

1 to excite lust and to deprave the morals with respect to sexual
2 relations and which is obscene, indecent and related to sexual
3 impurity or incontinence carried on in a wanton manner. *State v.*
4 *Ragas*, 607 So. 2d 967, 972 n.2 (La. Ct. App. 1992); see *Young v.*
5 *State*, 109 Nev. 205, 849 P.2d 336, 341 (1993) (at common law, open
6 lewdness was defined as an "unlawful indulgence of lust involving
7 gross indecency with respect to sexual conduct "committed in a
8 public place and observed by persons lawfully present").

9 The acts with which the defendant is charged do not fall
10 within the definition of lewd or lascivious. Merely kissing a
11 person under 14 years old as alleged in Count IV cannot be defined
12 as a lewd and lascivious act. See *State v. Ragas* (hugging and
13 kissing the minor victim did not constitute an attempt to commit
14 a lewd and lascivious act); *State v. Louviere*, 602 So. 2d 1042 (La.
15 Ct. App. 1992) (kissing the minor victim and attempting to "french
16 kiss" her, did not constitute an attempt to commit a lewd and
17 lascivious act; evidence did not prove intent to arouse or gratify
18 either the defendant's or the victim's sexual desire).

19 Similarly, merely touching the "butts" of the victims over
20 their clothes cannot be considered a lewd and lascivious act. Such
21 conduct is common and cannot be construed as lewd and lascivious.
22 Moreover, under NRS 201.230, intent is an element of the crime.
23 *Findley v. State*, 94 Nev. 212, 577 P.2d 867 (1978). The statute
24 requires that the defendant act with the "intent of arousing,
25 appealing to, or gratifying the lust or passions or sexual desires"
26 of the defendant or the child. NRS 201.230(1). There was no
27 evidence presented in this case to show such intent. The alleged
28

1 acts generally took place while numerous other people were in the
2 house and in one case (Count II alleging the touching of the
3 victim's breasts) as the victim was "passing through" the
4 defendant's house. (T at 45-46.) The circumstances under which
5 the alleged "touchings" occurred belie any showing that the
6 defendant acted with the requisite sexual intent. This is the case
7 even as to Count II, alleging the touching of the victim's breasts,
8 which could have been accidental. Accordingly, the evidence fails
9 to establish probable cause for the charges.

10 Furthermore, particularly with respect to Counts IV and V,
11 even if the conduct alleged could be considered lewd, the evidence
12 is inconsistent and contradictory and fails to establish probable
13 cause. The victim, Erika Goodall, initially testified that only
14 one incident occurred and this was at the defendant's house. (T
15 at 8, 11, 17-18.) She again later denied that there was a second
16 incident. (T at 22.) However, upon prodding by the prosecutor on
17 redirect, she testified that the defendant, on a second occasion
18 at his house that occurred in May 1994, "touched [her] butt." (T
19 at 22.) Goodall did not testify as to any of the circumstances of
20 this "touching." On recross, Goodall indicated, contrary to her
21 prior testimony, that the first incident occurred at the church and
22 not at the defendant's house. (T at 23.) Given the
23 inconsistencies and contradictions in Goodall's testimony, the
24 evidence fails to establish probable cause as to Counts IV and V.

25 III. COUNTS IV AND V ARE CONSTITUTIONALLY DEFICIENT
26 FOR BEING TOO INDEFINITE AND THEREFORE MUST BE
DISMISSED.

27 NRS 173.075(1) requires that the indictment shall contain a
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1 definite written statement of the essential facts constituting the
2 offense charged. *Wright v. State*, 101 Nev. 269, 701 P.2d 743
3 (1985). An indefinite indictment deprives a defendant of notice
4 of the particular act alleged to have been committed by the accused
5 and deprives the defendant of his ability to defend properly
6 against the accusation. *Id.* Therefore, an indefinite indictment
7 denies a defendant his fundamental rights. *Id.*

8 It is recognized that time is not an essential element of an
9 offense under NRS 201.230. *Cunningham v. State*, 100 Nev. 396, 683
10 P.2d 500 (1984), cert. denied, 469 U.S. 935 (1985). As such, the
11 State is not absolutely required to allege the exact date of the
12 commission of an offense under NRS 201.230. *Id.* This does not
13 mean, however, that the State may fail to allege any date
14 whatsoever, since such a failure would clearly deprive the
15 defendant of adequate notice of the charge against him. *Id.*
16 Moreover, the State should, whenever possible, allege the exact
17 date on which the crime was committed, or as closely thereto as
18 possible. *Id.*

19 In this case, the State's evidence at the preliminary hearing
20 indicated that the criminal act alleged in Count IV occurred
21 "around Christmastime" of 1993 (T at 17-18) while the criminal act
22 alleged in Count V occurred in May of 1994. (T at 22.)
23 Nevertheless, both Counts IV and V allege that the criminal act
24 occurred "between December, 1993 and May, 1994." Under these
25 circumstances, Counts IV and V are constitutionally deficient in
26 that it cannot be determined from the Information what specific act
27 is being charged in each count. Either of the alleged touchings
28

1 of the victim could be the basis of each count under the time frame
2 alleged in Counts IV and V. Accordingly, Counts IV and V must be
3 dismissed as constitutionally deficient for being too indefinite.

4 IV. THE INFORMATION MUST BE DISMISSED DUE TO
5 UNCONSTITUTIONAL PREINDICTMENT DELAY.

6 It is well settled that unjustified and prejudicial
7 preindictment delay may constitute a due process violation which
8 requires dismissal. See *United States v. Marion*, 404 U.S. 307
9 (1971); *State v. Gattuso*, 108 Nev. 49, 825 P.2d 569 (1992).
10 Although there is scant authority in Nevada concerning
11 preindictment delay, there is an abundance of authority from other
12 jurisdictions.

13 The seminal United States Supreme Court decision on the issue
14 of preindictment delay is *United States v. Marion*. The Court in
15 *Marion* noted that although the primary guarantees against excessive
16 preindictment delay are the statutes of limitations for criminal
17 offenses, the statutes of limitations do not fully define a
18 defendant's rights with respect to the events occurring prior to
19 indictment. The Due Process Clause also plays a role in protecting
20 against prosecutorial delay. *Id.* Thus, even if the applicable
21 statute of limitations has not expired, due process requires
22 dismissal of indictments when the delay in bringing formal charges
23 is unjustified by the legitimate needs of the prosecution and
24 causes the defendant to suffer actual prejudice. *United States v.*
25 *Richburg*, 478 F. Supp. 535 (M.D. Tenn. 1979); see *United States v.*
26 *Marion*; *United States v. Lovasco*, 431 U.S. 783 (1977).

27 In determining whether dismissal is required due to
28

1 preindictment delay, the courts generally follow a balancing
2 approach. See *United States v. Alderman*, 423 F. Supp. 847 (D. Md.
3 1976). As *United States v. Marion* observed, to "accommodate the
4 sound administration of justice to the rights of the defendant to
5 a fair trial will necessarily involve a delicate judgment based on
6 the circumstances of each case." 404 U.S. at 325. The courts
7 generally agree that the defendant bears the initial burden of
8 showing that the delay has actually prejudiced his defense. See
9 *Howell v. Barker*, 684 F. Supp. 132 (E.D.N.C. 1988), *aff'd*, 904 F.2d
10 889 (4th Cir.), *cert. denied*, 498 U.S. 1016 (1990); *United States*
11 *v. Sample*, 565 F. Supp. 1166 (E.D. Va. 1983); *People v. Lawson*, 67
12 Ill. 2d 449, 367 N.E.2d 1244 (1977). If the defendant meets this
13 burden, then the burden shifts to the prosecution to show the
14 necessity for, or the reasonableness of, the delay. See *People v.*
15 *Lawson*; *Howell v. Barker*. The court then must balance the
16 prejudice to the defendant against the reasons advanced by the
17 prosecution for its delay in prosecuting. See *People v. Lawson*;
18 *Howell v. Barker*; *Pharm v. Hatcher*, 984 F.2d 783 (7th Cir.), *cert.*
19 *denied*, 114 S. Ct. 125 (1993).

20 Prejudice to a defendant caused by preindictment delay may be
21 established in a variety of ways. For example, loss of records,
22 loss of personal recollection, and loss of witnesses or witnesses'
23 memories all relate to the ability of an accused to defend himself
24 against the charges. *United States v. Richburg*. If proven, they
25 affect the fairness and reliability of the trial process itself
26 and, thus, fall within the core of the due process protection. *Id.*

27 In *Richburg*, the court noted that when making claims of
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1 prejudice caused by loss of evidence, defendants often encounter
2 difficulty in substantiating such claims, and courts experience
3 difficulty in evaluating them because of the very real danger that
4 what has been forgotten or lost can rarely be shown. 478 F. Supp.
5 at 540. Accordingly, the adoption of a rigid approach in assessing
6 prejudice is not appropriate, as it predetermines an outcome
7 adverse to defendants in all but very rare instances. *Id.*

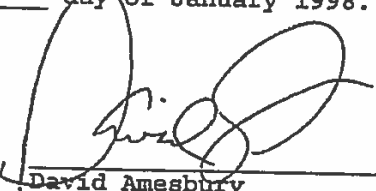
8 Generally, to establish prejudice from loss of witnesses due
9 to preindictment delay, defendant must demonstrate the general
10 content of lost evidence and show that it had material connection
11 with his defense to the crimes charged. *United States v. Richburg*;
12 *United States v. Sample*. The mere possibility that memories may
13 dim is not in itself sufficient to demonstrate prejudice justifying
14 dismissal of the indictment. *United States v. Sample*. It is
15 possible, however, for a defendant's ability to defend himself to
16 be prejudiced by a genuine lack of memory about the crucial events.
17 *Id.*; *United States v. Richburg*. Thus, if defendant is able to show
18 who would be his witnesses, that these witnesses' memories have
19 been impaired, what the general content of their testimony would
20 have been had they not lost their memories, that the testimony
21 would have been material to defendant's defense, and that the loss
22 of witnesses' memories resulted from the government's preindictment
23 delay, then actual prejudice will have been established. *United*
24 *States v. Sample*. The same analysis applies to lost or unavailable
25 witnesses. See *id.*; *United States v. Richburg*.

26 Application of the foregoing principles requires that the
27 indictment be dismissed in this case. Most of the offenses charged
28

1 happened as many as almost four years ago. There is no reason why
2 these charges could not have been brought sooner. Moreover, the
3 delay in bringing the charges clearly has prejudiced the defendant.
4 The alleged offenses generally occurred while other people were
5 present, but the exact dates have not been provided. Accordingly,
6 it is difficult if not impossible for defendant to determine who
7 was present and thus to gather exculpatory evidence. Moreover,
8 given the nature of the acts alleged and the indefinite time frame
9 alleged during which the acts occurred, the defendant is further
10 prejudiced in gathering exculpatory evidence. Therefore, the
11 unjustified and prejudicial delay in bringing these charges
12 constitutes a due process violation and requires dismissal of the
13 charges.

14 WHEREFORE, Petitioner prays that the court dismiss the
15 Information.

16 EXECUTED on the 26th day of January 1998.

17
18
19
20 
21 David Amesbury
22 Law Offices of Amesbury & Schutt
23 300 South Maryland Parkway
24 Las Vegas, NV 89101

25 Attorney for Petitioner
26
27
28

● ORIGINAL ●

1 DAVID C. AMESBURY
2 NEVADA BAR NUMBER 3889
3 AMESBURY & SCHUTT
4 300 SOUTH MARYLAND PARKWAY
5 LAS VEGAS, NEVADA 89101
6 (702) 385-5570

7 ATTORNEYS FOR DEFENDANT
8 DARRELL BERNARD THOMAS

FILED

JAN 26 1 34 PM '98

Justin L. ...
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

9 DARRELL BERNARD THOMAS)
10 #0785645)
11 Petitioner,)
12 vs.)
13 THE STATE OF NEVADA,)
14 Respondent.)

CASE NO. C147517
DEPT. NO. V
DOCKET H

PETITION FOR WRIT OF HABEAS CORPUS

Date of Hearing : 2/10/98
Time of Hearing : 9:00

17 TO: THE HONORABLE JEFFREY D. SOBEL, Judge of the Eighth
18 Judicial District Court, State of Nevada, in and for the
19 County of Clark.

20 COMES NOW the Petitioner, DARRELL BERNARD THOMAS, by and
21 through his attorney, DAVID C. AMESBURY, ESQ., and petitions this
22 Honorable Court as follows:

23 1. That Petitioner is a duly qualified, practicing and
24 licensed attorney in the City of Las Vegas, County of Clark and
25 State of Nevada.

26 2. That Petitioner, DARRELL BERNARD THOMAS, is presently on
27 his own recognize.
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1 3. That the imprisonment and restraint of said above
2 captioned client of Petitioner is unlawful in that:

- 3 I. COUNTS II THROUGH V ARE BARRED BY THE
4 STATUTE OF LIMITATIONS.
5 II. THE CHARGES ARE NOT SUPPORTED BY PROBABLE
6 CAUSE.
7 III. COUNTS IV AND V ARE CONSTITUTIONALLY
8 DEFICIENT FOR BEING TOO INDEFINITE AND
9 THEREFORE MUST BE DISMISSED.
10 IV. THE INFORMATION MUST BE DISMISSED DUE TO
11 UNCONSTITUTIONAL PREINDICTMENT DELAY.

12 4. That no other Petition for Writ of Prohibition or in the
13 Alternative Mandamus has heretofore been filed on behalf of said
14 Client of Petitioner.

15 5. The Petitioner has waived his 60-day right for a jury
16 trial.

17 6. If the Petition is not decided within 15 days before the
18 date set for trial, the Petitioner consents that the court may,
19 without notice or hearing, continue the trial indefinitely or to
20 a date designated by the court; and further that if any party
21 appeals the court's ruling and the appeal is not determined before
22 the date set for trial, Petitioner consents that the trial shall
23 be automatically vacated and the trial postponed unless the court
24 orders otherwise.

25 7. This Petition is based upon the grounds hereinabove set
26 forth, the records and pleading on file, the memorandum and points
27 and authorities attached hereto, and upon such other grounds and
28 evidence as may be adduced at hearing.

1 WHEREFORE, Petitioner prays that this Honorable Court make an
2 Order directing the County Clerk to issue a Writ of Prohibition or
3 in the Alternative Mandamus directed to the said Sheriff of Clark
4 County, commanding him to bring the above-mentioned client of
5 Petitioner before Your Honor, and return the cause of his
6 imprisonment.

7 DATED this 26th day of January, 1998.

8 LAW OFFICES OF AMESBURY & SCHUTT

9
10
11 David C. Amesbury
12 DAVID C. AMESBURY, ESQ.
13 300 S. Maryland Parkway
Las Vegas, NV 89101
Attorney for Petitioner,
DARRELL BERNARD THOMAS

14 STATE OF NEVADA)
15 COUNTY OF CLARK) ss:

16 DAVID C. AMESBURY, being first duly sworn, according to law,
17 upon oath, deposes and says:

18 That he is the attorney for DARRELL BERNARD THOMAS in the
19 above-entitled matter; that he has read the foregoing Petition,
20 knows the contents thereof, and that the same is true of his own
21 knowledge, except as to those matter therein stated on information
22 and belief, and as to those matters he believes them to be true.

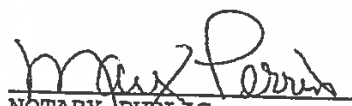
23 That the client of Affiant, DARRELL BERNARD THOMAS, is now in
24 custody and that your Affiant represents that his Client will be
25 present at the time of the hearing, should that be necessary, in
26 the above-entitled matter.

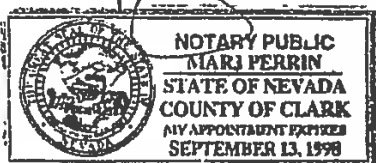
27 That the instant Petition is verified by DAVID C. AMESBURY,
28

1 counsel for DARRELL BERNARD THOMAS and that DAVID C. AMESBURY,
2 verifies that said Defendant/Petitioner, personally authorized
3 DAVID C. AMESBURY to commence this action.

4
5
6 
DAVID C. AMESBURY

7 SUBSCRIBED and SWORN to
8 before me this 26th day
9 of January, 1998

10 
11 NOTARY PUBLIC



ORIGINAL

1 DAVID C. AMESBURY
2 NEVADA BAR NUMBER 3889
3 LAW OFFICES OF DAVID C. AMESBURY
4 300 SOUTH MARYLAND PARKWAY
5 LAS VEGAS, NEVADA 89101
6 (702) 385-5570
7 Attorney for Petitioner
8 Darrell Bernard Thomas

FILED

JAN 28 3 01 PM '98

For the ...
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 DARRELL BERNARD THOMAS,)
10)
11 Petitioner,)
12)
13 v.)
14 THE STATE OF NEVADA,)
15)
16 Respondent,)

CASE NO. C147517

DEPT. NO. V

DOCKET NO. H

RECEIPT OF COPY

17 RECEIPT OF COPY of the foregoing Petition for Writ of Habeas
18 Corpus is hereby acknowledged this 28 day of January, 1998.

RECEIVED BY
DISTRICT ATTORNEY'S OFFICE

By:

Stewart Bell
STEWART BELL
DISTRICT ATTORNEY
200 South Third St.
Las Vegas, NV 89155

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FILED

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Letitia L. L...
CLERK

1 DAVID C. AMESBURY
2 NEVADA BAR NO. 003889
3 AMESBURY & SCHUTT
4 300 So. Maryland Parkway
5 Las Vegas, Nevada 89101
6 (702) 385-5570

Attorney for Petitioner
Darrell Bernard Thomas

DISTRICT COURT

CLARK COUNTY, NEVADA

10 DARRELL BERNARD THOMAS,
11)
12) Petitioner,
13)
14) v.
15)
16) THE STATE OF NEVADA,
17)
18) Respondent,
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26)
27)

CASE NO. C147517

DEPT. NO. V

DOCKET NO. H

NOTICE OF MOTION

17 PLEASE TAKE NOTICE that the Petitioner, Darrell Bernard
18 Thomas, will bring on this Motion for Writ of Habeas Corpus hearing
19 before the above entitled Court on the 10 day of feb 1998,
20 at the hour of 9 A.m. of said day, or as soon thereafter as
21 counsel can be heard.

LAW OFFICES OF AMESBURY & SCHUTT

By

David C. Amesbury
DAVID C. AMESBURY, ESQ.
BAR NUMBER 003889
300 S. Maryland Parkway
Las Vegas, NV 89101
Attorney for Petitioner
Darrell Bernard Thomas

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1 0056
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 DARRELL BERNARD THOMAS,
12 #785645

13 Defendant.
14

Case No. C147517
Dept. No. V
Docket H

15 STATE'S MOTION TO DISMISS DEFENDANT'S
16 PRETRIAL PETITION FOR WRIT OF HABEAS CORPUS

17 DATE OF HEARING: 3/26/98
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
20 TERESA LOWRY, Deputy District Attorney, and files this Motion to Dismiss Defendant's
21 Petition for Writ of Habeas Corpus.

22 ///

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1 This Motion 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 DATED this 3rd day of March, 1998.

5 Respectfully submitted,

6 STEWART L. BELL
7 DISTRICT ATTORNEY
8 Nevada Bar #000477

9 BY

Teresa Lowry
10 TERESA LOWRY
11 Deputy District Attorney
12 Nevada Bar #003901

13 PROCEDURAL HISTORY

14 On May 27, 1997, a criminal complaint was filed charging Darrell Bernard Thomas
15 (hereinafter referred to as Defendant) with five counts of Lewdness With a Child Under the Age
16 of Fourteen.

17 On June 25, 1997, the Defendant was arraigned in Justice Court four on the above
18 charges. A preliminary hearing date was set for September 3, 1997. The September 3, 1997
19 preliminary hearing date was continued until December 16, 1997.

20 On December 16, 1997, the Defendant was bound over to District Court on all five counts
21 of Lewdness With a Child Under the age of Fourteen. On January 5, 1997, the Defendant was
22 arraigned in District Court five on the above charges and entered a plea of not guilty and waived
23 his right to a speedy trial. A trial date was set for May 18, 1998 in District Court five.

24 POINTS AND AUTHORITIES

25 The Defendant's Petition for Writ of Habeas Corpus fails to meet several statutory
26 requirements.

27 NRS 34.700 Time for filing; waiver and consent of accused respecting date of trial.
28 Provide in pertinent part:

1. Except as provided in subsection 3, a pretrial petition for a writ
of habeas corpus based on alleged lack of probable cause or

1 otherwise challenging the courts right to jurisdiction to proceed to
2 trial of a criminal charge may not be considered unless:

3 (a) The petition and all supporting documents are filed within 21
4 days after the first appearance of the accused in the district court;
5 and

6 (b) the petition contains a statement that the accused:

7 (1) Waives the 60-day limitation for bringing an accused to
8 trial; or

9 (2) If the petition is not decided within 15 days before the date
10 set for trial, consents that the court may, without notice or hearing,
11 continue the trial indefinitely or to a date designated by the court.

12 The Defendant's Writ of Habeas Corpus fails to contain a statement of the accused,
13 alleging whether the Defendant waives his right to a speedy trial within 60 days and if he is
14 seeking relief due to lack of probable cause or otherwise challenging the courts right or
15 jurisdiction to proceed to trial. As well as whether he is in or out of the custody of Sheriff Jerry
16 Keller. Therefore it does not comply with NRS 34.700 and should be denied

17 **NRS 34.710 Limitation on submission and consideration of
18 pretrial petition. Provide in pertinent part:**

19 1. A district court shall not consider any pretrial petition for
20 habeas corpus:

21 (a). Based on alleged lack of probable cause or otherwise
22 challenging the courts right or jurisdiction to proceed to the trial
23 of a criminal charge unless a petitions filed in accordance with
24 NRS 34.700.

25 A petition that fails to contain the mandatory statement required by NRS 34.375(1)(b)(3),
26 is not cognizable by the district court and is ordered to be dismissed. Sheriff v. Husney, 95 Nev.
27 467, 596 P.2d 230 91979); Sheriff v. Toston, 93 Nev. 394, 566 P.2d 411(1977).

28 NRS 34.730(1) provide, in pertinent part:

1. A petition must be verified by the petitioner or his counsel. If
the petition is verified by counsel, he shall also verify that the
petitioner personally authorized him to commence the action.

In the case at bar, the Defendant's pretrial writ of habeas corpus filed on January 26,
1998, has not been verified by the Defendant.

The Nevada Supreme Court has repeatedly ruled that Petitions for Writ of Habeas Corpus
which does no contain the required consent and does not contain the above described verification
is not cognizable in the District Court. Sheriff, Clark County v. Arvey, 93 Nev. 72, 560 P.2d 153

1 (1977); Sheriff, Washoe County v. Chumphol, 95 Nev. 818, 603 P.2d 699 (1979); Sheriff, Clark
2 County v. Scilio, 96 Nev. 776, 616 P.2d 402 (1980). In each of these three cases, the Nevada
3 Supreme Court *sua sponte* raised this jurisdictional defect and then dismissed the action without
4 reaching the merits of the petition, holding that an unverified petition is not cognizable in district
5 court. See also, Passanisi v. Director, 105 Nev. 63, 769 P.2d 72 (1989)(holding that petitioner's
6 failure to meet the statutory prerequisites for petition for writ of habeas corpus is a proper
7 ground for dismissal of a petition).

8 CONCLUSION

9 The State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be
10 dismissed.

11
12 DATED this 3rd day of March, 1998.

13 Respectfully submitted,

14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY Teresa Lowry
18 TERESA LOWRY
19 Deputy District Attorney
20 Nevada Bar #003901
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David C. Amesbury, ESQ.
ATTORNEY FOR DEFENDANT

BY DC, Amesbury /js
300 S. Maryland Parkway
Las Vegas, Nevada 89101

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John C. Schutt
CLERK

1 DAVID C. AMESBURY
2 NEVADA BAR NO. 003889
3 AMESBURY & SCHUTT
300 So. Maryland Parkway
Las Vegas, Nevada 89101
(702) 385-5570

4 Attorney for Petitioner
5 Darrell Bernard Thomas

6
7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 DARRELL BERNARD THOMAS,
#0785645,

11 Petitioner.

12
13 THE STATE OF NEVADA,

14 Respondent.

)
) Case No. C147517
) Dept. No. V
) Docket H
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)

15 Date of hearing: 3/26/98
16 Time of Hearing: 9 AM

17 PETITIONERS' OPPOSITION TO STATE'S MOTION TO DISMISS
18 DEFENDANT'S/PETITIONER'S PRETRIAL PETITION FOR WRIT
19 OF HABEAS CORPUS.

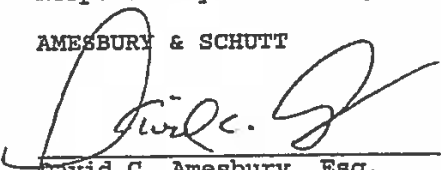
20 COMES NOW, Petitioner DARRELL BERNARD THOMAS, by and through
21 his attorney of record, David C. Amesbury of the Law Offices of
22 Amesbury & Schutt and files this Motion in Opposition to the
23 state's Motion to Dismiss Defendant's/Petitioners Petition for Writ
24 of Habeas Corpus.

25 This Motion is made and based upon all the papers and
26 pleadings on file herein, a copy of the attached Petition,
27 affidavit of Attorney David C. Amesbury, and oral argument at the
28 time of hearing, if deemed necessary by this Honorable Court.

1 DATED this 4th day of March, 1998.

2
3 Respectfully submitted,

4 AMESBURY & SCHUTT

5
6 
7 David C. Amesbury, Esq.
8 Amesbury & Schutt
9 300 So. Maryland Parkway
10 Las Vegas, Nevada 89101
11 Attorney for Petitioner
12 Darrell Bernard Thomas

13 AFFIDAVIT OF DAVID C. AMESBURY, ESQ.

14 STATE OF NEVADA)
15) ss:
16 COUNTY OF CLARK)

17 DAVID C. AMESBURY, ESQ., being first duly sworn on oath,
18 deposes and says:

19 I am an attorney duly licensed to practice law in the State
20 of Nevada and am a member of the law firm of AMESBURY & SCHUTT,
21 attorney for Defendant, Darrell Bernard Thomas, in the above-
22 captioned matter. I have personal knowledge of the facts stated
23 herein and if called as a witness could competently testify thereto
24 under oath.

25 1. Affiant represents Darrell Bernard Thomas in Case Number
26 C147517.

27 2. That Affiant timely filed, on behalf of his Client Darrell
28 Bernard Thomas, The Writ of Habeas Corpus and the accompanying
Pretrial Petition for Writ of Habeas Corpus (Points and

1 Authorities) - see Exhibit #1. The hearing on this matter was
2 scheduled for February 10, 1998.

3 3. That Affiant caused both documents to be RECEIPT OF COPY on
4 the District Attorney's Office, see attached Exhibit #2, a copy of
5 both the Writ of Habeas Corpus and the accompanying Petition for
6 Writ of Habeas Corpus (Points and Authorities) - RECEIPT OF COPY,
7 January 28, 1998.

8 4. That on or before the hearing on February 10, 1998, Affiant
9 received a telephone call from the Office of the District Attorney,
10 Secretary to Ms. Teresa Lowry. The Secretary informed Affiant,
11 that in spite of the fact that the previous copies of Affiant's
12 Petition had been acknowledged by the RECEIPT OF COPY by the
13 District Attorneys Office, that nothing was in the file, that
14 neither she or Ms. Lowry had a copy of the Petition.

15 5. That the Secretary for Ms. Lowry requested that Affiant "fax,"
16 a copy of the pleadings in this matter to her attention.

17 6. That Affiant legal assistant faxed a copy of the documents to
18 Ms. Lowry's Secretary.

19 7. That Affiant is surprised to see that in Ms. Lowry's Motion
20 to Dismiss that neither she and/or her Secretary acknowledge
21 receipt of Affiant's Petition.

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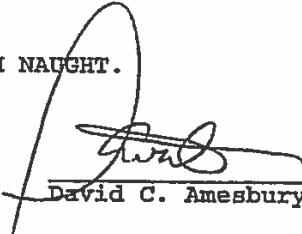
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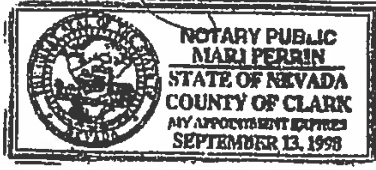
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FURTHER YOUR AFFIANT SAYETH NAUGHT.


David C. Amesbury, Esq.

SUBSCRIBED AND SWORN to
before me this 4th day
of March, 1998.


NOTARY



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Exhibit 1

AA2248

1 DAVID C. AMESBURY
2 NEVADA BAR NUMBER 3889
3 AMESBURY & SCHUTT
4 300 SOUTH MARYLAND PARKWAY
5 LAS VEGAS, NEVADA 89101
6 (702) 385-5570

7 ATTORNEYS FOR DEFENDANT
8 DARRELL BERNARD THOMAS

FILED

JAN 26 1 34 PM '98

Justin D. ...
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

9 DARRELL BERNARD THOMAS)
10 #0785645)
11 Petitioner,)
12 vs.)
13 THE STATE OF NEVADA,)
14 Respondent.)

CASE NO. C147517
DEPT. NO. V
DOCKET H

PETITION FOR WRIT OF HABEAS CORPUS

Date of Hearing : 2/10/98
Time of Hearing : 9am

17 TO: THE HONORABLE JEFFREY D. SOBEL, Judge of the Eighth
18 Judicial District Court, State of Nevada, in and for the
19 County of Clark.

20 COMES NOW the Petitioner, DARRELL BERNARD THOMAS, by and
21 through his attorney, DAVID C. AMESBURY, ESQ., and petitions this
22 Honorable Court as follows:

23 1. That Petitioner is a duly qualified, practicing and
24 licensed attorney in the City of Las Vegas, County of Clark and
25 State of Nevada.

26 2. That Petitioner, DARRELL BERNARD THOMAS, is presently on
27 his own recognize.

1 3. That the imprisonment and restraint of said above
2 captioned client of Petitioner is unlawful in that:

3 I. COUNTS II THROUGH V ARE BARRED BY THE
4 STATUTE OF LIMITATIONS.

5 II. THE CHARGES ARE NOT SUPPORTED BY PROBABLE
6 CAUSE.

7 III. COUNTS IV AND V ARE CONSTITUTIONALLY
8 DEFICIENT FOR BEING TOO INDEFINITE AND
9 THEREFORE MUST BE DISMISSED.

10 IV. THE INFORMATION MUST BE DISMISSED DUE TO
11 UNCONSTITUTIONAL PREINDICTMENT DELAY.

12 4. That no other Petition for Writ of Prohibition or in the
13 Alternative Mandamus has heretofore been filed on behalf of said
14 Client of Petitioner.

15 5. The Petitioner has waived his 60-day right for a jury
16 trial.

17 6. If the Petition is not decided within 15 days before the
18 date set for trial, the Petitioner consents that the court may,
19 without notice or hearing, continue the trial indefinitely or to
20 a date designated by the court; and further that if any party
21 appeals the court's ruling and the appeal is not determined before
22 the date set for trial, Petitioner consents that the trial shall
23 be automatically vacated and the trial postponed unless the court
24 orders otherwise.

25 7. This Petition is based upon the grounds hereinabove set
26 forth, the records and pleading on file, the memorandum and points
27 and authorities attached hereto, and upon such other grounds and
28 evidence as may be adduced at hearing.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

Electronically Filed
Jun 14 2019 02:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 77345

District Court Case No.
96C136862-1

(Death Penalty Case)

APPELLANT'S APPENDIX

Volume 9 of 35

Appeal from Order Dismissing Petition for Writ of Habeas
Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Stefany Miley, District Judge

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Federal Public Defender

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Attorneys for Appellant

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31	Stipulation and Order to Modify Briefing Schedule, <i>Thomas v. Filson</i> , District Court, Clark County, Nevada Case No. 96C136862-1 (May 23, 2018)	7529-7531

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 14, 2019. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney

/s/ *Jeremy Kip*

An Employee of the
Federal Public Defender,
District of Nevada

EXHIBIT 52

EXHIBIT 52



AA2002

EXHIBIT 53

EXHIBIT 53

MEMO:**Draft****TO: Marlo Thomas file****FR: James Green****DT: 1/21/10****RE: Georgia Thomas Interview**

On January 11, 2010, I interviewed Ms Thomas at her home 5824 W. Oakey St., LV. She is Marlo's mother. She lives with her 2nd oldest son, Darrell Bernard Thomas. She can be reached by calling his cell # 702-556-4277 and scheduling to see her. Ms Thomas is wheelchair bound and cannot answer the door. Darrell has to be home to get access. She agreed to talk with us through this arrangement. On this visit, Darrell was not home at the agreed time. He arrived approximately 30 minutes later and opened the door. He escorted me to her room at the back of the house.

Ms Thomas lives in what appears to be several rooms at the rear of the house. She is able to leave through a rear door with wheelchair access. However, the door adjoining the rest of the house is too narrow for passage. She must go to dialysis on Monday, Wednesday and Friday mornings. The best days are Tuesday and Thursday in the early evening when Darrell can be home. Today, she complains of constant pain in her right leg. She was in an accident several weeks ago and is still undergoing physical rehab.

Ms Thomas said she is glad someone is trying to help Marlo because she loves him very much and would hate to see anything happen to him. She understands his situation and if he is executed, she couldn't make it. She will answer all our questions as best she can.

She began by saying Marlo was born at home. She then went to Women's Hospital where she and Marlo stayed 3 days. Marlo was examined, but she is not sure if he received any treatment there. Soon, he had a bad case of the Flu. She took him to Drs. La Ruso and Cherry. They shaved his head and kept him-she is not sure how long- at So. Nevada Hosp. These are the only hospitalizations she remembers.

She believes Marlo was hurt while she was pregnant with him. Throughout her pregnancy, Marlo's father, Bobby Lewis, beat her and kicked her in the stomach. Every day, he dragged her through the apartment they had in Tallulah, LA-where they lived at the time she became pregnant with Marlo. She was 16 years old. She left him and returned to Las Vegas, But he followed her here. They were together 4 years after Marlo was born. He is also Darrell's father.-who was born 2 years before Marlo. It hurt her that he denied being Marlo's father. However, he readily owned Darrell. He would buy Darrell toys and bicycles-but not Marlo. When Marlo was around 6 years old, he began asking her why his daddy didn't love him.

Marlo was her baby for 8 years, then his brother Paul was born. She admits to neglecting him the entire time and even more when Paul had her attention. She said she really did not love him and told him so on many occasions. She hated him because of his father. There were times he got hurt and she refused to take him for treatment. Her hatred for Bobby Lewis caused her to treat Marlo bad. When she whipped him, it was usually because she was mad with Lewis. Sometimes, she whipped Darrell for the same reason. She beat Marlo with brooms, belts and whatever she could get her hands on. Marlo knew she didn't love him. She constantly told him she didn't like him and she wished he had never been born. After years of hearing this from her, Marlo ran away from home when he was 18.

In Middle School, Marlo was fighting a lot and sometimes got expelled. Several times, she had to take him back. Teachers began to tell her he needed help. She had been feeling he needed help since he was small, but did not care about him. Also, she had no idea how to take care of his mental and emotional problems. She became very frustrated with her inability to change his behavior.

When he was at Miley-age 13/14-Mr. Shute brought him home and told her Marlo needed help. He recommended Juvenile. They lived on/near Durango St.

At age 14/15- Miley sent him to Juvenile with her permission.

At age 16, Juvenile referred him to Elko. Georgia said she doesn't know what happened there, but it made Marlo worse. She now thinks it was a "big mistake".

Neurological Implications:

During the pregnancy, Georgia was repeatedly beaten and kicked in her stomach by Bobby Lewis. There were instances when she beaten with a chair. Sometimes he dragged her through the apartment. This happened a lot while they were in Tallulah, LA. and later in Las Vegas.

Georgia did not receive any pre-natal care during the pregnancy.

Baby sitter Vicky (LNU) drops Marlo on head. Georgia did not take him to the hospital because she "didn't care what happened to him. He is one year old.

Between 1 and 2 years old, Marlo is given an undetermined amount of vodka by Bobby Lewis and Robert Nash. He sleeps an unusually long time. Georgia tries for 2 hours to wake him up. Again, he is not taken to the hospital.

When the family lived on Lake Mead, Marlo was hit by a car and knocked down. Not treated. Georgia does not remember the exact age, but said it was preschool.

When the family lived on Duchess, Marlo was usually beaten by kids in the neighborhood. At least once, he was kicked in the head. He was 7/8 years old.

There were other instances when he was injured. Georgia does not remember incidents, but is sure they all went untreated.

Georgia beat him constantly. She whipped him with whatever she could get her hands on. Sometimes, she used a broomstick. She beat him “for any reason”. She took the word of anyone who accused him without asking him about it. She was trying to “beat sense into him”.

Adaptive: Georgia remembers:

Marlo was slower than the other children in the family.

Marlo begins walking between 1-2 years.

He could say simple words like mama or daddy at age 1.

He could not say complete sentences until he was 2 years old.

He could dress himself in elementary school, but he put on his clothes wrong. Did not know how to match colors.

He could not use public transportation by himself. He got on the school bus with his cousins. That was easy because the bus stopped right in front of the house. He got put off the bus frequently because he caused trouble. When he was put off, he would walk and find his way home. (Throughout Elementary school.)

Emotional stressors:

He was teased constantly. The kids called him “stinky” and he would get mad. He could not seem to control his behavior. Georgia said he did not wet the bed. (Other family members said he was a bedwetter). He was easily frustrated and resorted to fighting. (Throughout Elementary school). He would ask her why was he always picked on.

EXHIBIT 54

EXHIBIT 54

◆◆◆ PRIVILEGED AND CONFIDENTIAL ◆◆◆

**INVESTIGATIVE
MEMORANDUM**

TO: Marlo Thomas File
FROM: Tena S. Francis
DATE: October 5, 2011
RE: Interview of witness: Georgia Ann Thomas

I have met with Marlo's mother on two occasions to date: on September 27, 2011 and on this date. Both meetings took place at the home of Marlo's brother, Darrell Thomas, with whom Georgia resides. The interview with Georgia will be an on-going process. She suffers from a kidney disease and tires easily. I can only see her on the two days a week she does not have dialysis treatments. During these first two visits, Georgia provided the following information.

Information about Marlo's mother and the maternal family

Georgia's parents were TJ Thomas and Jesse Mae Brown Thomas. Georgia could not tell me where she was in the birth order. She has eleven or more brothers and sisters; she's not certain of the exact number. Her father had children with more than one woman, and those children are counted by Georgia when she discusses her siblings. I have pieced together info about her siblings from several sources. They are:

Emma Nash, dob ----, died of heart problems
Annie Outland, dob 1966 ????
John Thomas, dob —, died of a stroke
Johnnie Thomas, dob 1947
Georgia Thomas, dob 1950
Rebecca Thomas
Shirley Nash, dob 1954
Linda McGilbra, dob 1958
TJ Thomas
Eliza Bosley, died 2009 of heart problems
Larry Thomas, dob ----, resides in Kansas City

Georgia was born in Tallulah, Louisiana. The family moved to Las Vegas in 1960, when she was about eleven years old. Georgia did not know the reason for the move. Their extended family remained in Louisiana. Georgia's father worked on construction sites; her mother stayed home and tended to the house and the children. *After I met with Georgia, I learned from other sources that her mother never moved to Las Vegas. Her parents split while living in Tallulah and her father relocated with all the children to Las Vegas. Jessie Mae stayed in Tallulah.*

Marlo's older brothers are born

Georgia became pregnant with her first child at age sixteen. The baby's father was Larry Stewart. Nothing else is known about him at this time; he is said to be deceased. When he discovered she was pregnant, Georgia's father sent her back to Tallulah to stay with relatives. Georgia had the child there, who she named Larry. Larry was full term and unhealthy at the time of his birth. He was hospitalized for three months with what Georgia thinks was a disorder concerning his blood.

Georgia returned to Las Vegas when Larry was nine months old. At the time she moved back to Las Vegas, Georgia was pregnant with her second child, Darrell. Darrell's father is Bobby Lewis, whom Georgia met while she was pregnant with her first child and living in Talullah. Lewis followed Georgia to Las Vegas, where he tried to settle in with her. Lewis is also Marlo's father.

Georgia's pregnancy with Marlo

Georgia knew she was pregnant when she was about a month into her pregnancy with Marlo.

Georgia admits to drinking "every chance (she) got" during her pregnancy with Marlo. She was unaware that alcohol could have an adverse effect on her baby. Georgia described drinking almost everyday, as a way to escape the emotional pain of living with an abuser. She mostly drank Mad Dog 20/20, but also had Vodka mixed with grapefruit juice as often as possible. She drank with a friend (Cecelia Jones) and a cousin (Albert Chase, deceased).

All during the pregnancy, Georgia worked at Arrowhead Linens, an industrial laundry. She "fed sheets" into the folding machine. Georgia hated the job, because the chemicals to which she was exposed made her sick every day. She described the chemicals as foul smelling, causing her to suffer from nausea, headaches, and vomiting. Other employees were sick, as well. Georgia worked right up until the day she gave birth. The business was owned by a man named Benny (Lnu). Georgia's father and some of her siblings also worked at the business (sisters Rebecca and Shirley, their brother John, and their uncle JT). Georgia did not return to that job after Marlo was born. The business is now called Mission Linens.

Marlo was born at home, at the Herbert Gerson Apartment complex. Georgia describes going into labor and having to "pop him out" before she could get to a hospital. There were no difficulties regarding Marlo's birth. Nothing was different with this birth than the births of her other children. Georgia's sister, Shirley, was present for Marlo's birth. His brothers, Larry (age 6) and Darrell (4), were at home when Marlo was born.

Georgia and Marlo were transported to Women's Hospital via ambulance after he was born. She recalls Marlo weighed seven pounds, three ounces at birth. As far as Georgia

knows, he was not given any special treatment, like oxygen, at the hospital. They stayed in the hospital three days.

Marlo's infancy and developmental years

Bobby Lewis stayed with Georgia from the time they moved to Las Vegas until ----- when Marlo was about ----- years old. Georgia describes Lewis as extremely violent to her. She did not know why he was so violent, and does not attribute his behavior to drinking or drug use. (Actually, Georgia states she does not know if Lewis drank or used drugs. He did not use them in front of her.) In fact, he beat her up the day she came home from the hospital with infant Marlo. On this occasion, Georgia's father heard about the beating and came to Georgia's place to retaliate against Lewis. He beat Lewis badly that day. Georgia stayed with Lewis for several more years. Lewis always denied Marlo was his child.

Georgia's oldest children, Larry and Darrell (six and four years older than Marlo) tried to intervene when Lewis beat Georgia, but they were too small to make much of a difference. The police were never called and Georgia never sought medical treatment for her injuries. She stated she often had black eyes and busted lips.

Sometimes, Georgia responded to Lewis's violence with violence of her own. She stated she tried to kill him with a knife once, but a North Las Vegas police officer she thinks was named "Smootie" stopped her and talked her down.

After Marlo's birth, Georgia got a job at the Tropicana Hotel as a housekeeper. She soon left that job when she was hired at McCarran Airport as a janitor. It was at McCarran that she met Paul Hardwick Sr., the father of her fourth child, Paul Junior (PJ). -----

It was after she met Hardwick that Georgia finally got away from Bobby Lewis. Lewis let her go without a fight. Marlo was in elementary school at this time and the family resided on J Street. After they split up, Lewis asked to see the children, but Georgia would not allow him to come to where she stayed.

Georgia constantly relocated her children, as evidenced in Marlo's school records. She could not explain the moves during these interviews, other than to say sometimes she liked to stay with family members. Georgia stated that as she was always a recipient of Section 8 housing benefits, so money was not an issue.

Medical and behavior issues

Marlo was a sickly child. Georgia recalls he had something like the flu when he was a few weeks old. He had a nasty cough and mucus, these symptoms lasted a month. She thought Marlo should be hospitalized for this illness, however his doctor (Dr. Laruso) prescribed strong antibiotics instead.

Marlo fell out of a moving car when he was about five years old. The accident happened when Marlo was sitting close to a door that had not been closed properly. Although he hit his head during the fall, Marlo was said to have jumped back up and into the car. There was no known loss of consciousness or visible injury. Marlo was with Rosalyn Harris, a family member of Georgia, when it happened. (Rosalyn is deceased.)

Marlo “was mean”, even as a small child. Georgia recalls he was “a hitter and biter”. She would not characterize his behavior as tantrums, but rather stated Marlo was mean all the time.

Marlo’s behavior only got worse as he matured. He was always picking fights with other children in the neighborhood when they lived on Yale Street.

According to Georgia, Marlo used marijuana and cocaine during his teen years. He and his cousin Jody (now deceased, son of John and Evelyn Thomas) were frequently high.

Misc.

Georgia did not have any insight into Marlo’s experiences at juvenile detention or the juvenile facility at Elko. When she saw him at the juvie facility, Marlo only stated he hated the place.

Georgia was with Paul Hardwick for twelve years. He was good to her and the children. Hardwick did not drink and always had a job. They split up after twelve years when Georgia met another man.

During recent years, Bobby Lewis apologized to Georgia for how he treated her when they were young. He chalked his violence up to being young and stupid.

Marlo’s capital murder trials

Georgia said she did not know what to expect when she took the witness stand. She did not know what questions were to be asked of her. She referred to David Schieck as a very nice man who seemed concerned with the case, compared to Marlo’s first attorney (Pete LaPorta). When I asked to see photos of Marlo as a child, Georgia noted she gave them all to David Schieck and they were not returned to her after the trial.

Marlo told his mother that Pete LaPorta made a derogatory comment to someone without knowing Marlo was present. Marlo stated he overheard LaPorta say “Lets go get this N!@ ##” with regard to him.

EXHIBIT 55

Part 1

EXHIBIT 55

Part 1

C65500

IN THE JUSTICE COURT OF NORTH LAS VEGAS TOWNSHIP,
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA.

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. 022
)	
vs.)	DOCKET NO. 84FN
)	
BOBBY LEWIS, #131182)	
)	
Defendant.)	<u>CRIMINAL COMPLAINT</u>

Personally appeared before the undersigned Justice of the Peace this day T. HARRY, of NORTH LAS VEGAS, in the County of Clark, State of Nevada, who, being first duly sworn, complains and says that BOBBY LEWIS, the Defendant above named, has committed the crimes of BURGLARY (Felony - NRS 205.060); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); SECOND DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.330, 193.165); and SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165) in the manner following, to-wit: That the said Defendant, on or about the 6th day of January, 1984, at and within the County of Clark, State of Nevada,

COUNT I - Burglary

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a felony, to-wit: Kidnapping and/or Sexual Assault, that certain building occupied by VIRGIE LEE JIMMERSON and/or SHIRLEY COOPER, located at 537 Kings, North Las Vegas, Clark County, Nevada.

COUNT II - First Degree Kidnapping With Use of a Deadly Weapon

did wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away VIRGIE LEE JIMMERSON, a human being, with the intent to hold or detain the said VIRGIE LEE JIMMERSON against her will and without her consent for the purpose of

1 committing Sexual Assault upon VIRGIE LEE JIMMERSON, said De-
2 fendant using a deadly weapon, to-wit: a shotgun, during the
3 commission of said crime.

4 COUNT III - Second Degree Kidnapping With Use of a Deadly Weapon

5 did wilfully, unlawfully, feloniously, and without authority
6 of law, seize, inveigle, take, carry away or kidnap SHIRLEY COOPER,
7 a human being, against her will and without her consent, with the
8 intent to keep the said SHIRLEY COOPER detained against her will,
9 Defendant using a deadly weapon, to-wit: a shotgun, during the
10 commission of said crime.


11 COUNT IV - Sexual Assault With Use of a Deadly Weapon

12 did then and there wilfully, unlawfully and feloniously
13 sexually assault and subject VIRGIE LEE JIMMERSON, a female
14 person, to sexual penetration, to-wit: sexual intercourse, by
15 inserting his penis in the vagina of the said VIRGIE LEE
16 JIMMERSON, against her will, said Defendant using a deadly weapon,
17 to-wit: a shotgun, during the commission of said crime.

18 All of which is contrary to the form, force, and effect of
19 Statutes in such cases made and provided and against the peace
20 and dignity of the State of Nevada. Said Complainant, therefore,
21 prays that a Warrant be issued for the arrest of the said
22 Defendant in order that said Defendant may be dealt with
23 according to law.

24
25 
T. HARRY

26 Subscribed and sworn to before me this 17th day of January, 1984.

27
28 
29 Justice of the Peace in and for
Said Township.

30 84FN022/sb
31 NLVPD DR#84-00177
32 Burg; 1° Kidnap W/Wpn;
2° Kidnap W/Wpn; Sexual
Assault W/Wpn - F

DATE 1-6-84
NLVPD C# 84-177

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

R. L. KING BEING FIRST DULY SWORN, DEPOSES AND SAYS:

THAT HE IS A POLICE OFFICER WITH THE NORTH LAS VEGAS POLICE DEPARTMENT, NORTH LAS VEGAS, CLARK COUNTY, NEVADA, BEING SO EMPLOYED FOR A PERIOD OF 12 YEARS.

AFFIANT HAS READ ALL THE ATTACHED INVESTIGATION AND POLICE
REPORTS ATTACHED HERETO AS EXHIBITS:

Arrest, Incident, Investigative Reports & Victim statements.

WHICH ARE INCORPORATED HEREIN BY REFERENCE AND MADE A PART HEREOF

WHICH FACTS AND CIRCUMSTANCES CONTAINED THEREIN ESTABLISHES THE

REASONABLE BELIEF BY AFFIANT THAT THE CRIME(S) OF ① Kidnap - 2ct.

② Sex. Asslt. ③ Burglary ④ Poss. Sawed-off s/g ⑤ Upwice A.cts.

WAS COMMITTED BY Bobby LEWIS

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 6th DAY OF Jan, 1984

KENNETH W. KIPHART
Notary Public State of Nevada
CLARK COUNTY

NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

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

FIRST APPEARANCE BEFORE

MAGISTRATE

NAME: Lewis, Bobby

DATE: 01-10-84

LOCATION: ☒ NLV JUSTICE COURT
☐ NLV JAIL
☐ SNMH
☐ OTHER

YOU HAVE BEEN CHARGED WITH THE FOLLOWING OFFENSE(S):

Kidnap 2 cts

Sexual Assault

Burglary

Possession Sawed off Shot Gun

Use Deadly Weapon in Commission of Crime 4 cts

DATE OF ARREST: 01-06-84

THE COURT INFORMS YOU:

1. That you have the right to have an attorney present during any questioning and to represent you concerning these charges;
2. That if you cannot afford to hire an attorney, one will be appointed for you free of charge;
3. That you have the right to remain silent and that any statement you make may be used against you;
4. That a formal complaint will be presented to you when you appear in court on or before Jan. 17-1984 at 9:00 A.M. The court is located at 1928 North Bruce Street, North Las Vegas, Nevada 89030
5. That you have the right, in most cases, to have bail set, to secure your release from custody. Bail is hereby set in the sum of \$ 385.00

Count 1 200,000

Count 2 100,000

Count 3 3,000

Count 4 2,000

Count 5 42,000

CONDUCTED BY JUDGE: JP

JUSTICE OF THE PEACE

PD OFFICER _____

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

CASE NO. 022

DOCKET NO. 84FN

STATE OF NEVADA,

Plaintiff,

-vs- LEWIS, BOBBY

Defendant(s),

COMMITMENT

and

ORDER TO APPEAR

An Order having been made this day by me, that BOBBY LEWIS

be held to answer upon the charge(s) of BURGLARY; FIRST DEGREE KIDNAP WITH USE OF A D/W ; SECOND DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and SEXUAL ASSAULT WITH
Committed in said County, on or about the 6th day of January, 19 84 USE OF A D/W

IT IS FURTHER ORDERED that unless the Defendant(s) have/has been previously released on bail or by order of the Court, that the Sheriff of the County of Clark receive the above named Defendant(s) into custody, and detain such Defendant(s) until such Defendant(s) be legally discharged, and that such Defendant(s) be admitted to bail in the sum of \$ 100,000.00 cash or bail bond or \$ 200,00.00 property. (Property must be approved in advance by the Court, after hearing); and

IT IS FURTHER ORDERED that said Defendant(s) is/are commanded to appear in the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada at 9 a.m. on the 5th day of March, 19 84, for arraignment and further proceedings on the within charge.

DATED THIS 23rd day of February, 19 84.

B. Kelly
JUSTICE OF THE PEACE
NORTH LAS VEGAS TOWNSHIP

NORTH LAS VEGAS TOWNSHIP JUSTICE COURT

065500

FEB 24 4 25 PM '84

STATE VS. LEWIS, BOBBY

CASE NO. 022-84FN

CHARGE BURGLARY; FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY

WEAPON; SECOND DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON; and SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONTINUED TO:

January 10, 1984 M. ROBINSON, J.P. L. ADAIR, CLK	First appearance before a Magistrate Defendant PRESENT in Court, *IN CUSTODY* Charge and rights explained, bail set at \$385,000.00	
January 17, 1984 J.B. KELLY, J.P. M. O'CALLAHAN, DA J. FOULENFONT, CLK	Complaint sworn to and filed Defendant PRESENT in Court, *IN CUSTODY* Copy complaint presented defendant Defendant advised/waives reading of complaint Continued for P/D intv. Bail set at: Count I \$5,000.00 Count II \$50,000.00 Count III \$20,000.00 Count IV \$25,000.00	1-19-84 at 9am
January 19, 1984 J.B. KELLY, J.P. M. O'CALLAHAN, DA R. AHLWEDE, PD B. FOULENFONT, CLK	TOTAL BAIL: \$100,000.00 and Defendant REMANDED TO CUSTODY OF SHERIFF Defendant PRESENT in Court, *IN CUSTODY* Motion is made by Defendant for Bail Reduction Motion is DENIED - Court to consider further reduction Court appoints P/D and P/Hearing is set DEFENDANT REMANDED TO CUSTODY OF SHERIFF	2-2-84 at 2PM
February 2, 1984 J.B. KELLY, J.P. P. WOMMER, DA R. AHLWEDE, PD W. HANS, CRP B. FOULENFONT, CLK	TIME SET FOR PRELIMINARY HEARING Defendant PRESENT in Court, *IN CUSTODY* Motion is made by Defense, at request of defendant for 2 week continuance - Deft. waives 15 day rule Motion to continue is Granted, P/Hearing is re-set	2-16-84 at 2PM
February 16, 1984 J.B. KELLY, J.P. R. BLOXHAM, DA R. AHLWEDE, PD W. HANS, CRP B. FOULENFONT, CLK	TIME SET FOR PRELIMINARY HEARING Defendant PRESENT in Court, *IN CUSTODY* Motion by Defense to exclude witnesses - Granted WITNESSES FOR STATE VIRGIE JIMMERSON SHIRLEY COOPER STATE RESTS Magistrate advises Defendant of his right to testify and to call witnesses - Deft. advised/waives DEFENSE RESTS SUBMITTED WITHOUT ARGUMENT THEREUPON Court Ordered Defendant Bound Over and Held to Answer to Said Charges in the Eighth Judicial District Court Bail remains at \$100,000.00 and Defendant REMANDED TO CUSTODY OF SHERIFF	3-5-84 at 9am District Court

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the case of:

THE STATE OF NEVADA

Plaintiff

vs.

BOBBY LEWIS

Defendant

CASE NO. 022

DOCKET NO. 84FN

Witness my hand this 23rd day of February, 19 84

B Kelly
Justice of the Peace, North Las Vegas Township

Robert J. Miller
District Attorney
Clark County Courthouse
Las Vegas, Nevada

FILED

MAR 1 11 22 AM '84

CASE NO. C65500

DEPT. NO.

LORETTA BOHMAN

CLERK

BY

**In the Eighth Judicial District Court of the
State of Nevada,
in and for the County of Clark.**

THE STATE OF NEVADA,

Plaintiff,

— vs —

BOBBY LEWIS,

Defendant.

INFORMATION

BURGLARY (Felony-NRS-205.060);
FIRST DEGREE KIDNAPPING WITH USE
OF A DEADLY WEAPON (Felony-NRS-
200.310, 200.320, 193.165);
SECOND DEGREE KIDNAPPING WITH
USE OF A DEADLY WEAPON (Felony-
NRS-200.310, 200.330, 193.165);
and SEXUAL ASSAULT WITH USE OF
A DEADLY WEAPON (Felony-NRS-200.
364, 300.366, 193.165)

STATE OF NEVADA }
COUNTY OF CLARK } ss:

ROBERT J. MILLER, District Attorney within and for the County of Clark, State
of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BOBBY LEWIS

the Defendant... above named, on or about the 5th day of January,
1984, at and within the County of Clark, State of Nevada, contrary to the form, force
and effect of statutes in such cases made and provided, and against the peace and dignity
of the State of Nevada, ~~did~~

COUNT I - Burglary

did then and there wilfully, unlawfully, and feloniously
enter, with intent to commit a felony, to-wit: Kidnapping and/or
Sexual Assault, that certain building occupied by VIRGIE LEE
JIMMERSON and/or SHIRLEY COOPER, located at 537 Kings, North Las

1 Vegas, Clark County, Nevada.

2 COUNT II - First Degree Kidnapping With Use of a Deadly Weapon

3 did wilfully, unlawfully, feloniously, and without authority
4 of law, seize, confine, inveigle, entice, decoy, abduct, conceal,
5 kidnap, or carry away VIRGIE LEE JIMMERSON, a human being, with
6 the intent to hold or detain the said VIRGIE LEE JIMMERSON
7 against her will and without her consent for the purpose of
8 committing Sexual Assault upon VIRGIE LEE JIMMERSON, said
9 defendant using a deadly weapon, to-wit: a ^{firearm} ~~shotgun~~, during
10 the commission of said crime.

11 COUNT III - Second Degree Kidnapping With Use of a Deadly Weapon

12 did wilfully, unlawfully, feloniously, and without authority
13 of law, seize, inveigle, take, carry away or kidnap SHIRLEY
14 COOPER, a human being, against her will and without her consent,
15 with the intent to keep the said SHIRLEY COOPER detained against
16 her will, defendant using a deadly weapon, to-wit: a ^{firearm} ~~shotgun~~,
17 during the commission of said crime.

18 COUNT IV - Sexual Assault With Use of a Deadly Weapon

19 did then and there wilfully, unlawfully and feloniously
20 sexually assault and subject VIRGIE LEE JIMMERSON, a female
21 person, to sexual penetration, to-wit: sexual intercourse, by
22 inserting his penis in the vagina of the said VIRGIE LEE
23 JIMMERSON, against her will, said defendant using a deadly
24 weapon, to-wit: a ^{firearm} ~~shotgun~~, during the commission of said crime.

25 ROBERT J. MILLER
26 DISTRICT ATTORNEY

27
28 BY Ronald C. Bloxham
29 RONALD C. BLOXHAM
30 Chief Deputy District Attorney
31
32

C65500

The names of witnesses known to the District Attorney's
Office at the time of filing this Information, are as follows:

CLAYTON, SHARON
1463 West El Rio Drive
Tucson, AZ

CLAYTON, TROY
1463 W. El Rio Drive
Tucson, AZ

COOK, BRENDA
537 Kings
North Las Vegas, Nevada

COOPER, SHIRLEY
537 Kings
North Las Vegas, Nevada

JIMMERSON, VIRGIE
537 Kings
North Las Vegas, Nevada

KING, ROBERT
NLVPD #321

MYERS, WILLIE
520 Van Buren
Las Vegas, Nevada

SMITH, R.
NLVPD #197

STEVENSON, WILLIE
537 Kings
North Las Vegas, Nevada

TANNER, R.
NLVPD #287

M. F. JUDD
NLVPD P#398

TINA WASHINGTON
ADDRESS UNKNOWN

DET. W. VANLANDSCHOOT
NLVPD #250

DA#84FN022/em
NLVPD DR#84-00177
Burglary-F; 1° Kidnap UDW-F;
2nd° Kidnap UDW-F; Sexual
Assault UDW-F

3*



AMENDED BY ORDER OF THE COURT
LORETTA BOWMAN, CLERK
BY *Loreta Bowman* Deputy
July 30, 1984

AMENDED BY ORDER OF THE COURT
LORETTA BOWMAN, CLERK
BY *Loreta Bowman* Deputy
August 2, 1984

Cases No 022

Dept No 5

Mar 8 10 59 AM '84

FILED

IN THE EIGHT JUDICIAL DISTRICT COURT OF
NEVADA; IN AND FOR THE COUNTY OF CLARK; STATE OF
NEVADA.

THE STATE OF NEVADA
PLAINTIFF:

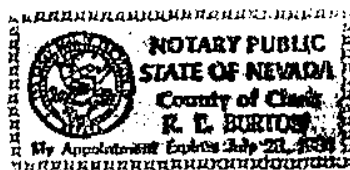
VS.

BOBBY LEWIS
DEFENDANT.

Set for 3-21-84
Dept VIII
MOTION FOR PRELIMINARY
TRANSCRIPT.

I THE DEFENDANT, BOBBY LEWIS :MOVES THIS HONORABLE COURT FOR AN ORDER
THAT THE FOLLOWING PORTIONS OF THE EVIDENCE AND PROCEEDINGS AT THE PRELIMINARY
HEARING HEREIN BE TRANSCRIBED AT THE EXPENSE OF THE UNITED STATES: (AS SET OUT
IN DEFENDANT'S DESCRIPTION OF PARTS OF THE TRANSCRIPT;
DEFENDANT INTENDS TO INCLUDE IN THERECORD).
ON THE GROUND THAT THE SAID PORTIONS OF THE EVIDENCE AND PROCEEDINGS AT THE
PRELIMINARY HEARING ARE MATERIAL TO THE SUBSTANTIAL QUESTIONS PRESENTED AT TIME
OF TRIAL.

RESPECTFULLY SUBMITTED



Bobby Lewis
defendant

SUBSCRIBED AND SWORN TO AND BEFORE
ME THIS 28 DAY OF FEB; 1984.

(R)

CASE NO. 65500
DEPT NO 8

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JUL 3 4 18 PM '84

Set 7-23-84

EDREMA DOWE
CLERK

THE STATE OF NEVADA

PLAINTIFF BY *Redman*

VS.

MOTION FOR BAIL REDUCTION

DEFENDANT PRO SE
Bobby Lewis

TO THE HONORABLE Michael J Wendell JUDGE OF THE EIGHTH JUDICIAL
DISTRICT COURT; IN AND FOR THE COUNTY OF CLARK; STATE OF NEVADA.

COME NOW; Bobby Lewis DEFENDANT AND PETITIONER PRO SE
WHO MOVES THIS HONORABLE COURT FOR AN ORDER REDUCING BAIL.

DEFENDANT HUMBLE PETITIONS THE HONORABLE JUDGE TO RULE FAVORABLE AND FAIRLY
ON THIS MOTION AND TH EREFTER ISSUE THE APPROPRIATE ORDER REDUCING BAIL TO A
REASONABLE AMOUNT THAT THE DEFENDANT IS ABLE TO MAKE.

THIS MOTION IS BASED UPON THE SUPPORTING POINTS AND AUTHORITIES WHICH
ARE CONTAINED HEREIN AND DEFENDANT WILL SHOW THE FOLLOWING;

SUPPORTING POINTS AND AUTHORITIES.

TO CONTINUE A DEMAND OF SUBSTANTIAL BAIL WHICE A DEFENDANT IS UNBLE TO
SECURE RAISES CONSIDERABLE PROBLEMS FOR THE EQUAL PROTECTION CLAUSE OF THE
UNITED STATES CONSTITUTION (1960; U.S.) L. ed 2d. 218 ; 219; 81 S.ct. 197
198.; THE SUPREME COURT HAS HELD THAT AN INDIOENT DEFENDANT IS DENIED
EQUAL PROECTION IF THEREFORE; (CAN AN INDIGENT BE DENIED FREEDOM;
WHERE A WFALTHY MAN CANNOT; BECAUSE HE DOES NOT HAPPEN TO HAVE ENOUGH
PROPERTY OR MONEYS TO PLEDGE FOR HIS FREEDOM); ORAFFIN Vs TLLINOIS
(1956) 351 U.S. 12;28; 1000 L.ed. 891; 76s.ct. 585; 55AIR.2d. 1055;
reh den 351 U.S. 958; 100 Led. 218; 219; 81s.ct.844;
LODIE DICTATES THAT A DEFENDANT'S POTENTIAL DANGER TO THE COMMUNITY
IS NOT TO BE CONSIDERED AS A FACTOR IN THE DISIGNATION OF BAIL BECAUSE
IT IS IPRELLEVANT AS TO TH E QUESTION OF THE AMOUNT OF BAIL.



IF A DEFENDANT WOULD PRESENT A DANGER IF FREE IN THE COMMUNITY THEN IT WOULD NOT MATTER WHETHER HE HAD POSTED A 100,000 DOLLAR BAIL OR WAS RELEASED ON HIS OWN RECOGNIZANCE.

DANGER TO THE COMMUNITY HAS NO RELATIONSHIP TO THE ABILITY OF THE ACCUSED TO POST BAIL. THEREFORE; IF THE COURT DETERMINES THAT A DEFENDANT WOULD BE A THREAT IF RELEASED PRIOR TO TRIAL ITS DUTY IS TO REMAND HIM RATHER THEN TO SET AN EXCESSIVE BAIL.

308
PEOPLE Vs MELVILLE (1970) 62 misc.2d 366. nys 2d. 671; 678.

TRIMBLE Vs STONE; (1966; dc. dist Col.) 187 F. SUPP 483; 484 .485;

THIS CASE HAS BEEN CONTRUED AS GUARANTEEING THE RIGHT TO BAIL BY NECESSARY IMPLICATION AND NOT MERELY MEANING THAT WHEN ALLOWED ? BAIL SHOULD NOT BE EXCESSIVE ... THE RIGHT TO BAIL PENDING TRIAL IS ABSOLUTE; EXCEPT IN CAPITAL CASES.

THIS FUNDAMENTAL RIGHT IS ONE OF THE OUTSTANDING FEATURES OF THE PERSONAL RIGHT AFFORDED IN ANGLO AMERICAN JURISPRUDENCE TO THOSE ACCUSED AND PRESUMED INNOCENT. (WHAT WOULD BE A REASONABLE BAIL IN THE CASE OF ONE DEFENDANT MAY BE EXCESSIVE IN THE CASE OF ANOTHER); BENNETT Vs; U.S. (1929 ca. 5 FLA. 36F.2d. 477.

IT IS A WELL ESTABLISHED FACT THROUGHOUT THIS COUNTRY THAT THE SOLE PURPOSE OF DETENTION PENDING TRIAL IS TO INSURE THE APPEARANCE OF THE ACCUSED AND THE ACCUSED AND THAT THE ACCUSED RETAINS ALL THE RIGHTS OF AN ORDINARY CITIZEN EXCEPT THOSE EXPRESSLY OR BY NECESSARY IMPLICATION; ARE TAKEN FROM HIM BY LAW. JACKSON Vs. GODWIN; 400 F.2d. 529; (5th cir 1968).

QUOTING; COFFIN Vs. REICHARD; 443 F. 2d. 443; 445 (6 TH. CIR 1971).
RHEM Vs. MALCOLM; 371 F. supp. 59; 622 (s.d.n.y. 1974). AFF'D.

AND REMANED 507 F.2d. 333 (2d. cir 1974). SANIS Vs. WAINWRIGHT. 357 F.supp. 1062; 1062. 1094(m.d. FLA. 19. VACATED ON OTHER GROUNDS; 491 F.2d. 417(5th CIR. 1974). WASHINGTON Vs. LEE. 263 F. supp. 327. 331. (M.D. ALA. 1966) AFF'D. percuriam. 390 U.S. 333. 88 S.ct. 971. 19 L.ed. 2d. 1212 (1968

AS IT IS IN THE CASE OF THE ORDINARY CITIZEN HE IS AFFORDED THE RIGHT AND PRIVILEGE TO RELEASE ON HIS OWN RECOGNIZANCE IN A CASE SUCH AS THE PETITIONER'S AFTER A MINIMAL SHOWING OF HIS RELIABILITY. HOWEVER; IN THE CASE OF THE PETITIONER HE IS HELD IN LIEU OF AN EXCESSIVE BOND BECAUSE HE DOES NOT HAVE THE SECURITIES THEREOF AND WITHOUT JUSTIFIABLE SHOWING BY THE STATE AS TO WHY THE PETITIONER IS NOT AFFORDED THE SAME RIGHT; AND PRIVILEGE TO RELEASE AS THE ORDINARY CITIZEN; 323 F.supp at 100. SIMILARLY IN HAMILTON Vs. LOVE; 328 F. supp. 1182. (E.D. ARK.) 1971; THE COURT STATED.

THE DISTINCTION BETWEEN DETAINED AND THOSE ON BAIL MUST BE BASED UPON THE
STATE'S DETERMINATION THAT THERE IS A NEED FOR PHYSICAL CUSTODY OF THE
FORMER...

ACCEPTING THIS DISTINCTION TO BE CONSTITUTIONAL PERMISSIBLE.

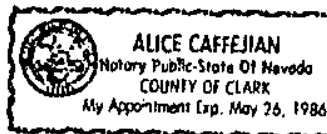
WHEREFORE; IT IS PRAYED THAT THIS HONORABLE COURT GRANT A HEARING ON
THIS PETITION OR IN THE ALTERNATIVE ISSUE AN ORDER GRANTING THE
RELIEF SOUGHT HEREIN.

SUBSCRIBED AND SWORN TO BEFORE ME THIS

29 DAY OF June 1983.

NOTARY PUBLIC; IN AND FOR THE COUNTY
OF CLARK; STATE OF NEVADA.

Alice Caffeejian



RESPECTFULLY SUBMITTED

Bobby Lewis

DEFENDANT; PRO SE.

1 Robert J. Miller
2 District Attorney
3 Clark County Courthouse
4 Las Vegas, Nevada

FILED

5 CASE NO. C65500

JUL 23 4 29 PM '84

6 DEPT. NO. VIII

7 In the Eighth Judicial District Court of the
8 State of Nevada,
9 in and for the County of Clark.

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13 THE STATE OF NEVADA,

14 Plaintiff,

15 — vs —

16 BOBBY LEWIS,

17 Defendant.

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MOTION AND NOTICE OF MOTION
TO ENDORSE NAMES ON
INFORMATION

To: Defendants above named, and

To: Your Counsel of Record: PUBLIC DEFENDER

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that, on
Monday, the 30th day of July, 1984,
at the hour of 9:00 o'clock, A.M., or as soon thereafter as Counsel can be heard,
in the Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will
move the Court for leave to endorse upon Information heretofore filed herein the names
of the following witnesses:

Name
M.F. JUDD

Address
NLVPD P#398

DATED this 23rd day of July, 1984.

ROBERT J. MILLER
District Attorney.

By Robert J. Miller
Deputy Dist. Attorney
ROBERTA J. O'NEALE

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

ROBERTA J. O'NEALE

, being first duly sworn, deposes and

says:

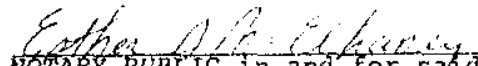
That he is a Deputy District Attorney of Clark County, Nevada; that Information has heretofore been filed in the within action; that since the filing of said Information Affiant has learned that the testimony of the person or persons named in the Motion to Endorse Names on Information, which this Affidavit supports, is necessary and material to the prosecution of the within criminal action; that such facts were unknown to Affiant at the time of filing Information herein.

WHEREFORE, Affiant prays that the Court enter an Order for endorsement of names on Information, in accordance with NRS 173.045.


Deputy District Attorney
ROBERTA J. O'NEALE

Subscribed and sworn to before me

this 27 day of July, 1984


NOTARY PUBLIC in and for said
County and State.

Notary Public-State of Nevada
CLARK COUNTY
ESTHER S. McELHANEY
My Appointment Exp. Feb. 19, 1986

ORDER SHORTENING TIME

Upon application of _____ on behalf of the
Clark County District Attorney, Attorney for Plaintiff, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing the above and foregoing
Motion be, and the same is hereby shortened to the _____ day of _____,
19____, at the hour of _____ o'clock, _____ M.

DATED this _____ day of _____, 19____

DISTRICT JUDGE

Deputy District Attorney

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION
2 TO ENDORSE NAMES ON INFORMATION

3 1. After filing the Information the District Attorney shall
4 endorse thereon the names of such other witnesses which shall
5 become known to him before the trial as the Court prescribes.
6 Such amendment may be made at any time after defendant pleads
7 when it can be done without prejudice to the substantial rights
8 of the defendant. NRS 173.045.

9 2. The granting on the morning of the trial of a motion to
10 add names of witnesses to a first degree murder Information was
11 not error where the defendant's attorney learned the names of
12 such witnesses three days before trial, this being a reasonable
13 time to prepare for the defense. State v. Teeter, 65 Nev. 584,
14 612 (1948); Dalby v. State, 81 Nev. 517 (1965).

15 3. Any prejudice resulting to defendant because the
16 District Attorney was permitted to add names on the Information
17 after the jury had been sworn, he having known these names before
18 trial, was cured by the court's granting defendant a continuance
19 (three days) to prepare to meet the testimony of these witnesses.
20 State v. Monahan, 50 Nev. 27, 35 (1926); Gallegos v. State, 84
21 Nev. 608 (1968).

22 4. Failure to endorse a name does not preclude calling any
23 witness whose name or materiality of testimony is first learned
24 at the time of trial NRS 173.045.

25 5. Defects or imperfections of form are immaterial.
26 NRS 173.100. Minor defects in an Information, including
27 typographical errors, may be disregarded where the intent is
28 clear and the rights of the defendant are not prejudiced.
29 22 CJS 955, Sec. 377.

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RECEIPT of a copy of the above and foregoing
Motion, Notice of Motion, Affidavit and
Points and Authorities is hereby acknowledged
this 23rd day of July, 1984.

~~XXXXXXXXXXXXXXXXXXXX~~

OFFICE OF THE PUBLIC DEFENDER

By *Dale R. Stahl*
Attorney for Defendant
309 S. Third Street #226
Las Vegas, Nevada 89101

Robert J. Miller
District Attorney
Clark County Courthouse
Las Vegas, Nevada

FILED IN OPEN COURT
JUL 30 1984

CASE NO. C65500

DEPT. NO. VIII

By Ruth Rose Deputy

**In the Eighth Judicial District Court of the
State of Nevada,
in and for the County of Clark.**

THE STATE OF NEVADA,

Plaintiff,

— vs —

BOBBY LEWIS,

Defendant.

**ORDER TO ENDORSE NAMES
ON INFORMATION**

Upon Motion of the STATE OF NEVADA, Plaintiff, by and through the Clark County District Attorney, and Notice to Defendant above named by and through Defendant's Counsel, PUBLIC DEFENDER, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion is granted and the Clerk of the above entitled Court is hereby directed to endorse upon the Information on file herein the following names:

Name	Address
M.F. JUDD	NLVPD P#398

as prospective witnesses in the prosecution of the within matter.

DATED this 30 day of July, 1984.

Michael J. Hendley
DISTRICT JUDGE

Robert J. O'Neale
Deputy District Attorney
ROBERTA J. O'NEALE

DA-40



CASE NO. 65500

DEPARTMENT NO. 8

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

C 65500

FILED

THE STATE OF NEVADA

AUG '2 3 09 PM '84

Plaintiff WILLIAM BOYMAN

CLERK

vs.

BY Alden J. Young

Bobby Lewis

Defendant

MOTION

FOR

DISCOVERY

Set 8-~~20~~⁸-84
VIII

COMES NOW the defendant, Bobby Lewis, in propria persona, and respectfully moves this Honorable Court, pursuant to N.R.S. 174.235 and N.R.S. 174.245, for an ORDER permitting Defendant, by and through his attorney, to inspect and copy or photograph the following:

1. Any written or recorded statements or confessions made by Defendant, or copies thereof, within the possession, custody or control of the State of Nevada, the existence of which is known, or by the exercise of the due diligence may become known, to the Attorney General of the State of Nevada, or the District Attorney of Las Vegas, State of Nevada.

2. All results or reports of the physical, mental examination, scientific tests, or experiments made in connection with this case, or copies thereof, within the possession, custody or control of the State of Nevada, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney General of the State of Nevada or the District Attorney of Las Vegas, State of Nevada, including, but not limited to any scientific tests or experiments performed upon or with the defendants permission in the above entitled case, or any portion thereof.

3. All photographs, Books, papers, documentd, tangible objects, drawings, or copies or portions thereof, which constitutes

amc

(2)

evidence material to the preparation of Defendant's defense which are within the custody or control of the State of Nevada, or through the exercise of due dilligence may become known, to the Attorney General of the State of Nevada or the District Attorney of Las Vegas, State of Nevada.

Defendant further moves this Court to ORDER the continuing duty of the Attorney General of the State of Nevada and the District Attorney of Las Vegas, State of Nevada to disclose any material information requested or ordered which is subject to discovery and inspection pursuant to the provisions of N.R.S.---
174.295.

DATED this 23 day of JULY, 1984.



NOTARY PUBLIC
STATE OF NEVADA
County of Clark
HOWIN R. DOSSIERE
My Appl. Expires Mar. 20, 1988

Elwin R. Dossier

Respectfully Submitted,

Bobby Lewis
DEFENDANT

POINTS AND AUTHORITIES

STATEMENT OF FACTS:

THE DEFENDANT Bobby Lewis, was charged and arrested on the 6 day of JANUARY, the charge(s) against the defendant are Kidnap Act, Sexual Assault, Burglary, possession of use Deadly Weapon in connection with crime, etc shot gun

The Supreme Court of Nevada in it's decision in Donovan v Nevada, found at 94 Nev. 671, has stated that a party may not avail himself of the provisions of N.R.S. 17h.295 providing sanction for failure to provide discovery unless that party has sought and secured a Discovery Order from the Trial Court. Therefore this Motion is brought.

N.R.S. 17h.235 provides in relevent part that upon motion Defendant may secure the Courts Order to permit him to inspect any and all information, Mental Examinations and Scientific Tests, Statements of Confessions, Reports of Examinations and Tests against the Defendant.

N.R.S. 17h.245 provides that the District Attorney must make accessible all Information, Books, Papers, Documents, or any Tangible Evidence or Object against the Defendant.

The Supreme Court of the UNITED STATES handed down it's decision in Brady v Maryland, found at 373 U.S. 83 (1963), whereas it was held that in evidence to the Defendant, the State should either provide All Information to the defence or make available to the court, so the Court may make a determination. U.S. v Hibler, 463F. 2d. 455 (1972), U.S. v Quinn, 364 FED. SUPP. 432 (1973).

The case of Jackson v United States, 343 F. 2d 49 (1956) That the State shall make available to the Defendant the credibility of all witnesses, also in Lewis v Texas, 386 U.S. 707 (1967) where the State must make available to the Defendant any Written or Recorded Statements. In the California Courts in the case of Hill v Superior Court, 10 Cal. 3d. 812 (1974) Entitled the Defendant can Impeach Witnesses against the Defendant if favorable to his case. Finally, the Supreme Court of Nevada in Donovan v Nevada, 94 Nev. ADV. OF. 190, Ruled that unless a Defendant secures a Discovery Order from the Trial Court he may not be heard to complain that particular items of evidence were not made available to him in Informal Discovery nor may he seek the Sanctions and Prohibitions available to him under N.R.S. 17h.295.

WHEREFORE, the Defendant respectfully requests this Honorable Court
enter it's Order directing Counsel for the State to make available to the
Defendant all and any Information against or for the Defendant.

Respectfully Submitted,

Bobby Lewis
DEFENDANT

SUBSCRIBED and SWORN to before me

this 23 day of JULY, 1984

Edwin R. Dossiere
NOTARY PUBLIC



NOTARY PUBLIC
STATE OF NEVADA
County of Clark
EDWIN R. DOSSIERE
My Appl. Expires Mar. 28, 1988

FILED

AUG 13 1 26 PM '84

CASE NO. C65500

DEPARTMENT VII

BY *Elizabeth D. Magidella*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA)
PLAINTIFF,)
VS.)
BOBBY LEWIS,)
DEFENDANT)

J U R Y

- | | |
|--------------------------|----------------------------|
| 1. JENNIFER ANN MEYN | 7. REBECCA LYNN GRENIER |
| 2. MARTIN PAUL EINERT | 8. YVONNE RENEE ATKINSON |
| 3. RONALD LYNN BREEDLOVE | 9. PAULINE MARION MORTON |
| 4. ROSALIE TANZI | 10. JAMES RAYMOND MARTINEZ |
| 5. DAVID ALLEN DEAN | 11. ROBERT CARL EATON |
| 6. HAROLD ROBERT SHRADER | 12. AVERY P. KISSEE |

ALTERNATE: 1. JAMES ORAN BATES



1 Robert J. Miller
2 District Attorney
3 Clark County Courthouse
4 Las Vegas, Nevada

FILED

5 CASE NO. C 65500
6 DEPT. NO. VIII

AUG 17 3 49 PM '84

7 In the Eighth Judicial District Court of the
8 State of Nevada,
9 in and for the County of Clark.
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13 THE STATE OF NEVADA,

14 Plaintiff,

15 — vs —

16 BOBBY LEWIS,

17 Defendant.
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MOTION AND NOTICE OF MOTION
TO ENDORSE NAMES ON
INFORMATION

20 To: Defendants above named, and

21 To: Your Counsel of Record: PUBLIC DEFENDER

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that, on

23 Monday, the 20th day of August, 1984,

24 at the hour of 9:00 o'clock, A.M., or as soon thereafter as Counsel can be heard,
25 in the Courthouse, Las Vegas, Clark County, Nevada, the STATE OF NEVADA will
26 move the Court for leave to endorse upon Information heretofore filed herein the names
27 of the following witnesses:

28 Name	Address
29 TINA WASHINGTON	Address Unknown
30 DET. W. VANLANDSCHOOT	NLVDP #250

31
32 DATED this 16th day of August, 1984.

ROBERT J. MILLER
District Attorney.

By Robert J. Neale
ROBERTA J. ^{Deputy} NEALE

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

ROBERTA J. O'NEALE

, being first duly sworn, deposes and says:

That he is a Deputy District Attorney of Clark County, Nevada; that Information has heretofore been filed in the within action; that since the filing of said Information Affiant has learned that the testimony of the person or persons named in the Motion to Endorse Names on Information, which this Affidavit supports, is necessary and material to the prosecution of the within criminal action; that such facts were unknown to Affiant at the time of filing Information herein.

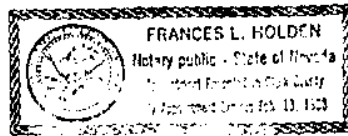
WHEREFORE, Affiant prays that the Court enter an Order for endorsement of names on Information, in accordance with NRS 173.045.

Robert J. O'Neale
Deputy District Attorney
ROBERTA J. O'NEALE

Subscribed and sworn to before me

this 16th day of August, 1984.

Frances L. Holden
NOTARY PUBLIC



ORDER SHORTENING TIME

Upon application of _____ on behalf of the Clark County District Attorney, Attorney for Plaintiff, and good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing the above and foregoing Motion be, and the same is hereby shortened to the _____ day of _____, 19____, at the hour of _____ o'clock, _____ M.

DATED this _____ day of _____, 19____.

DISTRICT JUDGE

Deputy District Attorney

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION
2 TO ENDORSE NAMES ON INFORMATION

3 1. After filing the Information the District Attorney shall
4 endorse thereon the names of such other witnesses which shall
5 become known to him before the trial as the Court prescribes.
6 Such amendment may be made at any time after defendant pleads
7 when it can be done without prejudice to the substantial rights
8 of the defendant. NRS 173.045.

9 2. The granting on the morning of the trial of a motion to
10 add names of witnesses to a first degree murder Information was
11 not error where the defendant's attorney learned the names of
12 such witnesses three days before trial, this being a reasonable
13 time to prepare for the defense. State v. Tectter, 65 Nev. 584,
14 612 (1948); Dalby v. State, 81 Nev. 517 (1965).

15 3. Any prejudice resulting to defendant because the
16 District Attorney was permitted to add names on the Information
17 after the jury had been sworn, he having known these names before
18 trial, was cured by the court's granting defendant a continuance
19 (three days) to prepare to meet the testimony of these witnesses.
20 State v. Monahan, 50 Nev. 27, 35 (1928); Gallegos v. State, 84
21 Nev. 608 (1968).

22 4. Failure to endorse a name does not preclude calling any
23 witness whose name or materiality of testimony is first learned
24 at the time of trial NRS 173.045.

25 5. Defects or imperfections of form are immaterial.
26 NRS 173.100. Minor defects in an Information, including
27 typographical errors, may be disregarded where the intent is
28 clear and the rights of the defendant are not prejudiced.
29 22 CJS 955, Sec. 377.
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RECEIPT of a copy of the above and foregoing
Motion, Notice of Motion, Affidavit and
Points and Authorities is hereby acknowledged
this 17th day of August, 1984.

Attorney for Defendant

OFFICE OF THE PUBLIC DEFENDER
By *[Signature]*
Attorney for Defendant

CASE NO. C 65500
DEPARTMENT NO. VII

—FILED IN OPEN COURT—

August 16 19 84
LORETTA BOWMAN, CLERK

By Elizabeth D. [Signature]
Deputy

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,
vs.
BOBBY LEWIS,
Defendant.

INSTRUCTIONS TO THE JURY
INSTRUCTION NO. I

MEMBERS OF THE JURY:

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

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



INSTRUCTION NO. 2

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

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

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3 An Information is but a formal method of accusing a
4 person of a crime and is not of itself any evidence of his guilt.

5 In this case, it is charged in an Information that on or
6 about the 6th day of January, 1984, the Defendant committed the
7 offenses of Burglary, First Degree Kidnapping With Use of a
8 Deadly Weapon, Second Degree Kidnapping With Use of a Deadly
9 Weapon and Sexual Assault With Use of a Deadly Weapon.

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

14 Each charge and the evidence pertaining to it should be
15 considered separately. The fact that you may find a Defendant
16 guilty or not guilty as to one of the offenses charged should not
17 control your verdict as to any other offense charged.
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3 To constitute the crime charged, there must exist a
4 union or joint operation of an act forbidden by law and an intent
5 to do the act.

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

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

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

INSTRUCTION NO. 5

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3 You are instructed that each Count set forth in the
4 Information charges a separate and distinct offense. You must
5 consider the evidence applicable to each alleged offense as
6 though it were the only accusation before you for consideration,
7 and you must state your findings as to each Count in a separate
8 verdict, uninfluenced by the mere fact that your verdict as to
9 any other Count or Counts is in favor of, or against a Defendant.
10 A Defendant may be convicted or acquitted upon any or all of the
11 offenses charged, depending upon the evidence and the weight you
12 give to it, under the Court's Instructions.
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INSTRUCTION NO. 6

Every person who, either by day or by night, enters
any house, room, apartment or other building with intent to
commit larceny, or any felony, is guilty of Burglary.

INSTRUCTION NO. 7

First Degree Kidnapping is a felony. Second Degree
Kidnapping is a felony. Sexual Assault is a felony.

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INSTRUCTION NO. 8

Consent to enter is not a defense to the crime of
Burglary, nor need there be a breaking into or a forced entry so
long as it is shown that entry was made with a felonious intent.

INSTRUCTION NO. 9

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3 If you find that the Defendant entered the building
4 illegally, but that he did not form an intention to commit a
5 crime therein until he was already inside, he must be acquitted
6 of the charge of Burglary.
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INSTRUCTION NO. 10

You are further instructed that the intention with which the Defendant entered the building is a question of fact which may be inferred from the Defendant's conduct and other circumstances disclosed by the evidence.

INSTRUCTION NO. 11

Intent need not be proved by direct evidence, but may be inferred from the conduct of the parties and the other facts and circumstances disclosed by the evidence.

INSTRUCTION NO. 12

Every person who, in the commission of a Burglary,
shall commit any other crime, shall be punished therefor as well
as for the Burglary, and may be prosecuted for each crime
separately.

INSTRUCTION NO. 13

Every person who shall wilfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap or carry away any person by any means whatsoever with the intent to hold or detain, or who holds or detains any person for the purpose of committing sexual assault, shall be deemed guilty of Kidnapping in the First Degree.

INSTRUCTION NO. 14

Every person who shall wilfully and without authority of law, seize, inveigle, take, carry away or kidnap another person with the intent to keep such person secretly imprisoned within the State, or for the purpose of conveying such person out of the State without authority of law, or in any manner held to service or detained against her will, shall be deemed guilty of Kidnapping in the Second Degree.

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3 If you find that the evidence is insufficient to
4 establish the Defendant's guilty of First Degree Kidnapping, he
5 may, however, be found guilty of a lesser offense, the commission
6 of which is necessarily included in the offense charged, if the
7 evidence is sufficient to establish his guilt of such lesser
8 offense.

9 The offense of First Degree Kidnapping, with which the
10 Defendant is charged in the Information, necessarily includes
11 the lesser offense of Second Degree Kidnapping.

12 If the evidence is sufficient to support a finding of
13 guilt of both the offense charged and a lesser included offense,
14 but you entertain a reasonable doubt as to which offense the
15 Defendant is guilty, it is your duty to find him guilty only of
16 the lesser offense.
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INSTRUCTION NO. 16

An essential element of the crime of Second Degree Kidnapping is specific intent. This means that before a person can be found guilty of Second Degree Kidnapping, you must find that the person perpetrating the kidnap possessed a specific intent at the time of the seizing, taking, or carrying away of another, to secretly imprison, or to hold to service or detain against her will, the person kidnapped.

INSTRUCTION NO. 17

Seize means to take possession of by force, and confine
as to restrain within limits; to limit; to shut up, imprison; to
put or keep in restraint; to keep from going out.

INSTRUCTION NO. 18

The law does not require that a victim be carried away for a minimum distance. It is the fact, not the distance, of forcible removal of the victim that constitutes kidnapping.

INSTRUCTION NO. 19

The crime of Kidnapping is complete, for example,
whenever it is shown that a person wilfully and without authority
seizes another with intent to detain him against his will.
Movement of the victim is only one of several methods by which
Kidnapping may be committed.

False imprisonment is an unlawful violation of the personal liberty of another and consists in confinement or detention without sufficient legal authority.

False imprisonment does not require that there be confinement in a jail or prison.

False imprisonment without the use of a deadly weapon is a gross misdemeanor. False imprisonment with the use of a deadly weapon is a felony.

INSTRUCTION NO. 21

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3 The offense of Kidnapping, with which the defendant is charged
4 in the Information, necessarily includes the lesser offense of
5 False Imprisonment.

6 False Imprisonment differs from Kidnapping in that Kidnapping
7 is aggravated by removal of the imprisoned person to some other
8 place.

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INSTRUCTION NO. 22

You are instructed that if you find the Defendant guilty of First Degree Kidnapping, you must also determine whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 23

If you find beyond a reasonable doubt that the Defendant committed First Degree Kidnapping With the Use of a Deadly Weapon, then you are instructed that the verdict of First Degree Kidnapping With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the First Degree Kidnapping, but you do find that a First Degree Kidnapping was committed, then you are instructed that the verdict of First Degree Kidnapping Without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both First Degree Kidnapping With the Use of a Deadly Weapon and First Degree Kidnapping Without the Use of a Deadly Weapon.

INSTRUCTION NO. 24

You are instructed that if you find the Defendant guilty of Second Degree Kidnapping, you must also determine whether or not a deadly weapon was used in the commission of this crime.

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3 If you find beyond a reasonable doubt that the
4 Defendant committed Second Degree Kidnapping With the Use of a
5 Deadly Weapon, then you are instructed that the verdict of
6 Second Degree Kidnapping With the Use of a Deadly Weapon is the
7 appropriate verdict.

8 If, however, you find that a deadly weapon was not
9 used in the commission of the Second Degree Kidnapping, but you
10 do find that a Second Degree Kidnapping was committed, then you
11 are instructed that the verdict of Second Degree Kidnapping
12 Without the Use of a Deadly Weapon is the appropriate verdict.

13 You are instructed that you cannot return a verdict of
14 both Second Degree Kidnapping With the Use of a Deadly Weapon
15 and Second Degree Kidnaping Without the Use of a Deadly Weapon
16 as to the same victim.
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INSTRUCTION NO. 26

Sexual Assault is the sexual penetration of another against the victim's will.

Sexual penetration is any intrusion, however slight, of any part of a person's body into the genital opening of the body of another, and includes sexual intercourse in its ordinary meaning when the victim is not married to the Defendant.

INSTRUCTION NO. 27

Physical force is not a necessary ingredient in the commission of sexual assault. The crucial question is not whether the victim was physically forced to engage in a sexual assault but whether the act was committed without her consent. There is no consent where the victim is induced to submit to the sexual act through fear of death or serious bodily injury.

INSTRUCTION NO. 28

You are instructed that if you find the Defendant
guilty of Sexual Assault, you must also determine whether or not
a deadly weapon was used in the commission of this crime.

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3 If you find beyond a reasonable doubt that the Defendant
4 committed a Sexual Assault with the Use of a Deadly Weapon, then
5 you are instructed that the verdict of Sexual Assault with the Use
6 of a Deadly Weapon is the appropriate verdict.

7 If, however, you find that a deadly weapon was not used
8 in the commission of a Sexual Assault, but you do find that a
9 Sexual Assault was committed, then you are instructed that the
10 verdict of Sexual Assault is the appropriate verdict.

11 You are instructed that you cannot return a verdict of both
12 Sexual Assault with the Use of a Deadly Weapon and Sexual Assault
13 without the use of a deadly weapon, as to the same victim.
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INSTRUCTION NO. 30

A deadly weapon is any object, instrument or weapon which is used in such a manner as to be capable of producing, or is likely to produce, death or great bodily injury.

You are instructed that a firearm is a deadly weapon, and proof of its deadly capabilities is not required.

INSTRUCTION NO. 3/

To "use" a deadly weapon in a crime means to produce or display or to gesture or threaten with the weapon so as to facilitate the commission of the crime. It is not necessary to inflict or to attempt to inflict an injury with the weapon.

INSTRUCTION NO. 32

The Defendant is not compelled to testify and the fact that he does not, cannot be used as an inference of guilt and should not prejudice him in any way.

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3 The defendant is presumed to be innocent until the
4 contrary is proved. This presumption places upon the State the
5 burden of proving beyond a reasonable doubt every material ele-
6 ment of the crime charged and that the defendant is the person
7 who committed the offense.

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

16 If you have a reasonable doubt as to the guilt of the
17 defendant, he is entitled to a verdict of not guilty.
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3 The evidence which you are to consider in this case
4 consists of the testimony of the witnesses, the exhibits, and
5 any facts admitted or agreed to by counsel.

6 There are two types of evidence: direct and circum-
7 stantial. Direct evidence is the testimony of a person who
8 claims to have personal knowledge of the commission of the crime
9 which has been charged, such as an eyewitness. Circumstantial
10 evidence is the proof of a chain of facts and circumstances
11 which tend to show whether the defendant is guilty or not
12 guilty. The law makes no distinction between the weight to be
13 given either direct or circumstantial evidence. Therefore,
14 all of the evidence in the case, including the circumstantial
15 evidence, should be considered by you in arriving at your
16 verdict.

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

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

25 You must disregard any evidence to which an objec-
26 tion was sustained by the Court and any evidence ordered
27 stricken by the Court.

28 Anything you may have seen or heard outside the
29 courtroom is not evidence and must also be disregarded.
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3 The credibility or "believability" of a witness
4 should be determined by his manner upon the stand, his rela-
5 tionship to the parties, his fears, motives, interests or
6 feelings, his opportunity to have observed the matter to which
7 he testified, the reasonableness of his statements and the
8 strength or weakness of his recollections.

9 If you believe that a witness has lied about any
10 material fact in the case, you may disregard the entire testimony
11 of that witness or any portion of his testimony which is not
12 proved by other evidence.
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3 Although you are to consider only the evidence in
4 the case in reaching a verdict, you must bring to the consideration
5 of the evidence your everyday common sense and judgment as
6 reasonable men and women. Thus, you are not limited solely to
7 what you see and hear as the witnesses testify. You may draw
8 reasonable inferences from the evidence which you feel are justifi-
9 fied in the light of common experience, keeping in mind that
10 such inferences should not be based on speculation or guess.

11 A verdict may never be influenced by sympathy, pre-
12 judice or public opinion. Your decision should be the product of
13 sincere judgment and sound discretion in accordance with these
14 rules of law.
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INSTRUCTION NO. 37

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the Court. Your duty is confined to the determination of the guilt or innocence of the defendant.

INSTRUCTION NO. 38

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

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

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

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

10 Readbacks of testimony are time-consuming and are
11 not encouraged unless you deem it a necessity. Should you
12 require a readback, you must carefully describe the testimony
13 to be read back so that the court reporter can arrange his notes.
14 Remember, the court is not at liberty to supplement the evidence.
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INSTRUCTION NO. 40

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given you in these Instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

Given:

Paul J. Christensen
District Judge

1 Robert J. Miller
2 District Attorney
3 Clark County Courthouse
4 Las Vegas, Nevada

AUG 22 1984

5 CASE NO. C 65500
6 DEPT. NO. VIII

By Ruth Pease Deputy

7 In the Eighth Judicial District Court of the
8 State of Nevada,
9 in and for the County of Clark.

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12 THE STATE OF NEVADA,

13 Plaintiff,

14 -- vs --

15 BOBBY LEWIS,

16 Defendant.

17
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19 ORDER TO ENDORSE NAMES
20 ON INFORMATION

21 Upon Motion of the STATE OF NEVADA, Plaintiff, by and through the Clark
22 County District Attorney, and Notice to Defendant above named by and through De-
23 fendant's Counsel, PUBLIC DEFENDER, and good cause appearing
24 therefore,

25 IT IS HEREBY ORDERED that the Motion is granted and the Clerk of the above
26 entitled Court is hereby directed to endorse upon the Information on file herein the fol-
27 lowing names:

28 Name	29 Address
30 TINA WASHINGTON	31 Address Unknown
32 DET. W. VANLANDSCHOOT	NLVPD #250

as prospective witnesses in the prosecution of the within matter.

DATED this 22 day of August, 19 84.

Michael J. Wendell
DISTRICT JUDGE

Roberta J. O'Neale
Deputy District Attorney

DA-40 ROBERTA J. O'NEALE



C65500

The names of witnesses known to the District Attorney's
Office at the time of filing this information, are as follows:

CLAYTON, SHARON
1463 West El Rio Drive
Tucson, AZ

CLAYTON, TROY
1463 W. El Rio Drive
Tucson, AZ

COOK, BRENDA
537 Kings
North Las Vegas, Nevada

COOPER, SHIRLEY
537 Kings
North Las Vegas, Nevada

JIMMERSON, VIRGIE
537 Kings
North Las Vegas, Nevada

KING, ROBERT
NLVPD #321

MYERS, WILLIE
520 Van Buren
Las Vegas, Nevada

SMITH, R.
NLVPD #197

STEVENSON, WILLIE
537 Kings
North Las Vegas, Nevada

TANNER, R.
NLVPD #287

M. F. JUDD
NLVPD P#398

TINA WASHINGTON
ADDRESS UNKNOWN

DET. W. VANLANDSCHOOT
NLVPD #250

DA#84FN022/em
NLVPD DR#84-00177
Burglary-F; 1° Kidnap UDW-F;
2nd° Kidnap UDW-F; Sexual
Assault UDW-F



APPROVED BY ORDER OF THE COURT
LORETTA BOWMAN, CLERK
Deputy
July 30, 1984

APPROVED BY ORDER OF THE COURT
LORETTA BOWMAN, CLERK
Deputy
August 22, 1984

1 CASE NO. C 65500
2 DEPARTMENT NO. VIII

SEP 4 1 21 PM '84

James H. Hume

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5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
8

9 THE STATE OF NEVADA,)

10 Plaintiff)

11 vs.)

12 BOBBY LEWIS,)

13 Defendant.)
14

MOTION FOR REDUCTION OF BAIL
OR IN THE ALTERNATIVE, RELEASE
ON OWN RECOGNIZANCE

15 COMES NOW the Defendant, BOBBY LEWIS, by and through his
16 attorney, LYNN R. SHOEN, ESQ., and pursuant to NRS Chapter 178
17 respectfully moves this Court for an ORDER reducing his bail, or
18 in the alternative, providing him with an Own Recognizance Release.

19 This Motion is made and based upon the attached points
20 and authorities and the pleadings and documents on file herein.

21 Respectfully Submitted:

22 LYNN R. SHOEN, CHARTERED

23
24 By *Lynn R. Shoen*
25 LYNN R. SHOEN, ESQ.
26 First Floor
27 228 South Fourth Street
28 Las Vegas, Nevada 89101
29 Attorney for Defendant
30
31
32

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LAS VEGAS, NEVADA 89101
(702) 382-8003

cmc

(25)

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(702) 382-1001

NOTICE OF MOTION

TO: THE STATE OF NEVADA; and

TO: ROBERT J. MILLER, DISTRICT ATTORNEY OF CLARK COUNTY:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the above-entitled Court on the 10th day of September, 1984, at the hour of 9:00 a.m. in Department VIII of District Court, or as soon thereafter as counsel may be heard.

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.

First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

FACTS

BOBBY LEWIS is thirty-five (35) years old and has been a resident of Las Vegas, Nevada for several years. Prior to his arrest, Mr. Lewis was a porter at the Four Queens Hotel and a porter at the Royal Inn.

BOBBY LEWIS's bail is currently set at \$100,000.00. BOBBY LEWIS cannot afford such a high bail.

The Defendant has one prior felony conviction. With regard to case C 65500, the matter was previously submitted to the triar of fact and the result was a hung jury. The case has been reset for trial on September 17, 1984.

THE DEFENDANT SHOULD BE GRANTED A REDUCTION OF BAIL

A Defendant has a right to be released on a reasonable bail. "There can be no equal justice where the kind of treatment a man gets depends on the amount of money he has." Griffin v. People of the State of Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956).

.....

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1 NRS 178.498 addresses the factors which are to be
2 considered when determining the amount of bail for a criminal
3 defendant. NRS 178.498 provides, in pertinent part:

4 ". . . . The amount thereof shall be such as in
5 the judgment of the magistrate will insure the
6 presence of the defendant, having due regard to:

7 "1. The nature and circumstances of the
8 offense charged;

9 "2. The financial ability of the defendant to give
10 bail; and

11 "3. The character of the defendant."

12 Generally, there is no hard and fast rule which can be
13 set down for determining the amount of bail on each criminal
14 charge, and each case must be governed by its own facts and
15 circumstances. The amount of bail rests with the sound discretion
16 of the court. See State v. Foy, 582 P.2d 281 (Kan. 1978).

17 The defense submits that the nature and circumstances
18 of the criminal charges pending against BOBBY LEWIS are not such
19 as would warrant the high bail; that his financial status is such
20 that the amount of bail set at the present time is tantamount to
21 having no bail at all; and that BOBBY LEWIS is a law-abiding
22 person who will eventually be exonerated of the charges presently
23 pending against him. The defense is currently preparing a Motion
24 to Dismiss the sexual assault charge based on the fact that the
25 victim claimed that BOBBY LEWIS ejaculated during the course of
26 the crime, yet the police failed to take a rape kit, thus, the
27 State failed to preserve potentially exculpatory evidence.

28 NRS 178.4851 allows the Court to release the Defendant
29 on his own recognizance if it appears to the Court that the
30 Defendant will appear at all times and places ordered by the Court.

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32

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(702) 383-2001

1 NRS 178.4853 further establishes the minimum facts to be
2 considered in determining whether to release a person without bail.
3 There factors are as follows:

4 1. The length of his residence in the community.
5 BOBBY LEWIS has lived in Las Vegas, Nevada for several years.

6 2. The status and history of his employment. BOBBY
7 LEWIS was previously employed as a porter at Las Vegas hotels.

8 3. His relationship with his spouse and children,
9 parents or other members of his family. Mr. Lewis currently
10 resides in Las Vegas, Nevada.

11 4. His prior criminal record, including any records
12 of his failure to appear after release on bail or without bail.
13 BOBBY LEWIS has one felony conviction.

14 5. His reputation, character, and mental condition.
15 BOBBY LEWIS is an average citizen, with no mental defects.

16 6. The identity of responsible members of the
17 community who would vouch for the defendant's reliability.

18 BOBBY LEWIS has a sister, Anna Bell Stringer, 1049 Bartley, Las
19 Vegas, Nevada. He has a friend named Reverend Bennett.

20 7. The nature of the offense with which he is charged,
21 the apparent probability of conviction and the likely sentence,
22 insofar as these factors relate to the risk of his not appearing.

23 The defendant previously went to trial on this case, the result
24 was a hung jury. The defendant has filed a Motion to Dismiss based
25 on the failure to preserve potentially exculpatory evidence.

26 BOBBY LEWIS submits that to deny this motion for a
27 reduction in bail or in the alternative, an own recognizance re-
28 lease, denies the Defendant his right to fully cooperate with his
29 counsel, to investigate the charges against him, and to adequately

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1 prepare his defense. "This traditional right to freedom before
2 conviction permits the unhampered preparation of a defense, and
3 serves to prevent the infliction or punishment prior to trial."
4 Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1 (1951).

5 DATED this 31st day of August, 1984.

6 Respectfully Submitted:

7 LYNN R. SHOEN, CHARTERED

8
9 By Lynn R. Shoen

10 LYNN R. SHOEN, ESQ.

11 First Floor

12 228 South Fourth Street

13 Las Vegas, Nevada 89101

14 Attorney for Defendant

15 RECEIPT OF COPY of the above and foregoing MOTION FOR
16 REDUCTION OF BAIL OR IN THE ALTERNATIVE, RELEASE ON OWN
17 RECOGNIZANCE is hereby acknowledged this 31 day of Aug,
18 1984.

19 ROBERT J. MILLER, ESQ.

20 CLARK COUNTY DISTRICT ATTORNEY

21 By Robert J. Miller

22 ROBERT J. MILLER, ESQ.

23 200 South Third Street

24 Las Vegas, Nevada 89101

SEP 4 1 22 PM '84

Submitted

1 CASE NO. C 65500
2 DEPARTMENT NO. VIII
3 *m*

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 BOBBY LEWIS,)
13 Defendant.)

MOTION TO DISMISS COUNT IV
SEXUAL ASSAULT WITH USE OF
A DEADLY WEAPON

15 COMES NOW the Defendant, BOBBY LEWIS, by and through
16 his attorney, LYNN R. SHOEN, ESQ., and moves this Court for an
17 order dismissing Count IV of the information, Sexual Assault With
18 Use Of A Deadly Weapon.

19 This Motion is made and based upon the attached
20 points and authorities and the pleadings and documents on file
21 herein.

22 Respectfully Submitted:
23 LYNN R. SHOEN, CHARTERED

24
25 By *Lynn R. Shoen*
26 LYNN R. SHOEN, ESQ.
27 First Floor
28 228 South Fourth Street
29 Las Vegas, Nevada 89101
30 Attorney for Defendant
31
32

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A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

one



THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
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(702) 382-2001

NOTICE OF MOTION

TO: THE STATE OF NEVADA; and

TO: ROBERT J. MILLER, DISTRICT ATTORNEY OF CLARK COUNTY;

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing motion on for hearing before the above-entitled Court on the 10th day of September, 1984, at the hour of 9:00 a.m. in Department VIII of District Court, or as soon thereafter as counsel may be heard.

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.

First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

I.

FACTS

The Defendant, BOBBY LEWIS is charged in Count IV of the information with Sexual Assault With The Use Of A Deadly Weapon. The victim alleges that on January 6, 1984 BOBBY LEWIS had sexual intercourse with her against her will, after threatening her with a shotgun. In her statement to the City of North Las Vegas Police Department, the victim, Virgie Lee Jimmerson stated that, "he then had sex with me, and he came." (See Exhibit "A" attached hereto).

Despite the fact that officers with the North Las Vegas Police Department had information from the victim that the Defendant had ejaculated, the police officers failed to take a "rape-kit" which would include the collection of semen samples from the vagina of the victim.

. . . .

. . . .

1 As the court is aware, a large percentage of the male
2 population secretes its blood type in its semen. Therefore, if
3 the semen found inside the victim was type A, and the Defendant's
4 blood type was type B, this would constitute conclusive evidence
5 that the Defendant did not commit the crime.

6 In the present case, the North Las Vegas Police Depart-
7 ment failed to preserve potentially exculpatory evidence. In
8 other words, the Police Department failed to collect semen which
9 could potentially exonerate the Defendant from any criminal
10 liability.

11 This issue has been addressed in numerous cases
12 considered by the Nevada Supreme Court. In Crockett vs. State,
13 95 Nev. 859, 603 P.2d 1078 (1979) the court considered the
14 situation in which the Defendant and the victim both had type
15 A blood. However, when the lab technician examined the semen
16 found inside the victim, the result showed a positive reaction
17 for both type A and type B secretions. The lab technician
18 considered the results to be "strange" and she threw away the
19 slide containing the semen sample. The Nevada Supreme Court
20 stated:

21 Of course, when evidence is lost as a
22 result of inadequate governmental handling,
23 a conviction may be reversed. Howard v.
24 State, 95 Nev. 580, 600 P.2d 214 (1979);
25 Williams v. State, 95 Nev. 527, 598 P.2d
26 1144 (1979); United States v. Heiden, 508
27 P.2d 898 (9th Cir. 1974). As stated in our
28 prior decisions, the test for reversal on
29 the basis of lost evidence requires appellant
30 to show either (1) bad faith or connivance on
31 the part of the government, or (2) prejudice
32 from its loss.

33 Unfortunately, scientific
34 verification is forever foreclosed because
35 the government admittedly did not properly
36 preserve the swab. Further, the sperm slide,
37 which easily could have been preserved, was
38 intentionally, though not maliciously dis-
39 carded. The State now seeks to benefit from

1 its own faulty procedures by urging factual
2 possibilities which proper procedures might
3 well have foreclosed. We think this approach
4 is legally untenable.

5 Due process cannot be restored
6 in this case by retrial, since the swab is
7 gone and there is no way fairly to eliminate
8 the prejudice We therefore reverse
9 the conviction in order that the indictment
10 against Crockett be dismissed.

11 Similarly, in State v. Havas, 95 Nev. 706, 601 P.2d
12 1197 (1979) the Nevada Supreme Court considered a situation in
13 which Victor Havas the owner of Courtesy RV Center interviewed a
14 young woman for a job. The woman alleged that during the course
15 of the job interview, Victor Havas forced himself upon her and
16 had sexual intercourse with her, against her will. For some
17 reason, the pants and undergarments of the victim were not
18 produced by the prosecution for inspection when requested by the
19 defense. The garments were either lost, destroyed or simply not
20 taken into possession during the investigation of this case.
21 The issue presented to the court was whether the evidence not
22 preserved was material and exculpatory. The Nevada Supreme Court
23 stated:

24 The crime of rape is rarely perpetrated
25 in the presence of witnesses other than the
26 defendant and the victim and great reliance
27 must be placed upon the testimony of the victim,
28 and, if given, the defendant. Thus, the presence
29 or absence of other evidence which would support
30 or refute the testimony of the involved parties
31 has the potential for great significance.

32 On these facts, we believe a
33 rape victims underpants are so related to
34 the commission of the crime and that their
35 preservation has such potential relevance to
36 the guilt or innocence of a accused that a
37 further showing is unnecessary. See United
38 States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971).
39 The prosecution should have acquired and
40 preserved the underpants in question.

CONCLUSION

The victim, Virgie Jimmerson alleges that BOBBY LEWIS had sexual intercourse with her and that he ejaculated. However, police officers failed to preserve any semen which could potentially absolve the Defendant of any criminal liability. Crockett v. State, Supra, is directly on point. As the Nevada Supreme Court stated in Crockett v. State, Supra,

Taken alone, we might consider circumstantial evidence in this case sufficient to sustain a conviction. However, in effect, the unreported blood grouping test indicating a "B" reaction was direct exculpatory evidence. Indicating, as it did, that someone other than Crockett had raped and killed Blythe Harrington, this test by itself made a prima facie showing exonerating him."

Here, the police did not even bother to preserve the semen, or to test it. The test results would potentially have been direct exculpatory evidence. The defense is now forever foreclosed from determining the blood type of the semen, despite the fact that had the semen been preserved and tested, it could potentially have exonerated the Defendant BOBBY LEWIS.

Respectfully Submitted;

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.

First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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RECEIPT OF COPY of the above and foregoing MOTION TO
DISMISS COUNT IV SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON is
hereby acknowledged this 31 day of Aug, 1984.

ROBERT J. MILLER, ESQ.
CLARK COUNTY DISTRICT ATTORNEY

By *Robert J. Miller*
ROBERT J. MILLER, ESQ.
200 South Third Street
Las Vegas, Nevada 89101

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CITY OF NORTH LAS VEGAS
POLICE DEPARTMENT
1301 E. LAKE MEAD BLVD.

84-177

I, Virgie Lee Jimmerson, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det. R. L. King #321

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 41 years of age, and I live at NLV (642-7557)

Q: Ms. Jimmerson, would you tell me in your own words what has occurred starting from about 2:00AM this morning and about 1:45PM this afternoon when you were dropped off at your home by Bobby Lewis?

A: Last night Bobby busted through the living room side window while I was sleeping and he called Shirley (my sister) out of her room then he told her to bring her old man (Willie Stevenson) out of the room to. All the noise woke me up and I looked down the hall and he was standing there in the hallway with a sawed-off shotgun. Then Bobby came down to the room where I was and told Shirley that she was going to take me and Bobby over to his house.

Q: Did he say this in a way that you and your sister felt threatened?

A: Yes, he was pushing me and he had that gun and he said he didn't want to hurt anybody but he would if we didn't do as he said. Then Shirley drove me and Bobby over to his house. When we got there he told her to get out too and said that she was going with us. He thought someone called the police from the house and he wanted to make sure that they weren't following him before he would let her go. Then after he made sure the police wasn't around he let her go and took me in the house which is an old empty apartment near Van Buren Street where he stays. He still had the gun and there was an old raggeddy mattress there and he made me get down on the mattress with him and he told me to take my panties off and I did because I was afraid, he said if I didn't do it he would blow my head off because he had nothing else to

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at NLVPD 1515 hours, this 6th day of January 84

WITNESS: R. King #321

Virgie L. Jimmerson
Signature of person giving voluntary statement

WITNESS:

Form 20.44 (11/77)

Exhibit "A"

AA2094

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84 Page No. 2

STATEMENT OF: Virgie Jimmerson

loose. He then had sex with me, and he came. After he had sex with me he just laid there and talked to ME & Q and kept the gun in his hand saying he was going to kill me because he didn't want me to be with another man and that he had nothing to live for. He talked me to sleep until about nine or ten o'clock this morning when we went over to some lady's house he knows, I don't know her name or nothing but it was an apartment somewhere in the projects. He called my sister and asked her if she called the police or anything and he made tell my sister that I wanted to be with him and stuff, but the only reason I was telling her that was because he still had the gun on me. He told her to call the police and drop the charges because if she didn't he was going to kill me like he told her last night. We were at this lady's house the whole time he was making the phone calls to my sister and to you all. The lady didn't know anything was wrong because he kept the gun under this big ole coat he was wearing, and she was in another room during the time he was calling. I was afraid to tell her anything and he had her believing that everything was ok between the two of us. I was scared to that she might have told him since they were friends and everything and if she told him he may have pulled it out and shot me right there, so I really didn't trust her to tell her what was happening. Then after he talked to you about getting a cab and taking me home we left the lady's apartment and went to some old man's apartment and he asked him if he would keep the gun for him and he handed to him and said he would be back to get it latter on. We left and went over to where he stays and caught a ride with the guy who brought me home. The guy didn't act like he knew what was going on only just giving me a ride home. That's about it.

Q: Were you in fear for your life during this entire incident ?

A: Yes, I sure was, he's capable of doing anything.

20.55 (12/77)

Virgie L Jimmerson

AA2095

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84 Page No. 3

STATEMENT OF: Virgie Jimmerson

Q: Why didn't you make some attempt to either get away from him or to let someone know what was happening during all this ?

* A: He wouldn't let me, he was always right beside of me and would never leave my side. I may have been able to when I fell asleep but when I woke up he was already awake too.

Q: Would you describe the gun Bobby had for me ?

A: It was long type gun that looked like it was sawed off and it had some white tape on the handle where someone had sawed it off at the back of it, I'm not familiar with guns to say what kind it was or anything.

Q: How long have you known Bobby Lewis and has he ever done anything like this before ?

A: I've known him about a year, we used to go together but we been broke up a couple of months. Before Christmas he shot up into another ladies house trying to make me come out of there. Because I didn't want to see him then either. He got arrested then by Metro. About a year ago he shot a guy's eye out at the Brown Bomber because I wouldn't leave with him then. He used a pistol that time.

Q: Is there anything else you would like to add ?

A: That's about it except this scar on the left side of my face, he did that with a little razor thing on a key-chain because I wouldn't leave with him then, I reported that to Metro downtown but nothing happened. I do want to prosecute and go to court.

Virgie L Jimmerson

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William J. ...

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CASE NO. C 65500
DEPARTMENT NO. VIII

m ✓

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
BOBBY LEWIS,)
)
Defendant.)

MOTION TO CONTINUE TRIAL DATE

COMES NOW the Defendant, BOBBY LEWIS, by and through his attorney, LYNN R. SHOEN, ESQ., and pursuant to NRS 174.511 and NRS 174.515 respectfully moves this Court for a continuance of the trial date currently set for September 17, 1984 at 10:00 o'clock a.m. in Department VIII.

This Motion is made and based upon the attached points and authorities and the pleadings and documents on file herein.

Respectfully Submitted:
LYNN R. SHOEN, CHARTERED

By *Lynn R. Shoen*
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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(702) 382-2001

NOTICE OF MOTION

TO: THE STATE OF NEVADA; and

TO: ROBERT J. MILLER, DISTRICT ATTORNEY OF CLARK COUNTY;

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the above-entitled Court on the 12th day of September, 1984, at the hour of 9:00 a.m. in Department VIII of District Court, or as soon thereafter as counsel may be heard.

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.

First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

The trial in the case of the State of Nevada vs. Bobby Lewis is set for September 17, 1984 in Department VIII. On August 24, 1984, Lynn R. Shoen, the attorney for the Defendant had a lengthy conference with the Defendant during which the Defendant asked Lynn R. Shoen, Esq. to file a Motion to Continue the Trial Date for at least thirty (30) days. The Defendant advised Lynn R. Shoen, Esq. that the reason he desired the continuance was that he wanted Ms. Shoen to be fully prepared for trial, and he wanted her to file numerous motions with regard to the case. Ms. Shoen advised the Defendant that since he is in custody, he might desire a trial as soon as possible. The Defendant stated that he definitely wanted the trial to be continued for thirty (30) days for preparation of a defense.

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Lynn R. Shoen, Esq. will be in Chicago, Illinois on a business trip from October 17, 1984 through October 20, 1984. It would be acceptable to Ms. Shoen if the trial could begin during the week of October 8, 1984.

Respectfully Submitted:

LYNN R. SHOEN, CHARTERED

By 
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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(702) 382-2001

AFFIDAVIT OF LYNN R. SHOEN

STATE OF NEVADA)
 : SS
COUNTY OF CLARK)

LYNN R. SHOEN, having been duly sworn, deposes and says
that:

1. She is an attorney duly licensed to practice law in
the State of Nevada;

2. She has been assigned to defend BOBBY LEWIS with
regard to Case No. 65500;

3. On August 24, 1984 your affiant had a conversation
with her client, BOBBY LEWIS, during which Mr. Lewis stated that
he desired that the trial date in the aforementioned case be continued
for thirty (30) days; the trial date is currently set for
September 17, 1984;

4. On August 24, 1984 your affiant stated to BOBBY
LEWIS that since Mr. Lewis was in custody perhaps he desired a
trial date as soon as possible;

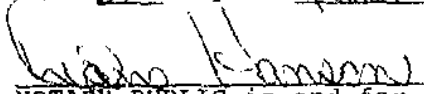
5. BOBBY LEWIS advised your affiant on August 24, 1984
that he desired that the trial date of September 17, 1984 be
continued because he desired that Lynn R. Shoen, Esq. be fully
prepared for trial, and he desired that she file numerous pretrial
motions, including a Motion for Bail Reduction and a Motion to
Dismiss.

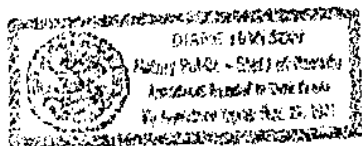
6. After speaking to BOBBY LEWIS on August 24, 1984,
your affiant prepared the attached Motion to Continue Trial Date.

7. Further your affiant sayeth not.


LYNN R. SHOEN, ESQ.

SUBSCRIBED AND SWORN to before me
this 6th day of September, 1984.


NOTARY PUBLIC in and for said
County and State



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RECEIPT OF COPY of the above and foregoing MOTION TO
CONTINUE TRIAL DATE is hereby acknowledged this 6th day of
Sept, 1984.

ROBERT J. MILLER, ESQ.
CLARK COUNTY DISTRICT ATTORNEY

Robert J. Miller

ROBERT J. MILLER, ESQ.
200 South Third Street
Las Vegas, Nevada 89101

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VII
ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

SEP 6 8 59 AM '84

Garrett

1 CASE NO. C65500

2 DEPT. NO. VIII

3
4
5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF CLARK

8
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 BOBBY LEWIS,)

13 Defendant.)

STATE'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS COUNT IV, SEXUAL
ASSAULT WITH USE OF A DEADLY WEAPON

14
15 COMES NOW, the STATE OF NEVADA, through ROBERT J. MILLER,
16 District Attorney, by and through ROBERTA J. O'NEALE, Deputy,
17 and files this Opposition to Defendant's Motion to Dismiss Count
18 IV, Sexual Assault With Use of a Deadly Weapon.

19 This Opposition is made and based upon all of the files, pa-
20 pers and pleadings on file herein, Points and Authorities in
21 support hereof, as well as oral arguments.

22 DATED this 5th day of September, 1984.

23 ROBERT J. MILLER
24 DISTRICT ATTORNEY

25
26 BY: *Robert J. O'Neale*

ROBERTA J. O'NEALE
Deputy District Attorney

1 II

2 ARGUMENT

3 A. THE DEFENDANT'S MOTION IS NOT TIMELY MADE.

4 As can be seen from the Court's files, the defendant, de-
5 spite ample opportunity, has never made a Motion to Dismiss Count
6 IV on these grounds previously. Nor are the grounds for this
7 Motion newly discovered. The clear import of Chapter 174 of
8 NRS is that this Motion should have been made before trial.
9 NRS 174.075(2) indicates that defenses and objections raised
10 before trial are to be raised by a Motion to Dismiss or other
11 appropriate Motion.

12 NRS 174.125(1) states that:

13 "All motions in a criminal prosecution to
14 suppress evidence, for a transcript of
15 former proceedings, for a preliminary hear-
16 ing, for severance of joint defendants, for
17 withdrawal of counsel, and all other Motions
18 which by their nature, if granted, delay or
19 postpone the time of trial must be made be-
20 fore trial unless an opportunity to make
21 such a Motion before trial did not exist or
22 the moving party was not aware of the grounds
23 for the Motion before trial."

19 Further, such Motions are to be made in writing 15 days "before
20 the date set for trial". (NRS 174.125(3)). A Motion to Dismiss
21 clearly, similar to a Motion to Suppress, delays trial. An
22 evidentiary hearing may be necessary. If granted, the State
23 could not seek redress without delaying the trial.

24 Eighth District Court Rule 3.20 similarly:

25 "(a) unless otherwise provided by law or
26 these rules, all motions shall be served
27 and filed not less than 15 days before
28 the date set for trial". [emphasis added].

28 The point is the interpretation of the phrase "before the
29 date set for trial". Useful to shed light on how to interpret
30 this phrase is the case of Carrell v. Justice Court, 99 Nev. Adv.
31 Op. 87 (1983). In that case, the Supreme Court interpreted the
32 following phrase from NRS 175.011(2) concerning written demands
for jury trials in misdemeanors: "a case shall be tried by jury

1 only if the defendant so demands in writing, not less than five
2 days prior to trial". In that case, the Court set a date for
3 trial and on the day of trial, the Court granted the defendant's
4 Motion for a Continuance and reset the trial date. The defen-
5 dant's written demand came after the first trial date and more
6 than five days before the second trial date. In upholding the
7 Justice of the Peace's interpretation of the statute that the
8 written demand must be made within five days of the initial trial
9 date, not the date to which the trial was continued, the Nevada
10 Supreme Court held that:

11 "We believe . . . that in the light of the
12 obvious public policy in favor of the orderly
13 processing of misdemeanor trials through
14 Justice's Courts, the Legislature intended
15 that jury trials be demanded at the earliest
16 possible time under the language of the sta-
17 tute." Carrell v. Justice's Court, supra,
18 at P.2.

19 The philosophy of Carrell is obviously applicable, also the
20 orderly processing of felony trials. In this case, the Motion
21 should have been made before the first trial under the logic and
22 implications of Carrell. It wasn't even made during the first
23 trial. The State would argue that in the light the statutes,
24 the District Court Rule and Carrell, the defendant's Motion is
25 not timely made and should be denied.

26 B. BECAUSE THE DEFENDANT FAILS TO SHOW HE WAS PREJUDICED
27 BY THE "LOSS" OF EVIDENCE, DISMISSAL OF COUNT IV IS NOT WARRANTED

28 The Nevada Supreme Court ruled in Howard v. State, 95 Nev.
29 580, 600 P.2d 214 (1979), that the defendant must show either
30 "(1) bad faith or connivance on the part of the government or,
31 (2) that he was prejudiced by the loss of the evidence." In
32 this case, there is no allegation by the defendant of bad faith
or connivance on the part of the State, nor is there any evidence
of such. In fact, there is no evidence that the State ever had
the evidence in its possession. Thus, unlike the majority of
cases involving so called exculpatory evidence, the evidence was

1 not in the hands of the State and then discarded or mishandled.
2 Evidence would show (and is corroborated by defendant's Exhibit
3 A) that the State, in the person of Detective King was not even
4 aware that a sexual assault took place until some 12 to 13 hours
5 after the event and that the identity of the victim's assailant
6 was never in question. At that late date and under the circum-
7 stances of the case, a "rape kit" was not collected.

8 Since there is no evidence of bad faith or connivance, the
9 defendant must show prejudice from the "loss" of the evidence.
10 The issue then is whether the evidence not preserved was material
11 and exculpatory. State v. Havas, 95 Nev. 706, 601 P.2d 1197
12 (1979). The burden of showing the materiality and exculpatory
13 nature of the evidence rests on the defense. Id. In Boggs v.
14 State, 95 Nev. 859, 603 P.2d 1078 (1979), the Nevada Supreme
15 Court discusses the nature of the defendant's burden:

16 "This burden [showing of prejudice] requires
17 some showing that it could reasonably anti-
18 cipate that the evidence sought would be ex-
19 culpatory and material to appellant's defense.
20 See State v. Williams, 500 P.2d 722 (Or. App.
21 1972). It is not sufficient that the showing
22 disclose merely a hoped-for conclusion from
23 examination of the destroyed evidence, nor
24 is it sufficient for the defendant to show
25 only that examination of the evidence would
26 be helpful in preparing his defense. See
27 United States v. Agurs, 427 U.S. 97 (1976);
28 State v. Koennecke, 565 P.2d 376 (Or. App.
29 1977)."

30 Accord, Rusling v. State, 96 Nev. 755, 758-9, (1980).

31 What is before the Court in this case is a "merely hoped-
32 for conclusion." In the light of the testimony of six State
witnesses positively identifying the defendant as the person who
kidnapped this victim, the evidence of the "rape kit" would
much more likely have been inculpatory. In fact the United
States Supreme Court, which also cites United States v. Agurs,
goes even further concerning the requirement of materiality in
California v. Trombetta, 104 Sup. Ct. 2528, 2534 (1984), wherein
it holds that "evidence must both possess an exculpatory value
that was apparent before the evidence was destroyed, and also be

1 of such a nature that the defendant would be unable to obtain
2 comparable evidence by other reasonably available means."

3 [Emphasis added]. The first condition is not met in this case
4 because Detective King was faced with a case where between eye-
5 witness statements and the defendant's own statements to him,
6 identity was never in question, thus a "rape kit" had no appar-
7 ent exculpatory value. It certainly may have had some inculpa-
8 tory value.

9 It should be noted that in State v. Havas, the defenses
10 theory was that the act was consensual rather than forced and
11 that the victims clothes were alleged to be material to the issue
12 of force vs. consent. Similarly the issue, if any, in this
13 case would be consent, (since the defendant is the victim's
14 ex-boyfriend), not identity. Clearly, evidence of semen type
15 is not material to the issue of consent. Also, it should be
16 noted from Justice Gunderson's concurrence in Havas, that the
17 evidence was very slim on the issue of force vs. consent and
18 finding of prejudice in that case was in the light of that evi-
19 dence.

20 The defendant on page 5 of his brief states that Crockett
21 v. State, "is directly on point." To the contrary, Crockett v.
22 State, 95 Nev. 859, 603 P.2d 1073 (1979) is not at all on point.
23 In that case, the lost evidence was "direct exculpatory evidence."
24 The blood grouping was done, a blood type other than the defen-
25 dant's was found; then the technician discarded the evidence.
26 In Crockett, just as the Supreme Court required in Trombetta,
27 the exculpatory value of the evidence was apparent before it was
28 destroyed. The case at bar is more comparable to Wood v. State,
29 97 Nev. 363 (1981), wherein the state's pathologist retained an
30 insufficient number and types of brain tissue samples. In fact,
31 the Court even referred to the "state's negligence in failing to
32 adhere to established pathological standards." Id. However, the

1 Court went on to state "contrary to Crockett and Boggs, the evi-
2 dence here was not 'direct exculpatory evidence' but merely evi-
3 dence which Wood's expert opined would have helped confirm one of
4 the alternative theories of death. Id. The Court then weighed
5 totality of the circumstances, including all the evidence and
6 concluded that the defendant's due process rights were not vio-
7 lated. In the case at bar, unlike Crockett, and like Wood, there
8 is no "direct exculpatory evidence". "Potentially" direct ex-
9 culpatory evidence is not the same as^{actual} direct exculpatory evidence

10 For other cases where the State's failure to preserve evi-
11 dence was not found to be prejudicial, see Rusling v. State,
12 supra, (hammer and screwdriver held by defendant as he exited
13 scene of burglary not retained by State) and Baccari v. State,
14 97 Nev. 109 (1981) (tape recording of defendant's initial inter-
15 view by police destroyed).

16 The defendant's whole theory in his Motion is that the
17 potential evidence potentially would have the defendant's blood
18 type was different from the semen type that might have been
19 found if semen had still been present and had been successfully
20 collected and typed. This is wholly speculative. More impor-
21 tantly, what the defendant is arguing is that his defense is
22 identity. Now in Crockett, cited favorably by the defendant
23 the issue is also identity. However, the posture of that case
24 is that all the evidence of identity is circumstantial, much of
25 it is controverted or conflicting it is characterized as weak
26 (see FN. 7), and there is a verdict of "questionable validity".
27 There is no direct evidence of identity in Crockett. The Court
28 stated that: "[t]his is not a case where an otherwise prejudicial
29 loss may be ignored, on the ground that the evidence of guilt is
30 overwhelming." Crockett v. State, supra, at p.865. However, in
31 the case at bar, on the issue of identity, the evidence of guilt
32 is overwhelming. And it is all direct evidence: five eyewitnesses to the kidnap by the defendant; the defendant's admission to

1 the police over the phone (that he still had the victim in his
2 custody and was reluctant to release her) and in person (the
3 weapon was a .22 not a shotgun); and the victim's identification
4 of her ex-boyfriend as the person who sexually assaulted her.
5 (See attached North Las Vegas Police Department police reports
6 attached as Exhibit 1). Even if, arguendo, there were prejudice
7 in the light of the totality of the circumstances and the over-
8 whelming evidence on that issue, there is no reason to dismiss
9 Count IV. As Justice Manoukian stated in his dissent in Crockett
10 (with whom then Chief Justice Mowbray concurred): ". . . we
11 have more often held that when there exists overwhelming evidence
12 of guilt, we will, within due process limitations, view the error
13 as harmless." Id. at p. 867.

14 III

15 CONCLUSION

16 The defendant's Motion to Dismiss Count IV of the Informa-
17 tion, Sexual Assault With Use of a Deadly Weapon should be denied.
18 The Motion is untimely made, and if the Court looks to the merits
19 of the defendant's claim, the evidence was not shown to be direct
20 exculpatory evidence as in Crockett; it had no apparent exculpa-
21 tory value, but simply a mere hoped-for conclusion. Further,
22 the defendant failed to show prejudice in the light of the over-
23 whelming evidence of his identity shown at trial.

24 DATED this 5th day of September, 1984.

25 Respectfully submitted,

26 ROBERT J. MILLER
27 DISTRICT ATTORNEY


28
29 BY:

Robert J. O'Neale
ROBERTA J. O'NEALE
Deputy District Attorney

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RECEIPT OF A COPY OF THE ABOVE AND FOREGOING STATE'S OPPO-
SITION TO DEFENDANT'S MOTION TO DISMISS COUNT IV, SEXUAL ASSAULT
WITH USE OF A DEADLY WEAPON is hereby acknowledged this 6th
day of September, 1984.

ATTORNEY FOR DEFENDANT

BY: 
LYNN R. SHOEN, Esq.
228 South Fourth Street
Las Vegas, Nevada 89101

rmf

9*

EXHIBIT "1"

LAS VEGAS POLICE DEPARTMENT

INCIDENT REPORT

1. NO. 64-177		2. L of 2		3. CLK SER NO.	
4. CLASSIFICATION KIDNAP (ACTS)		5. CLASS CODE - PRIMARY 02626		6. OCCURRED FROM DATE/TIME 10/06/84 0200 TO DATE/TIME 0	
7. LOCATION OF OCCURRENCE 537 KINGS, NLV		8. RPT OFC SER NO. 0287		9. INV OFC SER NO. 0	
10. WHEN REPORTED 01/06/84 10200		11. HOW OCCURRED FRI		12. PROSECUTION DESIRED YES X NO	
13. CLASS CODE - UCR		14. SUBMITTED TO CIA YES X NO		15. MO CLASSIFICATION	
16. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) JIMPRSON VIRGIE LEE		17. STATE V		18. ADDITIONAL INFORMATION OR CHARGES - DATA FOR COMPUTERIZED RETRIEVAL 3. BURGLARY 4. PASS. SH. SHOTGUN	
19. ADDRESS NLV		20. BUSINESS ADDRESS (CITY, STATE, ZIP)		21. BUSINESS NAME	
22. BUSINESS ADDRESS (CITY, STATE, ZIP)		23. BUSINESS NAME		24. BUSINESS PHONE	
25. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) COOPER SHIRLEY MAR		26. STATE V		27. ETHNIC B	
28. ADDRESS NLV		29. BUSINESS ADDRESS (CITY, STATE, ZIP)		30. BUSINESS NAME	
31. BUSINESS ADDRESS (CITY, STATE, ZIP)		32. BUSINESS NAME		33. BUSINESS PHONE	
34. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) CLAYTON SHARON		35. STATE W		36. ETHNIC B	
37. ADDRESS NLV		38. BUSINESS ADDRESS (CITY, STATE, ZIP)		39. BUSINESS NAME	
40. BUSINESS ADDRESS (CITY, STATE, ZIP)		41. BUSINESS NAME		42. BUSINESS PHONE	
43. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) LEWIS BOBBY		44. STATE W		45. ETHNIC B	
46. ADDRESS NLV		47. BUSINESS ADDRESS (CITY, STATE, ZIP)		48. BUSINESS NAME	
49. BUSINESS ADDRESS (CITY, STATE, ZIP)		50. BUSINESS NAME		51. BUSINESS PHONE	
52. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION 3/4 LENGTH COAT, BROWN PANTS, SHOWER CAP ON HEAD, NFO		53. AKA ADDITIONAL INFORMATION - DESCRIPTION 619 VAN BUREN #8, LV, BLUE			
54. TYPE F		55. SEX M		56. RACE B	
57. ETHNIC NM		58. DATE OF BIRTH 012849		59. AGE 34	
60. HEIGHT 602		61. WEIGHT 195		62. BUILD BUR	
63. EYES BRN		64. HAIR BLK		65. COMPLEXION M	
66. WARRANT YES X NO		67. AKA ADDITIONAL INFORMATION - DESCRIPTION			
68. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION		69. AKA ADDITIONAL INFORMATION - DESCRIPTION			
70. TAPE		71. SEX		72. RACE	
73. ETHNIC		74. DATE OF BIRTH		75. AGE	
76. HEIGHT		77. WEIGHT		78. HAIR	
79. EYES		80. BUILD		81. COMPLEXION	
82. WARRANT		83. STATE		84. LIC NUMBER	
85. YR		86. MAKE		87. MODEL	
88. YR MFG		89. STYLE		90. COLOR(S)	
91. IDENTIFYING CHARACTERISTICS OR COLOR(S) CONT'D		92. SINGLE ITEM LOSSES, STOLEN BICYCLES, GAS SKIP, DEFAUDING TAXI CAB DRIVER OR INNKEEPER, LOSS OF UNIDENTIFIABLE CURRENCY OR COINS MAY BE REPORTED ON THE INCIDENT REPORT IN LIEU OF PROPERTY REPORT. REPORT TWO OR MORE ITEMS ON THE PROPERTY REPORT.			
93. PROP CLASS CODE		94. PROPERTY DESCRIPTION, BRAND NAME, MODEL NO OR NAME, SERIAL NO			
95. PROP DESCRIPTION CONT'D		96. PROP RPT MADE YES X NO			
97. CURRENCY LOSS		98. CURRENCY REC		99. COIN LOSS	
100. COIN REC		101. ANSON - PROP LOSS		102. TOTAL LOSS (ERC ANSON)	
103. TOTAL REC		104. EXACT LOCATION OF PROPERTY ON THE PREMISES			
105. EVIDENCE TAGGED YES X NO		106. LOCKER NO		107. ON PERSON RELEASED, TO NAME ADDRESS ZIP PHONE NUMBER	
108. TRADEMARK OF SUSPECT(S), UNUSUAL ACTIONS, FEATURES OR STATEMENTS Jumped through window kidnapped victims fled (Broke glass)		109. TYPE OF PREMISES Residence		110. POINT OF ENTRY W. LIVING ROOM WINDOW	
111. POINT OF EXIT FRONT DOOR		112. WEAPON/INSTRUMENT USED 5/6 Shotgun			
113. OCCUPANTS PRESENT YES X NO		114. PREMISES LOCKED YES X NO		115. INVEST BUREAUS OR UNITS NOTIFIED	
116. NATURE OF VICTIM'S INJURY, IF ANY		117. WHERE HOSPITALIZED		118. ATTENDING PHYSICIAN	
119. DATE/TIME ATTENDED		120. HAS AN ARREST BEEN MADE YES X NO		121. CAN A SUSPECT BE LOCATED YES X NO	
122. CAN A SUSPECT BE DESCRIBED YES X NO		123. CAN A SUSPECT BE IDENTIFIED YES X NO		124. CAN A SUSPECT BE NAMED YES X NO	
125. CAN A SUSPECT VEH BE DESCRIBED YES X NO		126. WAS THERE A WITNESS TO THE CRIME YES X NO		127. IS THERE SIGNIFICANT PHYSICAL EVIDENCE YES X NO	
128. HAS AN EVIDENCE TECHNICIAN BEEN CALLED YES X NO		129. WAS THERE A MAJOR INJURY OR BARE VICTIM YES X NO		130. IS ANY STOLEN PROPERTY TRACEABLE YES X NO	
131. IS THERE A SIGNIFICANT MO PRESENT YES X NO		132. NARRATIVE			

I was dispatched AND ON ARRIVAL, Mrs. Cooper Related, "Tonight at approx 0200 AM BOBBY LEWIS came to my house jumped through the west living room window landing on tray. He had a sawed off shotgun and he was looking for my sister Virgie. He woke her up in one of the bedrooms and made her get dressed. He woke me up and at gun point he made me drive them to 619 VAN BUREN #8, LV. I then came home and called the NLV Police."

WITNESSES TO THE CRIME AT THE HOUSE ARE:

1. CLAYTON, SHARON - BE/050263
2. COOK, RICHARD - BE/051361
3. CLAYTON, TROY - BE/100563

AS WELL AS SEVERAL SMALL CHILDREN.

X **SHIRLEY MAR COOPER**

ADDITIONAL NAME REPORT

1. CASE NO. 84-177		2. 2 OF 2		3. CLK. SER. NO.	
4. CLASSIFICATION KIDNAP		5. RPT. REC. SER. NO. 0287		6. NAME OF VICTIM OR PR AS UN PAGE ONE	
VICTIM-WITNESS					
7. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) CLAYTON TROY		10. STAT N	11. SEX M	12. RACE B	13. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
15. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) J-1 NLU		18. RESIDENCE PHONE 642-7557		17. 8	
19. BUSINESS ADDRESS (CITY, STATE, ZIP) J-1 NLU		19. BUSINESS PHONE 0		20. OCCUPATION 0	
21. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) COOK BRENDIA		23. STAT N	24. SEX F	25. RACE B	26. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
28. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) J-1 NLU		29. RESIDENCE PHONE 642-7557		30. 13	
31. BUSINESS ADDRESS (CITY, STATE, ZIP) J-1 NLU		32. BUSINESS PHONE 0		33. OCCUPATION 0	
35. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) 0		36. STAT 0	37. SEX 0	38. RACE 0	39. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
41. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) 0		42. RESIDENCE PHONE 0		43. SOCIAL SECURITY NO. 0	
44. BUSINESS ADDRESS (CITY, STATE, ZIP) 0		45. BUSINESS PHONE 0		46. OCCUPATION 0	
48. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) 0		49. STAT 0	50. SEX 0	51. RACE 0	52. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
54. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) 0		55. RESIDENCE PHONE 0		56. SOCIAL SECURITY NO. 0	
57. BUSINESS ADDRESS (CITY, STATE, ZIP) 0		58. BUSINESS PHONE 0		59. OCCUPATION 0	
60. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) 0		62. STAT 0	63. SEX 0	64. RACE 0	65. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
67. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) 0		68. RESIDENCE PHONE 0		69. SOCIAL SECURITY NO. 0	
70. BUSINESS ADDRESS (CITY, STATE, ZIP) 0		71. BUSINESS PHONE 0		72. OCCUPATION 0	
74. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) 0		75. STAT 0	76. SEX 0	77. RACE 0	78. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
80. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) 0		81. RESIDENCE PHONE 0		82. SOCIAL SECURITY NO. 0	
83. BUSINESS ADDRESS (CITY, STATE, ZIP) 0		84. BUSINESS PHONE 0		85. OCCUPATION 0	
87. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) 0		88. STAT 0	89. SEX 0	90. RACE 0	91. ETHNIC H <input type="checkbox"/> NH <input type="checkbox"/>
92. ADDRESS (HOUSE NO., STREET NAME, CITY, STATE, ZIP) 0		93. RESIDENCE PHONE 0		94. SOCIAL SECURITY NO. 0	
95. BUSINESS ADDRESS (CITY, STATE, ZIP) 0		96. BUSINESS PHONE 0		97. OCCUPATION 0	
SUSPECT					
101. NAME 0			102. AAA ADDITIONAL INFORMATION		
103. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
104. TYPE	105. SEX	106. RACE	107. ETHNIC	108. DATE OF BIRTH	109. AGE
			H <input type="checkbox"/> NH <input type="checkbox"/>		
117. NAME			119. AAA ADDITIONAL INFORMATION		
120. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
121. TYPE	122. SEX	123. RACE	124. ETHNIC	125. DATE OF BIRTH	126. AGE
			H <input type="checkbox"/> NH <input type="checkbox"/>		
131. NAME			133. AAA ADDITIONAL INFORMATION		
137. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
138. TYPE	139. SEX	140. RACE	141. ETHNIC	142. DATE OF BIRTH	143. AGE
			H <input type="checkbox"/> NH <input type="checkbox"/>		
151. NAME			153. AAA ADDITIONAL INFORMATION		
154. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
155. TYPE	156. SEX	157. RACE	158. ETHNIC	159. DATE OF BIRTH	160. AGE
			H <input type="checkbox"/> NH <input type="checkbox"/>		
168. NARRATIVE			170. PERSON REPORTING		
<p>Virgie Timerson was last seen wearing a blue and white checked dress.</p> <p>We Sgt. Berkowitz and I went to 619 #8 Van Buren St, LUN, along with LUNARD Sgt. Hawkins, gained entry through a Larry Simon. Neither party was there.</p> <p>We also checked several local bars without success.</p> <p>LUNARD officers advised us of an on going dispute between victim and suspect as they are boyfriend and girlfriend.</p> <p>Subject claimed he would kill victim if contact was made with the police.</p>					
171. PERSON APPROVING REPORT		172. OFFICER REPORTING		173. OFFICER RECEIVING REPORT	

NORTH LAS VEGAS POLICE DEPARTMENT INVESTIGATIVE REPORT

CASE NO. 84-177		<input type="checkbox"/> ORIGINAL <input type="checkbox"/> INFORMATION <input checked="" type="checkbox"/> FOLLOW-UP		P. 1 OF 1		3 CLS SER NO	
4. CLASSIFICATION Kidnap - Sex. Asslt.		5. CLASS CODE - PRIMARY 02626		6. OCCURRED FROM DATE TIME 010684		TO DATE TIME	
7. LOCATION OF OCCURRENCE 537 Kings, NLV		8. RPT OFC SER NO 0287		9. INV OFC SER NO 3213		10. RPT D-57	
11. WHEN REPORTED 01 06 84 1800		12. DOA OCCURRED Fri.		13. PROSECUT ON DESIRED YES X		14. MO IF NOT ESTABLISHED	
15. CLASS CODE - UCA		16. SUBMITTED TO CIA YES		17. ADDITIONAL INFORMATION OR CHARGES - DATA FOR COMPUTERIZED RETRIEVAL			
18. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) JIMMERSON, Virgie Lee		19. STAT V		20. SEX F		21. RACE B	
22. ADDRESS (CITY, STATE, ZIP) NLV		23. RESIDENCE PHONE 6427557		24. SOCIAL SECURITY NO		25. ITN 2	
26. BUSINESS ADDRESS (CITY, STATE, ZIP)		27. BUSINESS NAME		28. BUSINESS PHONE		29. OCCUPATION	
30. IF VICTIM IS MISSING PERSON		31. AGE		32. HGT		33. WGT	
34. HAIR		35. EYES		36. BLD		37. COMP	
38. MENTAL CONDITION		39. PROBABLE CAUSE OF ABSENCE		40. CLOTHING DESCRIPTION			
41. THIS IS A MISSING PERSON REPORT. GIVE PROBABLE DESCRIPTION NAME AND ADDRESS OF PERSON. IF PERSON MAY HAVE ACCESS TO MONEY VALUABLES, GIVE CO. WHERE LAST SEEN. NARRATIVE OF REPORT. GIVE NAME, ADDRESS, PHONE NO. & TO DIFFERENTIATE FROM MISSING PERSON AND RUNAWAY JUVENILE							
42. NAME (LAST, FIRST, MIDDLE OR FIRM NAME) COOPER, Shirley Mae		43. STAT V		44. SEX F		45. RACE B	
46. ADDRESS (CITY, STATE, ZIP) NLV		47. RESIDENCE PHONE 6427557		48. SOCIAL SECURITY NO		49. ITN	
50. BUSINESS ADDRESS (CITY, STATE, ZIP)		51. BUSINESS NAME		52. BUSINESS PHONE		53. OCCUPATION	
54. NAME (LAST, FIRST, MIDDLE OR FIRM NAME)		55. STAT		56. SEX		57. RACE	
58. ADDRESS (CITY, STATE, ZIP)		59. RESIDENCE PHONE		60. SOCIAL SECURITY NO		61. DATE OF BIRTH	
62. BUSINESS ADDRESS (CITY, STATE, ZIP)		63. BUSINESS NAME		64. BUSINESS PHONE		65. OCCUPATION	
66. NAME - SUSPECT NO 1 LEWIS, Bobby		67. AKA ADDITIONAL INFORMATION MF-11199 CS-131182		68. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION 619 VanBuren #8, L.V.			
69. TYPE F		70. SEX M		71. RACE B		72. ETHNIC NH X	
73. DATE OF BIRTH 012849		74. AGE 34		75. HGT 602		76. WGT 195	
77. HAIR Blk		78. EYES Bro		79. BLD M		80. COMP D	
81. WARRANT YES		82. NAME - SUSPECT NO 2					
83. AKA ADDITIONAL INFORMATION		84. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
85. TYPE		86. SEX		87. RACE		88. ETHNIC	
89. DATE OF BIRTH		90. AGE		91. HGT		92. WGT	
93. HAIR		94. EYES		95. BLD		96. COMP	
97. WARRANT		98. NAME - SUSPECT NO 3					
99. AKA ADDITIONAL INFORMATION		100. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
101. TYPE		102. SEX		103. RACE		104. ETHNIC	
105. DATE OF BIRTH		106. AGE		107. HGT		108. WGT	
109. HAIR		110. EYES		111. BLD		112. COMP	
113. WARRANT		114. NAME - SUSPECT NO 4					
115. AKA ADDITIONAL INFORMATION		116. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
117. TYPE		118. SEX		119. RACE		120. ETHNIC	
121. DATE OF BIRTH		122. AGE		123. HGT		124. WGT	
125. HAIR		126. EYES		127. BLD		128. COMP	
129. WARRANT		130. NAME - SUSPECT NO 5					
131. AKA ADDITIONAL INFORMATION		132. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
133. TYPE		134. SEX		135. RACE		136. ETHNIC	
137. DATE OF BIRTH		138. AGE		139. HGT		140. WGT	
141. HAIR		142. EYES		143. BLD		144. COMP	
145. WARRANT		146. NAME - SUSPECT NO 6					
147. AKA ADDITIONAL INFORMATION		148. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
149. TYPE		150. SEX		151. RACE		152. ETHNIC	
153. DATE OF BIRTH		154. AGE		155. HGT		156. WGT	
157. HAIR		158. EYES		159. BLD		160. COMP	
161. WARRANT		162. NAME - SUSPECT NO 7					
163. AKA ADDITIONAL INFORMATION		164. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
165. TYPE		166. SEX		167. RACE		168. ETHNIC	
169. DATE OF BIRTH		170. AGE		171. HGT		172. WGT	
173. HAIR		174. EYES		175. BLD		176. COMP	
177. WARRANT		178. NAME - SUSPECT NO 8					
179. AKA ADDITIONAL INFORMATION		180. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
181. TYPE		182. SEX		183. RACE		184. ETHNIC	
185. DATE OF BIRTH		186. AGE		187. HGT		188. WGT	
189. HAIR		190. EYES		191. BLD		192. COMP	
193. WARRANT		194. NAME - SUSPECT NO 9					
195. AKA ADDITIONAL INFORMATION		196. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
197. TYPE		198. SEX		199. RACE		200. ETHNIC	
201. DATE OF BIRTH		202. AGE		203. HGT		204. WGT	
205. HAIR		206. EYES		207. BLD		208. COMP	
209. WARRANT		210. NAME - SUSPECT NO 10					
211. AKA ADDITIONAL INFORMATION		212. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
213. TYPE		214. SEX		215. RACE		216. ETHNIC	
217. DATE OF BIRTH		218. AGE		219. HGT		220. WGT	
221. HAIR		222. EYES		223. BLD		224. COMP	
225. WARRANT		226. NAME - SUSPECT NO 11					
227. AKA ADDITIONAL INFORMATION		228. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
229. TYPE		230. SEX		231. RACE		232. ETHNIC	
233. DATE OF BIRTH		234. AGE		235. HGT		236. WGT	
237. HAIR		238. EYES		239. BLD		240. COMP	
241. WARRANT		242. NAME - SUSPECT NO 12					
243. AKA ADDITIONAL INFORMATION		244. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
245. TYPE		246. SEX		247. RACE		248. ETHNIC	
249. DATE OF BIRTH		250. AGE		251. HGT		252. WGT	
253. HAIR		254. EYES		255. BLD		256. COMP	
257. WARRANT		258. NAME - SUSPECT NO 13					
259. AKA ADDITIONAL INFORMATION		260. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
261. TYPE		262. SEX		263. RACE		264. ETHNIC	
265. DATE OF BIRTH		266. AGE		267. HGT		268. WGT	
269. HAIR		270. EYES		271. BLD		272. COMP	
273. WARRANT		274. NAME - SUSPECT NO 14					
275. AKA ADDITIONAL INFORMATION		276. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
277. TYPE		278. SEX		279. RACE		280. ETHNIC	
281. DATE OF BIRTH		282. AGE		283. HGT		284. WGT	
285. HAIR		286. EYES		287. BLD		288. COMP	
289. WARRANT		290. NAME - SUSPECT NO 15					
291. AKA ADDITIONAL INFORMATION		292. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
293. TYPE		294. SEX		295. RACE		296. ETHNIC	
297. DATE OF BIRTH		298. AGE		299. HGT		300. WGT	
301. HAIR		302. EYES		303. BLD		304. COMP	
305. WARRANT		306. NAME - SUSPECT NO 16					
307. AKA ADDITIONAL INFORMATION		308. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
309. TYPE		310. SEX		311. RACE		312. ETHNIC	
313. DATE OF BIRTH		314. AGE		315. HGT		316. WGT	
317. HAIR		318. EYES		319. BLD		320. COMP	
321. WARRANT		322. NAME - SUSPECT NO 17					
323. AKA ADDITIONAL INFORMATION		324. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
325. TYPE		326. SEX		327. RACE		328. ETHNIC	
329. DATE OF BIRTH		330. AGE		331. HGT		332. WGT	
333. HAIR		334. EYES		335. BLD		336. COMP	
337. WARRANT		338. NAME - SUSPECT NO 18					
339. AKA ADDITIONAL INFORMATION		340. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
341. TYPE		342. SEX		343. RACE		344. ETHNIC	
345. DATE OF BIRTH		346. AGE		347. HGT		348. WGT	
349. HAIR		350. EYES		351. BLD		352. COMP	
353. WARRANT		354. NAME - SUSPECT NO 19					
355. AKA ADDITIONAL INFORMATION		356. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
357. TYPE		358. SEX		359. RACE		360. ETHNIC	
361. DATE OF BIRTH		362. AGE		363. HGT		364. WGT	
365. HAIR		366. EYES		367. BLD		368. COMP	
369. WARRANT		370. NAME - SUSPECT NO 20					
371. AKA ADDITIONAL INFORMATION		372. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
373. TYPE		374. SEX		375. RACE		376. ETHNIC	
377. DATE OF BIRTH		378. AGE		379. HGT		380. WGT	
381. HAIR		382. EYES		383. BLD		384. COMP	
385. WARRANT		386. NAME - SUSPECT NO 21					
387. AKA ADDITIONAL INFORMATION		388. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
389. TYPE		390. SEX		391. RACE		392. ETHNIC	
393. DATE OF BIRTH		394. AGE		395. HGT		396. WGT	
397. HAIR		398. EYES		399. BLD		400. COMP	
401. WARRANT		402. NAME - SUSPECT NO 22					
403. AKA ADDITIONAL INFORMATION		404. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
405. TYPE		406. SEX		407. RACE		408. ETHNIC	
409. DATE OF BIRTH		410. AGE		411. HGT		412. WGT	
413. HAIR		414. EYES		415. BLD		416. COMP	
417. WARRANT		418. NAME - SUSPECT NO 23					
419. AKA ADDITIONAL INFORMATION		420. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
421. TYPE		422. SEX		423. RACE		424. ETHNIC	
425. DATE OF BIRTH		426. AGE		427. HGT		428. WGT	
429. HAIR		430. EYES		431. BLD		432. COMP	
433. WARRANT		434. NAME - SUSPECT NO 24					
435. AKA ADDITIONAL INFORMATION		436. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
437. TYPE		438. SEX		439. RACE		440. ETHNIC	
441. DATE OF BIRTH		442. AGE		443. HGT		444. WGT	
445. HAIR		446. EYES		447. BLD		448. COMP	
449. WARRANT		450. NAME - SUSPECT NO 25					
451. AKA ADDITIONAL INFORMATION		452. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
453. TYPE		454. SEX		455. RACE		456. ETHNIC	
457. DATE OF BIRTH		458. AGE		459. HGT		460. WGT	
461. HAIR		462. EYES		463. BLD		464. COMP	
465. WARRANT		466. NAME - SUSPECT NO 26					
467. AKA ADDITIONAL INFORMATION		468. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
469. TYPE		470. SEX		471. RACE		472. ETHNIC	
473. DATE OF BIRTH		474. AGE		475. HGT		476. WGT	
477. HAIR		478. EYES		479. BLD		480. COMP	
481. WARRANT		482. NAME - SUSPECT NO 27					
483. AKA ADDITIONAL INFORMATION		484. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					
485. TYPE		486. SEX		487. RACE		488. ETHNIC	
489. DATE OF BIRTH		490. AGE		491. HGT		492. WGT	
493. HAIR		494. EYES		495. BLD		496. COMP	
497. WARRANT		498. NAME - SUSPECT NO 28					
499. AKA ADDITIONAL INFORMATION		500. ADDITIONAL SUSPECT INFORMATION - DESCRIPTION					

34. NARRATIVE

On Friday, 1-6-84, at about 1045 hours, O/R was contacted by Officer R. SMITH #197 who informed me of his contact with victim COOPER (see report by SMITH). O/R contacted Ms. COOPER by phone & advised her to have suspect telephone O/R the next time he called her. Subsequently, O/R was contacted by suspect LEWIS by phone. O/R attempted to have LEWIS release JIMMERSON & allow her to go home. He claimed that he had no intention on hurting her but didn't know if he was going to allow her to leave and questioned whether or not he would be arrested. LEWIS wanted O/R to allow Ms. COOPER to come and pick up both he and JIMMERSON. O/R told him that we could not allow COOPER to do that. O/R suggested he place JIMMERSON in a cab and send her home. The conversation was terminated, however he did call back and further conversation ensued on the return of victim JIMMERSON to her home.

At about 1330 hours, O/R and Det. VANLANDSCHOOT went to 537 Kings, NLV in the event LEWIS would either again call COOPER or return JIMMERSON. At about 1335 hours, victim JIMMERSON came in the front door and related that LEWIS had dropped her off and described the vehicle, etc. (See VANLANDSCHOOT's report). Contact was made with LEWIS and the driver of the vehicle (MYERS) at Doolittle & "H" Street, L.V. where LEWIS was arrested by O/R.

P1 K... 221

AA2113

NORTH LAS VEGAS POLICE DEPARTMENT INVESTIGATIVE REPORT

CASE NO. 84-177		<input type="checkbox"/> ORIGINAL <input type="checkbox"/> INFORMATION <input checked="" type="checkbox"/> FOLLOW-UP		PAGE 1 OF 2		3 C.F. SER NO	
CLASSIFICATION Robbery		CLASS CODE - PRIMARY 0A626		OCCURRED FROM DATE TIME 010684 0300 TO DATE TIME 0300		OCCURRED AT 537 Kings	
LOCATION OF OCCURRENCE 537 Kings		8 RPT OFC SER NO 0287		9 INV OFC SER NO 2503		10 NAT DIST A3	
1 WHEN REPORTED Y01		TIME 06 184 11530		13 DATE OCCURRED Fri		14 PROSECUTION DESIRED YES X	
5 CLASS CODE - UCR		17 SUBMITTED TO C.A. YES		18 ADDITIONAL INFORMATION OR CHARGES - DATA FOR COMPUTERIZED RETRIEVAL			
20 NAME (LAST, FIRST MIDDLE OR FIRM NAME) Timerson, Virgie Lee		21 SEX F		22 RACE B		23 ETHNIC N	
24 BIRTH 142		25 RESIDENCE PHONE 642 7557		26 SOCIAL SECURITY NO			
27 BUSINESS ADDRESS CITY STATE ZIP N. Las Vegas		28 BUSINESS NAME		29 BUSINESS PHONE		30 OCCUPATION	
31 IF VICTIM IS MISSING PERSON		32 AGE		33 HGT		34 WGT	
35 HAIR		36 EYES		37 BLD		38 COMP	
39 MENTAL CONDITION		40 PROBABLE CAUSE OF ABSENCE		41 CLOTHING DESCRIPTION			
42 IF THIS IS A MISSING PERSON REPORT GIVE PROBABLE DESTINATION NAME AND ADDRESS OF FRIENDLY PERSON WHO MAY HAVE ACCESS TO MONEY VALUABLES CARRIED WHERE LAST SEEN IN NARRATIVE OF REPORT CLASSIFY AS NO. 4 TO DIFFERENTIATE BETWEEN MISSING PERSON AND RUNAWAY JUVENILE							
43 NAME (LAST, FIRST MIDDLE OR FIRM NAME) Cooper, Shirley Mae		44 SEX F		45 RACE B		46 ETHNIC N	
47 BIRTH 45		48 RESIDENCE PHONE 642 7557		49 SOCIAL SECURITY NO			
50 BUSINESS ADDRESS CITY STATE ZIP N. Las Vegas		51 BUSINESS NAME		52 BUSINESS PHONE		53 OCCUPATION	
54 NAME (LAST, FIRST MIDDLE OR FIRM NAME) Myers, Willie		55 SEX M		56 RACE B		57 ETHNIC N	
58 BIRTH 31		59 RESIDENCE PHONE 64		60 SOCIAL SECURITY NO			
61 BUSINESS ADDRESS CITY STATE ZIP		62 BUSINESS NAME		63 BUSINESS PHONE		64 OCCUPATION	
71 NAME - SUSPECT NO 1 Lewis, Bobby		72 AKA ADDITIONAL INFORMATION					
73 ADDITIONAL SUSPECT INFORMATION - DESCRIPTION							
74 TYPE F		75 SEX M		76 RACE B		77 ETHNIC N	
78 DATE OF BIRTH 012849		79 AGE 34		80 HGT 602		81 WGT 195	
82 HAIR Blk		83 EYES Bwn		84 BLD M		85 COMP D	
86 WARRANT YES		87 AKA ADDITIONAL INFORMATION					
88 ADDITIONAL SUSPECT INFORMATION - DESCRIPTION							
89 TYPE F		90 SEX M		91 RACE B		92 ETHNIC N	
93 DATE OF BIRTH		94 AGE		95 HGT		96 WGT	
97 HAIR		98 EYES		99 BLD		100 COMP	
101 WARRANT YES		102 AKA ADDITIONAL INFORMATION					
103 ADDITIONAL SUSPECT INFORMATION - DESCRIPTION							
104 STATE		105 LIC NUMBER		106 MAKE		107 MODEL	
108 YR MFG		109 STYLE		110 COLOR(S)			
111 COLOR(S) CONTINUED AND ADDITIONAL DESCRIPTION							
112 NARRATIVE							

On Friday 1-6-84 at approximately 1315 hrs P/R and Det. King made contact with a Shirley Cooper at 537 Kings in reference to interviewing her in reference to her sister being held against her will by a Bobby Lewis. While at 537 Kings victim Virgie Timerson walked in the front door and stated that Bobby Lewis had dropped her off. Virgie related Bobby was with an unknown black male who was driving an old white/blue car. These Detectives then drove to Bevere and Carey and observed an older model car driving south on Bevere. Upon closing on the vehicle it was observed to be a white over light blue Chrysler. The vehicle had Nevada license plate 627 ALM. A traffic stop was made on the vehicle on H St. at Boalittle. The driver and the passenger exited their vehicle and walked to the rear of their vehicle. The passenger was identified as Bobby Lewis 34 years Black Male Adult. The driver was identified as Willie Myers 52 yrs Black Male. The vehicle was registered to Mr. Myers and was a 1954 Chrysler.

NORTH LAS VEGAS POLICE DEPARTMENT

CONTINUATION REPORT

1 CASE NO. 84-177.

2 of 2

2 CLASSIFICATION

4 RPT DFC DEN NO

5 NAME OF VICTIM OR PERS. IN REPORTING

Kidnap

850

Timerson, Virgie

Bobby Lewis was listed as the suspect in a kidnap of Virgie Timerson and Shirley Cooper from 537 Kings on 1-6-84 at 0300 hrs. Lewis was reported to have broken into the 537 Kings address and with the use of a sawed off shotgun was able to kidnap the two victims. As a result of interviewing Willie Myers it was determined that he was not involved in the incident and was only giving Bobby Lewis a ride back to 537 Kings so he could return Virgie Timerson to her home. No weapons were located on either subject or in Myers' vehicle. Mr. Myers was advised he was free to leave the area. Det. King placed Bobby Lewis under arrest for 2 counts of kidnap, 1 count of burglary, possession of a sawed off shotgun and 3 counts of using a deadly weapon in the commission of a crime. The arrestee was transported to the N. Las Vegas Jail and while enroute to the jail Det. King advised Mr. Lewis of his rights per Miranda. Upon arriving at the jail O/R proceeded to book Lewis into jail. Prior to completing the booking Det. King informed O/R by telephone that he was interviewing Virgie Timerson and that she had informed him that Lewis had sexually assaulted her after kidnapping her. One count of sexual assault and one additional count of using a deadly weapon in the commission of a crime was placed on Lewis. Lewis was booked into jail on the following charges, Two counts of kidnap, one count sexual assault, one count burglary, possession of a sawed off shotgun and four counts of using a deadly weapon in the commission of a crime.

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

1 CASE NO. C65500

2 DEPT. NO. VIII

SEP 6 9 00 AM '84

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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8 + + + + +

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 BOBBY LEWIS,)

13 Defendant.)

RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO REDUCE
BAIL OR RELEASE ON OWN
RECOGNIZANCE

14
15 COMES NOW, The State of Nevada, by ROBERT J. MILLER,
16 District Attorney, through ROBERTA J. O'NEALE, Deputy District
17 Attorney, and files this response to defendant's motion for
18 reduction of bail or in the alternative, release on own recogni-
19 zance.

20 This response is made and based upon all of the files,
21 papers and pleadings on file herein, points and authorities in
22 support hereof, as well as oral arguments.

23 DATED this 6th day of September, 1984.

24 Respectfully submitted,

25 ROBERT J. MILLER
26 DISTRICT ATTORNEY

27 BY Robert J. O'Neale
28 ROBERTA J. O'NEALE
29 Deputy District Attorney
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31
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1 Exhibit "A" attached to defendant's motion to dismiss.

2 The defendant has a prior felony conviction for burglary in
3 1969; his probation on that offense was revoked in 1970, whereupon
4 the defendant was sent to Nevada State Prison for 2 years. The
5 defendant has a number of felony and misdemeanor arrests (about
6 20), with convictions of DUI (1976) and two other minor traffic
7 offenses (1976 and 1979).

8 The defendant has prior Bench Warrants (three, on citations)
9 and two prior FTA's (on a Driving Without a License in 1979, and
10 on an Attempt Murder With Use of a Deadly Weapon in 1982),
11 according to his SCOPE printout. Further, Counts II (Kidnap 1°
12 With Use of Deadly Weapon) and IV, (Sexual Assault With Use of
13 Deadly Weapon) are non-probationable offenses under NRS 193.165(4).

14 ARGUMENT

15 Pursuant to 178.498, bail should be set in an amount which
16 will insure the presence of the defendant, having regard to:

- 17 1) the character of the defendant;
18 2) the financial ability of the defendant to give
19 bail; and
20 3) the nature and circumstances of the crime charged

21 Under NRS 178.4853, when the court is considering release
22 without bail, the court must consider numerous factors, including
23 (in part) his prior criminal record, including any record of his
24 appearing or failing to appear after release with or without bail
25 and the nature of the offense with which he is charged, the
26 apparent probability of conviction and the likely sentence,
27 insofar as these factors relate to the risk of his not appearing.

28 As to the character of the defendant and prior criminal
29 record, his character is that he is a violent dangerous man who
30 uses weapons against his victims. Some of his prior felony
31 arrests not already mentioned include rape, kidnap, infamous
32 crime against nature, with use of a deadly weapon; rape and

1 kidnap again, and battery with a deadly weapon. Particularly as
2 to this victim (VIRGIE JIMMERSON) he shows a repeated pattern of
3 violence. The victims here would particularly be endangered if
4 the defendant were released, especially in the light of the
5 defendant's attempt to dissuade the victim from testifying even
6 while he was in jail, and his prior violence.

7 The nature of the charges is set out earlier. They are
8 crimes against the person, with the use of a firearm. The
9 probability of conviction is high in the light of the jury's
10 11-1 stance and the defendant knows it. The fact that the
11 defendant is also facing non-probationable, lengthy sentences
12 would also be an inducement to flee this jurisdiction.

13 Further the current bail settings are in the appropriate
14 range for standard bail settings as set out by Justice Court.

15 In the light of all the above reasons, the State adamantly
16 opposes the defendant's request for lowered bail or an own
17 recognizance release. Also, the defendant himself previously,
18 on July 23, 1984, made a motion to reduce his bail which was
19 promptly denied on that date.

20 Respectfully submitted,

21 ROBERT J. MILLER
22 DISTRICT ATTORNEY

23 BY 
24 ROBERTA J. O'NEALE
25 Deputy District Attorney

26 RECEIPT OF A COPY of the above and foregoing RESPONSE IN
27 OPPOSITION TO DEFENDANT'S MOTION TO REDUCE BAIL OR RELEASE ON
28 OWN RECOGNIZANCE is hereby acknowledged this 6th day of
29 September, 1984.

30 LYNN R. SHOEN, ESQ.
31 ATTORNEY FOR DEFENDANT

32 BY 
224 South Fourth Street
First Floor
Las Vegas, Nevada 89101

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

FILED

SEP 19 8 29 AM '84

CASE NO. C65500

DEPT. NO. VIII

BY *Jinda Gray*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

+ + + + +

THE STATE OF NEVADA,
Plaintiff,

vs.

BOBBY LEWIS,
Defendant.

OPPOSITION TO DEFENDANT'S
MOTION TO CONTINUE
TRIAL DATE

COMES NOW The State of Nevada by ROBERT J. MILLER,
District Attorney, through ROBERTA J. O'NEALE, Deputy District
Attorney, and files this response to defendant's motion to
continue trial date.

This response is made and based upon all of the files,
papers and pleadings on file herein, Points and Authorities in
support hereof, as well as oral arguments.

DATED this 6th day of September, 1984.

Respectfully submitted

ROBERT J. MILLER
DISTRICT ATTORNEY

BY *Robert J. O'Neale*
ROBERTA J. O'NEALE
Deputy District Attorney

8

POINTS AND AUTHORITIES

The State opposes the defendant's motion to continue his trial date of September 17, 1984, in Department VIII. This trial was set first on May 21, 1984. It was set a second time on August 13, 1984, tried, and resulted in a mistrial due to a hung jury. The current date is a third trial setting and its continuance would result in a fourth trial setting. This type of continual delay is hard on witnesses. The case gets staler and staler. The acts which were the basis of these charges occurred on January 6, 1984. Further, the defendant and his counsel had no objection to this date when it was originally set, and there have been no changed circumstances since that date. In fact the defendant invoked the 60 day rule on that date, August 22, 1984.

As for time to file pre-trial motions requested by the defendant, two (a motion to dismiss and a motion to reduce bail) have already been filed, and are to be heard September 10, 1984. It is unclear just how many more or what sort of motions the defendant wishes to file.

In conclusion, the defendant does not appear to have a sufficient basis for a continuance, and the State respectfully request that the defendant's motion be denied.

DATED this 6th day of September, 1984.

Respectfully submitted,

ROBERT J. MILLER
DISTRICT ATTORNEY

BY Robert J. O'Neale
ROBERTA J. O'NEALE
Deputy District Attorney

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RECEIPT OF A COPY of the above and foregoing OPPOSITION TO
DEFENDANT'S MOTION TO CONTINUE TRIAL DATE is hereby
acknowledged this 10th day of September, 1984.

LYNN R. SHOEN, ESQ.
ATTORNEY FOR DEFENDANT

BY Lynn R. Shoen /s/ em
228 South Fourth Street
First Floor
Las Vegas, Nevada 89101

em

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

FILED
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CLERK

1 CASE NO. C65500

2 DEPT. NO. VIII ✓
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6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8 * * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

O R D E R

12 BOBBY LEWIS,)

13 Defendant.)
14

15 THIS MATTER having come on regularly for hearing on the
16 10th day of September, 1984, the State of Nevada represented by
17 ROBERT J. MILLER, District Attorney, by and through ROBERTA J.
18 O'NEALE, Deputy, the Defendant present in Court and represented
19 by LYNN SHOEN, ESQ., the Court having heard arguments of counsel,
20 and good cause appearing therefor,

21 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss
22 Count IV of the Criminal Complaint, be, and the same is hereby
23 denied.

24 IT IS FURTHER ORDERED that Defendant's Motion to Reduce
25 Bail or Own Recognizance Release be, and the same is hereby
26 denied.

27 IT IS FURTHER ORDERED that Defendant's Motion to Continue
28 Trial Date be, and the same is, hereby granted., the new trial
29 date being November 5, 1984, at 10:00 A.M. with Calendar Call
30 on November 2, 1984, at 9:00 A.M.

31 DATED this 11th day of September, 1984.

32 Robert J. O'Neale
ROBERTA J. O'NEALE, Deputy

Michael J. Jendryak
DISTRICT JUDGE

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
328 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

CASE NO. C 65500
DEPARTMENT NO. VIII

FILED

OCT 5 1 15 PM '84

LORETTA BOWMAN
CLERK

BY *[Signature]*

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

BOBBY LEWIS,

Defendant.

MOTION FOR DISCOVERY

COMES NOW the defendant, BOBBY LEWIS, by and through his attorney, LYNN R. SHOEN, ESQ., who moves this court to order the District Attorney's Office of Clark County, Nevada, to provide the defense with the information requested below, or in the alternative, with the opportunity to inspect and copy that information.

Said defendant also moves the court to cause said District Attorney to use reasonable diligence in order to ascertain the information requested below.

Said defendant moves the court to issue a continuing discovery order pursuant to N.R.S. 174.295.

Defendant requests discovery for the following matter:

1. All oral and written statements allegedly made by the defendant, whether signed or unsigned. The names of all persons present during any portion of the statements.

2. All tape recordings made of statements of the defendant. The names of all persons present during any portion of the statements.

1 3. The undergarments, including underpants and panty-
2 hose worn by Virgie Lee Jimmerson on January 6, 1984.

3 4. All notes, memos, and transcriptions of state-
4 ments attributed to the defendant. The names of all persons who
5 made such items.

6 5. All results and reports of physical and mental
7 examinations made of any witness in the above-entitled case. The
8 names of all persons connected with each such examination.

9 6. All results and reports of physical and mental
10 examination made of the alleged victim in the above-entitled
11 case. The names of all persons connected with each of such
12 examinations.

13 7. All results and reports of physical and mental
14 examination made of the defendant in the above-entitled case.
15 The names of all persons connected with each of such examinations.

16 8. All results and reports of scientific tests or
17 experiments made in connection with the above-entitled case.
18 This includes, but is not limited to, the following:

19 (a) All latent and partial fingerprints.

20 (b) All blood alcohol examinations of
21 the alleged victim.

22 (c) All blood alcohol examinations
23 of the defendant in the above-entitled
24 action.

25 (d) All blood alcohol examinations
26 of all witnesses in the above-entitled
27 action.

28 (e) All drug or narcotics examinations
29 of the alleged victim.

30 (f) All drug or narcotics examinations
31 of the defendant in the above-entitled action.

32

1 (g) All drug or narcotics examinations
2 of all witnesses in the above-entitled action.

3 (h) All ballistics examinations of any
4 weapons that were performed in connection with
5 the above-entitled action.

6 (i) All blood identification tests that
7 were performed in connection with the above-
8 entitled case.

9 (j) All skin, hair, and fingernail
10 analysis performed in connection with the
11 above-entitled case.

12 (k) All tests performed to determine
13 the nature of a substance connected with the
14 above-entitled case.

15 (l) All tests performed to determine
16 the quality of a substance connected with
17 the above-entitled case.

18 (m) All tests performed to determine
19 the quality of each substance connected
20 with the above-entitled case.

21 (n) All fingerprint tests performed in
22 connection with the above-entitled case.

23 (o) The names of all persons connected
24 with each of the above-tests and examinations.

25 9. All photographs and negatives taken in connection
26 with the above-entitled case; this includes, but is not limited
27 to, the following:

28 (a) All photographs of suspects shown to
29 potential witnesses.

30 (b) All photos of all line-ups viewed by
31 potential witnesses.

32

1 (c) All photos of latent and partial
2 fingerprints.

3 (d) All photos of all scenes involved
4 in the above-entitled action.

5 (e) All photos of footprints connected
6 with the above-entitled action.

7 (f) All photos of tangible objects
8 taken in connection with the above-entitled
9 action.

10 (g) All photos of the defendant in the
11 above-entitled action.

12 (h) All photos of all victims involved
13 in the above-entitled action.

14 10. The names and addresses of all persons who in any
15 way participated in the investigation against the above defendant.

16 11. The names and addresses of each and every, all and
17 singular of the persons that the State proposes to call as wit-
18 nesses during the course of the preliminary hearing.

19 POINTS AND AUTHORITIES IN SUPPORT
20 OF DISCOVERY MOTION

21 Discovery allows the defendant to be provided with
22 written or recorded statements and confessions made by the
23 defendant, or copies thereof, within the possession, custody or
24 control of the state, the existence of which is known, or by the
25 exercise of due diligence may become known to the District
26 Attorney (N.R.S. 174.235(1)). Discovery allows the defendant to
27 be provided with results, and reports of physical and mental
28 examinations, and of scientific tests or experiments made in
29 connection with the particular case, or copies thereof, within
30 the possession, custody or control of the state, the existence of
31 which is known, or by the exercise of due diligence may become
32

1 known to the District Attorney (N.R.S. 174.235(2)). Discovery
2 allows the defendant to be provided with photograph books,
3 papers, documents, tangible objects, buildings or places, or
4 copies or portions thereof, which are within the possession,
5 custody or control of the state, upon a showing of materiality
6 to the preparation of his defense and that his request is
7 reasonable (N.R.S. 174.245).

8 The good faith or bad faith failure of the District
9 Attorney to produce extant evidence favorable to the accused
10 upon request of the accused results in a deprivation of the
11 right to a fair hearing as guaranteed by due process of law
12 under the Fourteenth Amendment to the United States Constitution
13 if the material evidence is favorable to the accused on the
14 issue of guilt or punishment Brady v. Maryland, (1963) 373 U.S.
15 83, L.Ed. 2d 215; Moore v. Illinois, (1972) 408 U.S. 786, 33
16 L.Ed. 2d 706. This pronouncement of the scope of discovery has
17 been reiterated by the United States Supreme Court with
18 reference to evidence that goes to the innocence or guilt of the
19 defendant in situations wherein the credibility of a witness is
20 in issue (Giglio v. U.S. (1972) 150, 31 L.Ed. 104). Credibility
21 is in issue when a suggestion of leniency has been made to the
22 witness (Giglio v. U.S., supra). An inducement to the wife of
23 a witness is within the scope of this fundamental holding
24 (People v. Ruthford, (1975) 14 Cal. 3d 399, 534 P.2d 1341). A
25 witness' material extrajudicial impeachment-type statements on
26 the issue of identification are within the aforementioned rule
27 (Moore v. Illinois, (1972) 408 U.S. 786, 83 L.Ed. 2d 706).
28 Evidence pointing towards a witness' motive to fabricate comes
29 within the principle that the state has the obligation of
30 providing material evidence favorable to the defendant in order
31 to insure a fair hearing (Napue v. Illinois, (1959) 360 U.S.
32 264, 3 L.Ed. 2d 1217). The Napue decision did not hinge upon the

1 the prosecution's desire to prejudice the defendant. The United
2 States Court has held that material evidence concerning the
3 credibility of a witness in a rape case was subject to dis-
4 closure when the credibility of the victim was in issue because
5 of consent and notice to fabricate (Giles v. Maryland, (1967)
6 386 U.S. 66, 17 L.Ed. 2d 737).

7 It is the state that tries a man, and it is the state
8 that must insure that the trial is fair. A citizen has the right
9 to expect a fair dealing from his government (Vitarelli v.
10 Seaton, () 359 U.S. 535, 3 L.Ed. 2d 1012). The right to a
11 fair dealing entails treating the government as a unit rather than
12 as an amalgam of separate entities (S. & E. Contractors, Inc.
13 v. U.S., (1972) 406 U.S. 1 at 10, 31 L.Ed. 2d 658). The
14 prosecutor's office is a government entity wherein the
15 prosecution has the duty to communicate all relevant information
16 of each case to each of its attorneys; a promise or act of one
17 attorney is attributed to the State (Giglio v. U.S., supra). The
18 United States Supreme Court has noted that prosecutors can be
19 responsible for actions of the police officers enlisted to aid a
20 prosecution (Kastigar v. U.S., (1972) 406 U.S. 441, 32 L.Ed. 2d
21 212).

22 The defendant's right to confrontation under the Sixth
23 Amendment to the United States Constitution includes the right to
24 cross-examination. This Sixth Amendment protection extends to
25 the states, pursuant to the Fourteenth Amendment to the United
26 States Constitution (Pointer v. Texas, (1965) 380 U.S. 400). A
27 deprivation of the right to cross-examination constitutes a denial
28 of due process of law (Pointer v. Texas, supra at 405). The
29 value of cross-examination is to expose falsehood and to bring
30 out the truth (Pointer v. Texas, supra, at 404). The court is
31 zealous to protect the right of confrontation from erosion
32 (Pointer v. Texas, supra at 405-406). The major reason for

1 confrontation is to allow the defendant the right of cross-
2 examination (Pointer v. Texas, supra, 405-406).

3 A full cross-examination of the witness upon the
4 subjects of his examination in chief is the absolute right of the
5 party against whom he is called (Quiles v. U.S., (1965) 344
6 Fed.2d 490, 494; Ninth Circuit). The rights to cross-examina-
7 tion and confrontation are essential to due process (Chambers
8 v. Mississippi, (1973) 93 U.S. 1038). The Nevada Supreme Court
9 has repeatedly recognized that one accusation of a crime has the
10 right to cross-examination pursuant to the United States
11 Constitution (State v. Merrit, (1949) 66 Nev. 380, 212 P.2d
12 706; Serrano v. State (1967) _____ Nev. _____ 429 P.2d 831).

13 The denial of the rights to confrontation and cross-
14 examination results in constitutional error of the first
15 magnitude and no amount of lack of prejudice will cure it
16 (Brookhart v. Janis, (1966) 384 U.S. 1, 3-4).

17 The United States Supreme Court has held that proper
18 cross-examination includes testing the perception and memory of
19 the witness; it encompasses impeaching the witness by showing
20 bias, prejudice, motive, and under appropriate circumstances, the
21 criminal record of the defendant. It went on to conclude that
22 cross-examination is the principal means by which the believa-
23 bility and truth of a witness' testimony are tested; that the
24 witness' motivation in testifying is important and it may be
25 discerned by the instrument of cross-examination (Davis v. Alaska
26 (1974) 415 U.S. 308, 316-317; Greene v. McElroy, (1950) 360 U.S.
27 474, 496). The Nevada Supreme Court is consistent and holds that
28 a wide latitude of cross-examination is allowed in order to test
29 the motives, interests, animus, accuracy, veracity and credi-
30 bility of a witness (Lloyd v. State, (1969) 85 Nev. 576, 460
31 P.2d 111).

1 Certainly, the right to a fair trial, as established in
2 the aforementioned cases, includes the fundamental right to cross-
3 examination by the impeachment of the witness' testimony. Im-
4 peachment may take the form of motive to fabricate, prior in-
5 consistent statements, or bias. In order to properly prepare
6 for trial, the defense should be entitled to this material even
7 if it was given to state officers. The purpose is to counter-
8 act the quality of evidence presented by the state from a
9 witness who may deny the truth unless he is presented with
10 tangible or intangible items that come within the scope of cross-
11 examination. The arrests and dispositions of a witness allow
12 development in the motive to fabricate depending on the leniency
13 of the disposition. Felony convictions come within the character
14 evidence allowed to impeach a witness (N.R.S. 50.095). The
15 defense should be provided with all convictions so he can make
16 a determination, independent of the prosecution, as to whether
17 N.R.S. 50.095 applies. The matters pending or which could be
18 filed are within the scope of examination pertaining to motive
19 to fabricate if the witness is hedging in hopes of a suggestion
20 of leniency or immunity. The names and addresses of witnesses
21 enables the defendant to prepare his case and to present favor-
22 able evidence. The legislature has not evidenced an intent to
23 deprive the defendant of this obligation because it requires such
24 a list to be endorsed to information and indictments (N.R.S. 173.
25 045; N.R.S. 172.265).

26 The Nevada Supreme Court has appreciated the constitu-
27 tional necessity of causing the defense to be provided with a
28 copy of a police officer's written report so the defendant can
29 effectively utilize the right to impeachment by cross-examina-
30 tion (Walker v. Fogliani, (1967) 83 N. 154, 425 P.2d 794).

31 The portion of N.R.S. 174.245 that, ostensibly, pre-
32 cludes the authorization of discovery of reports, memoranda, or

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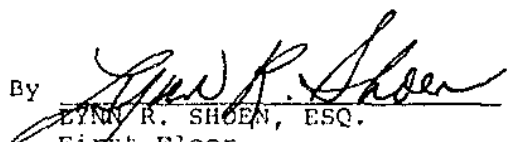
1 other internal state documents made by state agents in connection
2 with the investigation of the case and statements made by
3 prospective state witnesses to agents of the state is unconsti-
4 tutional because it deprives the defendant of his right to a
5 fair hearing in violation of the Fourteenth Amendment to the
6 United States Constitution, because he cannot effectively in-
7 vestigate his case, he cannot effectively prepare his case, he
8 cannot effectively present evidence on his own behalf, he cannot
9 effectively confront and cross-examine the evidence presented
10 against him. The United States Supreme Court has held that a
11 confession of a co-defendant is material evidence subject to
12 disclosure (Brady v. Maryland, supra). The Nevada legislature
13 has seen fit to allow the defendant to show the propensity of
14 the alleged victim of a crime of violence to be shown by
15 character evidence once the defense properly raises the issue of
16 self-defense case to establish the victim's state of mind at the
17 time he was using force (NRS 48.045(2)).

18 The District Attorney shall promptly notify the
19 defense, or the Court, of the existence of additional material
20 which is the subject of the discovery order (NRS 174.295). The
21 failure of the District Attorney to comply with his continuing
22 duty to provide discovery pursuant to a discovery order allows
23 the Court the discretion to prohibit the District Attorney from
24 introducing into evidence all that material that has not been
25 disclosed (NRS 174.295).

26 Therefore, it is respectfully requested that the
27 defendant's motion for discovery be granted.

28 LYNN R. SHOEN, CHARTERED

29
30 By


LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and
TO: ROBERT J. MILLER, District Attorney:

PLEASE TAKE NOTICE that the undersigned will bring the
above and foregoing motion on for hearing before the above en-
titled court on Monday, the 15 day of
October, 1984, at the hour of 9:00 o'clock a.m.,
or as soon thereafter as counsel can be heard.

LYNN R. SHOEN, CHARTERED

By

Lynn R. Shoen
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

RECEIPT OF COPY of the above and foregoing MOTION FOR
DISCOVERY is hereby acknowledged this 15 day of October, 1984.

Robert J. Miller
ROBERT J. MILLER, ESQ.
DISTRICT ATTORNEY

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

CASE NO. C65500
DEPT. NO. VIII

FILED

OCT 17 1 29 PM '84

LORETTA BOWMAN
CLERK

BY Morgan Lee Clarke

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,

vs.

BOBBY LEWIS,
Defendant.

RESPONSE TO DEFENDANT'S
MOTION FOR DISCOVERY

COMES NOW, THE STATE OF NEVADA, represented by ROBERT J. MILLER, District Attorney, by and through ROBERTA J. O'NEALE, Deputy District Attorney, and files this Response to Defendant's Motion for Discovery.

This Response is made and based upon all the files, papers, and pleadings on file herein, Points and Authorities in support hereof, as well as oral arguments.

DATED this 17th day of October, 1984.

ROBERT J. MILLER
DISTRICT ATTORNEY

BY: Robert J. O'Neale
ROBERTA J. O'NEALE
DEPUTY DISTRICT ATTORNEY



1 discovery and are not lightly to be dis-
2 regarded."

3 From the aforementioned discussion of the law, it is clear
4 that Nevada's discovery statutes are to be strictly construed.
5 Further, more discovery under NRS 174.245 is to be given only
6 "upon a showing of materiality to the preparation of his
7 defense and that the request is reasonable." [emphasis added].
8 Thus, the defendant's Motion, insofar as it exceeds the
9 requirements of NRS 174.235, et. seq., and the mandates of
10 Brady v. Maryland, supra, should be denied.

11 The rule of Brady v. Maryland, supra, which requires the
12 State to disclose to the defendant any exculpatory evidence, is
13 founded on the constitutional requirement of a fair trial.
14 Brady is not a rule of discovery, however. As the Supreme
15 Court held in Weatherford v. Bursy, 429 U.S. 545, 559, 97 S.
16 Ct. 837, 846 (1977):

17 "There is no general constitutional right
18 to discovery in a criminal case, and Brady
19 did not create one . . . 'the Due Process
20 Clause has little to say regarding the
21 amount of discovery which the parties must
22 be afforded . . . ' Wardius v. Oregon, 412
23 U.S. 470, 474 (93 S.Ct. 2208, 2212, 37 L.Ed.
24 2d 82) (1973)."

25 As to the Defendant's specific requests:

26 1. The State would not oppose the discovery of any oral or
27 written statements made by the defendant. The State is unaware
28 of any oral statements other than those comments mentioned in
29 police reports already supplied to defense counsel. The State
30 knows of no written statements.

31 2. The State would not oppose the discovery of any tape
32 recordings made of statements of the defendant. There is not
 the slightest indication that one was ever made.

1 3. The undergarments worn by Virgie Lee Jimmerson never
2 were, and are not now, in the possession of the State and are
3 thus not subject to discovery.

4 4. See the response to Items 1 and 2 above.

5 5. The State is not aware of any physical and mental exa-
6 minations made of any witness in this case. Even if such
7 reports/results existed, the State would oppose the release of
8 such reports. This is a shotgun request of incredible broad-
9 ness. There has been no showing of materiality to the defense
10 case, nor is this request reasonable, as is exemplified by its
11 lack of specificity. It is beyond the scope of NRS 174.235 and
12 174.245 and, the relevant case law.

13 6. Again the State is unaware of any such physical or men-
14 tal examinations of the "victim" (actually there are two vic-
15 tims) in this case. Again, the request is inexcusably broad
16 -- such a request would include the report of every medical
17 examination the victims had from the day they were born to
18 today's date. As to any reports of any "mental" examinations
19 of the "victim", the State would oppose their release if such
20 did exist; the defendant has not presented any case law
21 requiring the State to provide such reports.

22 7. The State is unaware of any physical or mental examina-
23 tions made of the defendant in this case. The State would not
24 oppose the discovery of such reports, but the record does not
25 give the slightest indication that they exist.

26 8. The State would not oppose the discovery of any and all
27 scientific tests. The shotgun, boiler plate nature of this
28 Motion is again grossly apparent in this item. The State is
29 unaware of any scientific tests having been performed in this
30 case. As noted above, the State's file is open in this matter.
31 Counsel is welcome to peruse the State's file and obtain copies
32 of any reports she does not already have.

1 9. The State does not oppose the viewing of any relevant
2 photographs in the State's possession. There were no line-ups
3 or any photographs of the defendant shown to any witnesses, (a),
4 & (b), nor any photographs of fingerprints (c). As to (d), all
5 these photographs were admitted into evidence in the previous
6 trial and are in the possession of the Court Clerk. Other than
7 a booking photo of the defendant, which may exist in the North
8 Las Vegas Police Department files, the State is unaware of any
9 photographs that would be described by sub-sections (e), (f), (g)
10 and (h).

11 10. This request is overly broad, non-specific, and beyond
12 the scope of the discovery statutes and case law, thus the
13 State opposes this item. However, the State would refer the
14 defendant to the witness list attached to the Information and
15 would again reiterate that the State's file is open.

16 11. This illustrates the absurdity of much of this boiler
17 plate motion. The defendant will find the names of all persons
18 that "the State proposes to call as witnesses during the course
19 of the preliminary hearing" in the transcript of the said pre-
20 liminary hearing. As to any witnesses the State may call in
21 its case-in-chief at trial, the State would again refer the
22 defendant to the list of witnesses attached to the Information
23 and any witnesses subsequently endorsed thereto.

24 In conclusion, the State's open file policy remains in
25 effect; the State will voluntarily provide the defense with any
26 obviously exculpatory evidence, if such evidence becomes
27 available, and will provide those items discoverable pursuant
28 to NRS 174.235 et. seq. when a showing of materiality and
29 reasonableness has been made.

30 WHEREFORE, the State respectfully requests that this
31 Discovery Motion by the defendant be denied, except as it per-
32 tains to the provisions of NRS 174.235 et. seq. and Brady v.

1 Maryland, supra, and/or as to those items which the State does
2 not oppose.

3 DATED this 17th day of October, 1984.

4 Respectfully submitted,

5 ROBERT J. MILLER
6 DISTRICT ATTORNEY

7 BY: Robert J. O'Neale
8 ROBERTA J. O'NEALE
9 Deputy District Attorney

10 RECEIPT OF A COPY OF THE ABOVE AND FOREGOING RESPONSE TO
11 DEFENDANT'S MOTION FOR DISCOVERY is hereby acknowledged this
12 17 day of October, 1984.

13 ATTORNEY FOR DEFENDANT

14 BY: Lynn R. Shoen
15 LYNN R. SHOEN, Esq.
16 228 S. 4th Street
17 First Floor
18 Las Vegas, Nevada 89101

31 rmf

FILED

OCT 24 1 55 PM '84

BY Jinda Gray

CASE NO. C 65500
DEPARTMENT NO. VIII ✓

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

BOBBY LEWIS,

Defendant.

SECOND MOTION TO DISMISS COUNT
IV SEXUAL ASSAULT WITH USE OF
A DEADLY WEAPON

COMES NOW the Defendant, BOBBY LEWIS, by and through
his attorney, LYNN R. SHOEN, ESQ., and moves this court for an
order dismissing Count IV of the information, Sexual Assault With
Use Of A Deadly Weapon.

This Motion is made and based upon the attached points
and authorities and the pleadings and documents on file herein.

Respectfully submitted:

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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(702) 382-2001

cmc



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(702) 383-2001

NOTICE OF MOTION

TO: THE STATE OF NEVADA; and

TO: ROBERT J. MILLER, DISTRICT ATTORNEY OF CLARK COUNTY:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing motion on for hearing before the above-entitled Court on the 29th day of October, 1984, at the hour of 9:00 o'clock a.m. in Department VIII of District Court, or as soon thereafter as counsel may be heard.

LYNN R. SHOEN, CHARTERED

By

Lynn R. Shoen
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

I.

FACTS

The Defendant BOBBY LEWIS is charged in Count IV of the information with Sexual Assault With The Use Of A Deadly Weapon. The victim alleges that on January 6, 1984 BOBBY LEWIS had sexual intercourse with her against her will, after threatening her with a shotgun. In her statement to the City of North Las Vegas Police Department, the victim, Virgie Lee Jimmerson stated that, "he then had sex with me, and he came." (See Exhibit "A" attached hereto.)

Despite the fact that officers with the North Las Vegas Police Department had information from the victim that the Defendant had ejaculated, the police officers failed to take into their possession the undergarments worn by the victim at the time of the alleged crime. (See State's Response to Defendant's Motion For Discovery.)

.....

.....

1 It is the contention of the defense that the defense
2 would have used the garments to show lack of force.

3 In the present case, the North Las Vegas Police Depart-
4 ment failed to preserve or maintain potentially exculpatory
5 evidence. In other words, the Police Department failed to collect
6 and maintain evidence which could potentially exonerate the
7 Defendant from any criminal liability.

8 Similarly, in State v. Havas, 95 Nev. 706, 601 P.2d
9 1197 (1979) the Nevada Supreme Court considered a situation in
10 which Victor Havas the owner of Courtesy RV Center interviewed a
11 young woman for a job. The woman alleged that during the course
12 of the job interview, Victor Havas forced himself upon her and
13 had sexual intercourse with her, against her will. For some
14 reason, the pants and undergarments of the victim were not
15 produced by the prosecution for inspection when requested by the
16 defense. The garments were either lost, destroyed or simply not
17 taken into possession during the investigation of this case. The
18 issue presented to the court was whether the evidence not preserved
19 was material and exculpatory. The Nevada Supreme Court stated:

20 The crime of rape is rarely perpetrated
21 in the presence of witnesses other than the
22 defendant and the victim and great reliance
23 must be placed upon the testimony of the victim,
24 and, if given, the defendant. Thus, the presence
25 or absence of other evidence which would support
26 or refute the testimony of the involved parties
27 has the potential for great significance.

28 On these facts, we believe a
29 rape victims underpants are so related to
30 the commission of the crime and that their
31 preservation has such potential relevance to
32 the guilt or innocence of a accused that a
further showing is unnecessary. See United
States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971).
The prosecution should have acquired and
preserved the underpants in question.
(Emphasis Added).

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CONCLUSION

The victim, Virgie Jimmerson alleges that BOBBY LEWIS had sexual intercourse with her and that he ejaculated. However, police officers failed to collect and maintain the undergarments which could potentially absolve the Defendant of any criminal liability.

Here, the facts are identical to the facts in State v. Havas. The undergarments could have potentially been direct exculpatory evidence.


It is irrelevant that the police never had the undergarments in their custody. As the Court stated in State v. Havas:

(W)e believe a rape victims underpants are so related to the commission of the crime and that their preservation has such potential relevance to the guilt or innocence of the accused that a further showing is unnecessary. . . . The prosecution should have acquired and preserved the underpants in question.
(Emphasis Added.)

Respectfully Submitted:

LYNN R. SHOEN, CHARTERED

By


LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

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RECEIPT OF COPY of the above and foregoing SECOND MOTION
TO DISMISS COUNT IV SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON is
hereby acknowledged this 24 day of October, 1984.

ROBERT J. MILLER, ESQ.
CLARK COUNTY DISTRICT ATTORNEY

By Jessie Smith
ROBERT J. MILLER, ESQ.
200 South Third Street
Las Vegas, Nevada 89101

CITY OF NORTH LAS VEGAS
POLICE DEPARTMENT
1301 E. LAKE MEAD BLVD.

84-177

I, Virgie Lee Jimmerson, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det. R. L. King #321

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 41 years of age, and I live at NLV (642-7557)

Q: Ms. Jimmerson, would you tell me in your own words what has occurred starting from about 2:00AM this morning and about 1:45PM this afternoon when you were dropped off at your home by Bobby Lewis?

A: Last night Bobby busted through the living room side window while I was sleeping and he called Shirley (my sister) out of her room then he told her to bring her old man (Willie Stevenson) out of the room to. All the noise woke me up and I looked down the hall and he was standing there in the hallway with a sawed-off shotgun. Then Bobby came down to the room where I was and told Shirley that she was going to take me and Bobby over to his house.

Q: Did he say this in a way that you and your sister felt threatened?

A: Yes, he was pushing me and he had that gun and he said he didn't want to hurt anybody but he would if we didn't do as he said. Then Shirley drove me and Bobby over to his house. When we got there he told her to get out too and said that she was going with us. He thought someone called the police from the house and he wanted to make sure that they weren't following him before he would let her go. Then after he made sure the police wasn't around he let her go and took me in the house which is an old empty apartment near Van Buren Street where he stays. He still had the gun and there was an old raggedy mattress there and he made me get down on the mattress with him and he told me to take my panties off and I did because I was afraid, he said if I didn't do it he would blow my head off because he had nothing else to

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at NLV/VPD 1515 hours, this 6th day of January 1984

WITNESS: R. L. King #321

Virgie L. Jimmerson
Signature of person giving voluntary statement

WITNESS:

Form 20.41 (12/77)

Exhibit "A"

AA2145

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84 Page No. 2

STATEMENT OF: Virgie Jimmerson

loose. He then had sex with me, and he came. After he had sex with me he just laid there and talked to me and kept the gun in his hand saying he was going to kill me because he didn't want me to be with another man and that he had nothing to live for. He talked me to sleep until about nine or ten o'clock this morning when we went over to some lady's house he knows, I don't know her name or nothing but it was an apartment somewhere in the projects. He called my sister and asked her if she called the police or anything and he made tell my sister that I wanted to be with him and stuff, but the only reason I was telling her that was because he still had the gun on me. He told her to call the police and drop the charges because if she didn't he was going to kill me like he told her last night. We were at this lady's house the whole time he was making the phone calls to my sister and to you all. The lady didn't know anything was wrong because he kept the gun under this big ole coat he was wearing, and she was in another room during the time he was calling. I was afraid to tell her anything and he had her believing that everything was ok between the two of us. I was scared to that she might have told him since they were friends and everything and if she told him he may have pulled it out and shot me right there, so I really didn't trust her to tell her what was happening. Then after he talked to you about getting a cab and taking me home we left the lady's apartment and went to some old man's apartment and he asked him if he would keep the gun for him and he handed to him and said he would be back to get it latter on. We left and went over to where he stays and caught a ride with the guy who brought me home. The guy didn't act like he knew what was going on only just giving me a ride home. That's about it.

Q: Were you in fear for your life during this entire incident ?

A: Yes, I sure was, he's capable of doing anything.

Page 2055 (1/7/77)

Virgie L Jimmerson

AA2146

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84

Page No. 3

STATEMENT OF: Virgie Jimmerson

Q: Why didn't you make some attempt to either get away from him or to let someone know what was happening during all this ?

* A: He wouldn't let me, he was always right beside of me and would never leave my side. I may have been able to when I fell asleep but when I woke up he was already awake too.

Q: Would you describe the gun Bobby had for me ?

A: It was long type gun that looked like it was sawed off and it had some white tape on the handle where someone had sawed it off at the back of it, I'm not familiar with guns to say what kind it was or anything.

Q: How long have you known Bobby Lewis and has he ever done anything like this before ?

A: I've known him about a year, we used to go together but we been broke up a couple of months. Before Christmas he shot up into another ladies house trying to make me come out of there. Because I didn't want to see him then either. He got arrested then by Metro. About a year ago he shot a guy's eye out at the Brown Bomber because I wouldn't leave with him then. He used a pistol that time.

Q: Is there anything else you would like to add ?

A: That's about it except this scar on the left side of my face, he did that with a little razor thing on a key-chain because I wouldn't leave with him then, I reported that to Metro downtown but nothing happened. I do want to prosecute and go to court.

Virgie L Jimmerson

[Headnote 13]

The fact that appellants failed to object to the introduction of the initial evidence of abandonment was appropriately construed by the trial court as implied consent to the admission of other evidence. See *Kaye v. Southernman*, 225 F.2d 583, 593, 594-95 (10th Cir. 1955), *cert. denied*, 350 U.S. 913 (1955). We affirm the judgment of the district court.

MOWBRAY, C. J., and THOMPSON, GUNDERSON, and BATTER, JJ., concur.

THE STATE OF NEVADA, APPELLANT, v. VICTOR ROWLAND HAYAS, RESPONDENT.

No. 10357

October 29, 1979

601 P.2d 1197

Appeal from judgment dismissing information in the Eighth Judicial District Court, Clark County; Carl J. Christensen, Judge.

The district court dismissed charges of forcible rape against defendant, and State appealed. The Supreme Court, BREEN, D.J., held that because of the potential relevance of evidence to guilt or innocence of accused, prosecution's failure to produce pants and undergarments of alleged rape victim for inspection when requested by defense required dismissal of forcible rape charges.

Affirmed.

BATTER, J., dissented.

Richard H. Bryan, Attorney General, Carson City, and

of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleading the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Oct. 1979]

State v. Hayas

707

Michael A. Cherry, Special Prosecutor, Clark County, for Appellant.

Louis Wiener, Jr., Las Vegas, for Respondent.

1. CONSTITUTIONAL LAW.

Failure to preserve evidence which is material and exculpatory violates due process without necessity of showing reasons for its unavailability. U.S.C.A. Const. Amend. 5, 14.

2. CRIMINAL LAW.

Burden of showing materiality and exculpatory nature of evidence which is not preserved by prosecution rests on defense.

3. CRIMINAL LAW.

Because of the potential relevance of evidence to guilt or innocence of accused, prosecution's failure to produce pants and undergarments of alleged rape victim for inspection when requested by defense required dismissal of forcible rape charges.

OPINION

By the Court, BREEN, D. J.:

The trial court dismissed charges of forcible rape against Hayas upon the ground that the prosecution had failed to preserve exculpatory evidence. This case has been before this court twice on other matters. See *State v. Hayas*, 91 Nev. 611, 540 P.2d 1060 (1975) and *State v. Hayas*, No. 9321, Order Dismissing Appeal, filed December 30, 1976.

The record discloses that the pants and undergarments of the alleged victim were not produced by the prosecution for inspection when requested by the defense. No explanation was made for the unavailability of the garments nor was there a contention made that they were intentionally destroyed by the prosecutor. The garments were either lost, destroyed or simply not taken into possession during the investigation of this case.

[Headnote 1, 2]

The issue presented to us is whether the evidence not preserved was material and exculpatory. If so, the failure to preserve the evidence violates due process without the necessity of showing the reasons for its unavailability. The burden of showing materiality and exculpatory nature of the evidence rests on

Mr. Chief Justice Louis Mowbray voluntarily disqualified himself and took no part in this decision. The Governor, pursuant to Art. VI, § 4 of the Constitution, designated Judge Peter I. Breen of the Second Judicial District to sit in his stead.

the defense. *Hale v. State*, 230 N.E.2d 432 (Ind. 1967); *State v. Hornbeck*, 559 P.2d 385 (Kan. 1977); *State v. Craig*, 545 P.2d 649 (Mont. 1976).

In *Wallace v. State*, 88 Nev. 549, 501 P.2d 1036 (1972), we reversed a conviction when the prosecution intentionally failed to disclose a psychiatrist's report. There we followed *Brady v. Maryland*, 373 U.S. 83, 87 (1963), in holding that when the prosecution withholds exculpatory evidence, due process is violated regardless of the motive of the prosecutor.

Respondent contends that he would have used the garments to show lack of force. The garments, says respondent, must have been torn to have been removed in the manner claimed by the victim. The position of the prosecution is that since a showing of physical force is not necessary to complete the act of forcible rape (*Dinkens v. State*, 92 Nev. 74, 77, 546 P.2d 228, 230 (1976)), but only that the act was committed against the victim's will, the garments are not material. Furthermore, claims the prosecutor, the victim has already testified that the clothing was not torn and, therefore, its presence would be cumulative.

The crime of rape is rarely perpetrated in the presence of witnesses other than the defendant and the victim and great reliance must be placed on the testimony of the victim, and, if given, the defendant. Thus, the presence or absence of other evidence which would support or refute the testimony of the involved parties has the potential for great significance.

See for example, *Davis v. Pitchess*, 388 F.Supp. 105 (C.D. Cal. 1974), where the court held the presence of vaginal smears on the victim's underpants to be highly relevant to the guilt or innocence of the defendant. And see *State v. Wright*, 557 P.2d 1 (Wash. 1976), which determined that the preservation of clothing of a murder victim was immediately related to the very existence of the alleged homicide. The court therein reversed a conviction on the ground that there was a reasonable possibility that the destroyed evidence was material to the guilt or innocence of the defendant.

Headnote 31

On these facts, we believe a rape victim's underpants are so related to the commission of the crime and that their preservation has such potential relevance to the guilt or innocence of an accused that a further showing is unnecessary. See *United States v. Bryant*, 439 F.2d 642 (D.C. Cir. 1971). The prosecution should have acquired and preserved the underpants in question.

This does not place an undue burden on the prosecution for preservation of this type of evidence. In an appropriate case, where the prosecutor seeks to dispose of such evidence, the trial court can be petitioned, with notice to the defense, to determine a course of action consistent with the interests of the parties.

The judgment appealed from is affirmed.

THOMPSON and MANOUKIAN, JJ., concur.

GUNDERSON, J., concurring:

I concur in the result, but desire to add a comment.

When this case first came before us, in regard to a pretrial habeas application, there was serious doubt whether the State had presented any evidence at all, justifying a prosecution for forcible rape. See *State v. Havas*, 91 Nev. 611, 540 P.2d 1060 (1975). Indeed, on this issue, members of the court were divided in opinion, although our established practice has been extremely liberal in upholding determinations of probable cause, whether made by magistrates or by grand juries. See, for example, *Franklin v. State*, 89 Nev. 382, 513 P.2d 1252 (1973).

It should be noted, therefore, that the factual determination now under review, i.e., the district court's finding that the loss of the underpants was prejudicial, came in a case in which the alleged victim's testimony was itself quite ambiguous on the issue of force, and subject to serious challenge concerning the manner the crime assertedly occurred.

In this context, the district court's finding cannot be held erroneous as a matter of law.

BARTER, J., dissenting:

I respectfully dissent from the opinion filed by the majority. Victor Havas was charged with rape as a result of events occurring in February, 1975. Evidence was introduced at his preliminary hearing that Havas interviewed a young woman for a job at the Courtesey RV Center and as a part of the interview forced her to have sexual intercourse with him. On appeal from the granting of a petition for habeas corpus we found that there was sufficient evidence presented to support the information. *State v. Havas*, 91 Nev. 611, 540 P.2d 1060 (1975).

The young woman testified at the preliminary examination

¹From the record it appears that the clothing was not produced at the preliminary examination and, thus, the same evidence crisis now as existed at the time of that opinion.

11/5
VIII

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

1 CASE NO. C 65500

2 DEPT. NO. VIII

FILED
OCT 26 3 54 PM '84

ROBERTA BOWMAN
CLERK
[Signature]

3
4
5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK

8 * * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 BOBBY LEWIS,)

13 Defendant.)

STATE'S OPPOSITION TO DEFENDANT'S
SECOND MOTION TO DISMISS COUNT IV,
SEXUAL ASSAULT WITH USE OF A
DEADLY WEAPON

14
15 COMES NOW, The State of Nevada, by ROBERT J. MILLER, Clark
16 County District Attorney, by and through ROBERTA J. O'NEALE,
17 Deputy, and files this Opposition to Defendant's Second Motion to
18 Dismiss Court IV, in the above entitled action.

19 This Opposition is made and based upon all the papers,
20 files and pleadings on file in this action, together with argu-
21 ment as may be deemed necessary by the Court.

22 DATED this 25th day of October, 1984.

23 Respectfully submitted,

24 ROBERT J. MILLER
25 DISTRICT ATTORNEY

26 By: *[Signature]*
27 ROBERTA J. O'NEALE
28 Deputy District Attorney
29
30
31
32

(2)

1 first trial held in this matter. Again, it was apparent from the
2 discovery provided to the Defendant, then and now, and from the
3 testimony, that the victim's undergarments had not been preserved.
4 Rather than repeat its argument again, the State would refer this
5 court to the State's response to the Defendant's previous Motion
6 to Dismiss filed September 6, 1984, for the facts, authorities
7 and arguments on this point. It should also be noted that this
8 Motion has been made and denied before. Also, this trial was
9 continued on September 10, 1984, on defense' Motion, over the
10 State's protest, so that the Defendant could file additional pre-
11 trial Motions, giving the Defendant about eight weeks to take care
12 of such matters before trial.

13 B. BECAUSE THE DEFENDANT FAILS TO SHOW PREJUDICE
14 BY THE "LOSS" OF EVIDENCE, DISMISSAL OF COUNT IV
IS NOT WARRANTED.

15 First, since the law concerning these matters is quoted
16 and discussed at length in the State's previous response filed
17 September 6, 1984, the State would respectfully refer the Court
18 to the Points and Authorities in that matter.

19 However, in this Motion, the Defendant relies entirely on
20 State v. Havas, 95 Nev. 706, 601 P.2d. 1197 (1979). Firstly, the
21 case at bar can be distinguished on its facts from Havas. In the
22 case at bar, the Defendant alleges: "It is the contention of the
23 defense that the defense would have used the garments to show
24 lack of force." Defendant's Brief, p. 3, 11. 1-2. This is the
25 precise position of the Defendant in Havas. Id., at p. 708. But
26 in Havas, the victim's testimony was "ambiguous on the issue of
27 force." (Id. at p. 709, Gunderson, J. concurring) and the Defend-
28 ant contended that the garments "must have been torn to have been
29 removed in the manner claimed by the victim." Id., at p. 708.
30 In the case at bar, there is no ambiguity in the victim's testi-
31 mony as to the issue of "force". Physical force, such as that in
32 Havas, was not present. The victim complied because the Defendant

1 had a gun and said he would blow her head off -- that's not
2 ambiguous, that's against her will! Fear and a weapon were used,
3 not brute strength. Also, the victim herself took off the panties,
4 they weren't torn off of her. Thus, the panties would clearly
5 show no evidence of force, nor, unlike Havas, could they reason-
6 ably be expected to show force.

7 What the Defendant hasn't brought to this Court's attention
8 is that HAVAS has been strictly limited to its own special facts
9 by the Nevada Supreme Court. See, Deere v. State, 100 Nev. Adv.
10 Op., 121 (1984), attached hereto as Exhibit "1". In that case,
11 as in the case at bar, the Defendant "appears to argue that Havas
12 states a per se rule that a rape victim's undergarments are
13 always material and potentially exculpatory evidence, at least
14 where the garments are allegedly removed by force." Id. But the
15 Court holds in Deere: "This interpretation of Havas is erroneous".
16 The Court goes on to further hold:

17 "That decision [Havas] does not state a
18 per se rule, and does not alter or detract
19 from the general rule set forth in Boggs.
20 The materiality and potentially exculpatory
21 character of lost or destroyed evidence must
22 be determined on an ad hoc basis on the facts
23 of each particular case. Any language to the
24 contrary in the Havas majority opinion is
25 hereby disapproved. Id. [Emphasis added.]

26 In Deere, the victim alleged that the undergarment had been
27 torn and the blouse slashed with a knife during the sexual assaults.
28 The State apparently did not impound and preserve the blouse and
29 undergarment of the victim. The Supreme Court found that a Motion
30 to Dismiss based on this failure to preserve evidence was properly
31 denied. That case is an even stronger case for the defense than
32 the case at bar because of the obvious evidentiary value of the

1 items that were not preserved in Deere. The Court in Deere cites
2 the general rule in this area:

3 "When an accused seeks dismissal for the
4 State's good-faith loss or destruction of
5 material evidence, he or she must show
6 prejudice flowing from the unavailability
7 of the evidence. To establish prejudice,
8 the accused must 'make some showing that
9 it could be reasonably anticipated that
10 the evidence sought would be exculpatory.'
11 Boggs v. State, 95 Nev. 859, 604 P.2d 107,
12 108 (1979). See, Crockett v. State, 95 Nev.
13 859, 603 P.2d 107 (1979)." Deere v. State,
14 supra, at p. 2.

15 As in Deere, the victim's testimony was not ambiguous and
16 was amply corroborated. For the victim's testimony, see her state-
17 ment provided by the Defendant. As to corroboration, there are
18 photographs of the rather unpleasant scene of the crime and as
19 noted in the previous brief in this matter, five other persons
20 testified as to the victim's forcible removal at gunpoint from
21 her home and as to the Defendant's forcible entry into that home.
22 Additionally, the Defendant admitted to the police that he used a
23 weapon, a ".22", not a shotgun, according to him. Furthermore,
24 as required by Deere, and Boggs, etc., the Defendant has not
25 established prejudice because he has made no showing that it can
26 be reasonably anticipated that these undergarments would be
27 exculpatory. Since the victim removed the garment herself, no
28 tears could be expected and untorn panties could only corroborate
29 her testimony. And according to the Defendant's reasoning, torn
30 panties would show force. Neither finding would be exculpatory.

31 / / /

32 / / /

Therefore, pursuant to Deere, the cases cited therein, and pursuant to the Points and Authorities cited in the present State's brief and the State's prior brief on the same subject, the State would respectfully request that the Defendant's Motion to dismiss Count IV be dismissed.

Respectfully submitted,

ROBERT J. MILLER
DISTRICT ATTORNEY

By: Robert J. O'Neale
ROBERTA J. O'NEALE
Deputy District Attorney

13 RECEIPT of a copy of the foregoing Opposition is hereby
14 acknowledged this 26 day of October, 1984.

LYNN R. SHOEN, ESQ.

BY: Lynn R. Shoen/RLM
Attorney for Defendant
228 South Fourth Street, 1st floor
Las Vegas, Nevada 89101

121
RECEIVED
OCT 8 1984
APPELLATE DIVISION

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD RICHARD DEERE,) No. 14893
Appellant,)
vs.)
THE STATE OF NEVADA,)
Respondent.)

FILED
OCT 4 1984
Judith F. Smith
CLERK OF SUPREME COURT

Appeal from judgment of conviction of multiple felony offenses, Eighth Judicial District Court, Clark County; John F. Mendoza, Judge.

Affirmed.

Marc D. Risman, Las Vegas,
for Appellant.

Brian McKay, Attorney General,
Carson City; Robert Miller,
District Attorney, and James
Tufteland, Deputy District
Attorney, Clark County,
for Respondent.

OPINION

PER CURIAM:

In August of 1982, appellant Lloyd Richard Deere kidnapped, beat, handcuffed and sexually assaulted a Las Vegas prostitute. He was convicted of one count each of first degree kidnapping and battery with intent to commit a crime, and four counts of sexual assault. On appeal, he raises eleven assignments of error. We conclude that appellant has failed to demonstrate prejudicial error, and affirm.

EXHIBIT "1"

Appellant's principal contention is that the district court erred by denying a motion to dismiss based on the state's allegedly negligent failure to impound and preserve material and potentially exculpatory evidence, namely the blouse and undergarment of the victim. According to the victim's testimony, the undergarment had been torn and the blouse slashed with a knife during the sexual assaults. Appellant argued in his motion that the evidence would have been exculpatory on the issue of the use of force or a weapon during the assaults. He based his motion primarily on our decision in *State v. Havas*, 95 Nev. 706, 601 P.2d 1197 (1979), in which a majority of this Court upheld dismissal of a forcible rape charge because of the state's negligent failure to obtain and preserve the victim's undergarments, which were considered material and potentially exculpatory on the issue of the use of force.

We are persuaded that the motion to dismiss was properly denied. The general rule in this area is well settled. When an accused seeks dismissal for the state's good-faith loss or destruction of material evidence, he or she must show prejudice flowing from the unavailability of the evidence. To establish prejudice, the accused must make "some showing that it could be reasonably anticipated that the evidence sought would be exculpatory." *Hoggs v. State*, 95 Nev. 911, 913, 604 P.2d 107, 108 (1979). See *Crockett v. State*, 95 Nev. 859, 603 P.2d 1078 (1979). From our review of the record, we have concluded that appellant cannot demonstrate that it was reasonably likely that the lost evidence would have exculpated him; he thus cannot make the requisite showing of prejudice. Accordingly, the motion to dismiss was properly denied, and this assignment of error is without merit.

Nothing in Havas compels a contrary result. Havas was decided on its own facts, which are readily distinguishable from those of this case. The Havas majority's ruling hinged on the reasoning that the victim's undergarments were potentially exculpatory because her testimony on the use of force was not only ambiguous, but "subject to serious challenge concerning the manner the crime assertedly occurred." 95 Nev. at 709, 601 P.2d at 1198 (Gunderson, J., concurring). The underpinnings of the Havas majority's ruling are simply not present in the case before us, wherein the victim's testimony was not ambiguous and was amply corroborated by other testimony and by physical evidence.

Appellant appears to argue that Havas states a per se rule that a rape victim's undergarments are always material and potentially exculpatory evidence, at least where the garments are allegedly removed by force. This interpretation of Havas is erroneous. That decision does not state a per se rule, and does not alter or detract from the general rule as set forth in Boggs. The materiality and potentially exculpatory character of lost or destroyed evidence must be determined on an ad hoc basis on the facts of each particular case. Any language to the contrary in the Havas majority opinion is hereby disapproved.

We have considered appellant's remaining assignments of error, and have concluded that they are either without merit or do not warrant reversal. Accordingly, the judgment of conviction is affirmed.

W. Bennett C.J.
Mangukian

Springer J.
Springer

Mowbray J.
Mowbray

Steffen J.
Steffen

Attest: A full, true and Correct Copy. Gunderson J.
Judith Fountain, Clerk of the Supreme Court

By Shirley Pao Deputy

ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

CASE NO. C 65500

DEPT. NO. VIII

— FILED IN OPEN COURT —

November 5 1984

LORETTA BOWMAN, CLERK

By Jane Bjorklund Deputy

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * *

THE STATE OF NEVADA,)

Plaintiff,)

vs.) TRIAL MEMORANDUM

BOBBY LEWIS,)

Defendant.)

FACTS

The Defendant herein is, among other charges, charged with 1° Kidnap With Use of a Deadly Weapon (Count II) and Sexual Assault With Use of a Deadly Weapon (Count IV) as to victim, Virgie Jimmerson. Count IV alleges an act of ordinary intercourse. It came out during the first trial in this matter that another uncharged act of sexual assault occurred at the same time and location, an act of Fellatio.

The victim, Virgie Jimmerson, has also indicated to the police in her statement attached hereto as Exhibit "1", that the Defendant previously attempted to take her away forcibly and has used weapons in those incidents and has caused injury on two of those occasions, one to the victim and once to an innocent bystander. Attached hereto as Exhibits "2", "3" and "4", respectively, are the victim's written statements given to the police as to each of those incidents done at the time of the incidents. It should be noted, however, as to the shooting of the owner of the Brown Bomber on October 11, 1982, the Defendant was found not

1 guilty of the Attempt Murder and Battery with a Deadly Weapon,
2 that is, not guilty of intentionally shooting the victim, Otis
3 Brown. The Defendant was not charged with the kidnapping of
4 Virgie Jimmerson; although that is what occurred when he removed
5 her at gunpoint from the Brown Bomber Pool Hall. What is also
6 not indicated in Virgie Jimmerson's statement concerning that
7 event, is that before the Defendant turned himself in, he sexually
8 assaulted Virginie Jimmerson on that occasion as well, again in
9 an abandoned or unoccupied apartment. Ms. Jimmerson indicates
10 she was too frightened and embarrassed to tell the police what
11 had occurred to her.

12 ARGUMENT

13 Because, as is indicated by the Preliminary Hearing
14 Transcript and Exhibit "1", the Defendant and the victim, Virgie
15 Jimmerson, are ex boyfriend/girlfriend, the issue of the Defend-
16 ant's intent, motive, and the absence of mistake comes into
17 question. As well, the victim's consent or lack of such, is
18 clearly at issue at trial. Both the Kidnapping and the Sexual
19 Assault must be "against her will." It is the State's contention
20 that this was not a friendly date where the victim went out
21 willingly with the Defendant and willingly had sex with him. The
22 State requests that the victim be able to testify to the Jury
23 concerning the previous incidents where the Defendant committed
24 violent acts when she resisted complying with his demands.
25 Furthermore, the other kidnap victim, Shirley Cooper, was aware
26 of the Defendant's prior violent acts, and thus the issue of her
27 consent was affected as well.

28 NRS 48.045(2) provides:

29 "Evidence of other crimes, wrongs or acts is
30 not admissible to prove the character of a person in
31 order to show that he acted in conformity therewith.
32 It may, however, be admissible for other purposes,
such as proof of motive, opportunity, intent,
preparation, plan, knowledge, identity, or absence of
mistake or accident."

(Emphasis added)

1 The Court must weigh the probative value of such testimony as
2 that above against its prejudicial effect. Elsbury v. State, 90
3 Nev. 50, 52-53, 518 P.2d 599 (1974).

4 The State would argue that evidence of these prior inci-
5 dents are relevant to the Defendant's motive, his intent, and the
6 absence of mistake. In Wallin v. State, 93 Nev. 10 (1977), the
7 Defendant was charged with Battery with Substantial Bodily Harm
8 for inserting his clenched fist into his wife's rectum. At
9 trial the victim testified as to previous episodes of a like
10 nature with the Defendant and the Supreme Court held that under
11 NRS 48.045, such evidence was admissible because it was relevant
12 to his intent.

13 As noted above, the victim's consent is a crucial issue
14 in this case, and as the Nevada Supreme Court has stated: "The
15 crucial question in determining if a sexual assault has occurred
16 is whether the act is committed without the consent of the
17 victim, (cite omitted) and the intent of the accused is relevant
18 to the issue of consent or lack thereof." Williams v. State, 95
19 Nev. 830, 833, 603 P.2d 694 (1979). And in McMichael v. State,
20 94 Nev. 184, 188, 577 P.2d 398 (1978), our Court in an Infamous
21 Crime Against Nature case, found that the Defendant's intent was
22 placed in issue by his not guilty plea. The Court then upheld
23 the admission of other incidents or oral cooulation between the
24 same victim prior and subsequent to the charged act. The grounds
25 for admissibility were intent or absence of mistake or accident.

26 Considering the Defendant's prior threats of violence to
27 the victim as well, see Exhibit "4" and Exhibit "5", it is
28 interesting to note Solorzano v. State, 92 Nev. 144, 145, 546 P.2d
29 1295 (1976), wherein evidence that the Defendant had threatened
30 the victims numerous times prior to the charged Battery With
31 Intent to Kill was ruled to be admissible because it was relevant
32 to intent under 48.045(2).

1 Basically, it is the State's argument, that the victim
2 complied with Defendant's demands because of fear of the weapon
3 and her very real fear, based on her past experiences with the
4 Defendant, that he would carry out his threats of violence.
5 Since the defense has argued at the previous trial that the
6 victim had numerous opportunities to leave the Defendant's
7 presence and didn't, this is evidence that is very important and
8 relevant to consent which is also related to the intent of the
9 Defendant. This evidence makes much more clear the intent
10 behind the Defendant's threats which caused both victims to go
11 with him against their will and which caused the victim, Virginia
12 Jimmerson, to submit to sexual acts against her will. This evi-
13 dence also helps to show that the Defendant was making no mistake --
14 this was no joke. It goes to motive -- it helps show his
15 jealousy, his possessiveness towards Virginia Jimmerson; his
16 tendency to continue the relationship when she did not desire it
17 and to use force and violence to enforce his will upon her.

18 The uncharged act of Sexual Assault, the act of Fellatio,
19 which occurred at the same time and place as the charged act, is
20 admissible, not only under 48.045(2), but more specifically under
21 the rationale of Allan v. State, 92 Nev. 318, 549 P.2d 1402 (1976).
22 In that case, the Defendant argued that it was error to allow
23 testimony concerning uncharged acts of fellatio with two young
24 boys and the Defendant other than the sole act with which he was
25 charged. At p. 320, the Nevada Supreme Court stated:

26 "We do not agree. The testimony regarding
27 the additional acts of fellatio, as well as the act
28 of masturbation, was admissible as part of the res
29 gestae of the crime charged. Testimony regarding
30 such acts is admissible because the acts complete
 the story of the crime charged by proving the
 immediate context of happenings near in time and
 place. Such evidence has been characterized as the
 same transaction or the res gestae."

31 Further, when considering both the additional act of
32 sexual assault occurring during the "same transaction" as the

1 charged one, and the prior sexual assault of the victim by the
2 Defendant, it should be noted that our Court has said:


3 "Moreover, in sex crimes generally a more
4 liberal judicial attitude exists in admitting
5 prior and subsequent proscribed sexual conducts.
6 See 77 ALR 2d 841." McMichael v. State, supra,
7 p. 189.

8 WHEREFORE, the State respectfully urges that this Honor-
9 able Court permit VIRGIE JIMMERSON to testify as to the Defend-
10 ant's prior violent acts and violent threats which occurred to her
11 or in her presence and as to any other acts of sexual assault
12 that occurred during the "same transaction" as the presently
13 charged one.

14 DATED this 5th day of November, 1984.

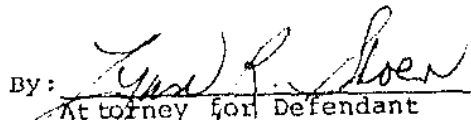
15 Respectfully submitted,

16 ROBERT J. MILLER
17 DISTRICT ATTORNEY

18 By: 
19 ROBERTA J. O'NEALE
20 Deputy District Attorney

21 RECEIPT of a copy of the foregoing Trial Memorandum is
22 hereby acknowledged this 5th day of November, 1984.

23 LYNN R. SHOEN, ESQ.

24 By: 
25 Attorney for Defendant
26 228 S. 4th Street, 1st Floor
27 Las Vegas, Nevada 89101

28
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31
32

CITY OF NORTH LAS VEGAS
POLICE DEPARTMENT
1301 E. LAKE MEAD BLVD.

84-177

I, Virgie Lee Jimmerson, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det. R. L. King #321

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 41 years of age, and I live at _____, NLV (642-7557)

Q: Ms. Jimmerson, would you tell me in your own words what has occurred starting from about 2:00AM this morning and about 1:45PM this afternoon when you were dropped off at your home by Bobby Lewis?

A: Last night Bobby busted through the living room side window while I was sleeping and he called Shirley (my sister) out of her room then he told her to bring her old man (Willie Stevenson) out of the room to. All the noise woke me up and I looked down the hall and he was standing there in the hallway with a sawed-off shotgun. Then Bobby came down to the room where I was and told Shirley that she was going to take me and Bobby over to his house.

Q: Did he say this in a way that you and your sister felt threatened?

A: Yes, he was pushing me and he had that gun and he said he didn't want to hurt anybody but he would if we didn't do as he said. Then Shirley drove me and Bobby over to his house. When we got there he told her to get out too and said that she was going with us. He thought someone called the police from the house and he wanted to make sure that they weren't following him before he would let her go. Then after he made sure the police wasn't around he let her go and took me in the house which is an old empty apartment near Van Buren Street where he stays. He still had the gun and there was an old raggeddy mattress there and he made me get down on the mattress with him and he told me to take my panties off and I did because I was afraid, he said if I didn't do it he would blow my head off because he had nothing else to

I have read each page of this statement consisting of 3 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at NLVPD 1515 hours, this 6th day of January 1984.

WITNESS: R. L. King #321

Virgie L. Jimmerson
Signature of person giving voluntary statement

WITNESS: _____

EXHIBIT "1"

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84 Page No. 2

STATEMENT OF: Virgie Jimmerson

loose. He then had sex with me, and he came. After he had sex with me he just laid there and talked to ^{ME & I} ~~you~~ and kept the gun in his hand saying he was going to kill me because he didn't want me to be with another man and that he had nothing to live for. He talked me to sleep until about nine or ten o'clock this morning when we went over to some lady's house he knows, I don't know her name or nothing but it was an apartment somewhere in the projects. He called my sister and asked her if she called the police or anything and he made tell my sister that I wanted to be with him and stuff, but the only reason I was telling her that was because he still had the gun on me. He told her to call the police and drop the charges because if she didn't he was going to kill me like he told her last night. We were at this lady's house the whole time he was making the phone calls to my sister and to you all. The lady didn't know anything was wrong because he kept the gun under this big ole coat he was wearing, and she was in another room during the time he was calling. I was afraid to tell her anything and he had her believing that everything was ok between the two of us. I was scared to that she might have told him since they were friends and everything and if she told him he may have pulled it out and shot me right there, so I really didn't trust her to tell her what was happening. Then after he talked to you about getting a cab and taking me home we left the lady's apartment and went to some old man's apartment and he asked him if he would keep the gun for him and he handed to him and said he would be back to get it latter on. We left and went over to where he stays and caught a ride with the guy who brought me home. The guy didn't act like he knew what was going on only just giving me a ride home. That's about it.

Q: Were you in fear for your life during this entire incident ?

A: Yes, I sure was, he's capable of doing anything.

Form 20.55 (12/77)

Virgie L Jimmerson

AA2165

POLICE DEPARTMENT
City of North Las Vegas
1301 E. Lake Mead Blvd.

84-177

Date 1-6-84

Page No. 3

STATEMENT OF: Virgie Jimmerson

Q: Why didn't you make some attempt to either get away from him or to let someone know what was happening during all this ?

A: He wouldn't let me, he was always right beside of me and would never leave my side. I may have been able to when I fell asleep but when I woke up he was already awake too.

Q: Would you describe the gun Bobby had for me ?

A: It was long type gun that looked like it was sawed off and it had some white tape on the handle where someone had sawed it off at the back of it, I'm not familiar with guns to say what kind it was or anything.

Q: How long have you known Bobby Lewis and has he ever done anything like this before ?

A: I've known him about a year, we used to go together but we been broke up a couple of months. Before Christmas he shot up into another ladies house trying to make me come out of there. Because I didn't want to see him then either. He got arrested then by Metro. About a year ago he shot a guy's eye out at the Brown Bomber because I wouldn't leave with him then. He used a pistol that time.

Q: Is there anything else you would like to add ?

A: That's about it except this scar on the left side of my face, he did that with a little razor thing on a key-chain because I wouldn't leave with him then, I reported that to Metro downtown but nothing happened. I do want to prosecute and go to court.

X Virgie L Jimmerson

TELEPHONE
STATION

DR. 62-64076

Stomoxys, v. r. r. r.

OPTIONAL FORM NO. 10 MAY 1962 EDITION GSA GEN. REG. NO. 27

DATE: 1956-1-25

ID NO	DOB	DESC	SEX	HT	WT	HAIR	EYES	PLACE OF BIRTH	BOYS	TIME
-------	-----	------	-----	----	----	------	------	----------------	------	------

[illegible]

ON OF STAK.	7	6	5	4	3	2	1
-------------	---	---	---	---	---	---	---

[illegible]

LOCATION OF OCCURRENCE	IF VISITOR, LOCAL ADDRESS	DEPARTING DATE
------------------------	---------------------------	----------------

VEHICLE	YEAR	MAKE	BODY TYPE	MODEL	LICENSE NO	STATE	COLOR
E13 (W. LAKE MEAD) 11/1/81							

VEHICLE	YEAR	MAKE	BODY TYPE	ENGINE	CHASSIS NO	STATE	COLOR
INFORMATION - VICTIM	HA						

If correct was made, please impression on Page 2 and place number in box.

What place a witness to the crime? Please Name/Address on Page 2	Victim	<input type="checkbox"/>	Other	<input type="checkbox"/>	If no. place an X in Box A	A
--	--------	--------------------------	-------	--------------------------	----------------------------	---

Can suspect be named? If so, explain in "Subject Section" - Page 2

Can suspect be located? Explain in narrative.	If no, place an X in Box C *	C
Can suspect be described? If no, explain in "Suspect Section" - Page 2	If yes, place an X in Box D *	D

Can suspect be identified? Explain in narrative.	If no, place on X in Rpt 1.	E
Is suspect identified?	If no, place on X in Rpt 1.	E

DESCRIBE PROPERTY STOLEN/DAMAGED	IDENTIFICATION INFO	SERIAL NO	MODEL NO	VALUE
1967 Ford Mustang	1967 Ford Mustang	1967 Ford Mustang	1967 Ford Mustang	1967 Ford Mustang

Left side of the tree ...

Handed out the new calendar for 1944.

1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 23

Kenya Post.

Cost From the New York - 4000 \$

140

[illegible]

PROPERTY LIST	COMPLETE	CONTINUED	ADDITIONAL	OTHER
1. ADDRESS, MAILING ADDRESS (if different)				

Is there significant physical evidence present? If yes, describe.

Is there significant M.O. present? If yes, describe the situation.
Has criminalist work been performed? ☒ Yes

DATE	NATURE OF INJURY	CAUSE	DEATH

CONFIDENTIAL

$\frac{1}{2} \pi$

OFFICE RECOMMENDATION:

REPORTING OFFICER(S):

[illegible]

SUPERVISOR RECOMMENDATIONS: ☒ FOLLOW UP ☐ Suspend ☐ PR SIGNATURE

COMMENTS

WILL YOU PROSECUTE?
☒ YES ☐ NO

SUPERVISOR APPROVING REPORT _____ NO _____ CONNECTING REPORT'S TYPE AND/OR NO _____

I Montebello Lat 390

INCIDENT		LOCATION		DATE	
1. OCCASIONAL	2. COMMERCIAL	3. INDUSTRIAL	4. RESIDENTIAL	5. OTHER	6. UNKNOWN
7. HIGHWAY	8. RAILROAD	9. AIRPORT	10. MARINA	11. OTHER	12. UNKNOWN
13. CITY	14. COUNTY	15. STATE	16. ZIP	17. OTHER	18. UNKNOWN
19. STREET	20. HIGHWAY	21. RAILROAD	22. AIRPORT	23. MARINA	24. OTHER
25. CITY	26. COUNTY	27. STATE	28. ZIP	29. OTHER	30. UNKNOWN
31. STREET	32. HIGHWAY	33. RAILROAD	34. AIRPORT	35. MARINA	36. OTHER
37. CITY	38. COUNTY	39. STATE	40. ZIP	41. OTHER	42. UNKNOWN
43. STREET	44. HIGHWAY	45. RAILROAD	46. AIRPORT	47. MARINA	48. OTHER
49. CITY	50. COUNTY	51. STATE	52. ZIP	53. OTHER	54. UNKNOWN
55. STREET	56. HIGHWAY	57. RAILROAD	58. AIRPORT	59. MARINA	60. OTHER
61. CITY	62. COUNTY	63. STATE	64. ZIP	65. OTHER	66. UNKNOWN
67. STREET	68. HIGHWAY	69. RAILROAD	70. AIRPORT	71. MARINA	72. OTHER
73. CITY	74. COUNTY	75. STATE	76. ZIP	77. OTHER	78. UNKNOWN
79. STREET	80. HIGHWAY	81. RAILROAD	82. AIRPORT	83. MARINA	84. OTHER
85. CITY	86. COUNTY	87. STATE	88. ZIP	89. OTHER	90. UNKNOWN
91. STREET	92. HIGHWAY	93. RAILROAD	94. AIRPORT	95. MARINA	96. OTHER
97. CITY	98. COUNTY	99. STATE	100. ZIP	101. OTHER	102. UNKNOWN

1. Louis, Bobby, 619 Van Buren, Hy. L. 11202.
 A. H. BK, 5'11" 210, 33, Heavy, 2nd
 Saw knife on keychain
 Gray slacks.
 Bright long sleeve shirt with yellow & white stripes.
 2. H/1

4/12

4/12

4/12

4/12

4/12

4/12

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

DR NO. 82-73179TYPE CRIME ATT. MURDER

DATE OCCURRED _____ LOCATION OF _____

TIME OCCURRED 0030 HRS OCCURRENCE 616 H. ST. LAS VEGAS.

I, Virgie Lee Jimmerson, am 40 years of age,
home phone none
and my address is Las Vegas, Nevada bus. phone none

Jimmerson was in the bar visiting with her daughter, Tina Washington, when Bobby Lewis came into the bar, The Brown Bummer Pool Hall. Lewis used to be an old boyfriend of Jimmersons. Lewis approached Jimmerson and wanted to talk to her. When Jimmerson refused to speak with him, Lewis got up and she went to the cooking area. She saw Lewis go to the cash register where Otis Brown, the owner of the pool hall, was counting the money. Lewis and Brown were talking in a mutual manner. The next thing Jimmerson heard was a shot. Brown fell to the floor and rolled over. Jimmerson saw a gun in Lewis' right hand. She described the gun as being small. Lewis then went to the cooking area and forcibly took Jimmerson out the front door. All this time Lewis still had the gun in his hand. Lewis and Jimmerson walked around the desert area and talked about Lewis turning himself in. They both walked to City Hall, Plaza desk, where Lewis turned himself in. Lewis told Jimmerson that the only reason he shot Brown was that he was afraid that she was going to stay with Brown and not come back to him.

I have read this statement consisting of 1 page (s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) CITY HALL

on the 12TH day of OCTOBER at 0525 (AM/PM), 19 82

WITNESS _____

WITNESS Fred Haley 2383

Virgie Lee Jimmerson
Signature of person giving voluntary statement

EXHIBIT "3"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

DR NO. 82-83179TYPE CRIME ATTEMPT MURDERDATE OCCURRED 10-11-82 LOCATION OFTIME OCCURRED APPROX. 2300HRS OCCURRENCE _____

I, SURLESTENA WASHINGTON, am 24 years of age, DOB -58
home phone 642-1308
and my address is LAS VEGAS, NEVADA bus. phone 648-9899

This is a statement being taken at the LAS VEGAS METROPOLITAN POLICE DEPARTMENT
Detective Bureau on 10-11-82 at 2330 hours.

I came to work at the BROWN BOMBER POOL HALL, located at 616 North H
Street, at 12 Noon, this being October 11, 1982. My mother VIRGIE
JIMMERSON came to work with me and sat around. The owner of the place
was also working all day with me. His name is OTIS BROWN. About 10:45
PM tonight a friend of my mother's who she has known for less than a
year and had been living together off and on, BOBBY LEWIS, Black Male,
approximately 35 years of age, 5'7", about 190 pounds, having short
afro hair, clean shaven, came in. He was wearing a black waist length
jacket, blue slacks. He started grabbing my mother's arm and wanting
to have her go with him and she did not want to go. This argument went
on for a little while. I told BOBBY to turn my mother loose and he said
it was none of my business and I said it was and my mother said it was.
At this time, OTIS BROWN, the owner, was waiting on a customer and

I have read this statement consisting of 2 page(s) and I affirm to the truth and accuracy of the facts
contained herein.

This statement was completed at (location) Detective Bureau

on the 11 day of Oct at 2330 (AM/PM), 19 82

WITNESS Det m. [signature]

SURLESTENA WASHINGTON
Signature of person giving voluntary statement

WITNESS _____

my mother and BOBBY were at the counter also. The next thing I knew BOBBY came out with a gun. It was a black gun and BOBBY LEWIS fired one shot and it hit OTIS BROWN. After he was shot he fell behind the counter. I ran out by my car in the front parking lot. I did not see BOBBY or my mother leave the bar but they did because they weren't there when I went back in. BOBBY LEWIS does not have a car. I don't know how they left unless they left in a friends car. I went back in the bar a short time later and the police and ambulance were there and this detective brought me to the station where I gave this statement. Prior to coming here I took the detective and showed them where BOBBY LEWIS lives. This is all I know.

Statement concluded at 2355 hours on the same date, same persons present, being the witness, DETECTIVE N. METZ, and STENOGRAPHER IRENE HOTHAM.

WITNESS: Det. MetzSIGNED: Surlestena Washington

WITNESS: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

DR NO. 83. 85526

TYPE CRIME THREATS TO LIFE
SHOOTING INTO OCC. STRUCTURE

DATE OCCURRED 12-3-83 LOCATION OF

TIME OCCURRED 0110 OCCURRENCE 807 GRANT

I, VIRGIE JIMMERSON, am 41 years of age, home phone 642-9822
and my address is NLV bus. phone NONE

I WAS OVER AT BOBBY LOUIS HOUSE AT
ABOUT 7 PM TO 730 PM. (WE WERE ARGUING AND
HE WOULD NOT LET ME LEAVE.

BOBBY TOLD ME THAT HE WOULD SHOOT
ME IN THE FOOT AND WHEN I WENT TO THE
DOCTOR TO LET AND SAY IT WAS AN ACCIDENT.
I TOLD BOBBY I WAS GOING TO THE STORE.
I CALLED MY DAUGHTER AND SHE CAME
AND PICKED ME UP AND TOOK ME TO 807
GRANT ST SO I COULD TALK TO A FRIEND.
I WAS AT MY FRIENDS HOUSE FOR ABOUT 25
MINUTES AND BOBBY KNOCKED ON THE
DOOR AND TOLD ELIZA THAT HE WANTED ME
TO COME OUT. ELIZA TOLD HIM NO AND HE
LEFT. ABOUT 3-5 MINUTES LATER THERE WERE

I have read this statement consisting of 2 page(s) and I affirm to the truth and accuracy of the facts contained herein.

This statement was completed at (location) 807 GRANT

on the 3 day of DEC at 0200 (AM/PM), 19 83

WITNESS H. Schol 1875

Virgie Jimmerson
Signature of person giving voluntary statement

WITNESS _____

EXHIBIT "4"

2. SAYS THAT CAME THRU THE BEDROOM
WINDOW.

ELIZA CALLED THE POLICE AGAIN RIGHT AFTER
THAT.

THIS STATEMENT WAS WRITTEN BY OFF.
SLHOLZ.

Diego Jimenez

10520F 2

INCIDENT/CRIME REPORT

DR# 82-86687

SUBSIDIARY		LARCENY		PROPERTY BY TYPE & VALUE	
RESIDENTIAL	GRAND LARCENY	PEACE LARCENY	CURRENCY, NOTES, ETC.	5	
HOTEL/MOTEL	LARCENY FROM A PERSON	BURGLARY FROM VEHICLE (TFMV)	JEWELRY, PRECIOUS METALS		
COMMERCIAL (NOT HOTEL/MOTEL)	ATTEMPT	OTHER (EXP.)	CLOTHING & FURS		
NIGHT (6 P.M. - 6 A.M.)	CLASSIFICATION		OFFICE EQUIPMENT		
DAY (6 A.M. - 6 P.M.)	POCKET PICKING	PURSE-SNATCHING	TVS, RADIOS, CAMERAS		
TIME UNKNOWN	SHOPLIFTING	FROM AUTOS (EXC. PARTS & ACCESS.)	FIREARMS		
METHOD OF ENTRY <input type="checkbox"/> FORCE <input type="checkbox"/> NO FORCE	AUTO PARTS & ACCESS.	FROM ANY COIN-OPER. MACHINE	HOUSEHOLD GOODS		
LOCATION IDENTIFIER	FROM ANY COIN-OPER. MACHINE	FROM BLDG. (EXC. SHOPLIFTING & COIN-OPER. MACH)	CONSUMABLE GOODS		
HIGHWAY (ST/ALLEYS)	OTHER (EXPLAIN)		LIVESTOCK		
COMMERCIAL			MISCELLANEOUS		
GAS OR SERV. STATION			TOTAL LOSS	5	
CHAIN STORE					
RESIDENCE (ANYWHERE ON PREMISES)					

ROBBERY		CRIMES AGAINST PERSONS	
LOCATION IDENTIFIER	TYPE WEAPON/FORCE USED	RAPE	CRIMINAL HOMICIDE
HIGHWAY (ST/ALLEYS)	FIREARM	RAPE BY FORCE	MURDER OR NON-NEGLIGENT
COMMERCIAL	KNIFE OR CUT. INSTRUMENT	ASSAULT	MANSLAUGHTER
GAS OR SERV. STATION	OTHER DANG. WEAPON	TO RAPE ATTEMPT	MANSLAUGHTER BY NEGLIGENCE
CHAIN STORE	STRONG-ARM		
RESIDENCE (ANYWHERE ON PREMISES)	SIMULATED		

SUSPECT (LAST, FIRST, MIDDLE)		RESIDENCE ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)	
1	LEWIS, BOBBY	619 VAN BUREN, LVN	NO PHONE

SEX	DESCENT	HAIR	EYES	HEIGHT	WEIGHT	AGE OR D.O.B.	BUILD	ARRESTED	I.D.
M	N	BLK	BRN	5-9	190	33 YRS		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

IDENTIFYING MARKS AND CHARACTERISTICS		COMPLETE DESC. OF TOOLS OR WEAPON USED	
LAST SEEN WEARING			

SUSPECT (LAST, FIRST, MIDDLE)		RESIDENCE ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)	
2			

SEX	DESCENT	HAIR	EYES	HEIGHT	WEIGHT	AGE OR D.O.B.	BUILD	ARRESTED	I.D.
								<input type="checkbox"/> YES <input type="checkbox"/> NO	

IDENTIFYING MARKS AND CHARACTERISTICS		COMPLETE DESC. OF TOOLS OR WEAPON USED	
LAST SEEN WEARING			

VEHICLE INFORMATION - SUSPECT							
YEAR	MAKE	BODY TYPE	MODEL	LICENSE NO.	STATE	COLOR	MARKS OF IDENTIFICATION
NONE							

PERSONS CONTACTED			
CODE	NAME (LAST, FIRST, MIDDLE)	BEST DAYTIME POINT OF CONTACT (BDPC)	TIME
W-1	BENSON, VELDA		

RESIDENCE ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)		RES. PHONE	D.O.B.	DESC.	SEX
, LVN		NONE			

KNOWLEDGE OF EVENT CIRCUMSTANCES		STATEMENT OBTAINED	OCCUPATION AND BUSINESS FIRM NAME
NIECE/WITNESS		<input type="checkbox"/>	

CODE	NAME (LAST, FIRST, MIDDLE)	BEST DAYTIME POINT OF CONTACT (BDPC)	TIME	BDPC PHONE

RESIDENCE ADDRESS (NO., STREET, CITY, STATE, ZIP CODE)		RES. PHONE	D.O.B.	DESC.	SEX

KNOWLEDGE OF EVENT CIRCUMSTANCES		STATEMENT OBTAINED	OCCUPATION AND BUSINESS FIRM NAME
		<input type="checkbox"/>	

NARRATIVE: INCLUDE ELEMENTS OF CRIME AND EXPLAIN SOLVABILITY FACTORS.

On the above date and time myself and the above suspect were at the pool hall at 616 H Street. Suspect began shooting his gun and at one time pointed it at me, threatening me with it, stating if I didn't get out he would shoot me. Police then came and he was arrested. Suspect calls me on the phone a couple times every day and threatens me over the phone stating he will "get me sooner or later" and that someone, and police will not be with me all the time. On one incident the above witness was present when suspect came over and threatened me. Suspect is an ex-boyfriend who I have known for approximately 7 months.

FILED

CASE NO. C 65500

DEPARTMENT NO. VIII

Dec 21 3 24 PM '84

(1)

CLERK OF COURT

[Signature]

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

BOBBY LEWIS,

Defendant.

MOTION FOR TRIAL
TRANSCRIPT

COMES NOW the Defendant, BOBBY LEWIS, by and through his attorney, LYNN R. SHOEN, ESQ., and moves this court for an ORDER requiring a transcript to be prepared regarding his previous trial which took place in August of 1984.

This Motion is made and based upon the attached points and authorities and the pleadings and documents on file herein.

Respectfully submitted:

LYNN R. SHOEN, CHARTERED

By *[Signature]*
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

®

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: ROBERT MILLER, ESQ., its attorney:

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing in the above-entitled court on Wednesday the 2nd day of January, 1985.

LYNN R. SHOEN, CHARTERED

BY

Lynn R. Shoen
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

The trial in the case of State of Nevada vs. Bobby Lewis is scheduled for January 28, 1985. Previously, in August of 1984, a trial was held with regard to the identical matter, and the result was a hung jury or a mistrial.

Bobby Lewis hereby requests that a transcript be prepared of the following testimony which took place during the August, 1984 trial:

The testimony of all prosecution witnesses, including Virgie Jimmerson and Shirley Mae Cooper.

Mr. Lewis would not ask for a transcript of the testimony pertaining to jury selection; opening statements, defense witnesses or closing arguments.

The purpose of preparing such a transcript would be that the defense wishes to cross-examine prosecution witnesses

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

1 regarding their prior testimony, and to impeach prosecution wit-
2 nesses regarding inconsistencies in their prior statements.

3 Respectfully submitted:

4 LYNN R. SHOEN, CHARTERED

5
6 By 

LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

7
8
9
10 RECEIPT OF COPY of the above and foregoing MOTION FOR
11 TRIAL TRANSCRIPT is hereby acknowledged this 25th day of
12 December, 1984.

13 DISTRICT ATTORNEY

14
15 By 

ROBERT MILLER, ESQ.
200 South Third Street
Suite 700
Las Vegas, Nevada 89101

Dec 26 3 12 PM '84

Charles Masello

CASE NO. C 65500

DEPARTMENT NO. VIII

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

BOBBY LEWIS,

Defendant.

MOTION FOR REDUCTION
OF BAIL OR IN THE
ALTERNATIVE, RELEASE
ON OWN RECOGNIZANCE

COMES NOW the Defendant, BOBBY LEWIS, by and through his attorney, LYNN R. SHOEN, ESQ., and pursuant to NRS Chapter 178 respectfully moves this Court for an Order reducing his bail, or in the alternative, providing him with an Own Recognizance Release.

This Motion is made and based upon the attached points and authorities and the pleadings and documents on file herein.

Respectfully submitted:

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.

First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

(2)

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: ROBERT MILLER, ESQ., its attorney;

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the above-entitled court on the 21 day of December, 1984, at the hour of 9 o'clock a.m. in Department III of District Court, or as soon thereafter as counsel may be heard.

LYNN R. SHOEN, CHARTERED

By Lynn R. Shoen
LYNN R. SHOEN, ESQ.
First Floor
228 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Defendant

POINTS AND AUTHORITIES

FACTS

BOBBY LEWIS is thirty-five (35) years old and has been a resident of Las Vegas, Nevada for several years. Prior to his arrest, Mr. Lewis was a porter at the Four Queens Hotel and a porter at the Royal Inn. Mr. Lewis has three (3) minor children.

BOBBY LEWIS's bail is currently set at \$100,000.00. BOBBY LEWIS cannot afford such a high bail.

The Defendant has one prior felony conviction. With regard to case C 65500, the matter was previously submitted to the triar of fact and the result was a hung jury. The case has been reset for trial on September 17, 1984.

THE DEFENDANT SHOULD BE GRANTED A REDUCTION OF BAIL

A Defendant has a right to be released on a reasonable bail. "There can be no equal justice where the kind of treatment a man gets depends on the amount of money he has." Griffin v. People of the State of Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956).

1 NRS 178.498 addresses the factors which are to be con-
2 sidered when determining the amount of bail for a criminal defen-
3 dant. NRS 178.498 provides, in pertinent part:

4 ". . . . The amount thereof shall be such
5 as in the judgment of the magistrate will
6 insure the presence of the defendant, having
7 due regard to:

8 "1. The nature and circumstances of the
9 offense charged;

10 "2. The financial ability of the defen-
11 dant to give bail; and

12 "3. The character of the defendant."

13 Generally, there is no hard and fast rule which can be
14 set down for determining the amount of bail on each criminal
15 charge, and each case must be governed by its own facts and cir-
16 cumstances. The amount of bail rests with the sound discretion
17 of the court. See State v. Foy, 582 P.2d 281 (Kan. 1978).

18 The defense submits that the nature and circumstances of
19 the criminal charges pending against BOBBY LEWIS are not such as
20 would warrant the high bail; that his financial status is such
21 that the amount of bail set at the present time is tantamount to
22 having no bail at all; and that BOBBY LEWIS is a law-abiding
23 person who will eventually be exonerated of the charges presently
24 pending against him.

25 NRS 178.4851 allows the court to release the Defendant
26 on his own recognizance if it appears to the court that the
27 Defendant will appear at all times and places ordered by the
28 court.

29 NRS 178.4853 further establishes the minimum facts to be
30 considered in determining whether to release a person without
31 bail. Their factors are as follows:

- 1 1. The length of his residence in the community.
2 BOBBY LEWIS has lived in Las Vegas, Nevada for several years.
- 3 2. The status and history of his employment.
4 BOBBY LEWIS was previously employed as a porter at Las Vegas
5 Hotels.
- 6 3. His relationship with his spouse and children,
7 parents or other members of his family.
8 Mr. Lewis has three (3) children who live in Las Vegas, Nevada.
- 9 4. His prior criminal record, including any records of
10 his failure to appear after release on bail or without bail.
11 BOBBY LEWIS has one felony conviction.
- 12 5. His reputation, character, and mental condition.
13 BOBBY LEWIS is an average citizen, with no mental defects.
- 14 6. The identity of responsible members of the com-
15 munity who would vouch for the defendant's reliability.
16 BOBBY LEWIS has a sister, Anna Bell Stringer, 1049 Bartley, Las
17 Vegas, Nevada. He has a friend named Reverend Bennett.
- 18 7. The nature of the offense with which he is charged,
19 the apparent probability of conviction and the likely sentence,
20 insofar as these factors relate to the risk of his not appearing.
21 The defendant previously went to trial on this case, the result
22 was a hung jury. The defendant has filed a Motion to Dismiss
23 based on the failure to preserve potentially exculpatory evi-
24 dence.
- 25 BOBBY LEWIS submits that to deny this Motion for a
26 reduction in bail or in the alternative, an own recognizance
27 release, denies the Defendant his right to fully cooperate with
28 his counsel, to investigate the charges against him, and to ade-
29 quately prepare his defense. "This traditional right to freedom
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LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
328 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

1 before conviction permits the unhampered preparation of a
2 defense, and serves to prevent the infliction or punishment prior
3 to trial." Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1 (1951).

4 DATED this 27th day of December, 1984.

5 Respectfully submitted:

6 LYNN R. SHOEN, CHARTERED

7
8 By Lynn R. Shoen
9 LYNN R. SHOEN, ESQ.
10 First Floor
11 228 South Fourth Street
12 Las Vegas, Nevada 89101
13 Attorney for Defendant

14 RECEIPT OF COPY of the above and foregoing MOTION FOR
15 REDUCTION OF BAIL OR IN THE ALTERNATIVE, RELEASE ON OWN
16 RECOGNIZANCE is hereby acknowledged this 27th day of December,
17 1984.

18 ROBERT J. MILLER, ESQ.

19 CLARK COUNTY DISTRICT ATTORNEY

20 By Robert J. Miller
21 ROBERT J. MILLER, ESQ.
22 200 South Third Street
23 Las Vegas, Nevada 89101
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ROBERT J. MILLER
DISTRICT ATTORNEY
Clark County Courthouse
Las Vegas, Nevada 89155

JAN 3 4 30 PM '85

FOR THE COURT
FILED

BY

1 CASE NO. C 65500

2 DEPT. NO. VIII

3
4
5
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF CLARK

8 * * * * *

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 BOBBY LEWIS,)

13 Defendant.)

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RESPONSE IN OPPOSITION TO
DEFENDANT'S SECOND MOTION TO
REDUCE BAIL OR RELEASE ON OWN
RECOGNIZANCE

15 COMES NOW, the State of Nevada, by ROBERT J. MILLER,
16 District Attorney, through ROBERTA J. O'NEALE, Deputy District
17 Attorney, and files this response to Defendant's Motion for
18 Reduction of Bail or in the alternative, Release on Own Recogniz-
19 ance.

20 This Response is made and based upon all the files, papers
21 and pleadings on file herein, Points and Authorities in support
22 hereof, as well as oral arguments.

23 DATED this 3rd day of January, 1985.

24 Respectfully submitted,

25 ROBERT J. MILLER
26 DISTRICT ATTORNEY

27 By: Roberta J. O'Neale
28 ROBERTA J. O'NEALE
29 Deputy District Attorney
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32

1
2
3 POINTS AND AUTHORITIES

4 The Defendant herein has filed his second essentially
5 identical Motion for Reduction of Bail, etc. The first was filed
6 August 31, 1984. This current Motion, filed December 26, 1984,
7 is, in fact, so identical that on p. 2, ll. 25-26, it states
8 that: "The case has been reset for trial on September 17, 1984".
9 (Emphasis added). In fact, on September 10, 1984, the Defend-
10 ant's Motion to continue the trial date of September 17, 1984,
11 was granted, and the trial was reset to November 5, 1984. On
12 November 6, 1984, the trial date was again continued (the State
13 was ready again to go to trial) because Defendant's counsel was
14 in trial in another Courtroom. On November 7, 1984, after the
15 Defendant requested an ordinary course setting for the trial and
16 the State requested a setting as soon as possible. The trial
17 was again reset for January 28, 1985. On December 21, 1984, the
18 Defendant, four months after the previous trial, filed a Motion
19 for a Transcript of the preceding trial, which Motion was heard
20 and granted on January 2, 1985. This may occasion yet another
21 defense generated delay of this trial, a case now over a year
22 old. Because the Defendant's current Motion is nearly identical
23 to his previous Bail Motion, the State will file a response
24 nearly identical to its previous response, since all the same
25 arguments hold and nothing in this case has any way changed since
26 the Defendant's last Motion, other than the passage of time, set
27 out above.

28 On January 6, 1984, at 2:00 A.M., the Defendant broke
29 into the home of SHIRLEY COOPER and her sister, VIRGIE JIMMERSON,
30 and kidnapped them at gunpoint. There were about five other
31 adults present, including the victims' ailing father, during
32 these violent acts, as well as several small children. SHIRLEY
COOPER was released after delivering the Defendant and the
victim, VIRGIE JIMMERSON, to a location specified by the

1 Defendant. VIRGIE JIMMERSON was held by the Defendant until the
2 next day at about 1:45 P.M. and was sexually assaulted at gun-
3 point during that time period. Threats to the lives of witnesses
4 and victims were made.

5 On August 13, 1984, through August 16, 1984, a jury trial
6 was had in this matter. The jury hung 11 to 1 for conviction!
7 According to 11 jurors, the 12th juror violated his oath, came
8 into the jury room with his mind made up, announced it would be
9 a hung jury, and refused to deliberate. He was hostile with the
10 rest of the jurors.

11 According to the testimony of TINA WASHINGTON, daughter of
12 VIRGIE JIMMERSON, the Defendant called her 2-3 times between
13 August 10th and August 13th, 1984, just prior to the trial and
14 tried to persuade TINA to talk her mother into not appearing at
15 the trial.

16 The Defendant has had at least three previous violent
17 incidents revolving around this same victim. In October of 1982,
18 the Defendant shot a man at the Brown Bomber and then took the
19 victim away at gunpoint. In December of 1983, the Defendant
20 shot up another woman's house trying to locate and take away
21 VIRGIE JIMMERSON. And on another occasion in July of 1982, the
22 Defendant sliced the victim's face with a razor while trying to
23 take her someplace against her will. Her face is scarred to
24 this day. The victim alluded to all three of these incidents in
25 Defendant's Exhibit "A" attached to Defendant's Motion to Dis-
26 miss filed August 31, 1984.

27 The Defendant has a prior felony conviction for Burglary
28 in 1969; his probation on that offense was revoked in 1970,
29 whereupon the Defendant was sent to Nevada State Prison for 2
30 years. The Defendant has a number of felony and misdemeanor
31 arrests (about 20), with convictions of DUI (1976) and two other
32 minor traffic offenses, (1976 and 1979).

1 The Defendant has prior Bench Warrants (three, on cita-
2 tions) and two prior FTA's (on a Driving Without a License in
3 1979, and on an Attempt Murder With Use of a Deadly Weapon in
4 1982), according to his SCOPE printout. Further, Counts II
5 (Kidnap 1° With Use of Deadly Weapon) and IV, (Sexual Assault
6 With Use of a Deadly Weapon) are non-probationable offenses under
7 NRS 193.165(4).

8 ARGUMENT

9 Pursuant to 178.498, bail should be set in an amount which
10 will insure the presence of the Defendant, having regard to:

- 11 1) the character of the defendant;
- 12 2) the financial ability of the defendant to give
13 bail; and
- 14 3) the nature and circumstances of the crime
15 charged.

16 Under NRS 178.4853, when the Court is considering release
17 without bail, the Court must consider numerous factors, including
18 (in part) his prior criminal record, including any record of his
19 appearing or failing to appear after release with or without bail
20 and the nature of the offense with which he is charged, the
21 apparent probability of conviction and the likely sentence,
22 insofar as these factors relate to the risk of his not appearing.

23 As to the character of the Defendant and prior criminal
24 record, his character is that he is a violent dangerous man who
25 uses weapons against his victims. Some of his prior felony
26 arrests not already mentioned include rape, kidnap, infamous
27 crime against nature with use of a deadly weapon; rape and kidnap
28 again, and battery with a deadly weapon. Particularly as to this
29 victim (VIRGIE JIMMERSON) he shows a repeated pattern of violence.
30 The victims here would particularly be endangered if the Defend-
31 ant were released, especially in the light of the Defendant's
32 attempt to dissuade the victim from testifying even while he was

1 in jail, and his prior violence.

2 The nature of the charges is set out earlier. They are
3 crimes against the person, with the use of a firearm. The
4 probability of conviction is high in the light of the jury's
5 11-1 stance and the Defendant knows it. The fact that the
6 Defendant is also facing non-probationable, lengthy sentences
7 would also be an inducement to flee this jurisdiction.

8 Further, the current bail settings are in the appropriate
9 range for standard bail settings as set out by Justice Court.

10 In the light of all the above reasons, the State adamantly
11 opposes the Defendant's request for lowered bail or an own
12 recognizance release. Also, the Defendant himself, previously,
13 on July 23, 1984, made a motion to reduce his bail which was
14 promptly denied on that date.

15 Respectfully submitted,

16 ROBERT J. MILLER
17 DISTRICT ATTORNEY

18 By: 

19 ROBERTA J. O'NEALE
20 Deputy District Attorney

21 RECEIPT of a copy of the above and foregoing is hereby
22 acknowledged this 3rd day of January, 1985.

23 LYNN R. SHOEN, ESQ.

24 By: 

25 228 South Fourth Street
26 Las Vegas, Nevada 89101
27 ATTORNEY FOR DEFENDANT

FILED

JAN 7 4 21 PM '85

CASE NO. C 65500
DEPARTMENT NO. VIII
DOCKET NO. "H"

TELEPHONED

Public Good

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,

Plaintiff,

vs.

BOBBY LEWIS,

Defendant.

ORDER TO TRANSCRIBE
TRIAL TESTIMONY

This matter coming on for hearing on the 2nd day of
January, 1985, upon the motion of the Defendant and the Defendant
appearing in person and with his attorney, Lynn R. Shoen, Esq.,
and the Plaintiff represented by Deputy District Attorney, Roberta
J. O'Neale, Esq., it is hereby

ORDERED that Constance Johnson, the Court Reporter in
Department VII of the 8th Judicial District Court prepare a
transcription of all testimony elicited from witnesses, including
any and all direct and cross-examination of witnesses, which
occurred during the August 1984 trial of The State of Nevada vs.
Bobby Lewis, Case No. C 65500; and it is further

ORDERED that Constance Johnson need not prepare a
transcription of any opening or closing statements, any jury voir
dire, or any jury instructions, which took place at said trial,
and it is further

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
229 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

THE LAW OFFICES OF
LYNN R. SHOEN, CHARTERED
A PROFESSIONAL CORPORATION
228 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
(702) 382-2001

1 ORDERED that said transcription should be prepared on or
2 before January 23, 1985, the date of the Calendar Call regarding
3 the above-named case.

4 DATED this 7 day of January, 1985.

5
6 Michael J. Miller
7 DISTRICT JUDGE

8 Submitted by:

9 LYNN R. SHOEN, CHARTERED

10 By Lynn R. Shoen
11 LYNN R. SHOEN, ESQ.
12 First Floor
13 228 South Fourth Street
14 Las Vegas, Nevada 89101
15 Attorney for Defendant

16 APPROVED BY:

17 ROBERT J. MILLER,
18 CLARK COUNTY DISTRICT ATTORNEY

19 By Robert J. O'Neale
20 ROBERTA J. O'NEALE, ESQ.
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EXHIBIT 56

EXHIBIT 56

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FILED
CLARK COUNTY, NEVADA
DEC 19 1997

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—vs—

DARRELL BERNARD THOMAS

Defendant.

District Court Case No. C 147517

Justice Court Case No. 97F07543X

V
H

1/5

I, hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

WITNESS my hand this 18TH day of DECEMBER, 1997.

[Signature]
Justice of the Peace of Las Vegas Township

Justice Court, Las Vegas Township

STATE VS. THOMAS, DARRELL BERNARD

CASE NO. 97F07543X

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
DECEMBER 10, 1997 DECEMBER 10, 1997	MOTION TO CONTINUE PRELIMINARY HEARING FILED RECEIPT OF COPY FILED	sls SLS
DECEMBER 12, 1997 J. BIXLER J. TOGLIATTI, DA D. AMESBURY, ESQ. D. GREEN, CR D. FISLER, CLK	DEFENDANT NOT PRESENT IN COURT MOTION BY DEFENSE TO VACATE PRELIMINARY HEARING DATE OF 12/16/97 9:00 #4 - STANDS AT THIS TIME COURT RESERVES RULING O/R CONTINUES	12/15/97 :00 #4 12/16/97 9:00 #4 SLS
DECEMBER 15, 1997 M. ROBINSON for J. BIXLER B. BARKER, DA D. GREEN, CR D. AMESBURY, ESQ. S. SHROCK, CLK	DEFT. NOT PRESENT IN COURT MOTION BY DEFENSE TO VACATE AND RESET DATE OF 12/16/97 9:00 OFF CALENDAR - DEFENSE COUNSEL STATES STATE WILL OBJECT TO CONTINUANCE PRELIMINARY HEARING DATE STANDS O/R CONTINUES.	12/16/97 9:00 #4 kw
12-16-97 J. Bixler D. Barker, Da D. Amesbury, ESQ D. Green, CR D. Fisler, CLERK	Time Set For Preliminary Hearing Defendant PRESENT In Court States Witnesses Ericka Goodall Witness i/d Defendant Motion by Defense to Exclude Witnesses-Motion Granted Lakeisha Culverson Ebony Bell Witness i/d Defendant Motion by State to Amend Count I to reflect 6/95-6/96 Motion Granted Motion by State to Amend Count IV to add or rubbing buttocks of Ericka Goodall and delete tongue-Motion Granted State Rests Defendant Advised of his Statutory Right to make a Sworn or Unsworn Statement, to Waive Making a Statement, And/Or His Right to Call Witnesses. Defendant Waives Right to Make A Statement Defendant Bound Over to District Court as charged. Appearance Date Set O. R. Continues	1-5-98 9am D5 District Court d

Justice Court, Las Vegas Township

STATE VS. THOMAS, DARRELL BERNARD

CASE NO. 97F07543X

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES — HEARING

CONTINUED TO:

MAY 23, 1997	CRIMINAL COMPLAINT FIELD 5 COUNTS OF LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN	
MAY 27, 1997 J. BIXLER L. REHFELDT, DA S. SHROCK, CLK	DEFENDANT NOT PRESENT IN COURT ARREST WARRANT ISSUED COUNTS I-V - \$10,000/10,000/20,000 PER COUNT	SLS
JUNE 5, 1997 J. BIXLER D. GREEN, CR D. FISLER, CLK	INITIAL ARRAIGNMENT DEFENDANT NOT PRESENT IN COURT APPEARANCE DATE SET O/R CONTINUES	6-25-97 8:00 #4 fp
6-25-97 J. BIXLER B. KOCHVAR, DA D. AMESBURY, ESQ CON L. MAKOWSKI, CR D. FISLER, CLK	DEFENDANT PRESENT IN COURT PRELIMINARY HEARING DATE SET OR CONTINUES.	9-3-97 9:00 #4 MS
SEPTEMBER 3, 1997 J. BIXLER D. BARKER, DA D. AMESBURY, ESQ. APPEARED EARLIER D. GREEN, CR S. SHROCK, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT IN CUSTODY OTHER CHARGES CONTINUED BY STIPULATION OF COUNSEL PER T. LOURY, DA AND DEFENSE ATTORNEY PASSED BY STATE FOR STATUS CHECK ON NEGOTIATIONS NOTIFY M. AMADOR, ESQ./ss DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	9/10/97 8:00 #4 do
SEPTEMBER 10, 1997 M. ROBINSON for #4 B. KOCHVAR, DA D. AMESBURY, ESQ D. GREEN, CR S. SHROCK, CLK	DEFENDANT PRESENT IN COURT CASE NOT NEGOTIATED PRELIMINARY HEARING DATE RESET O/R CONTINUES	12-16-97 9:00 #4 mb

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 97F07543X

5 -vs-

6 DARRELL BERNARD THOMAS #785645,

7 Defendant.

CRIMINAL COMPLAINT

8
9 The Defendant above named having committed the crime of LEWDNESS WITH A
10 CHILD UNDER THE AGE OF FOURTEEN (Felony - NRS 201.230), in the manner following,
11 to-wit: That the said Defendant, during or between July 1993 and June, 1996, at and within the
12 County of Clark, State of Nevada,

13 COUNT I *June 95 to*

14 did, during June, 1996, then and there wilfully, lewdly, unlawfully, and feloniously
15 commit a lewd or lascivious act with the body of LAKEISHA CULVERSON, a child under the
16 age of fourteen years, by fondling and/or rubbing the buttocks of the said LAKEISHA
17 CULVERSON with his hands, with the intent of arousing, appealing to, or gratifying the lust,
18 passions, or sexual desires of said Defendant, or said child.

19 COUNT II

20 did, during or between July, 1993 and May, 1994, then and there wilfully, lewdly,
21 unlawfully, and feloniously commit a lewd or lascivious act with the body of EBONY BELL,
22 a child under the age of fourteen years, by touching and/or fondling the breasts of the said
23 EBONY BELL, with the intent of arousing, appealing to, or gratifying the lust, passions, or
24 sexual desires of said Defendant, or said child.

25 COUNT III

26 did, during or between July, 1993 and May, 1994, then and there wilfully, lewdly,
27 unlawfully, and feloniously commit a lewd or lascivious act with the body of EBONY BELL,
28 a child under the age of fourteen years, by touching and/or fondling the buttocks of the said

4A

1 EBONY BELL, with the intent of arousing, appealing to, or gratifying the lust, passions, or
2 sexual desires of said Defendant, or said child.

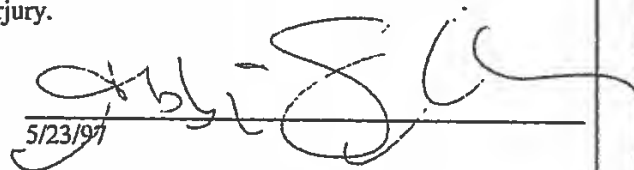
3 COUNT IV

4 did, during or between December, 1993 and May, 1994, then and there wilfully, lewdly,
5 unlawfully, and feloniously commit a lewd or lascivious act with the body of ERIKA
6 GOODALL, a child under the age of fourteen years, by kissing the said ERIKA GOODALL on
7 the mouth and/or by placing his tongue in the mouth of the said ERIKA GOODALL with the
8 intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said
9 Defendant, or said child.

10 COUNT V

11 did, during or between December, 1993 and May, 1994, then and there wilfully, lewdly,
12 unlawfully, and feloniously commit a lewd or lascivious act with the body of ERIKA
13 GOODALL, a child under the age of fourteen years, by touching and/or fondling the buttocks
14 of the said ERIKA GOODALL, with the intent of arousing, appealing to, or gratifying the lust,
15 passions, or sexual desires of said Defendant, or said child.

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

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21 5/23/97

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26 97F07543X/mt
27 LVMPD EV#9702260834
28 LEWD W/CHILD - F
(TK4)

ORIGINAL

1 DAVID C. AMESBURY, ESQ.
2 AMESBURY & SCHUTT
3 Nevada Bar No. 003889
4 300 South Maryland Parkway
5 Las Vegas, Nevada 89101
6 (702) 385-5570
7 Attorney for Defendant
8 Darrell Bernard Thomas

DEC 16 12 12 PM '97
CLERK

9 JUSTICE COURT
10 CLARK COUNTY, NEVADA

11 * * * *

12 THE STATE OF NEVADA,
13 Plaintiff,
14 vs.
15 DARRELL BERNARD THOMAS,
16 Defendant.

CASE NO. : 97F07543X
DEPT. NO. : 4

Date: 12-12-97
Time: 8:00 AM

17 MOTION TO CONTINUE PRELIMINARY HEARING DATE

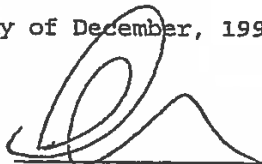
18 COMES NOW Defendant DARRELL BERNARD THOMAS, by and
19 through his attorney of record, David C. Amesbury Esq., of the
20 Law Firm of Amesbury & Schutt and does hereby move to continue
21 the trial date in the above-entitled case presently scheduled
22 for December 16, 1997 at 9:00 a.m. That Counsel for the
23 Defendant is currently scheduled for a deposition for December
24 16, 1997. That said deposition was set sometime ago prior to
25 the preliminary hearing being set.

26 Wherefore, the Defendant prays this Honorable Court to
27 continue the preliminary hearing heretofore set for December
28 16, 1997, in the

29 ///
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31 ///

1 ordinary course of the calendar.

2 DATED this 9th day of December, 1997.

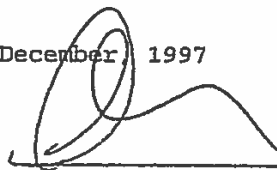
3
4
5 
6 DAVID C. AMESBURY
7 Nevada Bar No. 0003889
8 300 South Maryland Parkway
9 Las Vegas, Nevada 89101
10 Attorney for Defendant
11 Darrell Bernard Thomas

12 NOTICE OF MOTION

13 TO: DISTRICT ATTORNEY:

14 NOTICE IS HEREBY GIVEN that the Defendant, above-named,
15 by and through his attorney, DAVID C. AMESBURY ESQ. of The Law
16 Firm of Amesbury & Schutt, will bring the foregoing MOTION TO
17 CONTINUE on for hearing before the Justice Court Judge,
18 Department 4, on the 12 day of Dec, 1997, at
19 the hour of 8 A.m., or as soon thereafter as counsel may
20 be heard.

21 DATED this _____ day of December, 1997

22 
23 DAVID C. AMESBURY, ESQ.
24 Nevada Bar No. 003889
25 300 South Maryland Parkway
26 Las Vegas, Nevada 89101
27 (702) 385-5570
28 Attorney for Defendant

1 AFFIDAVIT OF DAVID C. AMESBURY ESQ.

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 DAVID C. AMESBURY, being first duly sworn, deposes and
6 says:

7 1. That I am the retained attorney of record for
8 the Defendant in this action.

9 2. Affiant has a conflicting deposition set in a
10 civil action that had been previously set on December 16,
11 1997, for approximately the same date and time as the
12 preliminary hearing in this matter.

13 Wherefore, Affiant prays this Honorable Court
14 continue this matter in the ordinary course.

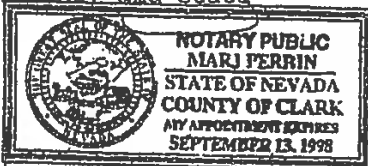
15 FURTHER AFFIANT SAYETH NOT.

16 DATED this 9th day of December, 1997.

17
18 
19 DAVID C. AMESBURY ESQ.

20 SUBSCRIBED and SWORN to before me
21 this 9th day of December, 1997.

22 
23 NOTARY PUBLIC in and for said
24 County and State



ORIGINAL

1 DAVID C. AMESBURY
2 NEVADA BAR NUMBER 3889
3 LAW OFFICES OF DAVID C. AMESBURY
4 300 SOUTH MARYLAND PARKWAY
5 LAS VEGAS, NEVADA 89101
6 (702) 385-5570

DEC 16 12 12 PM '97

5 Attorney for Defendant
6 Darrell Bernard Thomas

7 JUSTICE COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 DARRELL BERNARD THOMAS)

13 Defendant.)

CASE NO. 97F07543X

DEPT. NO. 4

DOCKET NO.

14 RECEIPT OF COPY

15 RECEIPT OF COPY of the foregoing Motion to Continue
16 is hereby acknowledged this 10 day of December, 1997.
17

18
19 RECEIVED BY
DISTRICT ATTORNEY'S OFFICE

20
21 By: Stewart Bell

22 STEWART BELL
23 DISTRICT ATTORNEY
24 200 South Third St.
25 Las Vegas, NV 89155
26
27
28

AA2201

CLARK COUNTY INTAKE QUESTIONNAIRE AND FINANCIAL AFFIDAVIT

Defendant: THOMAS, DARRELL B		
Arrest Date: 6/3/97	Arraign. Date:	
S.S.N.:	I.D.: 785645	
D.R. #: NO NCIC	D.O.B. 2/7/	
M J Charge: LEWD W/MINOR (3 rd CTS)	WA 97F07543X JC-4	Bail: 50000
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:
M J Charge:		Bail:

BASED ON _____ VERIFIED POINTS THIS DEFENDANT HAS RECEIVED, AND THE INFORMATION GATHERED BY INTAKE SERVICES, THE FOLLOWING RECOMMENDATION IS MADE:

_____ Supervised Release with Conditions as Directed by Intake Services: _____

_____ Bail Reduction To: _____

_____ Not Recommended for an O/R Release or Bail Reduction Because: _____

Release Granted: _____ Date: _____

Bail Reduction To: _____

Release Denied: _____ Date: _____

RESIDENCY

Defendant: THOMAS DARRELL ID 785645

Present Address: 3975 GULLIVER Apt. #: 6518920 Phone #: 6518920

How Long: 3 yrs Living With: CYNTHIA THOMAS Relationship: WIFE

Prior Address: 2627 SALT LAKE ST Apt. #: 6518920 Phone #: 6518920

How Long: 1 yrs Living With: CYNTHIA THOMAS Relationship: WIFE

Clark County Resident: 29 Weeks 29 Months 29 Years Visiting: ☐ Yes ☒ No How Long: 29

State of Residency (address) If Less Than 5 Years: N/A

Marital Status: Single Married Divorced Separated # of Children: 4 Education: 127REV

EMPLOYMENT

Are You Employed? ☒ Yes ☐ No. If no, means of support: 67:40 How Much: 67:40

Cash on hand or in bank (including spouse): 1997 MERCURY Spouse's Income: 67:40

Property (including spouse): 1997 MERCURY

Rent: 632 MO Mortgage: 632 MO Other Debts: 2000 MO

Total Monthly Payments: 2000 MO

Present Employer: CLARK COUNTY SCHOOL DIST Address: CLARK COUNTY SCHOOL DIST

How Long: 3 1/2 yrs Occupation: TEACHER ASSIST Phone: 67:40

Supervisor: BEVERLY Net Income: \$ 1900 ☐ Shift ☒ Weekly ☐ Monthly

Prior Employer: DESERT INN MOTEL Address: CLARK COUNTY SCHOOL DIST

How Long: 5 yrs Occupation: HOUSEMAN Phone: 67:40

Supervisor: UNK Reason for Leaving: QUIT

BACKGROUND

Family Not Living With Defendant:

Name/Relationship:	Address:	Work: Phone: Res:
Name/Relationship:	Address:	Work: Phone: Res:

Character References: (FRIEND)

Name: <u>REGINIA GAY</u>	Address:	Work: Phone: Res: <u>6483132</u>
Name:	Address:	Work: Phone: Res:

List all prior convictions/pending charges other than in Clark County:

Charge	Conviction Date	Where	Disposition
1. <u>None</u>			
2.			

I the undersigned defendant, under penalty of perjury, declare that the above facts are true and correct.

Darrell Thomas
Defendant

Subscribed and sworn to before me this 5 day of JUNE, 1997.

David Ainsbury
Notary Public

Circle One: P.D. N.A. PA Name: DAVID AINSBURY Interview Date: _____ Time: _____

S E R V E D

```
*****
*****
*
*          ***** NCJIS WANTED PERSON SYSTEM *****
*
*   PIN-0209  NCJIS SUCCESSFULLY CLEARED THE LAST WARRANT
*             INCLUDING THE BASE AND SUPPLEMENTAL INFORMATION
* CLEARING AGENCY /NV00201C4 - CLARK COUNTY DETENTION CENTER
* ARRESTING AGENCY /NV0020100 - LAS VEGAS METROPOLITAN POLICE
* ENTERING AGENCY /NV0020135 - CLARK COUNTY DETENTION CENTER
* CONFIRMING AGENCY/NV0020135 - CLARK COUNTY DETENTION CENTER
* VALIDATING AGENCY/NV0020178 - LAS VEGAS METROPOLITAN PD
* NIN/W007059067
* SEQ/001          REASON/SERVED          DATE:06/03/97
* WARRANT NAME    /THOMAS,DARRELL BERNARD TIME:13:08:25
* BASE RECORD NAME/THOMAS,DARRELL BERNARD
* COURT CASE #/97F07543X
* COURT/NV002023J - LAS VEGAS JUSTICE COURT
*****
*****
```

AA2204

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA)
)
PLAINTIFF)
VS.)
)
DARRELL BERNARD THOMAS)
ID# 00785645)
)
DEFENDANT)
)

CASE NO: 97F07543X
DEPT. NO: 4
AGENCY: METRO POLICE

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 DARRELL BERNARD THOMAS, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
5	LEWDNESS WITH A MINOR	50,000.00	50,000.00	100,000.00

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 27TH DAY OF MAY, 1997.


JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
JAMES HIXLER

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE 03 DAY OF June, 1997, AND SERVED THE SAME BY
ARRESTING THE WITHIN DEFENDANT, Darrell Bernard Thomas, AND
BRINGING Him INTO COURT THIS 03 DAY OF
June, 1997.

JERRY KELLER, SHERIFF, CLARK COUNTY, NEVADA

BY: Gene M. Tierney / #9836 DEPUTY

6/5
1AW JB

DEFENDANT THOMAS, DARRELL BERNARD

DEFENDANT ID# 00785645

CASE NO: 97F07543X

DEPARTMENT JCRT4

JUDGE JAMES BIXLER

AGENCY: METRO POLICE

ENTERED
HL

ORI VRI
DOB 020 SOC 530687063
RAC B SEX M HGT 601

NAME THOMAS, DARRELL BERNARD
SID
WGT 184 HAI BLK EYE BRO

-----WARRANT-----

HOI COI WNM THOMAS, DARRELL BERNARD
NOC 00191 AOC OFC F FTF TRF JUV DSO DOW 052797
OCA 9702260834 CCN 97F07543X BAIL 50,000.00
TRA MIS

-----SUPPLEMENTAL-----

SUBMITTING OFFICER ID#:MP2040 NAME: LUCAS, NICHOLAS B

COUNTS CHARGE
5 LEWDNESS WITH A MINOR

W0007059067/001

MAY 21 5 41 PM '97

030 PM '97

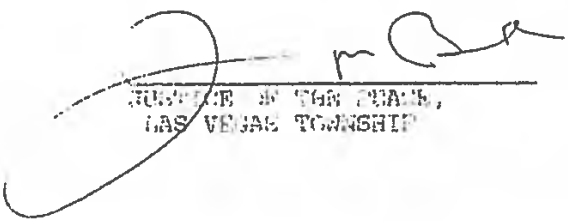
JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA)	CASE NO. 97P07443X
)	
PLAINTIFF)	
VS.)	
)	
Defendant: Edward Thomas)	
ID NO. 785649)	
)	
DEFENDANT)	REQUEST FOR ARREST WARRANT

WHEREFORE, STEWART L. BELL, DISTRICT ATTORNEY,
DO HEREBY REQUEST THAT A WARRANT OF ARREST BE ISSUED
FOR THE ABOVE NAMED DEFENDANT PURSUANT TO
NRS 151.100 AND THE COMPLAINT AND/OR AFFIDAVIT(S)
ATTACHED HEREON AND JUDICIAL ACTION HEREIN BY
THIS OFFICE.

STEWART L. BELL
DISTRICT ATTORNEY
NEVADA BAR NO. 000477

PROBABLE CAUSE FOUND: ☒ BALL: SB
PROBABLE CAUSE NOT FOUND: ☐


JUDGE OF THE COURT,
LAS VEGAS TOWNSHIP

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
TEMPORARY CUSTODY RECORD**

DATE OF ARREST: 5-1-71 TIME OF ARREST: 12:45 PM

I.D. #: 71665 Event #: 102021

Event #:

520

[illegible]

7

147517.16

Page 2 of 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

True Name: Darrell Bernard Thomas

I.D. #: 785645

Date of Arrest: 6/3/97

Time of Arrest: 1245

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 FBI (Department), Clark County, Nevada, being so employed for a period of 1 1/2 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 WARRANT at the location of 2601 Sunrise 1245 hours on the 3 day of JUNE, 19 97 and that the offense occurred at approximately

DETAILS FOR PROBABLE CAUSE:

On 5/27/97 a Justice Court arrest warrant issued for Darrell Bernard Thomas (dob 2/7 of Lendness with a Minor. (case # 97FB7543X).

On 6/3/97 this warrant was confirmed by p# 4467. Thomas was located at 2601 Sunrise and taken into custody without incident. He was then transported to CCDC.

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.

LVMPD 22 - A (REV. 3-91)

(1) ORIGINAL - COURT

James Patrick Jr
Declarant's Signature
James Patrick Jr
Print Declarant's Name

9831

P #

AA2209

DOA: 6-3-97
I.D. #: 785645

Clark County Intake Services

330 S Casino Center Blvd
(702) 455-4284

Charges: 97F07543X
LEWD w/minor 5cts

RELEASE AGREEMENT

Name: Thomas, Darrell Address: _____ Phone #: _____

YOU ARE HEREBY RELEASED ON THE FOLLOWING CONDITIONS LISTED BELOW

☒ **REPORT IN PERSON** to Intake Services on 6-5-97 between 9 A.M. to 11 A.M. or 1 P.M. to 3 P.M.
DATE

- ☒ 1) I will report to Intake Services one-half hour prior to all court appearances and immediately after each court appearance.
2) I will notify Intake Services of any change of address or telephone number.
3) I will notify Intake Services should I have any change of employment.
4) I will notify Intake Services should I want to leave the state advising them of destination and date of return.
5) I understand that if I am arrested on any other charges it may result in revocation of this release and being held without bail, per NRS 178.487.
6) If I fail to appear when so ordered and if I am taken into custody outside of this state, I waive my rights relating to extradition proceedings.

SPECIAL CONDITIONS

☒ **INTENSIVE SUPERVISION:**
YOU ARE TO REPORT TO INTAKE SERVICES ON THE ABOVE NOTED DATE AND TIME.
YOUR REPORT IN DAYS WILL BE ASSIGNED AT THAT TIME. FAILURE TO DO SO WILL
RESULT IN A WARRANT FOR YOUR ARREST.

☐ **OTHER:** _____

YOUR NEXT COURT APPEARANCE IS:

YOUR NEXT COURT APPEARANCE IS:

☒ **JUSTICE COURT #:** 4
200 S Third St • Las Vegas NV 89155
(702) 455-4435
Date & Time: 6/25/97 8AM

☐ **DISTRICT COURT #:** _____
200 S Third St • Las Vegas NV 89155
(702) 455-3156
Date & Time: _____

J.-J. PHILLIPS
Intake Services

I understand all of the above conditions.

[Signature]
Defendant

6/04/97

Date

PER JUDGE [Signature]

Release Authorized By

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)

(N.R.S. 53 amended 07/13/93)

EVENT: 970226-0834

STATE OF NEVADA)

) ss: Darrell Bernard Thomas

COUNTY OF CLARK)

Detective Nick Lucas, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 17 years, assigned to investigate the crime of lewdness w/minor (3cts), open & gross lewdness (1ct) committed on or about July/1993 - June/1996, which investigation has developed Darrell Bernard Thomas as the perpetrator thereof.

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

- 1- That Lakeisha Culverson is 14 years of age. Her date of birth is 3/18/
- 2- That Ebony Bell is 16 years old. Her date of birth is 12/2
- 3- That Erika Goodall is 15 years old. Her date of birth is 3/31/
- 4- That sometime during June of 1996 Darrell Bernard Thomas committed the offense of lewdness with a minor when he massaged the buttocks of Lakeisha Culverson without her permission and against her will. Lakeisha Culverson was 13 years of age at the time.
- 5- That sometime during July of 1993 Darrell Bernard Thomas committed the offense of lewdness with a minor when he massaged the breasts of Ebony Bell without her permission and against her will. Ebony Bell was 13 years of age at the time.
- 6- That sometime during May of 1994 Darrell Bernard Thomas committed the offense of open and gross lewdness when he massaged the breasts and buttocks of Ebony Bell without her permission and against her will. Ebony Bell was 14 years of age at the time.
- 7- That sometime during December of 1993 Darrell Bernard Thomas committed the offense of lewdness with a minor when he massaged the buttocks of Erika Goodall without her permission and against her will. Erika Goodall was 11 years of age at

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS CONTINUATION
Page 2

EVENT: 970226-0834

the time.

8- That the above offenses occurred at 3975 Gulliver St. LVN 89115.

9- That at the time of the offenses Darrell Bernard Thomas was the pastor of the Philadelphia Church of God in Christ and the victims were parishioners of that church.

10- That the above offenses occurred in Clark County, Nevada.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect Darrell Bernard Thomas on a charge of lewdness w/minor (3cts), open & gross lewdness (1ct).

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

Executed on this 16th day of May, 1997.

DECLARANT:

N. Lewis #2040

WITNESS:

[Signature] 1332

DATE:

5/16/97

Justice Court, Las Vegas TownshipCLARK COUNTY, NEVADA**Intensive Supervision Compliance Report**

CASE #: 97F07543X
DEPT #: JUSTICE COURT FOUR
NAME: THOMAS, DARRELL BERNARD
I.D. #: 785645
COURT DATE: 09/10/97
COURT TIME: 08:00 AM

Defendant was released to the Intensive Supervision Unit on 06/04/97 and is XXX is not in compliance with release conditions, having made 26 of 26 check-ins. ALL

COMMENTS:

THE DEFENDANT HAS MAINTAINED EXCELLENT COMPLIANCE WITH THE CONDITIONS OF THE O/R ISU
AGREEMENT. THIS IS A REQUEST FOR RELEASE FROM ISU.

SCT

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

Intensive Supervision Compliance Report

CASE #: 97F07543X
DEPT. #: JUSTICE COURT FOUR
NAME: THOMAS, DARRELL BERNARD
I.D. #: 785645
COURT DATE: 09/03/97
COURT TIME: 09:00 AM (P/B)

Defendant was released to the Intensive Supervision Unit on 06/04/97 and is XXX is not in compliance with release conditions, having made 24 of 24 check-ins. ALL

COMMENTS:

THE DEFENDANT HAS MAINTAINED EXCELLENT COMPLIANCE WITH THE CONDITIONS OF THE O/R ISU
AGREEMENT. THIS IS A REQUEST FOR RELEASE FROM ISU.

SCT

Justice Court, Las Vegas Township
CLARK COUNTY, NEVADA

Intensive Supervision Compliance Report

CASE #: 97F07543X
DEPT. #: JUSTICE COURT FOUR
NAME: THOMAS, DARRELL BERNARD
I.D. #: 785645
COURT DATE: 06/25/97
COURT TIME: 08:00 AM

Defendant was released to the Intensive Supervision Unit on 06/04/97 and is XXX is not in compliance
with release conditions, having made 5 of 5 check-ins. ALL

COMMENTS:

Justice Court, Las Vegas Township

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

—VS—

DARRELL BERNARD THOMAS

Defendant.

Case No. 97F07543X

COMMITMENT and ORDER TO APPEAR

An Order having been made this day by me, that
DARRELL BERNARD THOMAS

be held to answer upon the charge of

5 COUNTS- OF LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN

BETWEEN JULY 1993 AND JUNE 1996

Committed in said Township and County, on or about the _____ day of _____, 19____.

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive _____
_____ into custody, and detain _____ until _____ be legally discharged, and
that _____ be admitted to bail in the sum of _____ Dollars, and be
committed to the custody of the Sheriff of said County, until such bail is given; and

IT IS FURTHER ORDERED that said Defendant _____ IS _____ is/are commanded to appear in
Department _____ 5 of the Eighth Judicial District Court, Clark County Courthouse, Las Vegas, Nevada, at 9:00 A.M., on
the 5TH day of JANUARY, 19 98, for arraignment and further proceedings on the within charge S_____.

DATED this 18TH day of DECEMBER, 19 97.

Justice of the Peace of Las Vegas Township

ORIGINAL

FILED

DEC 29 8 14 AM '97

Letitia Sumner
CLERK

1 INFO
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

9 I.A. 1/5/98
10 9:00 A.M.
11 AMESBURY

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 DARRELL BERNARD THOMAS,
16 #0785645

17 Defendant.

Case No. C 147517
Dept. No. V
Docket H

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss:

20 STEWART L. BELL, District Attorney within and for the County of Clark, State of
21 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

22 That DARRELL BERNARD THOMAS, the Defendant(s) above named, having
23 committed the crime of LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Felony -
24 NRS 201.230), during or between July, 1993, and June, 1996, within the County of Clark, State
25 of Nevada, contrary to the form, force and effect of statutes in such cases made and provided,
26 and against the peace and dignity of the State of Nevada,

27 COUNT I

28 did, on or between June, 1995, and June, 1996, then and there wilfully, lewdly,
unlawfully, and feloniously commit a lewd or lascivious act with the body of LAKEISHA
CULVERSON, a child under the age of fourteen years, by fondling and/or rubbing the buttocks
///

AA2217

1 of the said LAKEISHA CULVERSON with his hands, with the intent of arousing, appealing to,
2 or gratifying the lust, passions, or sexual desires of said Defendant, or said child.

3 COUNT II

4 did, during or between July, 1993 and May, 1994, then and there wilfully, lewdly,
5 unlawfully, and feloniously commit a lewd or lascivious act with the body of EBONY BELL,
6 a child under the age of fourteen years, by touching and/or fondling the breasts of the said
7 EBONY BELL, with the intent of arousing, appealing to, or gratifying the lust, passions, or
8 sexual desires of said Defendant, or said child.

9 COUNT III

10 did, during or between July, 1993 and May, 1994, then and there wilfully, lewdly,
11 unlawfully, and feloniously commit a lewd or lascivious act with the body of EBONY BELL,
12 a child under the age of fourteen years, by touching and/or fondling the buttocks of the said
13 EBONY BELL, with the intent of arousing, appealing to, or gratifying the lust, passions, or
14 sexual desires of said Defendant, or said child.

15 COUNT IV

16 did, during or between December, 1993 and May, 1994, then and there wilfully, lewdly,
17 unlawfully, and feloniously commit a lewd or lascivious act with the body of ERIKA
18 GOODALL, a child under the age of fourteen years, by kissing the said ERIKA GOODALL on
19 the mouth and/or by touching and/or fondling the buttocks of the said ERIKA GOODALL, with
20 the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of said
21 Defendant, or said child.

22 COUNT V

23 did, during or between December, 1993 and May, 1994, then and there wilfully, lewdly,
24 unlawfully, and feloniously commit a lewd or lascivious act with the body of ERIKA
25 GOODALL, a child under the age of fourteen years, by touching and/or fondling the buttocks

26 ///

27 ///

28 ///

1 of the said ERIKA GOODALL, with the intent of arousing, appealing to, or gratifying the lust,
2 passions, or sexual desires of said Defendant, or said child.

3 STEWART L. BELL
4 DISTRICT ATTORNEY
5 Nevada Bar #000477

6 BY *Teresa M. Lowry*
7 TERESA M. LOWRY
8 Deputy District Attorney
9 Nevada Bar #003901

10 Names of witnesses known to the District Attorney's Office at the time of filing this
11 Information are as follows:

12 NAME

ADDRESS

13 BELL, Ebony

14 BELL, James

15 CULVERSON, Lakeisha

16 CULVERSON, Stephanie

17 CUSTODIAN OF RECORDS
18 Clark County School District

2832 E. Flamingo Rd.
Las Vegas, NV 89121

19 CUSTODIAN OF RECORDS
20 LVMPD

400 E. Stewart Ave.
Las Vegas, NV 89101

21 GOODALL, Erika

22 GOODALL, Monique

23 LNU, Monika

Address Unknown

24 LUCAS, N. MP# 2040

LVMPD

25 ///

26 ///

1 THOMAS, Cynthia

3975 Gulliver St.
Las Vegas, NV 89115

2 WILSON, Brenda

Clark County School District
c/o Human Resources
2832 E. Flamingo Rd.
Las Vegas, NV 89121

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27 DA#97F07543X/jmj
LVMPD EV#9702260834
LWM - F
28 (TK4)

● ORIGINAL ●

1 DAVID C. AMESBURY
NEVADA BAR NO. 003889
2 AMESBURY & SCHUTT
300 So. Maryland Parkway
3 Las Vegas, Nevada 89101
(762) 385-5570

4 Attorney for Petitioner
5 Darrell Bernard Thomas

FILED

Jan 26 1 34 PM '98

Charles J. Thomas
CJL

6
7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 DARRELL BERNARD THOMAS,
#0785645,

11 Petitioner.

12 THE STATE OF NEVADA,
13

14 Respondent.

)
) Case No. C147517
) Dept. No. V
) Docket H

) INFORMATION
)
)
)
)

15
16 PRETRIAL PETITION FOR WRIT OF
17 HABEAS CORPUS

18 Darrell Bernard Thomas, Petitioner, by and through his
19 attorney, David Amesbury, files this Pretrial Petition for Writ of
20 Habeas Corpus and requests that the Court dismiss the Information
21 on the following grounds: (1) Counts II through V are barred by
22 the statute of limitations; (2) the charges are not supported by
23 probable cause; (3) Counts IV and V are constitutionally deficient
24 for being too indefinite; and (4) preindictment delay.

25 INTRODUCTION

26 Defendant has been charged with five counts of lewdness with
27 a child under the age of 14 years, in violation of NRS 201.230
28 (1997). The charges allege that there were three different

AA2221

1 victims. Counts I, II, and V allege that the defendant committed
2 the offense charged "by touching and/or fondling the buttocks of"
3 the victim. Count IV alleges that the defendant committed the
4 offense charged "by kissing the said Erika Goodall on the mouth
5 and/or by touching and/or fondling the buttocks of the said Erika
6 Goodall. . . ." Count II alleges that the defendant touched and/or
7 fondled the breasts of the victim.

8
9 ARGUMENT

10 I. COUNTS II THROUGH V ARE BARRED BY THE STATUTE
11 OF LIMITATIONS.

12 The limitations period applicable to violations of NRS 201.230
13 (1997) is three years. *Hubbard v. State*, 110 Nev. 671, 877 P.2d
14 519 (1994), *pet. for reh'g denied*, 112 Nev. Adv. 122, 920 P.2d 991
15 (1996); *Walstrom v. State*, 104 Nev. 51, 752 P.2d 225 (1988); *see*
16 NRS 171.085(2) (1997). It is well established that the State must
17 prove that an offense was committed within the statutorily
18 permitted period for prosecution. *Walstrom v. State*.

19 The initial complaint against the defendant was filed on May
20 23, 1997. Thus any violation of NRS 201.230 that was committed
21 three or more years prior to the filing of the complaint is barred
22 by the three-year limitation period. Counts II and III of the
23 Information allege that the offense occurred between July 1993 and
24 May 1994. Counts IV and V allege that the offense occurred between
25 December 1993 and May 1994. Thus, it appears that Counts II
26 through V are barred by the applicable three-year limitation
27 period.

28 It is recognized, however, that NRS 171.095(1) provides that

1 if a felony is committed in a secret manner, an information or
2 complaint must be filed within the period of limitation prescribed
3 in NRS 171.085, in this case, three years after the discovery of
4 the offense. See *Hubbard v. State*; *Walstrom v. State*. Exceptions
5 to criminal statutes of limitations are narrowly construed and read
6 in a light most favorable to the accused. *Walstrom v. State*.
7 Under NRS 171.095, the burden is on the State to prove by a
8 preponderance of the evidence that the crime was committed in a
9 secret manner in order to toll the statute of limitations for
10 criminal actions. *Id.*

11 In this case, the State has failed to carry its burden. The
12 evidence shows that the alleged acts were generally committed while
13 other people were at the defendant's house. Thus, the alleged acts
14 could easily have been discovered and the victims could easily have
15 immediately told others about the alleged acts. Moreover, the
16 evidence indicates that the victims told others about the alleged
17 acts very shortly after they were committed. (See T at 14, 18, 20,
18 51-52.) Thus, even if the alleged acts were committed in a "secret
19 manner," they were discovered three years or more before the filing
20 of the complaint. Therefore, even assuming NRS 171.095(1) applies,
21 Counts II through V are still barred by the applicable three-year
22 limitation period. Accordingly, Counts II through V must be
23 dismissed.

24 II. THE CHARGES ARE NOT SUPPORTED BY PROBABLE
25 CAUSE.

26 At the preliminary hearing held on December 16, 1997, the
27 State presented the testimony of each of the three alleged victims.

28

1 With regard to Count I, Lakeisha Culverson testified that in 1995,
2 while she was at the defendant's house, the defendant "touched" or
3 "caressed" her "behind" with his hand. (T at 31.) There were
4 other people at the house at the time but Lakeisha was alone in the
5 room with the defendant when the touching occurred. (T at 37-38.)

6 With respect to Count III, Ebony Bell testified that sometime
7 around July 4, 1993, while she was at defendant's house, he
8 "touched" her "butt" with his hand on top of her clothes. (T at
9 47.) This occurred at a slumber party with other girls present at
10 the house. (T at 49-50.)

11 Bell also testified that on another occasion around the same
12 time, the defendant touched her breasts with his hand on the top
13 of her clothes as she was "passing through" his house. (T at 45-
14 46.) This touching is charged in Count II of the Information.

15 With respect to Count II, Ebony Bell testified that as she was
16 "passing through" the defendant's house on July 4, 1993, the
17 defendant touched her breasts with his hand on top of her clothing.
18 (T at 45-46.)

19 With respect to Counts IV and V, Erika Goodall testified on
20 direct examination that the defendant "touched me on my butt and
21 kissed me." (T at 8.) According to Goodall, the defendant kissed
22 her on her lips and touched and rubbed her butt with his hand on
23 top of her clothes. (T at 8-9.) She testified that this was the
24 first time that anything had happened with the defendant and that
25 the defendant did not do "anything else on any other times that
26 made [her] feel uncomfortable." (T at 11.) On cross-examination,
27 Goodall testified that this incident occurred "around
28

1 Christmastime" of 1993, in defendant's house while other people
2 were in the kitchen. (T at 8, 17-18.)

3 On redirect examination, the prosecutor showed Goodall a prior
4 statement she had made, and asked her if anything happened in 1994.
5 (T at 21-22.) Goodall answered "No." (T at 22.) The prosecutor
6 then asked if she recalled telling the police that a second
7 incident occurred in May of 1994 and Goodall answered "Yes." (T
8 at 22.) Goodall testified that in May of 1994, the defendant
9 "touched my butt" while she was at his house. (T at 22.)

10 On recross-examination, Goodall was asked: "The first
11 incident was the incident at the church; is that my understanding
12 of your testimony." (T at 23.) Goodall answered "Yes." (T at
13 23.)

14 Particularly, with regard to Counts I, III, IV, and V and even
15 as to Count II, the evidence presented at the preliminary hearing
16 was insufficient to establish probable cause for the charges
17 against the defendant.

18 NRS 201.230 provides in pertinent part as follows:

19 1. A person who willfully and lewdly commits any
20 lewd or lascivious act, other than acts constituting the
21 crime of sexual assault, upon or with the body, or any
22 part or member thereof, of a child under the age of 14
23 years, with the intent of arousing, appealing to, or
24 gratifying the lust or passions or sexual desires of
25 that person or of that child, is guilty of a category B
26 felony[.]

27 The statute does not define "lewdly," "lewd," or "lascivious." See
28 *Summers v. Sheriff, Clark County*, 90 Nev. 180, 521 P.2d 1228
(1974); *Ranson v. State*, 99 Nev. 766, 670 P.2d 574 (1983). A lewd
and lascivious act has been defined, however, as an act which tends