - State - Zip) CHARGE ORD / NRS # M GM F ARR TYPE* EVENT NUMBER WARR / NCIC NUMBER LV JC DC OTHER
1130 10TH ST NW, NV 89101 SEXUAL ASSAULT (2ND) NRS NO BAIL PC 160414-2205 17F04527X 0 1 0 0

54735 BATTERY 1ST TO 2ND DEGREE S/A NO BAIL PC 160414-2205 17F03940X 0 1 0 0

50051 KIDNAPPING NRS. 200.310 NO BAIL PC 160414-2205 17F03940X 0 1 0 0

55532 LOECATION (SA) FORCE \$10,000 NO BAIL PC 160414-2205 17F03940X 0 1 0 0

50091 OPEN AND GROSS FLOODING NO BAIL PC 160414-2205 17F03940X 0 1 0 0

ARREST TYPE: PC 17F03940X J SURRENDER BW - BENCH WARRANT WA - WARRANT RM - REMAND GI - GRAND JURY IND.
WADS Warrant Arrest Documents 7740229
Arresting Officer's Signature (Print Name) P # Agency
SAVANNAH GAO 7073 LIMP SAVANNAH GAO 7073 LIMP SAVANNAH GAO 7073 LIMP

Time Stamp at BOOKING
FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR RESULTS.
BENCH WARRANT SERVED ON
WARRANT SERVED ON
GRAND JURY INDICTMENT SERVED ON
TYPE OF I.D. FOR VERIFICATION
JUDGE:

3-13-17 16:02 DSD RECORDS
201 MAR 13 P 03
FILED
CONFIDENTIAL
JUDGE:

DECLARATION OF ARREST

I.D. #: 1239725

Page 1 of 1

True Name: WARREN, Joseph Date of Arrest: 03-08-17 Time of Arrest:

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 LVMPD (Department), Clark County, Nevada, being so employed for a period of 16 years (months). That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense of SA (2CTS), BWITCS/A (STRANGULATION), KIDNAPPING, COERCION, OEL at the location of 1130 S. 6TH LV, NV. 89101 (ADDRESS / CITY / STATE / ZIP) and that the offense occurred at approximately 1400 hours on the 14th day of APRIL, 2017, in the county of Clark or City of Las Vegas, NV.

DETAILS FOR PROBABLE CAUSE:

(SEE ARREST REPORT)

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 a misdemeanor).

Declarant must sign second page with original signature.

Declarant's Signature

L. SALAVESSA - CHO #7073

Print Declarant's Name

P#

ARREST REPORT "PRINT"

17F04527X/1

☐ City

☒ County

☒ Adult

☐ Juvenile

Sector/Beat

C-3

"Click to Enter/Change Event or ID Number"

| | | |
|---|---|--|
| ID/EVENT#
160414-2205 | ARRESTEE'S NAME (Last) (First) (Middle)
Warren Joseph | S.S.#
530-96-7030 |
| ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code)
<div style="background-color: black; height: 1.2em; width: 100%;"></div> | | |
| CHARGES
Sexual Assault (2Cts), Battery W/I To Commit SA (Strangulation), Kidnapping, Coercion/ Force (Sexually Motivated), Open and Gross Lewdness | | |
| OCURRED
DATE
04-14-2017 | DAY OF WEEK
Thur | TIME
1400 |
| LOCATION OF ARREST (Number, Street, City, State, Zip Code)
28th / Searles Avenue, LV, NV 89101 | | |
| RACE
B | SEX
M | D.O.B.
<div style="background-color: black; height: 1.2em; width: 100%;"></div> |
| HT.
5'9 | WT.
145 | HAIR
Blk |
| EYES
Bro | PLACE OF BIRTH
Las Vegas, NV | |

| | | | |
|--|--------------------|-----------------------|-----|
| ARRESTING OFFICER #1:
L. Salavessa-Cho | P#:
7073 | ARRESTING OFFICER #2: | P#: |
| CONNECTING REPORTS (Type or Event Number)
TCR, DOA, ICR, Property, Vol Statement (2), Grand Jury Subpoena, Photo Show Up | | | |

APPROVED BY (PRINTED NAME): Lt. D. Valenta

CIRCUMSTANCES OF ARREST:

OFFICERS:

CONFIDENTIAL

L. Salavessa-Cho P# 7073
D. Prichard P# 6210 (Retired)
D. Sigmund P# 8102
S. Tooley P# 6224
J. Lafreniere P# 7570

WITNESSES:

Todd Iwanylo DOB: 07-03-1972
Gerald Iwanylo DOB: 07-29-1976
Chris Gandy (Wells Fargo Bank)
J. Dermanelian (UMC/ SANE)

CRIMINALISTICS:

A. Petersen P# 13579 (Scene)

DETAILS OF INCIDENT/ INCIDENT REPORT (Ofc. Danielle Sigmund)

On 04-14-2016, at approximately 1200 hours, Gabrielle Vann, was leaving court (200 Lewis) and met an unknown male on the courthouse steps on the Lewis side of the courthouse, near 3rd Street. Vann stated the male introduced himself as "Joe" and offered to help her get home when she stated she didn't know her way around the area. During their conversation, Joe mentioned to Vann he had court at 1215 hours that day, but did not say for what charge or which court room.

CONTINUATION REPORT

ID/EVENT #: 160414-2205

The two began walking together through the downtown area. When the two got to 1130 S. 6th Street, Las Vegas, NV, Joe grabbed Vann by the hand and told her she was going to walk to the side yard of the residence or he was going to hurt her. Vann stated she walked to the side yard area where there were overgrown plants and shrubs. Vann began to look around stating she was going to attempt to run; however, before she could, Joe spun her around and put her in a choke hold from behind. Vann stated each time she would try to scream for help, Joe would squeeze her neck with his forearm and she could not breath.

Vann eventually passed out and woke up on the ground, laying on her back. Her shirt and skirt were still on. Vann's underwear had been removed and it was laying in the front yard of the residence. When she woke up, Joe was standing over her, with his clothing still on, and his penis out of the zipper of his pants. Vann stated Joe was masturbating and had a condom on his penis. Joe told her to roll over onto her stomach and she complied. The male told her to "stick her ass up in the air" and she refused. Vann began pleading with him, but he began choking her again. The male told her to "stick her ass up in the air" and that if she did not he would choke her again and this time she would not wake up. Vann stated during the assault Joe told her she was a prostitute and no one would believe her. Vann stated the male called her "baby girl" repeatedly during the incident.

Vann complied with Joe and stated he vaginally penetrated her with his penis. Vann's purse was on the ground next to her and she reached for her cell phone. When she attempted to grab her phone, Joe took her phone and purse. Patrol located Vann's phone was located in the flowers in the front yard of the residence. The male dropped her purse on the other side of the residence's fence when he jumped it to run away after the incident.

Vann began yelling for help and Gerald Imanylo, and his brother Todd Imanylo, who were working on a residence across the street, heard her yelling. They went to check on her and Vann told them she had just been sexually assaulted. She told them she was walking with a male when he drug her into the bushes, got behind her, and then sexually assaulted her. They then called police. Gerald and Todd did not see the suspect after he ran away. Both witnesses completed voluntary statements.

Vann described the male "Joe" as an adult black male, early 30's, 5'10 to 5'11, approximately 170 pounds, wearing a black t-shirt, dark gray pants, and red shoes. Vann stated he had long braids with knots tied in the braids. She stated he had very yellow teeth and light brown or hazel eyes.

Vann had dirt and several small scratches on her legs, she did not have any other visible injuries. Her underwear was located in the front yard of the residence, her purse in the backyard, and cell phone in the flowers in the front yard near the road. There were also two unwrapped condoms located in the bushes of the residence. The scene was secured by patrol officers and LVMPD Sex Crimes Detail was contacted. Officer M. Freeman transported Vann to UMC for a SANE exam. Detective D. Prichard P# 6210 (retired) and L. Cho P# 7073 responded to UMC.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 160414-2205

Victim Gabrielle agreed to a full forensic SANE exam and it was completed by UMC Nurse J. Dermanelian at UMC. Nurse Dermanelian advised Det. Prichard there were no significant findings to Gabrielle's neck or vaginal areas. Further details will be contained in the completed medical report. Detective Prichard completed a digitally recorded interview with Vann at UMC. The following is a summary of the interview and not verbatim. Further details will be contained in the transcribed statement.

GABRIELLE VANN INTERVIEW (Det. Prichard and L. Cho UMC)

Gabrielle stated she has worked as a prostitute for 7 years in Las Vegas and other states. Gabrielle explained the previous day she was at Planet Hollywood where security got into a physical altercation with her. Gabrielle denied this incident was related to prostitution. She then exited the Regional Justice Center after missing court for a recent Trespass (LVMPD # 160414-1080), she asked a Marshall about the incident at Planet Hollywood, and she encountered the suspect named "Joe". Gabrielle didn't have money or a means of transportation to pick up her child, so she began asking random people, one being an unknown female, if they could help her. Joe offered to walk with her to the bus stop (SDX) and then offered to give her \$5.00.

Gabrielle described Joe as being in his late 20's to early 30's, approximately 5'9", slim, brown skin, light eyes which turn aqua color when he gets angry, he was wearing on dark gray pants, a dark belt, a black short sleeved shirt, red shoes, and long braids. Gabrielle stated he has a very distinctive nose, almost crooked, and he had an older cell phone he carried with him. Joe didn't appear to be homeless to Gabrielle. Joe walked from the area of the court rooms and she believed he may have been there for court possibly. Joe walked with Gabrielle. At the bus stop Gabrielle told Joe how far she had to go on the bus (to Tropicana) and Joe told her he would help her and didn't want her to take the bus. Gabrielle explained she was going to sneak on the bus and skip paying the bus fare.

Gabrielle then asked an unknown female if she could use her cell phone charger and the female gave her a charger to keep. Gabrielle made a phone call to her husband (Rontez Vann, 34 years old) and during this time Joe had walked away from her. Gabrielle advised her husband what happened with her court date and she needed to return the following morning. She told him she didn't have any money and was trying to figure out how to get back home. Gabrielle stated during the incident at Planet Hollywood she had "lost" her money in the casino. Gabrielle stated she was there with her female friend and had not been home since yesterday.

Joe told Gabrielle he had to go to the ATM to get the \$5.00 and she agreed to walk with him. They then began discussing going to a hotel and having "fun" for \$300.00, which Joe refused stating he couldn't afford it. Joe stated he "ran girls" and didn't ever pay for it. Gabrielle stated if Joe had the money she would have gone to a room with him and they could "enjoy each other's company".

They first went to a 7-11 located at Las Vegas Boulevard and Charleston. Gabrielle was not familiar with this area and it took approximately 15 to 17 minutes to walk to it. They talked about his history of being a prior pimp, he's from the "hood", he is a "booster" (steals things), and a drug dealer of meth. Gabrielle talked about herself working as a prostitute to Joe.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 160414-2205

Gabrielle stated she was unfamiliar about meth and didn't hear of it before this. After leaving 7-11 he advised Gabrielle he couldn't steal anything and Gabrielle didn't distract the clerk long enough for him to do it.

Joe then went to an ATM (Wells Fargo Bank Las Vegas Boulevard/ Charleston) while Gabrielle waited for him. Joe returned a few minutes later and they then began walking to the bus stop. Joe then stated he wanted to go to a sex store where Gabrielle could help him pick something out for his "baby's mother".

They both then went to an adult store (Adult Superstore- 1147 Las Vegas Boulevard). Inside Gabrielle then began looking at products and Joe went to a different area to look around. This is where Gabrielle believes Joe may have used her to either purchase or obtained condoms. Gabrielle stated Joe had on him a new pack of Magnum condoms, so she knew he must have recently got them. Joe advised Gabrielle he would show her the way to the bus stop and then instead led her to an unfamiliar residential area on 6th Street. The way they had walked was confusing to Gabrielle and perhaps this was done on purpose by Joe.

Joe's demeanor changed and pulled Gabrielle to him closely as if hugging. Gabrielle felt something being pressed against her side and she believed this may have been a weapon, but never saw it. Joe then pulled Gabrielle to the side of a house into the untrimmed bush area (Kidnapping). Gabrielle didn't scream due to Joe stating he would hurt her (Coercion by Force). Gabrielle attempted to run and Joe grabbed her, choking her in a choke hold (Strangulation), causing her to pass out approximately 15 seconds later. When Gabrielle came to she stated her vision was blurry.

Joe is standing over her and she is on her back. Gabrielle didn't know where her property was and her underwear was off. Gabrielle's vagina was wet and she believed something had been done to her already (Sexual Assault, 1st Count). Gabrielle stated she only gets wet from masturbating or her husband. Joe's penis was out of his zipper and he had a condom on. Joe told Gabrielle to turn over and threatened to choke her again if she didn't. Gabrielle complied and turned over. Joe began masturbating himself (Open and Gross Lewdness). Gabrielle found a sharp plastic object and held it in her hand, but she didn't stab him. Gabrielle was on her stomach and Joe has her legs pinned down with his legs making her unable to move.

Gabrielle turns on her back and begins pleading with him stating she has a family- asking him not to do this to her. Joe stated "Bitch are you trying to get me mad, I will choke you". Joe then begins choking Gabrielle again (Battery with Intent to Commit Sexual Assault, 2nd Count). Joe then tells Gabrielle to "lift her butt up" and she does. Gabrielle begins pleading to him to stop and he begins choking her again. Joe then shoves his penis inside of Gabrielle's vagina (Sexual Assault, 2nd Count) for 2 or 3 "pumps". Joe then ejaculates and Gabrielle is able to get up where she then grabs her purse and cell phone. She then tries to run and Joe catches up to her.

Gabrielle then begins screaming and continues to run from Joe when she then makes contact with the two males who were down the street. Gabrielle asks them for help and sees Joe run then jump over the fence of the house. Joe was able to take Gabrielle's purse when he jumped over the fence. The males then drove around the block, but couldn't locate him. Gabrielle then thought the male wanted to rape and then rob her. The males in the truck called and waited for police to arrive. Joe ran northeast from their location.

CONTINUATION REPORT

ID/EVENT #: 160414-2205

Gabrielle stated this was not prostitution related because she has rules when she is working. She does not go into alley ways, or in public places, she uses hotels where the price is agreed on prior to going there. Gabrielle stated she recalled there were 2 condoms she observed at the scene. Gabrielle stated she smoked marijuana the night before and drank alcohol. The last time Gabrielle had consensual sex was April 5th with her husband. Gabrielle stated she didn't have sex while at Planet Hollywood, but eluded she was working where she had made money. Gabrielle stated she utilized sex toys on an unknown male during this, but washed her hands afterwards.

Gabrielle described Joe's penis as being not thick, but it was long. Gabrielle stated she told Joe she had to pick up her daughter at approximately 1500 hours. Gabrielle called her husband while they were at 7-11 when she told him she met a guy who was going to help her get on a bus to get home. Gabrielle stated her husband is aware of her work and denied he is her pimp, but has had a pimp in the past. Gabrielle stated she believes she can describe Joe enough for a sketch to be completed. Gabrielle stated she was aware of her court appearance for 1 month and snuck onto the SDX to get there. Gabrielle's husband knew about the court date and she didn't know or plan how to get back to her home. Gabrielle was asked to repeat the incident from end to beginning, repeating the details of events back to the detectives.

CRIME SCENE

The crime scene was photographed and processed by LVMPD CSA A. Peterson P# 13579. The following items were located:

- Samsung cell phone on sidewalk area west of the sidewalk's curb
- A pair of "Pink Victoria Secret" underwear from grass area on east side of lawn
- Black Guess slippers south side of residence by south facing exterior wall
- 2 Magnum condoms, positive for prints, south side of residence

Gabrielle's purse was located and the following items found, then returned back to Gabrielle:

- 4 Key playing cards, 3 player cards
- Jamaican Passport
- Instructional permit
- 2 Debit cards, gift card- debit
- Metro bus card
- Burnt \$20.00 bill
- American Express card
- Gray purse with a black phone charger and miscellaneous items
- Black high heel Guess shoes

From the person of Gabrielle collected at UMC by Nurse Dermanelian:

- A wig
- A black shirt
- A black and white shirt

➤ Burgundy bra

INVESTIGATION FOLLOW UP

Wells Fargo was provided a Grand Jury Subpoena for information related to the incident. According to Gabrielle a Wells Fargo Bank ATM was used by the Joe prior to the incident and there may be video, photos, or transactions via the ATM (Wells Fargo Bank at 1121 South Las Vegas Boulevard # 4658-A), Las Vegas Nevada 89101, prior to the Sexual Assault on 04-14-2016, at approximately 0100 hours. Investigator Christopher Gandy was able to provide photos with date and time stamps showing a male matching the description of the suspect as Gabrielle described during her interview, begin utilizing the ATM at 01:17:25 hours on 04-14-2016. These transactions showed an account (# 4342574993719734- issued 12-24-2014) in the name of a Joseph Warren DOB: [REDACTED]

Surveillance video was obtained from 7-11 convenience store (Las Vegas Boulevard/ Charleston) and the Adult Superstore (1147 Las Vegas Boulevard). While in the adult store detectives observe within the south area of the store it is dedicated to where they have condoms for sale. When reviewing the videos both Gabrielle and a male matching the suspect's description can be seen in the footage. At the adult store both enter and then part ways. Both appear to be looking at different items for a few minutes and the male is looking at items within the south corner of the store where the condoms were located.

A records check was completed and showed Warren as being a convicted registered sex offender for Coercion Force/ Sexually Motivated from 2006 with Clark County, Nevada (ID #1239725).

On 04-21-2016, Vann came into LVMPD HQ and Detective S. Tooley P# 6224, conducted a photo show up with her (ID # 37563). Vann identified one of the photos as being the person who sexually assaulted her. The photo was that of Joseph Warren. This was when some of Gabrielle's items found at the scene were returned to her by detectives and a follow up interview completed. Another incident (LVMPD # 160218-0288) was located where Warren was arrested for Open and Gross Lewdness where he was peering into a bedroom window. Records showed an active warrant being issued on 03-16-2016 for Warren out of North Las Vegas for Peering/ Peeping/ Spying through Opening of Dwelling.

FOLLOW UP INTERVIEW GABRIELLE VANN (Det. Cho and Prichard)

Vann stated she was lifted by the suspect over the retaining wall and then taken into the bushes by the house. She said she didn't have a choice since the suspect had pulled her by her arm. The suspect continued holding onto her hand leading her to the side of the residence. She said her underwear and cell phone were in the front of the lawn because she believes the suspect threw them at her after the incident. Gabrielle was asked if she would have gone to this area in the bushes to perform a sex act with the suspect if he had the money and she said "no" because it was too public, too risky, and she was afraid of being caught.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 160414-2205

When asked regarding the incident occurring at Planet Hollywood she stated she lost \$600.00 to some unknown males who had robbed her earlier there. Gabrielle thought Warren could make up for some of the money she had lost during that incident. After making contact with the males in the truck, Gabrielle stated she jumped up high enough to see which direction the suspect ran to after he had jumped over the wall. Gabrielle initially thought Joe ran off with her bag and when returning she then observed her bag, cell phone, and underwear. Gabrielle was asked if she recalled why Joe would choose that location to go to and she didn't know why.

While they were in the Adult Store Gabrielle was not aware of exactly where Joe walked or went and exited when Joe told her to leave with him. Gabrielle stated her court appearance was at 0700 hours and she was not there because she was getting a citation. The consequences of a nonappearance was a warrant being issued for Gabrielle, which she cleared up the following day. Gabrielle stated she made it to the courthouse at approximately 1000 hours due to the incident at Planet Hollywood. Gabrielle stays at the courthouse until 1230 hours.

Gabrielle walks with Joe from there and then goes to the SDX RTC bus station (Bonneville). Joe then makes the suggestion to Gabrielle not to sneak on the bus stating he will give her \$5.00 to her by going to the Wells Fargo (Charleston/ Las Vegas Blvd). When discussing the distance of these two areas Gabrielle stated she still continued to walk with Joe for the money because it's a public area. When asking why she then went to an area that isn't a public area Gabrielle stated she is not familiar with the area, so she thought it was how to get on the bus. Gabrielle stated she was desperate for the money.

Gabrielle stated she received the Trespass citation because she was wandering around the casino and she was intoxicated. Gabrielle stated some males had taken her purse from her bag and then chased them down. Gabrielle then located her purse in another area and found \$600.00 missing. Gabrielle admitted she charges \$600.00 for an hour of her time. Gabrielle stated regarding Joe she wanted to get a room because it is safer and there would be cameras in case something happens. Gabrielle stated the issue with Joe was he didn't have any money and recouping her lost money went wrong. Gabrielle realized Joe didn't have any money when he grabbed her before taking her into the bushes. Between the incident and the males driving by in the truck approximately 3 minutes had passed. All 3 then drove in the truck in an attempt to locate Joe and they didn't. Gabrielle stated if Joe had the money and asked to go into the bushes she still would have refused because it's too risky.

At the time of the incident written statements from Gerald and Todd Iwanylo were obtained by patrol Officer D. Sigmund P# 8102. Detectives could not make contact with either witness to complete recorded interviews at this time. Per the statements both stated they were on 6th Street and observed a girl who came running out from the location of 1130 6th Street yelling "help, help, help, he raped me". They then walked to the female. The female ran to the back fence area of the residence stating "he ran that way". The female then got into their truck with Gerald to look for the male, which they couldn't locate.

Todd stayed and checked the area around the scene and noticed some items in the back yard of the house. Gerald already called 911 and recalled the female giving him a description of the male. She described him as a dark skinned male, late 20's, 5'6", slender build, black shirt, dark grey pants, and red shoes. The female told him she was raped and had items stolen from her.

CONTINUATION REPORT

ID/EVENT #: 160414-2205

Todd wrote the female fell to her knees, was crying, and shaking. She told him the male dragged her into the bushes, they struggled, he choked her out, and when she woke up her underwear was off. The male told her to stay still and then got behind her then raped her. Todd told the female to leave everything alone until the police arrived and she complied. Todd observed underwear on the lawn which the victim identified to him as belonging to her.

Warren's whereabouts were unknown and he could not be located. Subsequently, the case was reassigned from Det. Prichard (retired) to Det. Cho in the Sex Crimes Detail. On 08-17-2016, a request was submitted to LVMPD Forensic Lab regarding the processing of evidence related to this incident.

On 03-07-2017, Detective J. Lafreniere P# 7570, was contacted related to his investigation (LVMPD #170301-0486) by patrol, regarding Warren being arrested at the location of 28th/ Searles Avenue, Las Vegas, Nevada. Warren was believed to be a suspect in the incident where a female victim was taken into a park restroom and sexually assaulted. During Det. Lafreniere's investigation it was found there were other incidents related to public masturbation where the suspect matched the description to his case.

Det. Lafreniere conducted a digitally audio and video recorded interview with Warren on 03-07-2017 at LVMPD HQ where he was transported to by patrol. Warren was advised of his Miranda rights read directly from the LVMPD department issued card and Warren waived his rights. Warren was asked about Det. Lafreniere's case and the other incidents. Warren gave details and admissions regarding the incidents to include this incident (Event # 160414-2205).

Warren denied having any involvement in the incident or to the extent of a sexual assault occurring. After snapshots of the Wells Fargo Bank footage and discussing possible forensic evidence collected from the victim Warren confirmed his involvement. Warren then stated he did have vaginal sex with the victim and he did hold the victim by her neck area because he stated her "pimp" arrived at the scene. Warren admitted to fleeing over a wall after the incident. He began crying stating he was victimized and this resulted in him having sexual "urges", which then causes him to act out sexually. After the interview Det. Lafreniere charged Warren with Sexual Assault and Kidnapping related to his case and he was then booked into CCDC accordingly.

Related to this incident Joseph Warren charge(s) of Sexual Assault (2 Counts), Battery with Intent to Commit Sexual Assault (Strangulation), Kidnapping, Coercion (Sexually Motivated), and Open and Gross Lewdness. Other charges or possible cases are still being followed up on which are possibly related to Warren.

DEPT = JCRT7

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*      ***** NCJIS WANTED PERSON SYSTEM *****
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*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
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* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
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* NIN/W806072994                                DATE:03/07/17
* SEQ/004          REASON/SERVED                 TIME:13:29:02
* WARRANT NAME     /WARREN, JOSEPHJR
* BASE RECORD NAME /WARREN, JOSEPHJR
* COURT CASE #/17F03940X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
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DEPT = JCRT7

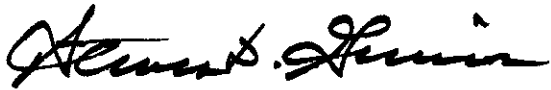
S E R V E D

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*      ***** NCJIS WANTED PERSON SYSTEM *****
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* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
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* BASE RECORD NAME /WARREN, JOSEPHJR
* COURT CASE #/17F03940X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
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DEPT = JCRT7

S E R V E D

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*      ***** NCJIS WANTED PERSON SYSTEM *****
*
*      PIN-0209  NCJIS WARRANT HAS BEEN SUCCESSFULLY CLEARED
*
* CLEARING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* ARRESTING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* ENTERING AGENCY  /NVLVJC001 - CLARK CO INFO SERVICES
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
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* WARRANT NAME     /WARREN, JOSEPHJR
* BASE RECORD NAME /WARREN, JOSEPHJR
* COURT CASE #/17F03940X
* COURT/NV002A53J - LAS VEGAS JUSTICE COURT
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CLERK OF THE COURT

District Court
Clark County, Nevada

Nevada State Of, Appellant(s)
vs
Joseph Warren Jr, Respondent(s)

Case No.: C-17-323608-A
Department 2
Municipal Court Case: 17F03940X

To: Appellant's Attorney: Steven B Wolfson
To: Respondent's Attorney Melinda E. Simpkins

COUNTS May 4, 2017
Findings of Facts
and Conclusion of
Law

RECEIPT FOR DOCUMENTS AND NOTICE OF HEARING

You are hereby notified that the Clerk of District Court has filed the following:

Notice of Appeal
Original Justice Court File Filed May 16, 2017

PLEASE TAKE NOTICE that the above referenced action has been set for
hearing in Department 2, on June 15, 2017, at 9:00 AM.

STEVEN D. GRIERSON, CEO/CLERK OF COURT

/s/ Irish Lapira
Irish Lapira, Deputy

CERTIFICATE OF SERVICE

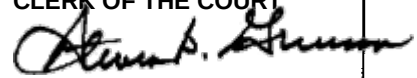
I hereby certify that this 16th day of May, 2017

- ☒ The foregoing Receipt for Documents and Notice of Hearing was electronically served to all registered parties for case number C-17-323608-A.

- ☒ I placed a copy of the foregoing Receipt for Documents and Notice of Hearing in the appropriate attorney folder located in the Clerk of the Court's Office:

Steven B Wolfson- District Attorney
Melinda E. Simpkins-Public
Defender

_____/s/ Irish Lapira
Irish Lapira,
Deputy Clerk of the Court



1 MOT
NSB 3700
2 DREW CHRISTENSEN
Acting Special Public Defender
3 NSB 4771
JONELL THOMAS
4 Chief Deputy Special Public Defender
NSB 0824
5 MELINDA E. SIMPKINS
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10 msimpkins@clarkcountynv.gov
Attorneys for Defendant
11

12 DISTRICT COURT
CLARK COUNTY, NEVADA
13

14 THE STATE OF NEVADA,)
15)
Plaintiff,)
16)

CASE NO. C-17-323608-A
DEPT NO. II

17 vs.)
18)

MOTION TO DISMISS APPEAL

17 JOSEPH WARREN, JR.,)
18 # 1239725)
Defendant,)
19)
20)

21 Comes now the Defendant, Joseph Warren, Jr., by and through his attorneys Drew R.
22 Christensen, Acting Special Public Defender, JoNell Thomas, Melinda Simpkins and Daniel
23 Page, Chief Deputy Special Public Defenders and files his Motion to Dismiss Appeal.
24
25
26
27
28

...

1 This motion is made and based upon the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities, and any argument presented to this Court at the hearing
3 on this matter.

4 Dated this 20th day of June, 2017.


JONELL THOMAS
MELINDA E. SIMPKINS
DANIEL PAGE
Attorneys for Defendant

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 The preliminary hearing in this case was held on April 20, 2017. After taking the matter
10 under submission, the Justice of the Peace dismissed the charges based upon the State's failure
11 to present sufficient evidence to establish probable cause that Mr. Warren committed the
12 offenses. The Justice of the Peace authored a thorough 10 page order in support of its decision.
13 The State filed an appeal from the order. That matter is currently pending before this Court. The
14 State also filed a Motion for Leave to File an Information by Affidavit. The motion was
15 docketed in case number C-17-323426-1 and was assigned to Department VI. (Exhibit A,
16 minutes). Following full briefing and argument by the parties, Department VI denied the State's
17 Motion for Leave To File an Information by Affidavit. Exhibit A. The State now seeks this
18 Court's intervention by way of appeal. There is no right to appeal, however, from a justice court
19 order refusing to bind over charges following a preliminary hearing and this Court is therefore
20 without jurisdiction to hear this appeal.

22 Nevada Procedures Following Dismissal of A Criminal Complaint At A Preliminary 23 Hearing Based Upon A Lack of Probable Cause

24 In Nevada, after a magistrate dismisses a criminal complaint at a preliminary hearing for
25 lack of probable cause, the State is prohibited from refileing the same charge that was dismissed
26 because of insufficient evidence. Nevada criminal procedure dictates that "the discharge of a
27 person accused upon preliminary examination is a bar to another complaint against the person
28 for the same offense, but does not bar the finding of an indictment or the filing of an

1 information.” NRS 178.562(2). If a defendant is not bound over for a charge, the State may
2 either: (1) seek an indictment by a grand jury; or (2) seek leave to file an “information by
3 affidavit” in the district court, pursuant to NRS 173.035(2).¹ State v. Sixth Judicial District
4 Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). Other cases which suggest a different scheme
5 were overruled. Id.

6 The State’s challenge to a justice court’s decision finding a lack of probable cause at a
7 preliminary hearing is through a motion for leave to file an information by affidavit or by
8 seeking an indictment before a grand jury. See e.g. Moultrie v. State, 364 P.3d 606 (Nev. App.
9 2015) (addressing the district court’s decision on a motion for leave to file an information by
10 affidavit after the justice court found that the State did not meet its burden of proof for a felony
11 and discharged the defendant); Parsons v. State, 115 Nev. 91, 978 P.2d 963 (1999) (addressing
12 a district court’s decision on a motion for leave to file an information by affidavit after the
13 justice court dismissed charges at a preliminary hearing). Other than seeking an Indictment, there
14 is no other method for challenging a justice court’s probable cause determination.

15 The right to appeal is statutory; where no statute or court rule provides for an appeal, no
16 right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 729 P.2d 1133, 1135 (1990). No
17 statute or court rule provides for an appeal from a justice court order finding that the State failed
18 to present probable cause to support a charge at a preliminary hearing. In its Notice of Appeal,
19 the State cites to NRS 177.015 and Sandstrom v. Second Judicial Dist. Court, 121 Nev. 657, 119
20 P.3d 1250 (2005) as authority for the assertion that it may appeal from the justice court’s finding
21 of a lack of probable cause. Neither supports the State’s assertion. In Sandstrom, the Nevada
22

23 ¹NRS 173.035(2) provides:

24 If, however, upon the preliminary examination the accused has been discharged, or the
25 affidavit or complaint upon which the examination has been held has not been delivered to the
26 clerk of the proper court, the Attorney General when acting pursuant to a specific statute or the
27 district attorney may, upon affidavit of any person who has knowledge of the commission of an
28 offense, and who is a competent witness to testify in the case, setting forth the offense and the
name of the person or persons charged with the commission thereof, upon being furnished with
the names of the witnesses for the prosecution, by leave of the court first had, file an
information, and process must forthwith be issued thereon. The affidavit need not be filed in
cases where the defendant has waived a preliminary examination, or upon a preliminary
examination has been bound over to appear at the court having jurisdiction.

1 Supreme Court considered an original petition for a writ of certiorari, filed by a defendant, who
2 argued that a district court lacked jurisdiction to entertain an appeal by the State from a justice
3 court order granting a motion to dismiss a misdemeanor criminal complaint. Id. at 658, 119 P.3d
4 at 1251. Sandstrom did not address felony charges for which no probable cause was found, but
5 instead concerned only misdemeanor complaints over which the justice court has final decision
6 making authority. Specifically, the Nevada Supreme Court noted that under the Nevada
7 Constitution, the legislature has the authority to ““prescribe by law the manner, and determine
8 the cases in which appeals may be taken from Justices and other courts.”” Id. at 659, 119 P.3d
9 at 1252 (quoting Nev. Const. art. 6, § 8). The legislature defined “the parameters of the district
10 courts’ appellate jurisdiction respecting criminal misdemeanor cases originating in just court [by
11 enacting NRS 177.015, which] provides in pertinent part: “The parties aggrieved in a criminal
12 action may appeal only as follows: 1. Whether that party is the State or the defendant: (a) To the
13 district court of the county from a final judgment of the justice court.”” Id. The Court found that
14 dismissal of a misdemeanor complaint was a final judgment because it “dispose[d] of all issues
15 and [left] nothing for future consideration.” Id.

16 Sandstrom does not apply, by either its plain language or by its rationale, to a justice
17 court’s finding of a lack of probable cause to support felony charges. Such an order does not
18 dispose of all issues and it does not leave nothing for future consideration. Rather, as set forth
19 above, following an order like that at issue here, the State may seek an indictment by a grand
20 jury; or (2) seek leave to file an “information by affidavit” in the district court, pursuant to NRS
21 173.035(2). State v. Sixth Judicial District Court, 114 Nev. at 743, 964 P.2d at 50. These
22 statutory remedies were provided by the Legislature, rendering NRS 177.015 inapplicable to this
23 type of order.

24 There is no rule providing for an appeal to the district court from an order of the justice
25 court finding a lack of probable cause to support felony charges. Likewise, there is no case
26 authority finding that such an appeal is possible. This Court lacks jurisdiction over this appeal
27 and it must therefore be dismissed.

1 **Conclusion**

2 The State's appeal must be dismissed as this Court lacks jurisdiction over this matter.
3 There is no right to appeal from the dismissal of charges following a preliminary hearing. The
4 State had the opportunity to seek redress by filing a Motion for Leave to File Information by
5 Affidavit, and it did so. There is no second mechanism for allowing the State yet another bite
6 at the apple.

7 DATED this 28th day of JUNE, 2017.

8 DREW CHRISTENSEN
9 ACTING SPECIAL PUBLIC DEFENDER

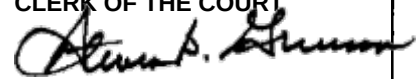
10 
11 JONELL THOMAS
12 MELINDA E. SIMPKINS
13 DANIEL R. PAGE
14 Attorneys for Defendant

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that service of the above and foregoing was made pursuant to EDCR
17 7.26 on the attorney for the named parties by means of electronic mail to the email address
18 provided to the court's electronic filing system for this case. Proof of Service is the date
19 service is made by the court's electronic filing system by email to the parties and contains a
20 link to the file stamped document.

| | |
|--------------------|-----------------------------------|
| 21 PARTY | EMAIL |
| 22 STATE OF NEVADA | DISTRICT ATTORNEY'S OFFICE email: |
| 23 | <u>Motions@clarkcountyda.com</u> |
| 24 | |

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



BREF

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Petitioner,

-vs-

THE LAS VEGAS JUSTICE COURT
AND THE HONORABLE KAREN P.
BENNETT HARON, JUSTICE OF THE
PEACE

Respondent,

and

JOSEPH WARREN, JR.,
#1239725

Real Party in Interest.

CASE NO: C-17-323608-A

DEPT NO: II

**STATE'S OPENING BRIEF IN SUPPORT OF AN APPEAL FROM A JUSTICE
COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
DISMISSING ALL CHARGES AGAINST RESPONDENT**

DATE OF HEARING: JULY 29, 2017

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney and GENEVIEVE CRAGGS, Deputy District Attorney, and hereby submits the attached Points and Authorities in support of its Opening Brief in Support of an Appeal from a Justice Court's Findings of Fact, Conclusions of Law and Order Dismissing All Charges Against Respondent.

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

4 **PROCEDURAL HISTORY**

5 On March 6, 2017, Respondent Joseph Warren ("Respondent") was charged by way of
6 Criminal Complaint with First Degree Kidnapping (Category A Felony - NRS 200.310,
7 200.320), Sexual Assault (Category A Felony - NRS 200.364, 200.366), Battery with Intent
8 to Commit Sexual Assault (Category A Felony - 200.400.4), and two counts of Open or Gross
9 Lewdness (Gross Misdemeanor – NRS 201.210). Respondent pleaded not guilty to the
10 aforementioned charges on March 9, 2017. The preliminary hearing was held on April 20,
11 2017. The justice court took the matter under advisement and dismissed the case on May 4,
12 2017 via written order. *See Exhibit 1.*

13 **STATEMENT OF FACTS**

14 The testimony at the preliminary hearing bore out that on March 1, 2017, Jeri
15 Dermanelian, a Sexual Assault Nurse Examiner, saw a patient by the name of Kearstin Ellis.
16 Preliminary Hearing Transcript (hereinafter PHT), April 20, 2017, pg. 8-9, Attached as Exhibit
17 2. Dermanelian testified that Ellis told her she had been sexually assaulted. Id. While there
18 was an objection to hearsay regarding Ellis' statements to Dermanelian, the court ruled that
19 the statements were offered for the purposes of medical diagnoses or treatment. Id. at 9-10.
20 Ellis stated she was walking to her fiancé's house when she stopped to have a cigarette. Id. at
21 10. An unknown male later determined to be Respondent, approached her and asked for a
22 cigarette. Id. Respondent forced her into the bathroom, forced his finger in her vagina, and
23 then forced his penis into her vagina. Id. He attempted to use a garbage bag as a condom, but
24 it came off and he ejaculated into her vagina. Id. He also forced her to smoke
25 methamphetamine. Id.

26 Ellis opted to have a full forensic sexual assault kit and was told this would result in a
27 criminal investigation. Id. at 14. A buccal swab was taken from Ellis, as well as vaginal and
28 cervical swabs. Id. at 15. The kit was sealed and sent to the Las Vegas Metropolitan Crime

1 Lab. Id. at 17. Dermanelian testified that Ellis said her last consensual intercourse was on
2 February 27, 2017, with her fiancé. Id. at 11. Ellis also tested positive for marijuana and
3 amphetamines. Id. at 11.

4 The State also admitted the 9-1-1 call from the victim, despite a hearsay objection by
5 defense counsel. Id. at 30. The court allowed the 9-1-1 call audio to be admitted, but denied
6 the admission of the accompanying transcript. Id. at 37. The State also admitted three DNA
7 reports by stipulation of the parties. The first DNA report from May 17, 2006 (Exhibit 3),
8 showed the DNA profile of Respondent. Id. at 31. The State admitted a DNA report from
9 March 5, 2017 Lab Case # 17-02073.1 (Exhibit 4). The first March 5, 2017 report showed the
10 findings from the sexual assault kit on Ellis. After the results were received, they were
11 uploaded to CODIS. PHT at 32. The second DNA report from March 5, 2017, Lab Number
12 17-02073.2 (Exhibit 5), showed that based on the cervical epithelial fraction taken from Ellis
13 in Exhibit 4 compared with Respondent's DNA in Exhibit 3, the probability that the DNA
14 found in Ellis' cervix was not Respondent's is 1 in 174 quadrillion.

15 On May 4, 2017, Justice of the Peace Karen P. Bennet Haron dismissed all charges
16 against Respondent via written order. The State now appeals this decision pursuant to NRS
17 177.015 and Sandstrom v. Second Judicial District Court, 121 Nev. 657, 119 P.3d 1250 (2005).

18 SUMMARY OF THE ARGUMENT

19 Judge Bennett-Haron committed error by determining that the State had not presented
20 slight or marginal evidence and dismissing the case. Judge Bennett-Haron found in the
21 Findings of Fact and Conclusions of Law that "the evidence by the State in this case funs [sic]
22 afoul of NRS 171.196(6) because the enumerated offenses in that statute are not being charged
23 in this case," making all hearsay statements from Dermanelian and the 9-1-1 call inadmissible.
24 Findings of Fact and Conclusions of Law (Exhibit 1) May 4, 2017, pg 9-10. This is an incorrect
25 statement of the law. The State did provide slight or marginal evidence regarding Counts one
26 through three in this case.

27 //

28 //

1 **A. Applicable Law**

2 As this Court is well aware, "[t]he finding of probable cause may be based on slight,
3 even 'marginal,' evidence because it does not involve a determination of the guilt or innocence
4 of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178 (1980); see also Sheriff v.
5 Shade, 109 Nev. 826, 828, 858 P.2d 840 (1993); Sheriff v. Simpson, 109 Nev. 430, 435, 851
6 P.2d 428 (1993); Sheriff v. Crockett, 102 Nev. 359, 361, 724 P.2d 203 (1986). Thus, "the
7 evidence need not be sufficient to support a conviction." Sheriff v. Kinsey, 87 Nev. 361, 363,
8 487 P.2d 340 (1971). *"To commit an accused for trial, the State is not required to negate all*
9 *inferences which might explain his conduct, but only to present enough evidence to support a*
10 *reasonable inference that the accused committed the offense."* Id. at 363 (emphasis added);
11 see also Shade, 109 Nev. at 828; Crockett., 102 Nev. at 361. Similarly, in Schuster v. Eighth
12 Judicial Dist. Court ex rel. County of Clark, 160 P.3d 873, 876-877 (2007), the Court
13 explained:

14 The finding of probable cause "does not involve a determination of the
15 guilt or innocence of an accused," and this court has consistently held
16 that to secure an indictment, the State is not required to negate all
17 inferences which might explain away an accused's conduct.

18 (footnotes omitted).

19 The Nevada Supreme Court has explicitly held that a probable cause determination is
20 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
21 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);
22 *see also, Robertson v. Sheriff*, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence
23 produced establishes reasonable inference that the defendant committed the crime, the
24 probable cause to order the defendant to answer in the district court has been established.
25 Morgan v. Sheriff, 86 Nev. 23, 467 P.2d 600 (1970).

26 //

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1 Further, the standard of review when analyzing the sufficiency of the evidence is to be
2 viewed in the light most favorable to the State. The Nevada Supreme Court has stated:

3 “The standard of review [when analyzing the sufficiency of evidence]
4 in a criminal case is whether, after viewing the evidence in the light
5 most favorable to the prosecution, *any* rational trier of fact could have
6 found the essential elements of the crime beyond a reasonable doubt.”

7 Grey v. State, 178 P.3d 154, 162 (2008) citing Nolan v. State, 122 Nev. 363, 377, 132 P.3d
8 564, 573 (2006).

9 **B. NRS 171.196 Does Not Negate All Other Hearsay Exceptions at Preliminary**
10 **Hearing**

11 The court’s findings that the legislation which amended NRS 171.196(6) essentially
12 negated all other hearsay exceptions to a victim’s statements is unfounded and an incorrect
13 reading of the law. *Statutory language should not be read to produce absurd or unreasonable*
14 *results.* Anthony Lee R. v. State, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997) (citing Alsenz v.
15 Clark Cty. School Dist., 109 Nev. 1062, 1065, 864 P.2d 285, 286 (1993)). NRS 171.196(6) is
16 an *expansion* on the already well-settled hearsay exceptions in the Nevada Revised Statutes.

17 NRS 171.196(6) states in full:

18 6. *Hearsay evidence consisting of a statement made by the*
19 *alleged victim of the offense is admissible at a preliminary*
20 *examination conducted pursuant to this section only if the*
21 *defendant is charged with one or more of the following offenses:*

22 (a) A sexual offense committed against a child who is under
23 the age of 16 years if the offense is punishable as a felony. As used
24 in this paragraph, “sexual offense” has the meaning ascribed to it
25 in NRS 179D.097.

26 (b) Abuse of a child pursuant to NRS 200.508 if the offense
27 is committed against a child who is under the age of 16 years and
28 the offense is punishable as a felony.

(c) An act which constitutes domestic violence pursuant to
NRS 33.018, which is punishable as a felony and which resulted
in substantial bodily harm to the alleged victim.

Emphasis added. It is clear based on the plain language of the statute that this addition is meant
to be an expansion of the existing law prohibiting hearsay. S. Nev. Homebuilders Ass’n v.
Clark Cty., 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (quoting Charlie Brown Constr. Co.

1 v. Boulder City, 106 Nev. 497, 502, 797 P.2d 946, 949 (1990)) (“When interpreting a statute,
2 this court must give its terms their plain meaning, considering its provisions as a whole so as
3 to read them ‘in a way that would not render words or phrases superfluous or make a provision
4 nugatory.’”). NRS 171.196(6) states that *hearsay evidence* of a statement by a victim is
5 admissible. This means that evidence that would otherwise not fall under the already well
6 settled hearsay exceptions is also admissible in these enumerated situations. If the court’s logic
7 were to be followed, there would be no hearsay exceptions available for victims statements in
8 all but the fewest of cases (not even murder cases); there would be no ability to bring in excited
9 utterances, dying declarations, or present sense impressions to name just a few well-
10 established hearsay exceptions.

11 There is no public policy reason or logic to the legislature narrowing the admissibility
12 of a victim’s statements. Rather, the legislature was expanding the ability of the State to bring
13 in statements of particularly vulnerable victims. The origins of the bill were that hearsay
14 (meaning statements that do not otherwise fall into an exception) would be allowed in all cases.
15 The court cites to statements made by the Attorney General, making it clear that the bill was
16 created to expand the ability of these statements to come in:

17 This is a victim-centered bill. It is focused on enumerated
18 offenses. Certain victims will only have to face the accused when
19 the constitutional Confrontation Clause is applicable in the
20 proceeding. . . . Thirty-six states allow hearsay evidence at
preliminary hearings. Hearsay evidence is allowed at federal
grand jury and preliminary hearings.

21 Exhibit 1, pg. 9. The Attorney General was certainly not saying that thirty-six states only allow
22 hearsay evidence in cases involving certain charges at preliminary hearing, but rather that
23 thirty-six states allow hearsay evidence to be admitted, regardless of whether an applicable
24 exception applies. The reason NRS 171.196 was amended as opposed to new exceptions being
25 added was because under the bill as initially written, hearsay *would not apply at all* in
26 preliminary hearings. It was then tailored in a narrower fashion, adding to the list of exceptions
27 already in the Nevada Revised Statutes.

28 //

1 In the Findings of Fact and Conclusions of Law, the justice court states that:

2 The traditional requirements relating to hearsay statements would
3 be satisfied by the statements at issue here. For example, K.E.'s
4 statements to Dermanelian constitute "statements for purposes or
5 medical diagnosis or treatment" under NRS 51.115. Moreover,
K.E.'s statements during her 9-1-1 call constitute "present-sense
impressions" and also "excited utterances."

6 Exhibit 1, pg. 5-6. The Court concludes that but for her reading of the new exceptions to
7 hearsay in NRS 171.196(6), all evidence presented by the State would be admissible. The State
8 submits to this Court that if all evidence was admissible, probable cause was shown to hold
9 Respondent to answer in District Court to Counts one, two and three of the Criminal
10 Complaint.

11 **C. The State Proved Counts One Through Three By Slight or Marginal Evidence**

12 The State proved Counts one through three by slight or marginal evidence. The State
13 did not prove Counts four and five.

14 Count 1, First Degree Kidnapping, was proved through the testimony of Jerri
15 Dermanelian and the victim's statements in the 9-1-1 call. NRS 200.310 states:

16 1. A person who willfully seizes, confines, inveigles, entices,
17 decoys, abducts, conceals, kidnaps or carries away a person by any
18 means whatsoever with the intent to hold or detain, or who holds
or detains, the person for ransom, or reward, or *for the purpose of*
19 *committing sexual assault*, . . . is guilty of kidnapping in the first
degree which is a category A felony.

20 Dermanelian testified as to the statements made by Ellis, which appropriately come into
21 evidence under NRS 51.115, statements made for the purposes of medical diagnoses or
22 treatment. Ellis said that she was walking home when Respondent forced her to smoke
23 methamphetamine and was moved to a bathroom. PHT at 10. In the 9-1-1 call (transcript
24 attached as Exhibit 6), the victim clearly states that she was "pulled into Freedom Park" by
25 Respondent and "raped." She also clearly states he put his "arm around me and I was
26 screaming," and "I was begging him to let me go." The victim's statements in the 9-1-1 call
27 are admissible under NRS 51.085 and NRS 51.095.

28 //

1 NRS 200. 366 states:

2 1. A person is guilty of sexual assault if he or she:

3 (a) Subjects another person to sexual penetration, or forces
4 another person to make a sexual penetration on himself or herself
5 or another, or on a beast, against the will of the victim or under
6 conditions in which the perpetrator knows or should know that the
victim is mentally or physically incapable of resisting or
understanding the nature of his or her conduct;

7 The State proved Count 2, Sexual Assault, by slight or marginal evidence when Dermanelian
8 testified that Ellis stated that “she was forced to have finger to vagina then penis to vagina
9 intercourse in a bathroom.” PHT at 10. Additionally, the statements made by Ellis in the 9-1-
10 1 call clearly show Sexual Assault.

11 Count 3, Battery with the Intent to Commit Sexual Assault, is shown by this same
12 testimony. NRS 200.400 defines battery as the “willful and unlawful use of force or violence
13 upon the person of another.” The Respondent pulling and holding the victim as she begged to
14 be let go constitutes unlawful use of force for the purposes of committing a sex assault. The
15 odds that Respondent was not the individual who committed the sexual assault on Ellis are 1
16 in 174 quadrillion based on the DNA reports.

17 The State concedes that Counts 4 and 5 were not proved through the testimony and
18 evidence.

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CONCLUSION

Based upon the foregoing, the justice court misapplied NRS 171.196(6) and this resulted in otherwise admissible evidence not being considered by the Justice of the Peace. The written order of the justice court was arbitrary, capricious and an abuse of discretion and must be reversed.

DATED this 28th day of June, 2017.

Respectfully submitted,

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

BY /s/ JACOB J. VILLANI
JACOB J. VILLANI
Chief Deputy District Attorney
Nevada Bar #011732

BY /s/ GENEVIEVE CRAGGS
GENEVIEVE CRAGGS
Deputy District Attorney
Nevada Bar #013469

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 28th day of JUNE 2017, to:

MELINDA SIMPKINS, SPD
msimpkins@ClarkCountyNV.gov
sscurry@clarkcountynv.gov

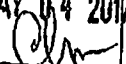
BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT “1”

LAS VEGAS JUSTICE COURT
FILED IN OPEN COURT

MAY 04 2017

BY 
CLERK

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSEPH E. WARREN, JR., #1239725,

Defendant.

Case No.: 17F-03940X

Dept. No.: 7

ORDER

This matter, having come before the Court for Preliminary Hearing on April 20, 2017,
and the Court being fully advised of the premises herein, does hereby find the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 6, 2017, the State of Nevada filed a Criminal Complaint against Joseph E.
Warren, Jr. (hereinafter "Defendant") for conduct allegedly committed against a victim who will
be designated as "K.E." The Complaint includes the following five counts:

| | |
|--------------|--|
| Count One: | First-Degree Kidnapping |
| Count Two: | Sexual Assault |
| Count Three: | Battery with Intent to Commit Sexual Assault |
| Count Four: | Open or Gross Lewdness |
| Count Five: | Open or Gross Lewdness ¹ |

On April 20, 2017, the Court presided over the Preliminary Hearing in this matter. The
Court will summarize the proceedings in the following sections.

¹ The Complaint alleges that Defendant committed each of the above acts on or about March 1, 2017.

1 I. Introductory Arguments

2
3 At the commencement of the Preliminary Hearing, Exhibit 1 was admitted without
4 objection. Exhibit 1 is a prior Judgment of Conviction in Case #C-220286.

5 Additionally, the parties stipulated to the admission of Exhibits 2, 3, and 6, all of which
6 are various DNA reports.
7

8 II. Testimony of Jeri Dermanelian

9
10 A. Direct Examination by the State
11

12
13 Jeri Dermanelian (hereinafter "Dermanelian") is a certified sexual-assault nurse examiner
14 ("SANE nurse") for a company called Rose-Heart.

15 On March 1, 2017, at approximately 4:35 AM, Dermanelian treated eighteen-year-old
16 K.E. at University Medical Center (UMC). K.E. reported that she had been the victim of a
17 sexual assault, and Dermanelian testified to the following:

18 The patient stated that she was walking home. She was going to go to her fiancé's
19 house. She was stopped. When she stopped, she went to have a cigarette. A male came
20 up to her that she didn't know and asked her if he could have a cigarette. She gave him a
21 cigarette. And she stated that she was forced to have finger to vagina and then penis to
22 vagina intercourse in a bathroom. She stated she was in a standing position and bent
over. She stated that the male used a garbage bag to wrap as a possible condom. The
garbage bag came off, and there was penis to vagina intercourse without the wrapper.
The ejaculation took place in the vagina.

23 The patient states that was forced to smoke methamphetamines. The male told her that
24 the methamphetamines would make her wet. And she stated that she was not hit with an
open hand or closed fist. There was no gun or knife used in the sexual assault.
25

1 *Transcript of Proceedings (April 20, 2017), at 10:4-10:22.*²

2 K.E. also told Dermanelian that K.E.'s last date of consensual sexual intercourse was on
3 February 27, 2017.

4 Moreover, K.E. indicated that she was not a user of street drugs. A subsequent drug
5 screen of K.E.'s urine showed marijuana and amphetamines in her system.

6 K.E. and Dermanelian discussed the four types of medical examinations to which K.E.
7 could be subjected, and K.E. chose "the full, forensic sexual assault kit" which includes
8 notification to law enforcement for the purpose of requesting a criminal investigation.

9 *Transcript, at 14:16-14:24.* Dermanelian impounded the underwear worn by K.E. and also
10 performed swabs of K.E.'s mouth, vagina, and cervex.

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12
13 B. Cross-Examination by Defense Counsel

14
15 After brief questioning, Defense Counsel renewed her objection to the admission of the
16 hearsay statements from Dermanelian's direct examination. Defense Counsel argued that K.E.'s
17 statements were made "for the purposes of a police investigation, not for purposes of treatment."
18 *Transcript, at 24:13-24:19.*

19 The State asked the Court to reserve its ruling until further questions had been asked of
20 the witness, and the Court agreed.

21
22
23 C. Redirect Examination by the State

24
25 ² During the Preliminary Hearing, the Court admitted the above hearsay statements pursuant to NRS 51.115.
This statute will be addressed in greater detail *infra*.

1 On redirect, Dermanelian testified to the following types of "treatment" that she had
2 administered to K.E.:

3 The medical history was obtained, the history of the event was obtained, the sexually
4 transmitted infection blood testing was drawn, urine was obtained, the antibiotics were
5 administered, the morning-after medication was administered, and the discharge
6 information was given to the patient. Referral information was given to the patient for
7 the 12-week follow-up for the second HIV and syphilis test.

8 *Transcript*, at 25:8-25:16.

9 After further arguments, the Court overruled the renewed objection and allowed the
10 hearsay testimony from the direct examination to be admitted.

11 III. Evidence Relating to a 9-1-1 Call

12 At this point in the Preliminary Hearing, the State asked that the 9-1-1 call from K.E. be
13 admitted into evidence. The State argued that K.E.'s statements during the 9-1-1 call were
14 admissible under hearsay principles as either "present-sense impressions" or "excited
15 utterances." The State further argued that the 9-1-1 call corroborates the sequence of events
16 which K.E. described to Dermanelian.

17 In response, Defense Counsel argued that the 9-1-1 call was not admissible under NRS
18 171.196. Defense Counsel also argued that that 9-1-1 call is "basically unintelligible."

19 *Transcript*, at 29:19-29:21.

20 After further argument, the Court allowed the 9-1-1 tape to be admitted, but not the
21 transcript of the 9-1-1 call.

22 IV. DNA Evidence

1 The State referred to the admitted DNA reports which showed that the results connected
2 Defendant to the charged offenses with a potential likelihood of error of "1 in 174 quadrillion."
3 *Transcript*, at 32:13-33:2.
4

5 V. Conclusion
6

7 At the conclusion of the Preliminary Hearing, the Court indicated that it would prepare
8 this written Order.
9

10 **DISCUSSION**
11

12 After carefully reviewing the applicable legal arguments raised by the parties, the Court
13 is now prepared to set forth its reasoning as follows.
14

15 I. Traditional Requirements Relating to Hearsay Statements
16

17 The State's entire case rests upon the admissibility of hearsay statements from the victim.
18 The traditional requirements relating to hearsay statements would be satisfied by the statements
19 at issue here. For example, K.E.'s statements to Dermanelian constitute "statements for purposes
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1 of medical diagnosis or treatment" under NRS 51.115.³ Moreover, K.E.'s statements during her
2 9-1-1 call constitute "present-sense impressions"⁴ and also "excited utterances."⁵

3 However, the Court must also consider how a recent legislative change has altered the
4 traditional hearsay requirements at preliminary hearings.

5
6 **II. Recent Legislation**

7
8 In 2015, the Nevada Legislature enacted Assembly Bill 193 (2015) (hereinafter
9 "AB 193"). This bill amended NRS 171.196, Nevada's statute which deals with preliminary
10 hearings. NRS 171.196(6) now provides as follows:

11 **NRS 171.196. Preliminary examination: Waiver; time for conducting;
12 postponement; introduction of evidence and cross-examination of witnesses by
13 defendant; admissibility of hearsay evidence.**

14 6. Hearsay evidence consisting of a statement made by the alleged victim of the offense
15 is admissible at a preliminary examination conducted pursuant to this section only if the
16 defendant is charged with one or more of the following offenses:

17 (a) A sexual offense committed against a child who is under the age of 16 years if
18 the offense is punishable as a felony. As used in this paragraph, "sexual offense"
19 has the meaning ascribed to it in NRS 179D.097.

20 (b) Abuse of a child pursuant to NRS 200.508 if the offense is committed against
21 a child who is under the age of 16 years and the offense is punishable as a felony.

22 (c) An act which constitutes domestic violence pursuant to NRS 33.018, which is
23 punishable as a felony and which resulted in substantial bodily harm to the
24 alleged victim. [*Emphasis added*].

25
21 ³ See NRS 51.115 ("Statements made for purposes of medical diagnosis or treatment and describing
22 medical history, or past or present symptoms, pain or sensations, or the inception or general character of the
23 cause or external source thereof are not inadmissible under the hearsay rule insofar as they were reasonably
24 pertinent to diagnosis or treatment").

25
21 ⁴ See NRS 51.085 ("A statement describing or explaining an event or condition made while the declarant
22 was perceiving the event or condition, or immediately thereafter, is not inadmissible under the hearsay
23 rule.").

25
21 ⁵ See NRS 51.095 ("A statement relating to a startling event or condition made while the declarant was under
22 the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule.").

1 The parties in this case recognize that Defendant is not charged with any of the
2 enumerated offenses in NRS 171.196(6). However, they disagree as to whether NRS
3 171.196(6) supplants the traditional requirements relating to hearsay in the context of a
4 preliminary hearing.

5 For at least two reasons, the Court finds that NRS 171.196(6) does supplant the
6 traditional requirements relating to hearsay in the context of a preliminary hearing.

7
8 A. The Text of NRS 171.196(6) as Amended by AB 193

9
10 NRS 171.196 is the Nevada statute which defines the applicable procedure at a
11 preliminary hearing. The title for this statute appears as follows:
12

13 **NRS 171.196 Preliminary examination: Waiver; time for conducting;
14 postponement; introduction of evidence and cross-examination of witnesses by
15 defendant; admissibility of hearsay evidence. [*Emphasis added*].**

16 The Legislature has structured the title so that it regulates the general "admissibility of
17 hearsay evidence" at a preliminary hearing. This title is indicative of what the Legislature
18 intended to accomplish. See Coast Hotels & Casinos v. Nev. State Labor Comm'n, 117 Nev.
19 835, 841-42 (2001) (recognizing that a title is typically prefixed to a statute in the form of a
20 descriptive heading or a brief summary of the contents of the statute and that "[t]he title of a
21 statute may be considered in determining legislative intent").

22 In addition, the preamble to NRS 171.196(6) declares that "hearsay evidence consisting
23 of a statement made by the alleged victim of the offense is admissible at a preliminary
24 examination conducted pursuant to this section only if the defendant is charged with one or
25

1 more" of the enumerated offenses. [*Emphasis added*]. In order to give meaning to every word
2 and phrase in NRS 171.196(6)⁶, the Court must interpret "only if" to mean what it says. A
3 hearsay statement from a victim is admissible at a preliminary hearing "only if" one or more
4 enumerated offenses is charged.⁷

5
6
7 B. Explicit Statements of Legislative Intent
8

9 On April 10, 2015, AB 193 was heard by the Assembly Committee on Judiciary.
10 Committee Counsel Brad Wilkinson testified as follows:

11 The revised proposed conceptual amendment for A.B. 193 would revise the bill to
12 include only the following provisions:

13 ...

14
15 (3) it would provide that hearsay would be allowed in preliminary examinations and
16 grand jury proceedings, **but only in** cases involving felony child abuse, sexual offenses
17 committed against children under the age of 16, and felony domestic violence involving
18 substantial bodily harm to the victim.

19 ⁶ See Slade v. Caesar's Entm't Corp., 132 Nev. Adv. Op. No. 36, 373 P.3d 74, 75 (May 12, 2016)
20 (emphasizing that "[a] statute must be construed as to 'give meaning to all of [its] parts and
language, and this court will read each sentence, phrase, and word to render it meaningful within the
context of the purpose of the legislation'").

21 ⁷ The Court notes that the State's interpretation of NRS 171.196 would essentially delete the word "only"
22 out of the statute so that "[h]earsay evidence consisting of a statement made by the alleged victim of the
offense is admissible at a preliminary examination conducted pursuant to this section [] if the defendant is
charged with one or more of the following offenses." However, the State cannot "cherry-pick" the
23 language that should be deemed operative in a Nevada statute. See Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 366 (2008) (declaring that "[o]ne tenet of statutory construction requires statutes to
be 'construed as a whole and not be read in a way that would render words or phrases superfluous or make
24 a provision nugatory.'").

25 While the State's interpretation would apparently create *additional* hearsay exceptions for victim
statements at preliminary hearings, the actual language of NRS 171.196(6) creates the *only* hearsay
exception that applies to victim statements at preliminary hearings.

1 *Hearing on AB 193 Before the Assembly Committee on Judiciary (April 10, 2015), at*
2 *Page 56 [Emphasis added].*

3 Later, on May 6, 2015, AB 193 came before the Senate Committee on Judiciary.

4 Assistant Attorney General Wes Duncan testified as follows:

5 Assembly Bill 193 allows hearsay evidence for certain offenses at preliminary hearings
6 and grand jury proceedings. This bill is important for a number of reasons. This is a
7 victim-centered bill. It is focused on enumerated offenses. Certain victims will only have
8 to face the accused when the constitutional Confrontation Clause is applicable to the
9 proceeding. Assembly Bill 193 is important because it puts Nevada in line with the
10 majority of states. Thirty-six states allow hearsay evidence at preliminary hearings.
11 Hearsay evidence is allowed at federal grand jury and preliminary hearings. The military
also allows hearsay evidence at preliminary hearings. Assembly Bill 193 touches on the
efficiency of the system and results in cost savings. *Gerstein v. Pugh*, 420 U.S. 103
(1975), says there is no constitutional right to an adversarial hearing at the preliminary
hearing stage. Assembly Bill 193 does not take away or erode trial rights at a district
court level. The bill only addresses evidence at a preliminary hearing at the justice
court level and grand jury proceedings.

12 *Hearing on AB 193 Before the Senate Committee on Judiciary (May 6, 2015), at Page 8.*
13 *[Emphasis added].*

14 The above passage illustrates the legislative intent to focus on "evidence at a preliminary
15 hearing at the justice court level." Because AB 193 "does not take away or erode trial rights at a
16 district court level," victim statements are still admissible at trial under traditional hearsay
17 exceptions, as long as a defendant's confrontation rights are satisfied.

18 19 III. Conclusion

20
21 In enacting AB 193, the Nevada Legislature could have simply created additional hearsay
22 exceptions for victim statements and added those exceptions to NRS Chapter 51 ("Hearsay"), but
23 the Legislature did not take that approach. Instead, the Legislature amended NRS 171.196 and
24 crafted a new rule that applies specifically to preliminary hearings. The evidence offered by the
25

1 State in this case runs afoul of NRS 171.196(6) because the enumerated offenses in that statute
2 are not being charged in this case. Therefore, K.E.'s hearsay statements to Dermanelian and
3 K.E.'s hearsay statements in the 9-1-1 call were not admissible at the preliminary hearing, and,
4 as a result, the State is unable to satisfy even a "slight-or-marginal" evidence standard to obtain a
5 bindover to District Court.

6
7 **ORDER**

8
9 Pursuant to the statements of fact and the arguments of law submitted, it is hereby
10 ordered, adjudged, and decreed that all charges against Defendant are dismissed.

11
12
13
14 Dated this 3rd day of May, 2017.

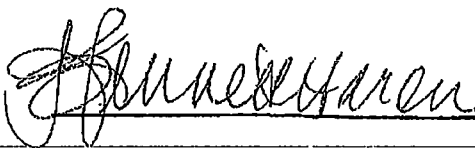
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25 **JUDGE KAREN BENNETT-HARON**

EXHIBIT “2”

1 CASE NO.: PENDING

2

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

5 -oOo-

6 STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 JOSEPH WARREN, JR.,)

10 Defendant.)

11 _____)

12

13 REPORTER'S TRANSCRIPT OF

14 PRELIMINARY HEARING, VOLUME I

15 BEFORE THE HONORABLE KAREN BENNETT-HARON
16 JUSTICE OF THE PEACE

17 THURSDAY, APRIL 20, 2017

18

APPEARANCES

19

20 For the State: JACOB VILLANI, ESQ. ✓
Chief Deputy District Attorney
21 GENEVIEVE CRAGGS, ESQ.
Deputy District Attorney

22

23 For the Defendant: MELINDA SIMPKINS, ESQ.

24

25 Reported By: Jennifer O'Neill, CCR No. 763

COPY

Case No. 17F03940X

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W I T N E S S E S

PAGE

STATE'S

JERI DERMANELIAN

| | |
|-------------------------------------|----|
| Direct Examination by Mr. Villani | 8 |
| Cross-Examination by Ms. Simpkins | 19 |
| Redirect Examination by Mr. Villani | 25 |

* * * * *

E X H I B I T S

| | Marked | Admitted |
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STATE'S

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| Exhibit 1 | 7 |
| Exhibit 2 | 7 |
| Exhibit 3 | 7 |
| Exhibit 4 | 37 |
| Exhibit 6 | 7 |

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1
2 LAS VEGAS, NEVADA; APRIL 20, 2017; 9:00 A.M.
3 -oOo-
4
5 THE COURT: Let's see. We've got Joseph
6 Warren. Case No. 17F03940X.
7 Good morning.
8 MS. SIMPKINS: Good morning, Your Honor.
9 Melinda Simpkins, Deputy Special Public Defender,
10 appearing on behalf of Mr. Warren, who's present in
11 custody.
12 MR. VILLANI: Good morning, Your Honor. Jake
13 Villani on behalf of the State.
14 THE COURT: Okay. Good morning. And are we
15 ready? Today is the preliminary hearing.
16 MS. SIMPKINS: Yes, Your Honor.
17 MR. VILLANI: Yes, Your Honor.
18 THE COURT: How many witnesses?
19 MR. VILLANI: One, maybe two, Your Honor.
20 THE COURT: Okay. I'll be right with you
21 all.
22 MR. VILLANI: Thank you.
23 (Whereupon, other matters were heard.)
24 THE COURT: Let's get started on Joseph
25 Warren. This is the time set for the preliminary

1 hearing in Case No. 17F03940X. Let the record reflect
2 the presence of -- okay. So is Mr. Warren here?
3 MS. SIMPKINS: He's in custody, Your Honor.
4 THE COURT: So Mr. Warren is present in
5 custody. And I'll have counsel enter their respective
6 appearance for the record, and then we can get started.
7 MR. VILLANI: Good morning, Your Honor. Jake
8 Villani on behalf of the State.
9 MS. CRAGGS: Genevieve Craggs for the State.
10 MS. SIMPKINS: Melinda Simpkins, Deputy
11 Special Public Defender, appearing on behalf of
12 Mr. Warren, who's present. Also, Your Honor, for the
13 record, Mr. Dan Page, from my office, is co-counsel,
14 but he couldn't be here today.
15 THE COURT: Okay. All right. Are there any
16 preliminary matters that need to be addressed by the
17 Court before we begin?
18 MR. VILLANI: Your Honor, I do have a number
19 of exhibits that are coming in by the stipulation of
20 the parties, if I may move to admit those now. That
21 would be Exhibit 1, which is the Judgment of Conviction
22 for defendant's prior.
23 THE COURT: Have they been marked already by
24 the clerk?
25 MR. VILLANI: Yes, they have, Your Honor.

1 THE COURT: Okay. Great.
2 MR. VILLANI: So State's Proposed Exhibit 1
3 is a prior Judgment of Conviction. State's Proposed
4 Exhibit 2 is a DNA report. State's Proposed Exhibit 3
5 is a DNA report. State's Proposed Exhibit 4 is audio
6 of a 911 call. State's Proposed Exhibit 5 is a
7 transcript of that 911 call. And State's Proposed
8 Exhibit 6 is another DNA report. I would ask that
9 those be admitted pursuant to stipulation.
10 MS. SIMPKINS: Your Honor, that's not
11 correct. The only thing I stipulated to was the DNA
12 reports coming in.
13 MR. VILLANI: I talked to Dan.
14 MS. SIMPKINS: I'm lead counsel on this.
15 Mr. Page ran everything by me. And the only thing I
16 stipulated to was the DNA reports.
17 MR. VILLANI: To the extent she's calling me
18 a liar, I did talk to her co-counsel, who actually
19 stipulated to the 911, but I can get the 911 in through
20 hearsay exception, Your Honor.
21 THE COURT: All right. So the DNA reports
22 have been stipulated to. And they, for purposes of
23 reference, are proposed exhibits what?
24 MR. VILLANI: 2, 3, and 6, Your Honor.
25 THE COURT: 2, 3, and 6.

1 MR. VILLANI: I'd move for admission of
2 those. I would actually move for admission of the
3 Judgment of Conviction. It is a Nevada JOC, Case
4 No. C-220286.
5 THE COURT: Do you have any objection to
6 that?
7 MS. SIMPKINS: I'm curious as to what
8 purpose, Your Honor. Is it to prove propensity?
9 Because then I would have the objection. I don't --
10 there's no habitual criminal charge. There's -- you
11 know, I don't know for what purpose.
12 THE COURT: Well, it says, I guess, under
13 Count 5; is that right?
14 MR. VILLANI: That's correct, Your Honor.
15 THE COURT: Under Count 5 it looks like the
16 allegation is that he was previously convicted of a --
17 MR. VILLANI: It turns the open or gross
18 lewdness into a felony, Your Honor.
19 MS. SIMPKINS: Then no objection, Judge.
20 THE COURT: Very good. So then that would
21 be 1? --
22 MR. VILLANI: That would be 1, yes, Your
23 Honor.
24 THE COURT: So we've got 1, 2, 3, and 6 that
25 have been -- that are coming in by way of stipulation.

1 Okay.
2 MR. VILLANI: Correct, Your Honor.
3 THE COURT: Very good. All right. Anything
4 else?
5 (State's Exhibits 1, 2, 3, and 6 were
6 admitted.)
7 MS. SIMPKINS: Well, 1 is not stipulated,
8 Your Honor. I just have no objection. The other ones
9 are stipulated. Yeah.
10 THE COURT: Okay.
11 MR. VILLANI: I'd move for admission of 1 as
12 a court document.
13 MS. SIMPKINS: There's no objection.
14 THE COURT: No objection. Very well. It
15 will be deemed admitted, then.
16 You only have one, right?
17 MR. VILLANI: One, maybe two, Your Honor.
18 THE COURT: Anything else?
19 MR. VILLANI: No, Your Honor.
20 MS. SIMPKINS: No, Your Honor.
21 THE COURT: Then let's get started. Call
22 your first witness.
23 MR. VILLANI: Your Honor, the State calls
24 Jeri Dermanelian to the stand.
25 MS. SIMPKINS: I would invoke the

7

1 exclusionary rule, Judge.
2 THE COURT: If there are any other witnesses
3 in the courtroom, please leave the courtroom. Stand
4 near the door so that my marshal can call you when
5 needed, but I don't think there is.
6 MR. VILLANI: They're all outside, Your
7 Honor.
8 Whereupon,
9 JERI DERMANELIAN,
10 was called as a witness, and having been first duly
11 sworn, was examined and testified as follows:
12 THE CLERK: Please be seated. Please state
13 and spell your first and last name for the record.
14 THE WITNESS: Jeri Dermanelian. J-E-R-I
15 D-E-R-M-A-N-E-L-I-A-N.
16 THE CLERK: Thank you.
17 MR. VILLANI: May I proceed, Your Honor?
18 THE COURT: Yes.
19
20 DIRECT EXAMINATION
21 BY MR. VILLANI:
22 Q. Ma'am, how are you employed?
23 A. I own a company called Rose Heart. I'm a
24 sexual assault nurse examiner.
25 Q. And what is your specific degree or training

8

1 and experience?
2 A. I'm a registered nurse. I have a bachelor's
3 in nursing from UNLV. I am a certified sexual assault
4 nurse examiner for pediatrics, adolescents, and adults.
5 I carry a nursing license for the state of Nevada.
6 Q. And do you work out of any particular
7 hospital?
8 A. I'm contracted with University Medical
9 Center.
10 Q. Specifically with regard to a SANE nurse,
11 what are your specific duties and responsibilities?
12 A. I provide options for patients that come in
13 with a chief complaint of sexual assault.
14 Q. On March 1, 2017, at approximately 4:35 a.m.,
15 did you see a patient by the name of Kearstin Ellis?
16 A. I did.
17 Q. And what was Miss Ellis's complaint?
18 A. Chief complaint was sexual assault.
19 Q. And how old was Miss Ellis?
20 A. Eighteen.
21 Q. Specifically with regard to the sexual
22 assault, what did Miss Ellis say happened?
23 MS. SIMPKINS: Objection. Hearsay, Your
24 Honor.
25 MR. VILLANI: Your Honor, these are

9

1 statements for the purpose of a medical diagnosis or
2 treatment.
3 THE COURT: Overruled. Come on.
4 THE WITNESS: The patient stated that she was
5 walking home. She was going to go to her fiancé's
6 house. She was stopped. When she stopped, she went to
7 have a cigarette. A male came up to her that she
8 didn't know and asked her if he could have a cigarette.
9 She gave him a cigarette. And she stated that she was
10 forced to have finger to vagina and then penis to
11 vagina intercourse in a bathroom. She stated she was
12 in a standing position and bent over. She stated that
13 the male used a garbage bag to wrap as a possible
14 condom. The garbage bag came off, and there was penis
15 to vagina intercourse without the wrapper. The
16 ejaculation took place in the vagina.
17 The patient states that she was forced to
18 smoke methamphetamines. The male told her that the
19 methamphetamines would make her wet. And she stated
20 that she was not hit with an open hand or a closed
21 fist. There was no gun or knife used in the sexual
22 assault.
23 BY MR. VILLANI:
24 Q. Do you commonly check patients for pregnancy
25 when something like this happens?

10

1 A. Yes. That's part of the exam.
 2 Q. And did you test Miss Ellis for pregnancy?
 3 A. Yes, I did. She did -- she stated that she
 4 had a four-month-old child and that she thought she may
 5 currently be pregnant. So there was discussion
 6 regarding taking the morning-after medication, whether
 7 she would have that option or not.
 8 Q. Is it important for you, under these
 9 circumstances, to find out when the last consensual
 10 intercourse was?
 11 A. Yes. For DNA purposes, as well as whether
 12 there may or may not be clinical findings from the exam
 13 results.
 14 Q. And did you ask Miss Ellis when her last
 15 consensual intercourse was?
 16 A. Yes.
 17 Q. What did she say?
 18 A. The 27th.
 19 Q. And is that --
 20 A. I'm sorry. Of February of 2017.
 21 Q. Okay. So February 27, 2017. Did she say who
 22 that intercourse was with?
 23 A. Her -- she referred to him as boyfriend,
 24 slash, fiancé. She would use both terms.
 25 Q. And what type of intercourse was that?

11

1 A. It was penis to mouth and penis to vagina
 2 intercourse, with ejaculation that took place in the
 3 vagina.
 4 Q. Is it important for you to know whether your
 5 patients use street drugs?
 6 A. Yes.
 7 Q. Why is that important?
 8 A. It goes to help figure out whether the
 9 patient is able to consent at the time that we do the
 10 examination process, as well as what some of the side
 11 effects or the effects of the drugs may have on their
 12 clinical assessment findings.
 13 Q. Did you ask Miss Ellis if she was a user of
 14 street drugs?
 15 A. I did.
 16 Q. And what did she say?
 17 A. No.
 18 Q. Now, do you run tests to confirm these
 19 answers you receive?
 20 A. Yes.
 21 Q. And what type of tests did you run on this
 22 particular case?
 23 A. I did a urine drug screen.
 24 Q. What were the results of that urine drug
 25 screen?

12

1 A. It showed marijuana and amphetamines.
 2 Q. Now, does there come a point where the
 3 patient gets to decide whether or not they actually
 4 want to have this information go forward or actually
 5 seek this person?
 6 A. Yes. The patient, as an adult, is given four
 7 options -- or four choices -- as to which type of
 8 examination they want done.
 9 Q. And what are those four options?
 10 A. Briefly, the first option is to decline the
 11 exam at the end of the conversation, after they have
 12 more knowledge on what's included in each one of the
 13 options. If they choose not to go forward, they can
 14 just simply say they don't want the exam, and the exam
 15 will stop at that time.
 16 The second option is what I term medical
 17 only. It's a medical exam that does a head-to-toe
 18 assessment. Sexually transmitted and infection testing
 19 is done, including blood and pelvic exam, if it's a
 20 female, and potentially an anal exam also. The patient
 21 would be given antibiotics to prevent gonorrhea and
 22 chlamydia. Morning-after medication would be
 23 discussed, and a urine pregnancy and a urine drug
 24 screen would be done on a medical. What's made clear
 25 to the patient is that with a medical-only exam,

13

1 there's no forensics evidence collected, no sexual
 2 assault kit obtained, and that there would be no
 3 photographs of their body taken.
 4 The third choice is called an anonymous or a
 5 Jane Doe sexual assault exam. Jane Doe for the
 6 females. John Does for the males. And that's an
 7 anonymous sexual assault kit that would be completed.
 8 And all of the medical examinations, testing, and
 9 head-to-toe assessment that's offered in Option 2 would
 10 be also included in Option 3. The 30-day window would
 11 be given to the patient so they could decide if they
 12 wanted to go forward from a legal perspective. They
 13 have 30 days to activate their case. So photographs
 14 would be taken with that exam and a sexual assault kit
 15 would be completed.
 16 The fourth option is the full, forensic
 17 sexual assault kit, the medical. And then that
 18 includes the law enforcement, where the patient is
 19 going to be notified that they're going to request a
 20 criminal investigation to be initiated regarding a
 21 sexual assault complaint.
 22 Q. And which of those options did Miss Ellis
 23 choose?
 24 A. Fourth.
 25 Q. So a full sexual assault kit was completed,

14

1 correct?
2 A. Yes.
3 Q. Did that sexual assault kit include a
4 reference standard for Miss Ellis?
5 A. I'm sorry?
6 Q. A reference standard. Was a buccal done on
7 Miss Ellis --
8 A. Yes.
9 Q. -- as part of the kit?
10 A. Yes.
11 Q. And that's just the swabbing of her cheek; is
12 that fair?
13 A. Inside the mouth.
14 Q. Did you do vaginal and cervical swabs with
15 Miss Ellis as well?
16 A. I did.
17 Q. And how about impounding any clothing that
18 she was wearing? Was that done in this case?
19 A. Yes.
20 Q. Did you include any clothing in the sexual
21 assault kit, that you recall?
22 A. Her underwear.
23 Q. And what's the reason for that?
24 A. The underwear would have potential DNA
25 findings.

15

1 Q. Did you notice anything, during your
2 collection of the evidence for the sexual assault kit
3 or your exam itself, any notable discharge or anything
4 in Miss Ellis's vagina?
5 A. At the cervical os she had a light discharge
6 noted and that was swabbed. Vaginal swabs were taken
7 first, and cervical os swabs. A gonorrhea and
8 chlamydia swab would have been taken third, and then
9 the swab taken to look for the light staining
10 microscope.
11 Q. Now, once you complete the sexual assault
12 kit, do you seal it off?
13 A. I do.
14 Q. How do you do that?
15 A. There is an evidence seal that's placed on
16 the outside of the kit and that's placed on the kit,
17 and then my initials and the date that I seal the kit
18 was placed on the outside of that seal.
19 Q. And then are all the swabs that you take kept
20 separate and labeled clearly inside that kit?
21 A. Yes. Each one of the swabs that's taken has
22 its own individual little box that you put the swabs
23 in, and then you label it with the patient identifying
24 information that the hospital provides. And,
25 generally, it's done with a label for me. And then the

16

1 sexual assault kit number is placed on that individual
2 box, and then each box is placed inside a specific
3 envelope that's labeled and sealed with the identifying
4 information on it. And then the sexual assault
5 event -- sexual assault kit number is placed also on
6 each one of those envelopes. All the envelopes are
7 gathered, including the underwear envelope, and that is
8 placed in the kit, and then it has the general evidence
9 seal placed over that.
10 Q. And on that general evidence seal, do you
11 note anywhere the primary Metropolitan Police
12 Department event number?
13 A. Yes. On the face portion -- or on the front
14 portion -- of the sexual assault kit, it asks for
15 certain pieces of information. And one of them is what
16 agency -- law enforcement agency is coming in to work
17 with that case.
18 Q. And you complete a report with regard to
19 this, correct?
20 A. Yes.
21 Q. Do you recall off the top of your head what
22 that particular event number was that that sexual
23 assault kit was impounded under?
24 A. No. I would have to look at my notes.
25

17

1 Q. Would it help to refresh your recollection to
2 look at your report?
3 A. For the event number?
4 Q. For the event number, yes.
5 A. Yes.
6 MR. VILLANI: Your Honor, I would ask that
7 she be able to refer to her report for that purpose.
8 MS. SIMPKINS: No objection.
9 THE COURT: Very well.
10 MR. VILLANI: If it's okay with the Court, I
11 would just ask that she be allowed to read that number.
12 MS. SIMPKINS: That's fine.
13 THE COURT: Okay.
14 THE WITNESS: The event number is
15 170301-0486.
16 BY MR. VILLANI:
17 Q. When you do screenings of this type, do you
18 commonly check for sexually transmitted diseases?
19 A. I do.
20 Q. Did you do so with Miss Ellis?
21 A. I did.
22 Q. What, if anything, was the findings of any
23 sexual transmitted diseases?
24 MS. SIMPKINS: Objection. Relevance.
25 THE COURT: Well, yeah. I mean, is there a

18

1 connection here? I mean --
 2 MR. VILLANI: Well, I guess the particular
 3 finding is not relevant in this case. I'll withdraw
 4 that question.
 5 THE COURT: Thank you.
 6 MR. VILLANI: Court's brief indulgence.
 7 Your Honor, I'll pass the witness.
 8 THE COURT: Okay.

CROSS-EXAMINATION

10 BY MS. SIMPKINS:
 11 Q. Can you please state your name again? I'm
 12 sorry. Your last name.
 13 A. Jeri Dermanellan.
 14 Q. Dermanellan. Sorry. And I apologize. I
 15 don't mean to butcher your last name.
 16 Miss Dermanellan, who did you say you work
 17 for again?
 18 A. Rose Heart.
 19 Q. Rose Heart. Is that a hospital?
 20 A. That's a business -- sexual assault nurse
 21 examiner business.
 22 Q. That's all you do is sexual assault nurse
 23 examiner?
 24 A. I do other forensic exams, like for

1 strangulation suspect.
 2 Q. Strictly forensics?
 3 A. Yes, at this time.
 4 Q. Is that work for the Las Vegas Metropolitan
 5 Police Department?
 6 A. No, ma'am.
 7 Q. For anybody?
 8 A. I am my own business.
 9 Q. When you do these sexual assault exams and
 10 the things that you do under your own business, do you
 11 do them primarily for police departments?
 12 A. Primarily for police departments, yes, ma'am.
 13 Q. Do you do them for anyone else?
 14 A. Anyone that comes in requesting a sexual
 15 assault exam will be offered an exam, whether there's
 16 law enforcement involved or not.
 17 Q. In this case there was obviously law
 18 enforcement involved, correct?
 19 A. Yes, ma'am.
 20 Q. You indicated that you put an event number on
 21 the envelope. Where did you get that event number?
 22 Who gave that to you?
 23 A. Law enforcement would generate the event
 24 number.
 25 Q. And so would it be fair to say that

1 Miss Ellis was referred to you by the Las Vegas
 2 Metropolitan Police Department?
 3 A. I don't know if the right word is "referred."
 4 She came in with Las Vegas Metropolitan Police, so they
 5 did transport her in.
 6 Q. They transported her to your office?
 7 A. To the emergency -- the adult emergency
 8 department at UMC.
 9 Q. And then you went there, or do you have an
 10 office there?
 11 A. Yes, ma'am. I have an office in the adult
 12 emergency department.
 13 Q. And the report of your examination goes
 14 directly to the Las Vegas Metropolitan Police
 15 Department in this instance?
 16 A. My report is fractionated off. Part of it is
 17 dictated. The medical record is dictated for the
 18 hospital report. And then the sexual assault kit
 19 information is placed in the sexual assault kit and
 20 sent to the Las Vegas Crime Lab.
 21 Q. And as part of your duties, it is your job to
 22 collect evidence for Las Vegas Metropolitan Police
 23 Department?
 24 A. I would collect that evidence for any agency
 25 that requested it if the patient is requesting to have

1 evidence collected. And then sometimes, remember, with
 2 the Jane or the John Does, there's no law enforcement
 3 involved with that option.
 4 Q. In this instance, did you collect the
 5 evidence for the Las Vegas Metropolitan Police
 6 Department?
 7 A. I collected evidence for the sexual assault
 8 kit for Metropolitan Police, yes.
 9 Q. Okay. And you also took photos. Were those
 10 given to Las Vegas Metropolitan Police Department as
 11 well?
 12 A. No.
 13 Q. Where are those maintained?
 14 A. I keep them in my encrypted computer.
 15 Q. And the sexual assault kit, was that given
 16 to -- that was given to Las Vegas Metropolitan Police
 17 Department? Yes or no?
 18 A. That was sent to the Las Vegas Crime Lab.
 19 Q. So when you were called to treat Miss Ellis,
 20 you knew that you were there because of an alleged
 21 sexual assault?
 22 A. That was her chief complaint to the triage
 23 nurse.
 24 Q. Did you record that interview with her?
 25 A. I dictated that interview with the medical

1 exam, and I filled out the sexual assault kit portion.
 2 Q. So, no, you did not record that interview
 3 with her? Let me make sure you understand the
 4 question. When I say record the interview, was a
 5 recorder playing while she was talking, something that
 6 has her voice on it?
 7 A. No, ma'am.
 8 Q. Thank you. Now, do you know the time of the
 9 drug screening for Miss Ellis, what time that was done?
 10 A. I would have to refer to my notes to look at
 11 what time that I sent that down to the lab.
 12 Q. Is that in your notes?
 13 A. I believe I have a copy, yes, ma'am.
 14 Q. Would it refresh your recollection to look at
 15 those notes?
 16 A. Yes, ma'am.
 17 Q. Could you please --
 18 MS. SIMPKINS: Do you have any objection?
 19 MR. VILLANI: No.
 20 BY MS. SIMPKINS:
 21 Q. Could you please go ahead and look at those.
 22 Thank you.
 23 A. The urine drug screen was 0830 on 3/1/2017.
 24 Q. That's military time. A.M., correct?
 25 A. Yes, ma'am.

1 Q. And the drug screen came back positive for
 2 marijuana and methamphetamine, you said?
 3 A. It came back for amphetamines.
 4 Q. Amphetamines?
 5 A. Yes, ma'am.
 6 Q. And was there a confirmatory test done?
 7 A. No, ma'am.
 8 Q. And that was a urine drug screen?
 9 A. Yes, ma'am.
 10 Q. Did you take any hair or blood and test those
 11 as well?
 12 A. No, ma'am.
 13 MS. SIMPKINS: Your Honor, at this time I'm
 14 going to renew my objection. This witness has
 15 indicated that she was there to collect evidence for
 16 the Las Vegas Metropolitan Police Department, that the
 17 witness was -- or the alleged victim was transported by
 18 Metro. This was done for the purposes of a police
 19 investigation, not for purposes of treatment. There
 20 was no evidence that she gave any treatment to this
 21 witness whatsoever. So I would renew the objection on
 22 that ground.
 23 MR. VILLANI: I have a bit of follow-up
 24 questions before Your Honor makes a ruling, if I may.
 25 THE COURT: Okay.

1 REDIRECT EXAMINATION
 2 BY MR. VILLANI:
 3 Q. And you are a nurse, correct, ma'am, a
 4 registered nurse?
 5 A. Yes.
 6 Q. Did you provide any treatment to Miss Ellis?
 7 A. Yes.
 8 Q. What treatment did you provide?
 9 A. The medical history was obtained, the history
 10 of the event was obtained, the sexually transmitted
 11 infection blood testing was drawn, urine was obtained,
 12 the antibiotics were administered, the morning-after
 13 medication was administered, and the discharge
 14 information was given to the patient. Referral
 15 information was given to the patient for the 12-week
 16 follow-up for the second HIV and syphilis test.
 17 Q. Had you seen anything that was
 18 life-threatening during your exam, would you have
 19 referred her to a treating physician, if necessary?
 20 A. If she had life-threatening injuries, we
 21 would stop the forensics interview and go forward with
 22 treatment.
 23 MR. VILLANI: Your Honor, that's all my
 24 follow-up questioning. And then I have argument if
 25 Your Honor would like to --

1 THE COURT: Okay. So Miss Simpkins, I
 2 believe, is arguing that what took place was basically
 3 just a collection of information, there was no
 4 treatment; and, therefore, this testimony constitutes
 5 hearsay and you say that?
 6 MR. VILLANI: I say that she's a registered
 7 nurse, Your Honor. There actually was treatment
 8 performed. Part of her examination was to give the
 9 patient an offer of whether or not they would like a
 10 sexual assault kit done in addition to the treatment
 11 and the examination she was doing. That patient was
 12 given four distinct options. That patient chose the
 13 option of the sexual assault kit, which would then be
 14 transferred to Metro. It did not have to be. She
 15 could have chose the option that it would remain
 16 anonymous, but she chose to have it transferred to
 17 Metro. That doesn't mean she's collecting evidence on
 18 behalf of Metropolitan Police Department. She's a
 19 nurse who's acting as a nurse to somebody with a sexual
 20 assault allegation, and she is doing what the patient
 21 wanted to do.
 22 I think under Medina versus State, this sort
 23 of testimony has been examined by our Supreme Court and
 24 it was held to be a harmless error to admit it at trial
 25 in that case. It was found to be testimonial.

1 However, the confrontation cause does not apply at this
 2 level of the proceedings, so I would ask that her
 3 testimony stand.
 4 MS. SIMPKINS: Confrontation cause may not
 5 apply, Your Honor, but there is a statutory right to
 6 confrontation of witnesses. So that being stated,
 7 anything that this alleged victim said about the crime,
 8 I don't really think that that had anything to do with
 9 the treatment. I mean, she knew that the alleged
 10 victim was there for treatment for sexual assault. She
 11 was transported by Metro. This is what she does. She
 12 does SANE exams for the purpose of police
 13 investigation.
 14 THE COURT: Okay. I'm going to overrule your
 15 objection. I'm going to allow the testimony. And is
 16 there anything further?
 17 MR. VILLANI: Not from the State, Your Honor.
 18 MS. SIMPKINS: No, Your Honor.
 19 THE COURT: Okay. You know what, I have a
 20 question just for my own edification, so I understand
 21 this.
 22 You're basically a contractor at UMC, though,
 23 right?
 24 THE WITNESS: Yes, ma'am.
 25 THE COURT: So you have a contract with the

1 County to provide this service at its hospital?
 2 THE WITNESS: Yes. At University Medical
 3 Center. We do go to the other hospitals.
 4 THE COURT: You go to the other ones as well?
 5 THE WITNESS: When the patients are admitted
 6 in-house.
 7 THE COURT: Okay. Okay. But your office and
 8 contact, everything flows through UMC?
 9 THE WITNESS: Yes, ma'am.
 10 THE COURT: Okay. All right. Thank you.
 11 Is that it?
 12 MR. VILLANI: Your Honor, I have one
 13 additional piece of evidence. It's the 911 call from
 14 the victim. I would ask that it be admitted under
 15 52.252, also as a present sense impression and as a
 16 statement made as an excited utterance. Obviously,
 17 Your Honor can disregard if you disagree once you hear
 18 the 911 call, but I will tell you she's crying so hard
 19 that the 911 operator is unable to hear her at the time
 20 she's placing the call. So I would ask to be able to
 21 at least play that for Your Honor's consideration and
 22 move to admit it, based upon the hearsay exceptions
 23 that I've noted.
 24 MS. SIMPKINS: Okay, Judge, and I'm sorry.
 25 I'll try to be brief, but this involves a lot of stuff

1 here. The legislature, in 171.196 -- that's the
 2 statute that indicates that my client has the right to
 3 cross-examine witnesses against him -- indicated that
 4 hearsay evidence consisting of a statement made by the
 5 alleged victim of the offense is admissible at the
 6 preliminary examination, conducted pursuant to this
 7 section only -- and the word "only" is specific in
 8 there -- If the defendant is charged with one or more
 9 of the following offenses. And that's a sexual offense
 10 committed on someone who is under the age of 16, abuse
 11 of a child, or an act which constitutes domestic
 12 violence.
 13 And, Your Honor, I would submit, even though
 14 exceptions to the hearsay rule may apply, the
 15 legislature was very specific in stating that only
 16 under these circumstances may the alleged victim's
 17 testimony come in, and none of those circumstances
 18 apply in this matter.
 19 The other issues that I have with these --
 20 with this audio is that -- he's right -- it is
 21 basically unintelligible. She is crying. You cannot
 22 understand a word she's saying. I know that there is a
 23 transcript that Metro has done. It's not a certified
 24 transcript, so I would object to the transcript coming
 25 in. But as far as the audio is concerned, you can't

1 really tell what she says, so I'm not exactly sure what
 2 purpose this is being offered for, unless they're
 3 trying to cobble together some kind of exception to get
 4 around the requirement that my client has a right of
 5 cross-examination under 171.196.
 6 THE COURT: I guess, why do we -- why are we
 7 listening to it?
 8 MR. VILLANI: She does put herself at the
 9 scene. I mean, it's not completely garbled. She puts
 10 herself at the scene of the crime. She says exactly
 11 what happened. It mirrors what she told the SANE
 12 nurse. It's just we're getting statements of the
 13 victim in here because, obviously, the victim is
 14 unavailable at this point. So it's a statement of her.
 15 It shows her state of mind at the time. It shows --
 16 THE COURT: Let me see the two of you at the
 17 bench, please.
 18 **(Whereupon, a brief discussion was**
 19 **held at the bench.)**
 20 MR. VILLANI: Your Honor, before I rest on
 21 the State's side, I just want to walk through briefly
 22 the DNA reports that were admitted by stipulation.
 23 I would like to start with the report that
 24 looks different than the other two that is dated --
 25 that I don't have a copy of -- it's dated from 2006, I

1 believe.

2 THE COURT: May 17, 2006?

3 MR. VILLANI: Correct. That report is just
4 being offered -- that is from defendant's prior, which
5 is also in evidence -- that report is being offered
6 because that's where the buccal swab came from. I
7 believe it's JC 2, I think, or JF 2 is the buccal swab
8 of the defendant.

9 THE COURT: Okay.

10 MR. VILLANI: That's the buccal swab that was
11 used to compare the DNA evidence. If we move forward
12 to the report dated March 5th -- and the other two are
13 both dated March 5th -- this is the one under lab case
14 number as 17-0273.1.

15 THE COURT: I'm sorry. Where do you want me
16 to go for that? Lab what?

17 MR. VILLANI: Lab No. 17 and it's got a .1 at
18 the end. Lab case number -- it's up at the upper
19 right-hand corner. Kind of under the distribution date
20 there. One of them has a .1. The other one is .2. If
21 we start with .1.

22 THE COURT: Okay. I got it.

23 MR. VILLANI: .1 is the examination of the
24 sexual assault kit from Kearstin Ellis. The findings
25 on that particular DNA report under 1.2.1, the vaginal

1 sperm fraction, found an unknown male contributor
2 number 1 that could not be excluded. 1.2.2, under the
3 cervical epithelial fraction, found an unknown male
4 number 1 who could not be excluded as the deduced
5 partial minor contributor. And then 1.2.2 was the
6 cervical sperm fraction, and that also had an unknown
7 male who could not be excluded.

8 Now, Kearstin Ellis and Taylor Washington
9 were both excluded by 1.2.1. By 1.2.2 Taylor
10 Washington was excluded from a cervical epithelial
11 fraction. And 1.2.2 both Ellis and Taylor Washington
12 were excluded there.

13 After receiving those results, as noted in
14 the report, they were uploaded to CODIS. On that same
15 day they got back a hit from that first report
16 Your Honor saw from that buccal swab. That buccal swab
17 was then compared to the unknown male profile obtained
18 in 1.2.1. Under the vaginal sperm fraction it was
19 consistent with Joseph Warren, and the odds were
20 1 in 174 quadrillion that that was an incorrect
21 assumption. Under 1.2.2, the cervical epithelial
22 fraction, Warren could not be excluded as the deduced
23 partial minor contributor, and that was 1 in 15,800.

24 And then, finally, in 1.2.2, under the
25 cervical sperm fraction, it was consistent with Joseph

1 Warren. Chances that that is incorrect,

2 1 in 174 quadrillion.

3 And so with that information, I'll save any
4 argument for the end, but the State would rest with
5 that. Actually, I would actually move that the 911
6 call be admitted, Your Honor.
7 MS. SIMPKINS: As for the 911 call,
8 Your Honor, I'm continuing my objection on that. The
9 same issues. Judge, you hit it at the bench. There's
10 an issue here as to consent. This witness came up and
11 testified regarding the alleged victim having drugs in
12 her system, having methamphetamine -- or amphetamine in
13 her system and marijuana in her system. We haven't
14 heard her testimony. And, like I said before, the
15 State, I think, is trying to cobble together a bunch of
16 hearsay exceptions so that they can get around having
17 her in here. My client under 171.196 has a right to
18 cross-examine the witnesses against him, and he may
19 introduce evidence in his or her own behalf.

20 At this point in time, for the record, I have
21 discussed my client's right to testify. He has
22 indicated to me that he's not going to testify today.
23 However, Your Honor, these statutes are very, very
24 limited as to especially alleged victims coming in and
25 testifying. There are instances, for example, under

1 171.197 where the State can use affidavits, but only

2 with certain notice and a right to be heard with regard
3 to those issues. But in this instance, there is no
4 real exception to my client's right of
5 cross-examination, so I'm going to -- for the record, I
6 am very specific about this. I understand that in
7 Nevada there is no constitutional right of
8 cross-examination, and Crawford versus Washington does
9 not apply in preliminary hearings. I understand that.
10 But I am going specifically based on 171.196. And like
11 I offered at the bench, Your Honor, I would be glad to
12 brief it for you. But it's my understanding that when
13 this statute came into effect, the legislature -- it
14 was very broad. It was drafted by the DA's office. It
15 was very, very broad, and the legislature specifically
16 narrowed it so that only under these specific
17 circumstances can this hearsay be allowed in.

18 So, Your Honor, I am saying that the State
19 has not, without the witness's testimony -- without the
20 alleged victim's testimony, the State has not proven
21 their case by a preponderance of the evidence, and I
22 would ask to dismiss.

23 MR. VILLANI: And, Your Honor, what we're
24 confusing here is that hearsay exception under 171.196.
25 We can present hearsay evidence. In other words,

1 evidence that is hearsay without any other exception
 2 under that statute in cases of child sexual assaults
 3 and battery domestic violence or substantial bodily
 4 harm results. That does not mean to swallow up every
 5 other hearsay exception that we can present evidence
 6 under, which is what counsel is arguing. That's what
 7 she's arguing as getting her around the Crawford does
 8 not apply at preliminary hearing is that that
 9 particular statute says that if you're going to present
 10 the hearsay statement of a victim, it has to be under
 11 these circumstances, which is not what that statute
 12 says, Your Honor, and I'll submit it with that.
 13 THE COURT: I still have not heard anything
 14 about consent. I mean, you've got evidence that there
 15 may have been contact. You've got evidence that
 16 something tragic happened to Kearstin Ellis that led
 17 her into the ER at UMC. I mean, I --
 18 MR. VILLANI: The evidence the State would
 19 put forth, Your Honor, is Miss Dermanellan's testimony
 20 that she came in and said that she was forced to have
 21 sex.
 22 THE COURT: But by?
 23 MR. VILLANI: That's exactly it. By who?
 24 And then we entered the DNA evidence that showed -- and
 25 she also said last consensual sex was with "my

35

1 boyfriend two days ago." So that was the last time she
 2 had consensual sex. Then a DNA examination is done
 3 with the sexual assault kit which finds this
 4 defendant's DNA inside of her. And that's how we're
 5 connecting the dots here, Your Honor.
 6 THE COURT: You know what, I'm going to take
 7 this matter under advisement and prepare a written
 8 decision and --
 9 MR. VILLANI: And, Your Honor, I am still
 10 moving to admit the 911 call.
 11 MS. SIMPKINS: And I'm still objecting.
 12 THE COURT: Yeah, you are.
 13 MS. SIMPKINS: And there's been no witness to
 14 authenticate it, Your Honor. I can't even tell -- in
 15 my review of it, there's -- she didn't even say her
 16 name.
 17 MR. VILLANI: She did not say her name, and I
 18 would stipulate to that. If she would like me to put
 19 the detective up, I can put the detective up. However,
 20 I think the 911 call stands on its own. This Court has
 21 heard 911 calls before. There's the entire preamble.
 22 THE COURT: How am I going to know it's her?
 23 MR. VILLANI: She makes it clear that she was
 24 at Freedom Park. She was raped. She makes it clear on
 25 the call. It could have been. Maybe it's 100 other

36

1 people, but I'm just asking that it be considered as
 2 one tiny part of the evidence we're piecing together.
 3 THE COURT: You know what, I'll go ahead and
 4 allow it. I'll go ahead and allow it.
 5 MR. VILLANI: Your Honor, with that also
 6 under the same statute, I would move to admit the
 7 transcript.
 8 MS. SIMPKINS: And, again, Your Honor, that's
 9 not a certified transcript.
 10 MR. VILLANI: It's not, but Your Honor can
 11 certainly tell if it's accurate or not.
 12 THE COURT: What is your tape?
 13 MR. VILLANI: It's Exhibit 4 is moving to be
 14 admitted and has been granted.
 15 THE COURT: So I'll admit it.
 16 **(Whereupon, State's Exhibit 4 was**
 17 **admitted.)**
 18 THE COURT: And then now what's 5?
 19 MR. VILLANI: 5 is just the transcript. I
 20 mean, you can determine --
 21 THE COURT: Is that the one that's not
 22 certified or whatever?
 23 MR. VILLANI: It's the transcript of the 911
 24 call, correct. It's not certified.
 25 THE COURT: You know what, I don't need the

37

1 transcript, I can just listen to the tape for what it
 2 is.
 3 MR. VILLANI: Thank you.
 4 THE COURT: We can reconvene for publication
 5 of my decision in this matter. Give me two weeks.
 6 THE CLERK: May 4th at 9:00 a.m.
 7 MS. SIMPKINS: Thank you, Your Honor.
 8 MR. VILLANI: Thank you, Your Honor.
 9 (The proceedings concluded.)
 10
 11 * * * * *
 12 ATTEST: Full, true, and accurate
 13 transcript of proceedings.
 14
 15
 16 /s/ Jennifer O'Neill
 17 JENNIFER O'NEILL, CCR No. 763
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REPORTER'S CERTIFICATE

1
2 STATE OF NEVADA)
3 COUNTY OF CLARK)
4

5 I, Jennifer O'Neill, a certified court reporter
6 in and for the State of Nevada, hereby certify that
7 pursuant to NRS 239B.030 I have not included the Social
8 Security number of any person within this document.

9 I further certify that I am not a relative or
10 employee of any party involved in said action, nor a
11 person financially interested in the action.

12 Dated in Las Vegas, Nevada this 24th day of
13 April, 2017.

14 /s/ Jennifer O'Neill
15 JENNIFER O'NEILL, CCR No. 763
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BY MS. SIMPKINS:
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MR. VILLANI: [52]
MS. CRAGGS: [1]
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MS. SIMPKINS: [26]
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THE CLERK: [3]
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THE COURT: [55]
THE WITNESS: [7]
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EXHIBIT “3”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY REPORT OF EXAMINATION

NAME: Warren, Joseph Jr. (Suspect) CASE: 060121-3369
Woods, Gena J. (Victim) AGENCY: LVMPD
DATE: May 17, 2006

INCIDENT: Sexual Assault BOOKED BY: Amy Coe (SANE)
S5979S
M8179C

REQUESTED BY: Det. Lebario

I, Jennifer R.G. Frederiksen, do hereby declare:

AUG 9 2006

That I am a Criminalist employed by the Las Vegas Metropolitan Police Department;

That prior to my employment with the LVMPD, I have qualified in the County or Circuit Courts of the State of Arizona as an expert witness;

That I received evidence in the above case and completed an examination on the following items:

JF1 - Sealed sexual assault evidence collection kit from Gena J. Woods containing the following:

- Item A - consent form/assault information
- Item B - vaginal/cervical swabs
- Item C - rectal swabs
- Item D - buccal swab reference standard
- Item F - underpants (Received, not analyzed)
- Item G - debris/fingernail scrapings/bite marks/secretions (Received, not analyzed)
- Item H - miscellaneous (Received, not analyzed)
- Item I - pubic hair brushing/reference hair clipping (Received, not analyzed)

JF2 - Buccal swabs from Joseph Warren

JF3 - One envelope marked: "Swabs of an unknown substance". Received, not analyzed

CONCLUSION:

Semen was identified on items JF1-B and JF1-C.

Items JF1-B, JF1-C, JF1-D and JF2 were subjected to PCR amplification at the following STR genetic loci: D3S1358, vWA, FGA, D8S1179, D21S11, D18S51, D5S818, D13S317, D7S820, D16S539, D2S1338, D19S433, TH01, TPOX, and CSF1PO. The sex-determining Amelogenin locus was also examined.

Items JF1-D (victim) and JF2 (suspect) were used as the reference standards.

The DNA profile obtained from items JF2 (suspect standard) cannot be excluded as being the source of the semen detected from items JF1-B E2 and JF1-C E2. The estimate of this DNA profile in the population is rarer than 1 in 600 billion (identity assumed).

I returned the evidence to the vault.

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

Executed on: 17 May 2006

Jennifer R. Frederiksen
Jennifer Frederiksen, #8692
Criminalist I

Kathy M. Luntzer 6109
Reviewer Criminalist II

EXHIBIT “4”

| | | |
|---|--|--|
| Las Vegas Metropolitan Police Department
Forensic Laboratory

Report of Examination

Biology/DNA Forensic Casework | | Distribution Date: March 5, 2017
Agency: LVMPD
Location: Homicide & Sex Crimes Bureau
Primary Case #: 170301-0486
Incident: Sexual Assault
Requester: Jason W Lafreniere
Lab Case #: 17-02073.1 |
| Subject(s): | Taylor Washington (Subject)
Kearstin Ellis (Victim) | |

The following evidence was examined and results are reported below.

| Lab Item # | Impound Pkg # | Impound Item # | Description | Examination Summary |
|------------|-------------------|----------------|--|---|
| Item 1 | Dermanellan - SAK | | Sexual assault kit from Kearstin Ellis | |
| Item 1.1 | | | Reference standard | |
| Item 1.2 | | | Vaginal and cervical swabs | |
| Item 1.2.1 | | | - Vaginal swabs | • Sperm positive |
| Item 1.2.2 | | | - Cervical swabs | • Sperm positive |
| Item 1.3 | | | Red lace tanga underwear | • Positive presumptive semen tests |
| Item 1.3.1 | | | - Swabbing from the inside and outside of the front panel | • Sperm positive |
| Item 2 | 007570 - 1 | 1 | Green camouflage pattern pants, size S | • Positive presumptive semen tests |
| Item 2.1 | | | Large amorphous stain on the inside crotch, wrapped around from the front to the back of the pants | • Positive presumptive blood test
• Sperm positive |
| Item 2.2 | | | Stain on the inside of the left leg near the knee | • Sperm positive |
| Item 3 | 007570 - 1 | 1 | Reference standard from Taylor Washington | |

A presumptive test is an indication, but not confirmation, of the identity of a body fluid.

DNA Results and Conclusions:

Item 1.1, Item 1.2.1, Item 1.2.2, Item 1.3.1, Item 2.1, Item 2.2 and Item 3 were subjected to PCR amplification at the following STR genetic loci: TH01, D3S1358, vWA, D21S11, TPOX, DYS391, D1S1656, D12S391, SE33, D10S1248, D22S1045, D19S433, D8S1179, D2S1338, D2S441, D18S51, FGA, D16S539, CSF1PO, D13S317, D5S818, and D7S820. The sex-determining Amelogenin locus was also examined.

Lab Item 1.2.1

The DNA profile obtained from the epithelial fraction of the vaginal swabs (Item 1.2.1-EF) is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Kearstin Ellis (Item 1.1). Due to the limited data available, no conclusions can be made regarding the trace component.

The DNA profile obtained from the sperm fraction of the vaginal swabs (Item 1.2.1-SF) is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with a single unknown male individual (Unknown Male #1, see Item 1.2.2-SF conclusions). Kearstin Ellis (Item 1.1) and Taylor Washington (Item 3) are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Lab Item 1.2.2

The DNA profile obtained from the epithelial fraction of the cervical swabs (Item 1.2.2-EF) is consistent with a distinguishable mixture of two individuals. Assuming Kearstin Ellis is the partial major contributor, Unknown Male #1 cannot be excluded as the deduced partial minor contributor. Taylor Washington (Item 3) is excluded as the possible contributor to the deduced partial minor DNA profile obtained.

The full DNA profile obtained from the sperm fraction of the cervical swabs (Item 1.2.2-SF) is consistent with Unknown Male #1. Kearstin Ellis (Item 1.1) and Taylor Washington (Item 3) are excluded as possible contributors to the full DNA profile obtained. The full DNA profile will be searched against the Local DNA Index System (CODIS) and then uploaded to the National DNA Index System (CODIS) for comparison. You will be notified if there is a match.

Lab Item 1.3.1

The DNA profile obtained from the epithelial fraction of the swabbing from the inside and outside of the front panel of the underwear (Item 1.3.1-EF) is consistent with a distinguishable mixture of two individuals with at least one being a male. Assuming Kearstin Ellis (Item 1.1) is the major contributor, Taylor Washington (Item 3) cannot be excluded as the deduced partial minor contributor to this mixture. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial minor DNA profile obtained from the evidence sample is approximately 1 in 7.77 trillion. Unknown Male #1 is excluded as the possible contributor to the deduced partial minor DNA profile obtained.

The full DNA profile obtained from the sperm fraction of the swabbing from the inside and outside of the front panel of the underwear (Item 1.3.1-SF) is consistent with Taylor Washington (Item 3). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 1.79 nonillion. Kearstin Ellis (Item 1.1) and Unknown Male #1 are excluded as possible contributors to the full DNA profile obtained.

Lab Item 2.1

The full DNA profile obtained from the epithelial fraction of the large stain on the inside crotch of the pants (Item 2.1-EF) is consistent with Kearstin Ellis (Item 1.1). An additional allele below the interpretation threshold was detected in this sample; however, due to the limited data available, no conclusions can be made regarding the source of this allele.

The DNA profile obtained from the sperm fraction of the large stain on the inside crotch of the pants (Item 2.1-SF) is consistent with a distinguishable mixture of two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Taylor Washington (Item 3). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial major DNA profile obtained from the evidence sample is approximately 1 in 265 septillion. Kearstin Ellis (Item 1.1) and Unknown Male #1 are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Lab Item 2.2

The DNA profile obtained from the epithelial fraction of the stain on the inside of the left leg near the knee of the pants (Item 2.2-EF) is consistent with a distinguishable mixture of at least three individuals with at least one being a male. The major DNA profile obtained is consistent with Kearstin Ellis (Item 1.1). Due to the limited data available, no conclusions can be made regarding the trace component.

The DNA profile obtained from the sperm fraction of the stain on the inside of the left leg near the knee of the pants (Item 2.2-SF) is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Taylor Washington (Item 3). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial major DNA profile obtained from the evidence sample is approximately 1 in 3.29 sextillion. Kearstin Ellis (Item 1.1) and Unknown Male #1 are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Note 1: Evidence collected directly from the body or personal items removed directly from the body are intimate samples; therefore, the donor may be reasonably assumed to be present should the item produce a DNA profile that is suitable for comparison.

Note 2: In instances in which contributors can be assumed, no statistical calculations were performed for the assumed contributor.

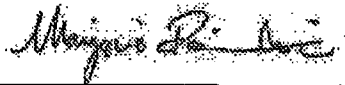
For comparison purposes, please collect reference buccal swab(s) from individuals believed to be involved in (or who have had reasonable access to) this incident. When a reference buccal swab is obtained, please submit a Forensic Laboratory Request in Property Connect to complete the case.

Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the NIST database (Hill, C.R., Duewer, D.L., Kline, M.C., Coble, M.D., Butler, J.M. (2013) U.S. population data for 29 autosomal STR loci. Forensic Sci. Int. Genet. 7: e82-e83). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Hispanic (HSP) population databases. These numbers are an estimation for which a deviation of approximately +/- 10-fold may exist. All random match probabilities, combined probability of inclusions/exclusions, and likelihood ratios calculated by the LVMPD are truncated to three significant figures.

The evidence is returned to secure storage.

Primary Event #: 170301-0486
Lab Case #: 17-02073.1

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Marjorie Davidovic, #14726
Forensic Scientist II

- END OF REPORT -

EXHIBIT "5"

| | | |
|---|--|---|
| Las Vegas Metropolitan Police Department
Forensic Laboratory

Report of Examination

Biology/DNA Forensic Casework | | Distribution Date: March 5, 2017
Agency: LVMPD
Location: Homicide & Sex Crimes Bureau
Primary Case #: 170301-0486
Additional Cases: 060121-3369
Incident: Sexual Assault
Requester: Jason W Lafreniere
Lab Case #: 17-02073.2
Supplemental 1 |
| Subject(s): | Taylor Washington (Subject)
Joseph Warren, Jr. (Suspect)
Kearstin Ellis (Victim) | |

* Refer to the original report issued by FS II Marjorie Davidovic P#14726 dated 3/5/2017 for related information.

^ Refer to the case file for event # 060121-3369 issued by Criminalist I Jennifer Frederiksen P# 8692 for information related to Joseph Warren (Item JF2). Suffix "Jr." was not listed as on the request.

DNA Results and Conclusions:

Item JF2^A was subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818 and FGA. The sex-determining Amelogenin locus was also examined.

Item 1.1*, Item 1.2.1*, Item 1.2.2*, Item 1.3.1*, Item 2.1*, Item 2.2* and Item 3* were subjected to PCR amplification at the following STR genetic loci: TH01, D3S1358, vWA, D21S11, TPOX, DYS391, D1S1656, D12S391, SE33, D10S1248, D22S1045, D19S433, D8S1179, D2S1338, D2S441, D18S51, FGA, D16S539, CSF1PO, D13S317, D5S818, and D7S820. The sex-determining Amelogenin locus was also examined.

When comparing Joseph Warren's^A reference standard, only those genetic loci contained in both the DNA profiles obtained from evidence samples and will be used in comparison.

Lab Item 1.2.1*

The DNA profile obtained from the epithelial fraction of the vaginal swabs (Item 1.2.1-EF)* is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Kearstin Ellis (Item 1.1)*. Due to the limited data available, no conclusions can be made regarding the trace component.

The DNA profile obtained from the sperm fraction of the vaginal swabs (Item 1.2.1-SF)* is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Joseph Warren (Item JF2)^A. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial major DNA profile obtained from the evidence sample is approximately 1 in 174 quadrillion. Kearstin Ellis (Item 1.1)* and Taylor Washington (Item 3)* are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Lab Item 1.2.2*

The DNA profile obtained from the epithelial fraction of the cervical swabs (Item 1.2.2-EF)* is consistent with a distinguishable mixture of two individuals. Assuming Kearstin Ellis (Item 1.1)* is the partial major contributor, Joseph Warren (Item JF2)^A cannot be excluded as the deduced partial minor contributor. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the deduced partial minor DNA profile obtained from the evidence sample is approximately 1 in 15,800. Taylor Washington (Item 3)* is excluded as the possible contributor to the deduced partial minor DNA profile obtained.

The full DNA profile obtained from the sperm fraction of the cervical swabs (Item 1.2.2-SF)* is consistent with Joseph Warren (Item JF2)^A. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 174 quadrillion. Kearstin Ellis (Item 1.1)* and Taylor Washington (Item 3)* are excluded as possible contributors to the full DNA profile obtained. The full DNA profile was searched against the Local DNA Index System (CODIS) and then uploaded to the National DNA Index System (CODIS) for comparison.

Lab Item 1.3.1*

The DNA profile obtained from the epithelial fraction of the swabbing from the inside and outside of the front panel of the underwear (Item 1.3.1-EF)* is consistent with a distinguishable mixture of two individuals with at least one being a male. Assuming Kearstin Ellis (Item 1.1)* is the major contributor, Taylor Washington (Item 3)* cannot be excluded as the deduced partial minor contributor to this mixture. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial minor DNA profile obtained from the evidence sample is approximately 1 in 7.77 trillion. Joseph Warren (Item JF2)^A is excluded as the possible contributor to the deduced partial minor DNA profile obtained.

The full DNA profile obtained from the sperm fraction of the swabbing from the inside and outside of the front panel of the underwear (Item 1.3.1-SF)* is consistent with Taylor Washington (Item 3)*. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the full DNA profile obtained from the evidence sample is approximately 1 in 1.79 nonillion. Kearstin Ellis (Item 1.1)* and Joseph Warren (Item JF2)^A are excluded as possible contributors to the full DNA profile obtained.

Lab Item 2.1*

The full DNA profile obtained from the epithelial fraction of the large stain on the inside crotch of the pants (Item 2.1-EF)* is consistent with Kearstin Ellis (Item 1.1)*. An additional allele below the interpretation threshold was detected in this sample; however, due to the limited data available, no conclusions can be made regarding the source of this allele.

The DNA profile obtained from the sperm fraction of the large stain on the inside crotch of the pants (Item 2.1-SF)* is consistent with a distinguishable mixture of two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Taylor Washington (Item 3)*. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial major DNA profile obtained from the evidence sample is approximately 1 in 265 septillion. Kearstin Ellis (Item 1.1)* and Joseph Warren (Item JF2)^A are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Lab Item 2.2*

The DNA profile obtained from the epithelial fraction of the stain on the inside of the left leg near the knee of the pants (Item 2.2-EF)* is consistent with a distinguishable mixture of at least three individuals with at least one being a male. The major DNA profile obtained is consistent with Kearstin Ellis (Item 1.1)*. Due to the limited data available, no conclusions can be made regarding the trace component.

The DNA profile obtained from the sperm fraction of the stain on the inside of the left leg near the knee of the pants (Item 2.2-SF)* is consistent with a distinguishable mixture of at least two individuals with at least one being a male. The partial major DNA profile obtained is consistent with Taylor Washington (Item 3)*. The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the partial major DNA profile obtained from the evidence sample is approximately 1 in 3.29 sextillion. Kearstin Ellis (Item 1.1)* and Joseph Warren (Item JF2)^A are excluded as possible contributors to the partial major DNA profile obtained. Due to the limited data available, no conclusions can be made regarding the trace component.

Note 1: Evidence collected directly from the body or personal items removed directly from the body are intimate samples; therefore, the donor may be reasonably assumed to be present should the item produce a DNA profile that is suitable for comparison.

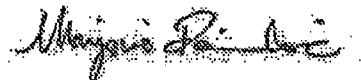
Note 2: In instances in which contributors can be assumed, no statistical calculations were performed for the assumed contributor.

Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the NIST database (Hill, C.R., Duewer, D.L., Kline, M.C., Coble, M.D., Butler, J.M. (2013) U.S. population data for 29 autosomal STR loci. Forensic Sci. Int. Genet. 7: e82-e83). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Hispanic (HSP) population databases. These numbers are an estimation for which a deviation of approximately +/- 10-fold may exist. All random match probabilities, combined probability of inclusions/exclusions, and likelihood ratios calculated by the LVMPD are truncated to three significant figures.

Supplemental 1

Primary Event #: 170301-0486
Lab Case #: 17-02073.2

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Marjorie Davidovic, #14726
Forensic Scientist II

- END OF REPORT -

EXHIBIT “6”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 1

EV#: 170301-0486

SPECIFIC CRIME: OPEN AND GROSS LEWDNESS

The following is the transcription of a 9-1-1 recording:

Recording: Saturday, January 14, 2017, 19:35 and 23 seconds.

Q: 911 emergency. Austin 8632. Do you need police, fire or medical?

A: I need police. There's a man masturbating next to my window in my car.

Q: Okay. What location?

A: I'm right outside the, uh, Planet Fitness on Eastern and Owens.

Q: Eastern and Owens, okay. Let's see—

A: Uh, he keeps—

Q: Do you know if you're at—

A: --walking away—

Q: --Las Vegas or North Las Vegas?

A: I'm in, I'm in the, right in the middle of Vegas and North Las Vegas. It's right on the intersection of Eastern and Owens. It's where North Las Vegas starts and east, and Las Vegas starts.

Q: Let me see if I can—

A: He's walking away with a pleated, a, a pleated, um, jacket—

Q: And what—

A: --black.

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 2**

EV#: 170301-0486

Q: --was he doing?

A: He's masturbating next to my window. I'm waiting for my tow truck. I can't move my car and he's a black man walking with a black hoodie and a pleated, uh, black and white, um, um, sweater.

Q: How, um, which way is he walking?

A: Oh my God, my tow truck is here, so the guy is here. He's walking away.

Q: Which way is he walking?

A: He's walking towards Eastern now. He's going up on Owens.

Q: Ah, so on Owens towards Eastern?

A: O—Owens towards Eastern. He's right next to the McDonald's right now, heading towards the 7-11 next to the McDonald's. I'm getting off my car—

Q: _____.

A: _____.

Q: He's going towards the McDonald's?

A: Yes. He's walking right around the McDonald's.

Q: And I'm, and I'm sorry was he white, black, Hispanic?

A: It's a, it's a black male.

Q: And how old does he look?

A: Black, young male. Like around 33, 35 years old. Maybe younger.

Q: How tall would you say?

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 3**

EV#: 170301-0486

A: He—like 5'7.

Q: Is he skinny, medium, heavy build?

A: Skinny. Skinny. Oh my God—

Q: And what color hair?

A: Uh, I don't know, he's wearing the black hoodie.

Q: And you said in a black and white sweater?

A: Yes. Black and white pleated, uh, like a jacket.

Q: Is that the hoodie?

A: Yes.

Q: Okay.

A: Attached to the hoodie. Oh my God—

Q: And what color pants?

A: --this is disgusting. It's so scary. It's uh, uh, light denim pants, with, with white tennis shoes.

Q: And this was just a minute ago or when you called right?

A: Just right now. I, I just lost him because they're building up the McDonald's. It's, it's blocking him but he was walking towards the McDonald's. I'm pretty sure he's on the 7-11 by now. On the corner of Eastern and Owens.

Q: And what is your name?

A: Mayra Rodriguez.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 4

EV#: 170301-0486

Q: And your phone number?

A: 702-410-3219.

Q: Alright. We'll get officers out okay.

A: Thank you.

Q: You're welcome. Mm-hmm, buh-bye.

JL:df

JL015

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
9-1-1 RECORDINGS
PAGE 5

EV#: 170301-0486