

1 adopted the “Massachusetts rule.” See Grimaldi v. State, 90 Nev. 89, 518 P.2d 615 (1974). It  
2 is the burden of the defendant to ask for such a hearing. See Wilkins v. State, 96 Nev. 367,  
3 372, 609 P.2d 309, 312 (1980).

4 The State’s burden of proof at a Jackson v. Denno hearing is a preponderance of the  
5 evidence, both with respect to voluntariness (Brimmage v. State, 93 Nev. 434, 567 P.2d 54  
6 (1977), Falcon v. State, 110 Nev. 530, 874 P.2d 772 (1994)), and with respect to Miranda.  
7 Falcon, 110 Nev. 530, 874 P.2d 772. In making this determination, the Court is to look at the  
8 totality of the circumstances. See Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996);  
9 Passama v. State, 103 Nev. 212, 735 P.2d 321 (1987).

10 If the Court finds that the statement was involuntary, it ceases to exist legally and cannot  
11 be used for any purpose. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978). If it was  
12 voluntary but Miranda was violated, it can only be used for impeachment if the defendant  
13 testifies and contradicts the statement. Harris v. New York, 401 U.S. 222, 91 S.Ct. 643 (1971);  
14 Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215 (1975); McGee v. State, 105 Nev. 718, 782 P.2d  
15 1329 (1989).

16 Coercive police conduct is a “necessary predicate” to a finding that a Defendant’s  
17 statement is involuntary such that its admission violates the Defendant’s Due Process rights.  
18 Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986). “A confession is  
19 admissible only if it is made freely and voluntarily, without compulsion or inducement.”  
20 Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980). In order to be considered  
21 voluntary, a confession must be the product of free will and rational intellect. Blackburn v.  
22 Alabama, 361 U.S. 199, 208, 80 S. Ct. 274, 280 (1960). A confession is involuntary if it is  
23 the product of physical intimidation or psychological torture. Townsend v. Sain, 372 U.S.  
24 293, 307, 83 S. Ct. 745, 754 (1963). To determine the voluntariness of a confession, the court  
25 must consider the effect of the totality of the circumstances on the will of the defendant.  
26 Passama, 103 Nev. at 213, 735 P.2d at 323. The question is whether the defendant’s will was  
27 overborne when he confessed. Id.

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

6 **I. DEFENDANT WAS NOT IN CUSTODY FOR PURPOSES OF**  
7 **TRIGGERING MIRANDA WARNINGS**

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

13 Whether a suspect is “in custody” is an objective inquiry. J. D. B. v. North Carolina,  
14 564 U.S. 261 (2011). Two discrete inquiries are essential to the determination: first, what were  
15 the circumstances surrounding the interrogation; and second, given those circumstances,  
16 would a reasonable person have felt he or she was at liberty to terminate the interrogation and  
17 leave. *Id.* Once the scene is set and the players’ lines and actions are reconstructed, the court  
18 must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or  
19 restraint on freedom of movement of the degree associated with formal arrest. *Id.*

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

1 Miranda adopted a “set of prophylactic measures” designed to ward off the “inherently  
2 compelling pressures’ of custodial interrogation,” Shatzer, 559 U.S. at 103, 130 S. Ct. at 1217,  
3 175 L. Ed. 2d at 1050 (quoting Miranda, 384 U.S., at 467), but Miranda did not hold that such  
4 pressures are always present when a prisoner is taken aside and questioned about events  
5 outside the prison walls. Indeed, Miranda did not even establish that police questioning of a  
6 suspect at the station house is always custodial. Mathiason, 429 U.S., at 495 (1977) (declining  
7 to find that Miranda warnings are required “simply because the questioning takes place in the  
8 station house, or because the questioned person is one whom the police suspect”). Howes v.  
9 Fields, 565 U.S. 499, 507-508 (2012).

10 A prisoner is not always considered “in custody” for purposes of Miranda whenever a  
11 prisoner is isolated from the general prison population and questioned about conduct outside  
12 the prison. Id. at 508. The three elements of that rule — (1) imprisonment, (2) questioning in  
13 private, and (3) questioning about events in the outside world—are not necessarily enough to  
14 create a custodial situation for Miranda purposes. Id. A prisoner, unlike a person who has not  
15 been sentenced to a term of incarceration, is unlikely to be lured into speaking by a longing  
16 for prompt release. Id. When a person is arrested and taken to a station house for interrogation,  
17 the person who is questioned may be pressured to speak by the hope that, after doing so, he  
18 will be allowed to leave and go home. Id. On the other hand, when a prisoner is questioned,  
19 he knows that when the questioning ceases, he will remain under confinement. Id. at 511  
20 (citing Shatzer, 559 U.S., at 124, n. 8). Third, a prisoner, unlike a person who has not been  
21 convicted and sentenced, knows that the law enforcement officers who question him probably  
22 lack the authority to affect the duration of his sentence. Id. And “where the possibility of parole  
23 exists,” the interrogating officers probably also lack the power to bring about an early  
24 release. *Ibid.* “When the suspect has no reason to think that the listeners have official power  
25 over him, it should not be assumed that his words are motivated by the reaction he expects  
26 from his listeners.” Id. (citing Perkins, 496 U.S., at 297). Under such circumstances, there is  
27 little “basis for the assumption that a suspect . . . will feel compelled to speak by the fear of  
28

1   reprisal for remaining silent or in the hope of [a] more lenient treatment should he confess.” Id.  
2   at 512 (*citing Shatzer*, 496 U.S., at 296-297).

3         We fail to see why questioning about criminal activity outside the prison should be  
4   regarded as having a significantly greater potential for coercion than questioning under  
5   otherwise identical circumstances about criminal activity within the prison walls. Id. at 513.  
6   In both instances, there is the potential for additional criminal liability and punishment. Id. If  
7   anything, the distinction would seem to cut the other way, as an inmate who confesses to  
8   misconduct that occurred within the prison may also incur administrative penalties, but even  
9   this is not enough to tip the scale in the direction of custody. Id. “The threat to a citizen's Fifth  
10  Amendment rights that *Miranda* was designed to neutralize” is neither mitigated nor  
11  magnified by the location of the conduct about which questions are asked. Id. at 514.

12         In Fields, the Defendant was a prisoner escorted from his prison cell into a conference  
13   room by a corrections officer. Id. at 502. Once inside, Defendant was questioned between five  
14   to seven hours by two sheriff’s deputies regarding allegations of sexual conduct with a 12-  
15   year-old boy that pre-existed his prison sentence. Id. at 502-503. Sheriffs told Defendant he  
16   was free to leave and return to his cell and the conference room door sometimes remained  
17   open and other times shut. Id. at 503. During the interview, Defendant became upset and stood  
18   up shouting expletives. Id. Sheriffs told Defendant to sit down and that he could go back to  
19   his cell if he didn’t want to cooperate. Id. Defendant eventually confessed to the sexual abuse.  
20   Id. Defendant even repeatedly indicated he did not wish to speak to detectives anymore but  
21   did not request to leave. Id. When the interview was over, Defendant was delayed in his  
22   transport back to his cell and didn’t return until well after the hours he typically retired. Id. at  
23   503-504. At no point during Defendant’s entire interaction with Sheriffs was the Defendant  
24   Mirandized. Id. at 504. Defendant was later charged with criminal sexual conduct and sought  
25   to suppress his confession based on a *Miranda* violation. Id.

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



1  
2 ...Respondent did not invite the interview or consent to it in advance, and he  
3 was not advised that he was free to decline to speak with the deputies. The  
4 following facts also lend some support to respondent's argument  
5 that Miranda's custody requirement was met: The interview lasted for between  
6 five and seven hours in the evening and continued well past the hour when  
7 respondent generally went to bed; the deputies who questioned respondent  
8 were armed; and one of the deputies, according to respondent, "[u]sed a very  
9 sharp tone," and, on one occasion, profanity.

10 These circumstances, however, were offset by others. Most important,  
11 respondent was told at the outset of the interrogation, and was reminded again  
12 thereafter, that he could leave and go back to his cell whenever he wanted. ("I  
13 was told I could get up and leave whenever I wanted"). Moreover, respondent  
14 was not physically restrained or threatened and was interviewed in a well-lit,  
15 average-sized conference room, where he was "not uncomfortable." He was  
16 offered food and water, and the door to the conference room was sometimes  
17 left open. "All of these objective facts are consistent with an interrogation  
18 environment in which a reasonable person would have felt free to terminate the  
19 interview and leave." Yarborough, 541 U.S., at 664-665.

20 Because he was in prison, respondent was not free to leave the conference  
21 room by himself and to make his own way through the facility to his cell.  
22 Instead, he was escorted to the conference room and, when he ultimately  
23 decided to end the interview, he had to wait about 20 minutes for a corrections  
24 officer to arrive and escort him to his cell. But he would have been subject to  
25 this same restraint even if he had been taken to the conference room for some  
26 reason other than police questioning; under no circumstances could he have  
27 reasonably expected to be able to roam free. And while respondent testified  
28 that he "was told . . . if I did not want to cooperate, I needed to go back to my  
cell," these words did not coerce cooperation by threatening harsher  
conditions. ("I was told, if I didn't want to cooperate, I could leave").  
Returning to his cell would merely have returned him to his usual  
environment.

23 Id. at 515-516.

24 In Minnesota v. Murphy, the Defendant sought to suppress statements made during a  
25 meeting with his probation officer on an unrelated charge. Minnesota v. Murphy, 465 U.S.  
26 420 (1984). The court held that "custody" for Miranda purposes has been narrowly  
27 circumscribed. Id. at 430. The court reasoned that the extraordinary safeguard of Miranda  
28 warnings do not apply outside the context of the inherently coercive custodial interrogations

1 for which it was designed. Id. The court found that Defendant's situation was not unlike  
2 suspects in noncustodial settings:

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

12 Id. at 432.

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

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

25 In Mathiason, the court held that a parolee who voluntarily came to a police station at  
26 the request of a police officer, who was immediately informed that he was not under arrest,  
27 who was thereafter questioned about a burglary, who confessed to the burglary after the  
28 questioning officer falsely stated that the parolee's fingerprints were found at the scene of the  
burglary, and who left the police station without hindrance at the close of his one-half hour  
interview, was not in custody or otherwise deprived of his freedom of action in any  
significant way for purposes of the requirement that an individual must be in custody or  
deprived of his freedom before police must give Miranda warnings. Oregon v. Mathiason,

1 429 U.S. 492 (1977). The court held that the questioning officer's false statement about the  
2 parolee's fingerprints has nothing to do with whether he was in custody for purposes of  
3 Miranda warnings. Id. Additionally, despite the police officer advising the parolee of his  
4 Miranda rights after he had confessed, the court held that the parolee's confession did not  
5 have to be excluded in his prosecution for burglary on the ground that it was not preceded by  
6 Miranda warnings. Id.

7 Here, Defendant's motion to suppress mistakenly focuses on the subsequent  
8 advisement of Miranda rights after questioning had commenced and overlooks the threshold  
9 issue of Defendant's custody status for purposes of triggering Miranda in the first place.  
10 Defendant quickly states that he was "absolutely" in custody based on his arrest for the  
11 California warrant. See "Defendant's Motion to Suppress" at 10. However, the  
12 circumstances surrounding the Defendant's arrest clearly establish he was not "in custody"  
13 for purposes of triggering Miranda warnings in the instant case.

14 On February 14, 2018, a Sheriff's Warrant for Defendant's arrest was issued out of  
15 San Diego County, California for Defendant's 2010 felony conviction for Manufacturing  
16 and/or Possessing a Dangerous Weapon. Defendant was on parole for the offense and the  
17 warrant authorized Defendant be extradited back to California. On February 16, 2018,  
18 Defendant was located by the LVMPD Criminal Apprehension Team (CAT) and arrested.  
19 When Defendant was arrested on the warrant, he had no Nevada charges pending. In fact,  
20 after Defendant was questioned and the firearm was recovered, the Defendant was not  
21 arrested on either the Murder or Possession of Firearm by Prohibited Person charge. Instead,  
22 Defendant was transported to the Clark County Detention Center exclusively on his  
23 California warrant. Five days later, California lifted the hold and Defendant was released  
24 from the detention center. LVMPD Detectives did not obtain the Defendant's arrest warrant  
25 for the murder or firearm charge until February 26, 2018 and after interviewing two  
26 additional witnesses.<sup>1</sup> See Exhibit 1 at 11-12. The LVMPD CAT team located Defendant on  
27 that day and arrested Defendant on the murder and possession of firearm charges.  
28

---

<sup>1</sup> Raymond Moore was interviewed on February 21 and Towan Abrams was interviewed on February 23.

1 Similar to Fields, where police sheriffs questioned the Defendant while he was  
2 serving a prison sentence for a separate offense, Detectives here spoke to Defendant while he  
3 was in custody on his California parole violation. Like in Fields, the Defendant's status of  
4 being in custody on his California felony offense for which he was on parole had no bearing  
5 on the independent Nevada investigation into Tyler's murder. Also similar to Fields,  
6 Detectives here had no influence on Defendant's California sentence or extradition.  
7 Additionally, questioning by Detectives had no impact on Defendant's restraint since he was  
8 going to remain in custody on his California warrant independent of whether Detectives  
9 questioned him on an unrelated event or not. At no point throughout questioning did  
10 Detectives make any promises or insinuations regarding the impact of Defendant's  
11 California sentence.

12 Furthermore, the objective circumstances surrounding Defendant's questioning  
13 clearly establishes his freedom of movement did not trigger Miranda. Once Detectives made  
14 contact with the Defendant, his handcuffs were removed, he was permitted to smoke outside  
15 of the patrol car, he was given the opportunity to hug his child, and was repeatedly told that  
16 he could "leave at any time" and was a "free man." See Exhibit 4 at 3; 11; 22. Similar to  
17 Fields, where police told Defendant he could leave and return to his cell, the Defendant here  
18 could have refused to speak to police and simply awaited transport to jail on his warrant.  
19 Instead, Defendant spoke with Detectives, smoked a cigarette, and never expressed any  
20 desire to end questioning.

21 Moreover, the circumstances here were far less coercive than those in Fields, where  
22 the court still found Defendant was not in custody for purposes of triggering Miranda. In  
23 Fields, the interview lasted between five (5) to seven (7) hours and continued into the night  
24 past Defendant's bed time. At one point during questioning, Defendant became upset and  
25 stood up from his seat as if to leave. Police used a sharp tone and even cursed throughout the  
26 interview. And most notably, at no point did police advise Defendant of his Miranda rights.  
27 Here, however, the Defendant was interviewed in the afternoon for less than three (3) hours.  
28 The conversation never turned hostile, Defendant never indicated he wanted to terminate the  
conversation, and Defendant was advised of his Miranda rights approximately twenty-five  
(25) minutes into questioning. See Exhibit 4 at 22-23.

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

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

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

12 Q: You have a warrant?

13 A: Yeah. In Cali.

14 Q: Will they extradite them? You sure?

15 A: Yes. Mmm.

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

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

19 Exhibit 4 at 49-50.

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

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

## 29 II. DEFENDANT'S STATEMENTS WERE VOLUNTARY

30 A defendant bears the initial burden of arguing that a statement was involuntarily given  
31 and requesting the appropriate hearing. Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312  
32 (1980). Following a challenge to the voluntariness of a confession, the State must prove by a

1 preponderance of the evidence that the confession was voluntary. Rosky v. State, 121 Nev.  
2 184, 192 n.18, 111 P.3d 690, 695 (2005) (citing Lynum v. Illinois, 372 U.S. 528, 534, 83 S.  
3 Ct. 917 (1963)). In such an analysis, the Court must consider whether a defendant's will is  
4 overborne by physical intimidation or psychological pressures. Id. The court must review the  
5 totality of the circumstances to determine whether a defendant's confession was voluntarily  
6 given. Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987). "Factors to be  
7 considered include: the youth of the accused; his lack of education or his low intelligence; the  
8 lack of any advice of constitutional rights; the length of detention; the repeated and prolonged  
9 nature of questioning; and the use of physical punishment such as the deprivation of food or  
10 sleep." Id.

11 The United States Supreme Court has recognized that before there can be a finding that  
12 a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth  
13 Amendment, there must first be a finding of some coercive police conduct. Colo. v. Connelly,  
14 479 U.S. 157, 166-677, 107 S. Ct. 515, 521-22 (1986) (recognizing that absent a police  
15 conduct prong, courts would be required to "divine a defendant's motivation for speaking or  
16 acting as he did even though there be no claim that governmental conduct coerced his  
17 decision."); see also United States v. Salameh, 152 F.3d 88, 117 (2d Cir. 1998) (quoting United  
18 States v. Chrismon, 965 F.2d 1465, 1469 (7th Cir. 1992)) ("A diminished mental state is only  
19 relevant to the voluntariness inquiry if it made mental or physical coercion by the police more  
20 effective.").

21 A. No Coercive Environment

22 As previously noted above, the totality of the circumstances surrounding Defendant's  
23 questioning clearly establish Defendant's statements were voluntary. Defendant was in a  
24 comfortable environment whereby he was questioned in the middle of the afternoon, his  
25 handcuffs were removed, he was permitted to smoke cigarettes, and even hug his child. At no  
26 point did Detectives threaten, harass, or promise Defendant any benefits in exchange for  
27 speaking with them. The conversation never grew hostile and Defendant even agreed that  
28

1 Detectives treated him with respect and did not harass or threaten him in any way. Exhibit 4  
2 at 44.

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

6  
7 I mean, I'm not gonna tell you how to feel, man, one way or the other 'cause I  
8 can't imagine what you're going through in your head. I mean, I get it. You  
9 sitting here, you talking to us and I appreciate your cooperation. And I know it  
10 ain't something that you have to do, but, uh, but you sitting here talking to us,  
11 man, and - and - and all that is a blessing in itself, man, given how things coulda  
12 transpired, right?...

13 Exhibit 4 at 27.

14 B. Defendant Waived His Miranda Rights

15 The prosecution does not need to show that a waiver of Miranda rights was express. An  
16 "implicit waiver" of the "right to remain silent" is sufficient to admit a suspect's statement into  
17 evidence. Butler, *supra*, at 376, 99 S. Ct. 1755, 60 L. Ed. 2d 286. Butler made clear that a  
18 waiver of Miranda rights may be implied through "the defendant's silence, coupled with an  
19 understanding of his rights and a course of conduct indicating waiver." 441 U.S., at 373, 99 S.  
20 Ct. 1755, 60 L. Ed. 2d 286. The Court in Butler therefore "retreated" from the "language and  
21 tenor of the Miranda opinion," which "suggested that the Court would require that a waiver .  
22 . . be 'specifically made. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010). The question of  
23 waiver must be determined on "the particular facts and circumstances surrounding that case,  
24 including the background, experience, and conduct of the accused." North Carolina v. Butler,  
25 441 U.S. 369, 374-375 (1979).

26 Here, Defendant asserts that Detectives belatedly realized their error in not advising  
27 him of his Miranda rights earlier in the interview. However, this lack of advisement only  
28 supports the argument that the circumstances did not trigger the need for Miranda warnings.  
Detectives did not feel compelled to advise Defendant of his Miranda rights at the outset of

1 the interview since Defendant was not “in custody” for purposes of their questioning. Instead,  
2 Detective Grimmatt advised Defendant of his rights in order to develop a rapport, not out of  
3 legal necessity. This is further evidenced by Detective Grimmatt’s comments prior to reading  
4 the warnings:

5  
6 Q: ...there’s a reason for everything, right? And that’s what you explained to  
7 us. There - there’s a reason for everything, man. I mean, would you - would  
8 you feel better if I read you your Miranda rights and stuff, man? I mean, I  
9 don’t have, I mean, you free to go, man. I mean, you know what I’m saying? I  
10 - I’m not here to jam you up. I’m here to simply get your side of the story. And  
11 that’s why I appreciate - and I’ll read ‘em for you, you want me to read ‘em to  
12 you, man. I mean, know, uh, you got the right to remain silent. Anything you  
13 say can be used against you in a court of law. You have a right to consult with  
14 an attorney before questioning. You have a right to the presence of a attorney  
15 during questioning. If you cannot afford an attorney, one will be appointed  
16 before questioning. You understand all that? You unders- you understand all  
17 that, Dre? Yeah? Yes, no, maybe so? I mean, I ain’t trying to jam you - I’m  
18 just letting you know I ain’t trying to trick you with nothing. You see what I’m  
19 sayin’? Those are your rights. You know what I’m sayin’? Those are your  
20 rights. Now, I’m not saying that, uh, you’re under arrest, not like that. I’m just  
21 telling you those are your rights. If you - if you feelin’ some kinda way - if that  
22 makes you feel better - you understand that? Yes, no? Am I making sense?

23 Id. at 23.

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

//

//

//



1           **III.    DEFENDANT HAD AUTHORITY TO CONSENT TO THE SEARCH**  
2           **FOR THE FIREARM**

3           The Fourth Amendment to the United States Constitution provides protection against  
4 unreasonable search and seizure by the State. An unreasonable search is one conducted  
5 without a warrant issued upon probable cause, unless the search falls under one of the  
6 exceptions to the warrant requirement. Katz v. United States, 389 U.S. 347 (1967). Consent to  
7 search is one such exception. See generally Bustamonte, 412 U.S. 218, 93 S. Ct. 2041. The  
8 State must prove consent by “clear and persuasive evidence.” McIntosh v. State, 86 Nev. 133,  
9 136, 466 P.2d 656, 658 (1970).

10          The validity of a consent to search is governed by the voluntariness of that consent.  
11 Bustamonte, 412 U.S. 218, 93 S. Ct. 2041. The voluntariness of a search does not require  
12 that a person know of his rights. Id. at 234, 93 S. Ct. at 2051 (“knowledge of a right to  
13 refuse is not a prerequisite of a voluntary consent.”). Instead, the question of voluntariness  
14 is a factual determination to be made by examining the totality of the surrounding  
15 circumstances. Sparkman v. State, 95 Nev. 76, 79, 590 P.2d 151, 154 (1979).

16          Actual authority is proved (1) where defendant and a third party have mutual use of and  
17 joint access to or control over the property at issue, or (2) where defendant assumes the risk  
18 that the third party might consent to a search of the property. State v. Taylor, 114 Nev. 1071,  
19 1074 (1998).

20          Whether an individual has apparent authority to consent to a search must be judged  
21 against an objective standard, namely, would the facts available to the officer at that moment  
22 warrant a person of reasonable caution to believe that the consenting party had authority over  
23 the property. Id. Whether the basis for authority to consent to a search exists is the sort of  
24 recurring factual question to which law enforcement officials must be expected to apply their  
25 judgment; and all the Fourth Amendment requires is that they answer it reasonably. Id. Thus,  
26 the Fourth Amendment does not invalidate warrantless searches based on a reasonable mistake  
27 of fact, as distinguished from a mistake of law. Id.  
28

1 "The authority which justifies the third-party consent does not rest upon the law of  
2 property, with its attendant historical and legal refinements, but rests rather on mutual use of  
3 the property by persons generally having joint access or control for most purposes, so that it  
4 is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection  
5 in his own right and that the others have assumed the risk that one of their number might  
6 permit the common area to be searched. Randolph at 110.

7 It is apparent that in order to satisfy the "reasonableness" requirement of the Fourth  
8 Amendment, what is generally demanded of the many factual determinations that must  
9 regularly be made by agents of the government -- whether the magistrate issuing a warrant,  
10 the police officer executing a warrant, or the police officer conducting a search or seizure  
11 under one of the exceptions to the warrant requirement -- is not that they always be correct,  
12 but that they always be reasonable. Ill. v. Rodriguez, 497 U.S. 177, 185-186 (1990).

13 Here, Defendant provided Detectives with consent to recover the firearm associated  
14 with the February 11<sup>th</sup> shooting:

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

22 A: Yeah. I appreciate it.

23 Id. at 51.

24 The factual circumstances demonstrate that Defendant had actual authority to  
25 consent to the search and recovery of the firearm. At the time Defendant consented,  
26 he indicated only him and his girlfriend, along with their two children, resided at the  
27 apartment. Id. at 45. This was corroborated when police arrived to find Defendant as  
28 the only adult inside of the apartment. Throughout the interview, Detectives noted  
that Defendant had "care and control" of the apartment which he did not deny. Id. at

1 47. This was further proven by the fact that Defendant had access to the air vent in the  
2 hallway of the apartment where he placed the firearm. Id. at 39.

3 Additionally, the circumstances suggest that Defendant had been residing with  
4 his girlfriend whenever he was in Las Vegas. Although Defendant states he only  
5 stayed at the apartment the previous night, he indicates that his girlfriend had only  
6 resided at the apartment for a couple of days herself. Id. at 45. Defendant further  
7 states that he and his girlfriend have been together for five (5) years, share two  
8 children together, and see each other when they can. Id. at 42;54. Defendant tells  
9 Detectives that his girlfriend is the only family he has in Las Vegas and that he stays  
10 with their baby when she goes to work. Id.

11 Defendant asserts in his motion that it was apparent he was staying in the area  
12 of the Van Patten complex and not the Wyandotte address when he gave consent to  
13 search. However, Defendant's only support for this assertion is based on a statement  
14 he made during the interview where he referenced his socializing at the Van Patten  
15 complex. Specifically, Defendant tells Detectives that the conflict between himself  
16 and Tyler stemmed from the Defendant encroaching into Tyler's "hood."

17 **A:** And that's when he - "Oh, blood, y'all gotta clear this out. On dead homies.  
18 Too much." So we, uh, all right. You know, we - basically, you know, we  
19 drink and smoke. We do this every day.

20 **Q1:** Mm-hm.

21 **A:** We not really - all right. You live here. You have a - we done been up and  
22 down the street for - for months. You just barely been over here probably two  
23 or three months, but you used to stay across the street. Now your girl and your  
24 mom got this spot right across the street. You - you just, like, he came through,  
25 like, politicking, but I, like, we was in Cali. Right. We not in Cali, bro. You,  
26 uh, it's...

27 **Q:** Right, right. (Unintelligible).

28 **A:** We not - ain't nobody out here on that. Everybody's out here chillin'. In  
Cali you can't just chill in different areas. Shoot. You in somebody hood.

**Q:** Right.

Exhibit 4 at 21.

Defendant indicated that on the day of the shooting he was at the Van Patten  
apartments drinking and smoking with the guys since his girlfriend doesn't drink or

1 smoke, further suggesting he was likely residing with his girlfriend on the day of the  
2 shooting, be it near the area of the Van Patten complex or not. Id. at 55.

3 Furthermore, Detectives sought to limit the scope of Defendant's consent,  
4 specifically, to only retrieving the firearm from the air conditioning unit. Id. at 47-48.  
5 After obtaining consent, Detectives entered the apartment, accessed the air vent  
6 specifically described by the Defendant, and only recovered the revolver and  
7 ammunition. Only after recovering the firearm did Detectives obtain a telephonic  
8 search warrant to search for additional firearms, ammunition, firearm related items,  
9 and a DNA sample from Defendant. See "Telephonic Search Warrant" attached as  
10 Exhibit 6.

11 Finally, even if this court were to determine Defendant lacked actual authority,  
12 it is certainly reasonable for Detectives to have believed Defendant had apparent  
13 authority to give consent. Not only was the Defendant the only person at the  
14 residence, the only other resident was his girlfriend of five years and mother of his  
15 children. Defendant was not restricted from any areas of the apartment and was  
16 particularly familiar with all areas of the unit as demonstrated by his placing the  
17 firearm in an air vent in the hallway.

18 Therefore, since Defendant had actual authority through mutual use and joint  
19 access to the apartment, his consent was valid and the firearm should not be  
20 suppressed.

#### 21 **IV. THERE IS NO BASIS TO EXCLUDE EVIDENCE UNDER THE** 22 **EXCLUSIONARY RULE**

23 Under the United States Supreme Court's precedents, the exclusionary rule  
24 encompasses both the primary evidence obtained as a direct result of an illegal search or  
25 seizure and evidence later discovered and found to be derivative of an illegality, the so-called  
26 fruit of the poisonous tree. But the significant costs of this rule have led the Supreme Court to  
27 deem it applicable only where its deterrence benefits outweigh its substantial social costs.  
28 Suppression of evidence has always been the Supreme Court's last resort, not its first impulse.  
Utah v. Strieff, 136 S. Ct. 2056, 2057 (2016).

1       The United States Supreme Court has recognized several exceptions to the exclusionary  
2 rule. Id. Three of these exceptions involve the causal relationship between the unconstitutional  
3 act and the discovery of evidence. Id. First, the independent source doctrine allows trial courts  
4 to admit evidence obtained in an unlawful search if officers independently acquired it from a  
5 separate, independent source. Id. Second, the inevitable discovery doctrine allows for the  
6 admission of evidence that would have been discovered even without the unconstitutional  
7 source. Id. Third is the attenuation doctrine: Evidence is admissible when the connection  
8 between unconstitutional police conduct and the evidence is remote or has been interrupted by  
9 some intervening circumstance, so that the interest protected by the constitutional guarantee  
10 that has been violated would not be served by suppression of the evidence obtained. Id. at 2057  
11 (emphasis added).

12       A. No Miranda Violation Occurred

13       As previously argued above, Miranda was not triggered based on the totality of the  
14 circumstances. Since Miranda warnings were not required and Defendant voluntarily spoke to  
15 Detectives and revealed the location of the firearm from the shooting, none of the Defendant's  
16 statements were obtained as a result of a Fifth Amendment violation.

17       B. Miranda Waivers Do Not Apply to Consent Exceptions to Warrantless Searches

18       The Miranda framework should not be applied when considering the validity of a  
19 consent to search. See generally Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041  
20 (1973). This is in part because a consent to search is not a testimonial, self-incriminating  
21 statement that would invoke Miranda concerns. See, e.g., United States v. Calvetti, 836 F.3d  
22 654, 663 (6th Cir. 2016) (“[A] consent to search is not a self-incriminating statement subject  
23 to the protection of the Fifth Amendment”); United States v. McClellan, 165 F.3d 535, 544  
24 (7th Cir. 1999) (“[A] request for consent to search is not an interrogation within the meaning  
25 of Miranda because the giving of such consent is not a self-incriminating statement.” (internal  
26 quotations omitted)); United States v. McCurdy, 40 F.3d 1111, 1118 (10th Cir. 1994) (“An  
27 officer's request to search a defendant's automobile does not constitute interrogation invoking  
28 a defendant's Miranda rights.”).

1       The United States Supreme Court has clearly defined testimonial evidence as an  
2 accused's communication that "itself, explicitly or implicitly, relate[s] a factual assertion or  
3 disclose[s] information." Doe v. United States, 487 U.S. 201, 210, 108 S. Ct. 2341, 2347  
4 (1988); see also Michael J. Zydney Mannheimer, Toward a Unified Theory of Testimonial  
5 Evidence Under the Fifth and Sixth Amendments, 80 TEMP. L. REV. 1135, 1137 (2007) ("In  
6 the Self-Incrimination Clause context, 'testimonial' refers to statements of fact or value, as  
7 opposed to physical evidence or statements introduced merely to prove how they were  
8 made[.]"). By this definition, a consent to search is not itself testimonial because "it does not  
9 'relate a factual assertion or disclose information.'" United States v. Calvetti, 836 F.3d 654,  
10 663 (6th Cir. 2016) (quoting Pennsylvania v. Muniz, 496 U.S. 582, 594, 110 S. Ct. 2638, 2646  
11 (1990)). This is true even when the consent to search leads to incriminating real or physical  
12 evidence, as it did in this case. See People v. Thomas, 12 Cal. App. 3d 1102, 1110-11, 91 Cal.  
13 Rptr. 867 (Cal. Ct. App. 1970) ("The fact that the search leads to incriminating evidence does  
14 not make the consent testimonial.") Thus, the requirements of Miranda, which apply to the  
15 admission of self-incriminating, testimonial statements made under custodial interrogation, do  
16 not apply to a defendant's consent to search.

17       Beyond the fact that a consent to search does not fall under the definition of a  
18 testimonial, self-incriminating statement, there is an even more fundamental reason that the  
19 Miranda waiver requirements do not apply when considering the validity of a consent to  
20 search: Miranda and its progeny are designed to protect interests that do not apply when  
21 considering the validity of a consent to search. In fact, Defendant's attempt to apply waiver  
22 analysis to a consent to search rather than looking to the Fourth Amendment has been rejected  
23 by the United States Supreme Court. In Schneckloth v. Bustamonte, the Court emphasized that  
24 the validity of a consent on the one hand, and a knowing and intelligent waiver on the other,  
25 are distinct inquiries. 412 U.S. 218, 246, 93 S. Ct. 2041, 2057 (1973). The Bustamonte Court  
26 considered whether a consent search was valid even though Bustamonte had not been informed  
27 of his right to refuse consent. Id. The Court held that "there is nothing in the purposes or  
28 application of the waiver requirements ... that justifies, much less compels, the easy equation

1 of a knowing waiver with a consent search. To make such an equation is to generalize from  
2 the broad rhetoric of some of our decisions, and to ignore the substance of the differing  
3 constitutional guarantees.” Id. Thus, unlike the notice requirement that applies when  
4 considering Fifth Amendment rights, when reviewing the validity of a consent to search, there  
5 is no requirement that a person be informed of his right to refuse to consent before consent  
6 could be voluntarily given. Id. at 231, 93 S. Ct. at 2050 (“For it would be thoroughly  
7 impractical to impose on the normal consent search the detailed requirements of an effective  
8 warning.”).

9 Shortly after the United States Supreme Court’s decision in Bustamonte, the Fifth  
10 Circuit explicitly laid out the reasoning behind why the *ratio decidendi* of the Miranda  
11 decision – to strengthen the Fifth Amendment – should not be applied to a Fourth Amendment  
12 search and seizure analysis:

13 In a fifth amendment context a defendant's statements, in and of  
14 themselves, present the potential constitutional evil.<sup>12]</sup> For  
15 purposes of the fourth amendment, however, it is an unreasonable  
16 search that must be condemned, not the use of a defendant's  
17 statements proving consent to a search. A search and seizure  
18 produces real and physical evidence, not self-incriminating  
19 evidence. Our task under the fourth amendment is to test the  
20 reasonableness of a search and exclude evidence procured  
21 unreasonably. We have been appropriately warned of the dangers  
22 inherent in “the domino method of constitutional adjudication . . .  
23 wherein every explanatory statement in a previous opinion is made  
24 the basis for extension to a wholly different situation.” Therefore,  
25 Miranda's ratio decidendi which was enunciated to strengthen the  
26 fifth amendment's function in preserving the integrity of our  
27 criminal trials should not be superimposed *ipso facto* to the wholly  
28 different considerations in fourth amendment analysis.

---

22 <sup>2</sup> This potential “constitutional evil” has been defined in earlier jurisprudence as a recurrence of the methods and ideas that  
23 led to coerced confessions in events such as the Inquisition and the Star Chamber, “even if not in their stark brutality.”  
24 Ullmann v. United States, 350 U.S. 422, 428, 76 S. Ct. 497, 501 (1956). In later decisions, the Court addressed what the  
privilege against self-incrimination was designed to protect against yet again, clarifying that:

25 “At its core, the privilege [against self-incrimination] reflects our fierce unwillingness to subject those  
26 suspected of crime to the cruel trilemma of self-accusation, perjury or contempt that defined the  
operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating  
private thoughts and forsaking their oath by committing perjury.”

27 Pennsylvania v. Muniz, 496 U.S. 582, 596, 110 S. Ct. 2638, 2647 (1990) (internal citations and quotations omitted). There  
28 was no such trilemma here, as Defendant was not asked for a self-accusatory statement, and did not face perjury, contempt,  
or other censure if he refused to give consent to search his car (i.e., as discussed in detail *infra*, Defendant’s consent to  
search was voluntarily given.)

1 United States v. Garcia, 496 F.2d 670, 675 (5th Cir. 1974) (quoting Bustamonte, 412 U.S. at  
2 246, 93 S. Ct. at 2057) (emphasis added). Accordingly, because a consent to search is not a  
3 testimonial, self-incriminating statement within the meaning of the Fifth Amendment, and  
4 because the *ratio decidendi* of Miranda is different than that of protecting Fourth Amendment  
5 rights against unreasonable search and seizure, the waiver analysis that culminated in the  
6 Supreme Court’s decision in Miranda does not apply when determining the validity of a  
7 consent to search. A consent to search results in evidence that is real and physical. Garcia, 496  
8 F.2d at 675.

9       Here, Defendant seeks to suppress real and physical evidence, specifically, the firearm  
10 recovered from the apartment. However, the United States Supreme Court has drawn a clear  
11 distinction between “real or physical” evidence and “testimonial” evidence, holding that real  
12 or physical evidence is not subject to Fifth Amendment protections against self-incrimination.  
13 Muniz, 496 U.S. at 591, 110 S. Ct. at 2645; Schmerber v. California, 384 U.S. 757, 764, 86 S.  
14 Ct. 1826, 1832 (1966). In fact, courts have long held that the privilege against self-  
15 incrimination bars compelled communication or testimony, but that it is not violated by  
16 physical evidence—even when that physical evidence is obtained from a defendant’s person  
17 rather than from a distinct location like a vehicle. See, e.g., Schmerber, 384 U.S. 757, 86 S.  
18 Ct. 1826. (This is so even when the real or physical evidence is compelled from the person of  
19 the accused, such as participation in a line-up, or a blood draw to determine blood alcohol  
20 content. See id.; Muniz, 496 U.S. at 591, 110 S. Ct. at 2645).

21       Thus, when the evidence that a defendant seeks to suppress is real and physical, rather  
22 than self-incriminating testimonial statements elicited during a custodial interrogation, the  
23 admissibility of that real or physical evidence is not governed by a Fifth Amendment-based  
24 Miranda analysis. Instead, courts should turn to existing Fourth Amendment jurisprudence to  
25 determine if the search was valid and the evidence may be considered.

26       Here, since Defendant gave consent to recover the firearm from the apartment, there  
27 was an adequate exception to the Fourth Amendment warrant requirement and the firearm  
28 should not be suppressed.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 2
- 3
- 4
- 5
- 6
- 7

## 8

9  
10

2

3

4  
5

1

7  
8

## 20

22

24

07

28

# EXHIBIT “5”

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 1

EVENT #: 180211-3549

SPECIFIC CRIME: MURDER WITH A DEADLY WEAPON

DATE OCCURRED: \_\_\_\_\_ TIME OCCURRED: \_\_\_\_\_

LOCATION OF OCCURRENCE: \_\_\_\_\_

CITY OF LAS VEGAS CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: RAYMOND MOORE

DOB: 6-24-76

SOCIAL SECURITY #: \_\_\_\_\_

RACE: \_\_\_\_\_

SEX: \_\_\_\_\_

HEIGHT: \_\_\_\_\_

WEIGHT: \_\_\_\_\_

HAIR: \_\_\_\_\_

EYES: \_\_\_\_\_

HOME ADDRESS: 2626 Van Patten, Apt #1  
Las Vegas, NV 89109

PHONE 1: \_\_\_\_\_

WORK ADDRESS: \_\_\_\_\_

PHONE 2: \_\_\_\_\_

The following is the transcription of a tape-recorded interview conducted by SERGEANT SANBORN, P# 5450, LVMPD HOMICIDE SECTION, on 2/21/2018 at 1535 hours. Also present is DETECTIVE MAUCH, P# 8566, HOMICIDE SECTION and DETECTIVE MURRAY, P# 13458.

Q: Operator this is Detective T. Sanborn, S-A-N-B-O-R-N, P# 5450, conducting one voluntary taped statement under LVMPD Event # 180211-3549. Date is February - what is the date, February 21, 2018, time approximately 1535 hours. Location is inside my unmarked LVMPD vehicle parked in Commercial Center. Uh, subject giving the statement is Raymond Moore. DOB 6-24-76. He lives at 2626 Van Patten, Apartment # 1, Las Vegas, Nevada, 89109. And has a contact cell number of [REDACTED] Present with me is my partner Detective G.

Vol. Statement, No Affidavit (Rev. 07/12) - 004000 3037

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 2

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

hangin' with somebody that live in your building," so T-Rex kept sayin', "Blood on the dead homies, I don't give a fuck about none of that." So he got to the point to where they was goin' back and forth, back and forth. And I'm like, "All right. All right Rex man, look we fuckin' to go in front of my building." So I'm still right there drinkin', I'm standin' right there by, uh - by Dre and, uh, he kept trying to press him an- and, you know, Dre kept saying like, "Man you trippin', man. You - we don't know what you on," like, you know, so he kept...

Q: Were you guys inside the gate or outside?

A: No we was outside the gate.

Q: Outside, okay.

A: So he was standin' like between the gate, him and his other friend was standin' like between the gate and we already outside the gate like on the, uh, sidewalk. So, uh, he was goin' back and forth for like 15, 20 minutes to where Dre was like, "Man you - you- you trippin'." so he was like, "Man you lookin' like a - ya all lookin' like a thug," and everything and hangin' outside. And he was like, "But I be here every day, like this is what we do. Like, you know, we hang right here. Like we hang in all the apartment building." So T-Rex kept saying, "Blood on the dead homies man. I don't give a fuck about none of that man, you know," this and that, this and that. Kept goin' on and on and, um, to about like at the last minute Dre was just, "Man I see you with your gun on you and all of that, I'm not trippin'," and he was like, "Man I don't give a fuck about none of th, that's what

Voluntary Statement (Rev. 05/12)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 2

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Mauch, M-A-U-C-H, P# 8566, as well as Detective T.J. Murray, M-U-R-R-A-Y, P# 13458. Okay you go by Ray right, just Ray? All right Ray, you're aware this statement's being recorded?

A: Yes.

Q: Okay. My partners and I, we're conducting a follow-up investigation into a shooting which took place over on Van Patten on February 11, uh, it happened out in front of 2612 out there involving a guy named T-Rex...

A: Mm-hm.

Q: ...uh, my understanding is is that, uh, you may have been out there with a group of guys?

A: I was - I was the witness and I was right there when everything took place.

Q: Okay. So go ahead and tell me...

A: So...

Q: ...tell me what you recall and what you saw.

A: So basically I would say about like between 7:00 and 8:00 I was - I was hanging out there with T-Rex - no I was hangin' out with a dude named, uh, Dre and another dude by the name of TY, he also got shot and he got shot on Sherwood the same night. So what happened was we was just hangin' out drinkin', mindin' our own business, not botherin' nobody, you know, we just doin' our own thing. T-Rex kept comin', tellin' us like, "Blood we can't be out there, we gotta go somewhere else," so we - so Dre was like, "Man you trippin', like, you know, I'm

Voluntary Statement (Rev. 05/12)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 4

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

T-Rex kept sayin' so it kept goin' back and forth and, um, by the time I look, I turned my back, Dre just shot him, boom boom. Then, you know, uh, T-Rex was tryin' to shoot back but his bo- his friend that was right there with him took the gun out - out of T-Rex hand and, uh, then he started shootin' at Dre and at my other friend. And, uh...

Q: Who's - who's the other friend, TY or someone else?

A: Yeah TY.

Q: TY, okay.

A: That's how, uh, TY he had ran to Eureka and, uh, he leave and come back and that's when he got shot six times, uh, right there by Eureka so Dre left so now everybody was sayin', "Oh yeah, you know, it's on with all the Crips, it a Crip and Blood thing, you know, it's on with all the Crips," so I just stay away and just stay in the house because they sayin' that I supposed to be next so I just stay in the house. I don't go to the store or nothin' so I - sometime I send my wife to the store and she get nervous 'cause every time my wife go to the store they come out, follow her to the store, follow her, see where she goin' or see what she doin' and she got fed up and she just told me to, uh, tell you guys what really happened. So that's what I'm here right now...

Q: Okay. What - do you remember what T-Rex was wearing or what he was dressed like?

A: He had on all red. He had a red shirt, red pants and some red shoes.

Voluntary Statement (Rev. 05/12)

PA000364

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 6

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Q: And then how about T- Rex- you said T-Rex had a gun?

A: Yeah he had a gun in his pocket and he was tryin' to shoot...

Q: Which pocket, do you remember?

A: Uh, the left pocket.

Q: So he had a gun in his left pocket. Did he - did he take it out or did he...

A: Yeah he took it out, he was tryin' to shoot but he was already hit...

Q: That was after he was hit though, how about before he was hit? Like...

A: No he kept - he kept like bringin' it in and out like, "Blood, I don't give a fuck about none of that so," you know, Dre kept saying like, "Blood," I mean like, "Cuz I see you with your blower like I ain't known that, I ain't even trippin'," so, you know, he kept doin' it, kept doin' it to where Dre just shot him.

Q: Now what about the other dude that was with T-Rex?

A: He had on all white.

Q: All white. Do you know who that guy is?

A: Uh...

Q: Or a nickname or...

A: ...I think he go by the name of Ju- Juge.

Q: What is it?

A: Juge.

Q: Juge? Like G...

A: Yeah like...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 6

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Q: ...G-U-G?

A: ...yeah like Juge. Like you juggin' something, like his name Juge, he chubby. And he - and then like a lot of people called him Little Rick Ross 'cause he look like Rick Ross 'cause he...

Q: Is that the dude that I had stopped on Sherwood? The guy wearin' all black that day?

A: Yeah. Yeah.

Q: Devin?

A: Yeah.

Q: That's the same dude?

A: Yeah that was him.

Q: And he was out there with him? Now did...

A: He was the one that was shootin' back.

Q: Did he have his own gun before...

A: No he took it from T-Rex.

Q: He took it when T-Rex took it - after T-Rex took his out?

A: Yeah. He took it from T-Rex. That's why - that's how my wife was sayin' they tampered with the evidence and he took it and tried to make like he didn't have a gun. But like if everybody was like that they said T-Rex hand was still like this, like tryin' to shoot so he took it and starts - Juge...

Q: So where does he - where does he start shootin' at, like where does Dre go,

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 7

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

does Dre run toward Sahara? Or...

A: No he's still, uh, tow- towards, uh...

Q: ...towards Karen?

A: ...towards Linwood.

Q: Toward Linwood? Where's that, one...

A: Yeah, you know, like the other - the other street.

Q: Oh across the street? So...

A: Yeah. Like - like by 7-Eleven.

Q: Okay. So this, uh - what are you callin' this guy again? Ju- I can't...

A: Juge.

Q: Juge?

A: Yeah.

Q: Juge, not like jug like a jug of milk?

A: No, Juge. It's like - it's like a jug but it's Juge.

Q: Juge.

A: I think J-U- J-U-G-E or something like that. Something like that.

Q: Juge. Juge, all right. He starts shooting - is he shooting out from the gate...

A: Yeah.

Q: ...out toward Linwood?

A: Yeah he's - he's shootin' 'cause Dre runnin' that way and he start shootin' back at Dre. And then he turned the gun and started shootin' at TY and TY...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 8

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Q: Where did TY go?

A: He ran towards the Eureka.

Q: Which way did you go?

A: I ran right in the house 'cause it was right next door to my house. I ran right in - in the house and ran to my window looked in the window. I ran right in the house.

Q: So is it just you - it's just you, TY...

A: It was me, Dre, TY, we was right there mindin' our business so it was, uh, Rex...

Q: And then T-Rex...

A: It was T-Rex and Juge, they was walking and they walked towards the store and he was like, "Man ya all still right here. Blood, like, you know, Blood this, Blood that," like, you know.

Q: Now isn't that T-Rex' dope spot though right there on the corner?

A: Yeah. Yeah. But see we wasn't inside the gate, we was outside the gate.

Q: Had you guys hung out there before? And was there no problems? What was the problem today?

A: I don't even know what the problem was. See like I was tryin' to tell them like only reason why I ended up outside because of my wife wanted me to go get her something to eat. And it - so once - when I went to go get her something to eat I stopped and got me somethin' to drink.

Q: Do you remember anything about T-Rex' gun or the gun that he took out and

Voluntary Statement (Rev. 05/10)

PA000365

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 9

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

tried to fire?

A: Um, I think he had a 45 I think - a 45 I think.

Q: Had you seen it before or is this the first time?

A: No that's the first time but I knew he had a lot of guns in there. He - he had a lot of guns. But that's the only one that he I guess carry.

Q: Now what about Dre, did you know Dre had a gun on him?

A: Yeah Dre always have his gun.

Q: What...

A: Dre always ke- keep his gun.

Q: What's Dre's gun?

A: A 357.

Q: Where did he have it this night?

A: He had it in his pants but like when he - I guess he feel like it was gonna be some tension so Dre took it from his pants and put it like in his - in his, uh, coat pocket.

Q: What was Dre wearin'?

A: He was ha- he had on all black. He had on all black. Some black sweats and a black, uh, hoodie like this one.

Q: And how long have you known Dre?

A: Uh, about a couple of months.

Q: A couple months. How many times have you seen him?

Voluntary Statement (Rev. 09/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 11

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

A: I start hangin' - I start kicking it with him, you know, I start hanging out with him. He come to my house from time to time.

Q: I'm showing you a picture...

A: Yeah that's Dre.

Q: This is the Dre that you're...

A: Yeah.

Q: ...that you're referring to?

A: Yeah.

Q: Okay.

A: That's the Dre.

Q: So about how many times does this, uh, Juge guy get - how many shots do you think he shoots at Dre?

A: About five I think. About four or five.

Q: Four or five. And how many times does Dre shoot at T-Rex?

A: Just three.

Q: Three times?

A: Mm-hm.

Q: Did you see how many times he hit T-Rex?

A: Uh, I didn't - I didn't see how many times he got hit. 'Cause as soon as I heard it I - I ran right in the house. And then that's when, uh, I was on the phone with, uh

Voluntary Statement (Rev. 09/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 10

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

A: I see him a lot. See, 'cause I didn't - I didn't really know who he was 'cause when I came back from California I had got into it with another dude over there and, uh, I didn't know who Dre was at the time 'cause he was sittin' right there with his gun, he always keep a gun on him. That's what everybody knew about Dre, he always keep a gun.

Q: Did you know his - is that was hi- did you know him as Dre, is that what his - his...

A: Yeah.

Q: ...nickname? Did you know any other name? Like any other like government names or anything like that...

A: Uh, no.

Q: ...or just Dre?

A: Just Dre or Baby Joker.

Q: Baby Joker. And have you heard anything since or do you still just know him as Dre?

A: Just Dre.

Q: So if I show you a picture of a guy you could recognize if it was the Dre that you've seen?

A: Mm-hm.

Q: How many times you think you've seen Dre in the past?

A: A lot.

Q: Lots of times?

Voluntary Statement (Rev. 09/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 12

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

- with TY, that's when he said the dude shot at him so he was shootin' back at Juge.

Q: T- TY fired also?

A: Yeah because he start- uh, 'cause Juge started shootin' at him 'cause like I say we all was right there...

Q: Mm-hm.

A: ...and, you know, we was all Crips right there and they was Bloods right there.

Q: So what did - what was...

A: (Unintelligible)...

Q: ...what was TY firing?

A: Um, a 45.

Q: 45?

A: Yeah he had his own gun. 'Cause he went upstairs and got his gun because he - him and T-Rex already had like problems already.

Q: Okay. TY lives inside that same...

A: Yeah.

Q: ...courtyard, right?

A: Yeah. He live upstairs.

Q: So TY went up and got his?

A: Yeah.

Q: How - how soon after TY got - went and got his gun did the shooting start? Like

Voluntary Statement (Rev. 09/10)

PA000366

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 13

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

when'd he come down?  
A: Uh, probably like 30, 40 minutes.  
Q: Oh so he had his gun for a bit?  
A: Yeah. I didn't even know it 'til he told me. 'Cause - see 'cause everybody know he quiet, he don't really talk that much. And that's what he was sayin' when he went upstairs he like, "Man why you - why TY so quiet? He don't talk, he don't laugh, he don't say nothin'." I said, "Man them the main ones you gotta watch."  
Q: So then after - so the progression would be Dre shoota...  
A: TY.  
Q: ...T-Rex.  
A: Yeah.  
Q: T-Rex pulls his gun out, it doesn't work. Juge picks up T-Rex's gun and shoots at Dre and TY.  
A: Yeah.  
Q: TY is shoot-has his own 45...  
A: Yeah.  
Q: ...and shoots back at Juge.  
A: Yeah. And then - but they...  
Q: Now does Juge get hit or no?  
A: No. No.  
Q: Does TY get hit right then or...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 15

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

A: And then I was askin' TY - before he was already hit I was askin' him why did he run to Eureka, he could've ran towards the back in my house. 'Cause I ran in my front.  
Q: Where's your --where's your building re- in regards to the scene, is it south toward Karen or towards Sahara?  
A: No, uh, Karen.  
Q: Toward Karen?  
A: My house is like right like this T-Rex building...  
Q: Mm-hm.  
A: ...and that's my building...  
Q: Oh so you're...  
A: ...side by side...  
Q: So...  
A: ...right through the little alley. It's like the...  
Q: So you're one south?  
A: Yeah.  
Q: On the same street, right?  
A: Yeah. Goin' towards Karen.  
Q: Okay now a little bit earlier you said for some reason you had - you had turned your back...  
A: Yeah.

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 14

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

A: No not right then and there, no.  
Q: He got hit later like...  
A: Yeah probably like 15, 20 minutes later.  
Q: On the street over, right? On...  
A: Yeah on Sherwood.  
Q: Yeah. Now who did that?  
A: They said Juge did it. And then they - then they said somebody else did it so, you know, they were saying there was another dude, it was another Blood that did it, that be right there with - with, uh, T-Rex.  
Q: So if I had a picture of the guy who - if I had a picture of the guy - I have a surveillance picture of the guy who shot...  
A: Yeah.  
Q: ...TY, if I showed you that picture you'll be able to - you'd see if it's one of the guys that's out there?  
A: Right. Mm-hm.  
Q: All right. I didn't bring that one with me, sorry. I - that's a different shooting so, um, but...  
A: But it was all connected.  
Q: Yeah yeah, we've...  
A: That was all connected.  
Q: We figured it was so...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 16

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Q: ...right at the time of the shooting?  
A: Mm-hm.  
Q: So when you turn around, describe exactly what you see when you turn around. Where is T-Rex standing?  
A: Uh, T-Rex was, uh, walking...  
Q: Where's his back toward?  
A: No I - like, uh, my back is turned but I'm still looking because I was drinking, me and Dre was drinking.  
Q: What were you drinking out of?  
A: Uh, some vodka.  
Q: Okay.  
A: So, uh, T-Rex walk up towards, uh, Dre.  
Q: On that little sidewalk like...  
A: Yeah the little...  
Q: Outside the gate...  
A: He comin' out the gate.  
Q: ...comin' out the gate, okay.  
A: Yeah he comin' out the gate walkin' up on him. And Dre - like me and Dre was sittin' side by side with our back turned but, you know, they still goin' words for words so Dre turned towards him and then I turned towards him and I was like, "Man we fin' to go kickin' in front of my building." But, uh, TY - I mean, uh, T-Rex

Voluntary Statement (Rev. 05/10)

PA000367

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 17

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

kept walkin' towards Dre to where he just got...

Q: Where's Dre, toward the sidewalk now?

A: Yeah we was...

Q: Like Dre's back toward the sidewalk?

A: No he turned towards T-Rex now because...

Q: Mm-hm, facin' him, now they're facing each other?

A: Yeah they - yeah they face to face now but it's like T-Rex went up like - like doin' like this back and forth, walkin' up, steppin' back walkin' up, steppin' back.

Q: So - and then - then what happens like right at the time of the shooting? What is - what's T-Rex doing? Does he got his gun out pointing it at Dre?

A: He was trying to shoot back...

Q: No no no before...

A: ...but the gun had failed.

Q: No no no, before that. Before...

A: No no he didn't - he - he - he wanted to but he just kept pullin' it out and puttin' it back in his pants, pull it out, put it back in...

Q: So when he gets shot what's he doing? Just - does he have the gun out or in or out or...

A: No, like when he got shot - but when he seen Dre pull his out he tried to pull his out but he was already hit so he was already tryin' to shoot 'cause he - his hands was like this. And, uh, once he - once he felt that's when the dude Juge took the

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 18

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

A: Right, he did, see 'cause like everybody was sayin', "Why did T-Rex do that and they know how Dre is?" He not gonna take too much of it, he gonna be the first one to shoot...

Q: Okay.

A: ...so and that's what he - that's what he did, the first one...

Q: So he finally had enough and he pulls his. Now T-Rex is tryin' to get his out of his pocket...

A: Yeah so...

Q: ...but he don't get it out in time.

A: Yeah he already hit.

Q: So now you left so you didn't see what happened to anything out there...

A: No 'cause when I - when I seen Juge start shootin' at Dre I thought Dre had got hit - hit in the foot 'cause when Dre started runnin' towards the, uh, by 7-Eleven, uh, he started limpin'...

Q: Mm-hm.

A: ...so I was like oh he got hit. So the next thing you know he...

Q: Now what do you hear what happens at the scene afterwards? Do - you leave, right? You don't stay - the cops - you leave before the cops get there and all that, right?

A: As soon as I heard the first police at the corner I'm - I'm already in the house lookin' out the window. But my wife got everything, she - she recorded

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 18

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

gun and start shootin'. Then he put that gun up and, uh, started shootin' with the 25.

Q: Where'd he do that at?

A: The same...

Q: The same area?

A: Yeah, same area. 'Cause that's why everybody said it was like three different - uh, they heard like three or four different guns. 'Cause like three of 'em - it was like three, four different guns. Dre had his 357...

Q: There's only five people out here though we're talkin' about though, right?

A: Yeah.

Q: There's just the five of you?

A: It was us three and them two.

Q: And them two, okay.

A: Yeah so, you know, we was all right there. But T-Rex was the one who provoked everything.

Q: He kept it going verbally but it...

A: Yeah...

Q: ...but it didn't - it doesn't sound like he had his gun out first to shoot it, it sounded like...

A: I mean, but see what it was...

Q: Sounds like Dre just had enough of it, like...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 20

EVENT #: 160211-3549  
STATEMENT OF: Raymond Moore

everything else like about everybody was sayin' Dre did it, the whole street said Dre did it, the - everybody and...

Q: Yeah.

A: ...the police came and everybody actin' like they so mad and everything, they, you know, goin' crazy, you know...

Q: What do you mean, in the neighborhood...

A: Yeah.

Q: ...like neighborhood people type thing?

A: Yeah the neighborhood.

Q: I mean but what else could - I mean what else could Dre have done or - I mean he could've took off, he just walked thru - just left and been like forget...

A: He could've - yeah he could've walked off but...

Q: ...could've just said forget it, let's get out of here.

A: ...no, but he didn't want to - I guess he didn't want to go that route.

Q: Yeah.

A: Especially when you - when you - when you threaten somebody and both of you have a gun it's like somethin' gotta give.

Q: So now when I was searching that crime scene I found a dope stash up in the blocks, the concrete blocks...

A: Oh yeah yeah yeah yeah.

Q: ...whose is that?

Voluntary Statement (Rev. 05/10)

PA000368

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 21

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

A: Oh that was, uh, what's the name? That was TY's.  
Q: TY?  
A: Yeah.  
Q: Why is his stashed up there?  
A: Because he live in the building and he was standin' right there at first.  
Q: Is that - so like he sells is that way or no?  
A: Yeah. Yeah he...  
Q: So if someone comes up he grabs it out of the block and sells it and...  
A: Yeah yeah.  
Q: ...the that way he don't have it on him type thing?  
A: Right.  
Q: What about T-Rex though, he lets TY - I mean that's okay for...  
A: That - that - that...  
Q: ...TY to sell and...  
A: No that's the whole problems was see he was already havin' like little issues with TY but he never say nothin' to TY 'cause, you know, TY is quiet so T-Rex already seen him sellin' - sellin', uh, something in front of him comin' through the building. But he never said nothing to TY.  
Q: How long has T-Rex been around the neighborhood?  
A: Um, probably a couple of months.  
Q: A couple months.

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 23

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

A: I don't know if they keep it but everything that he had it was gone.  
Q: Now where does Juge live or stay?  
A: In T-Rex building- I mean T-Rex, uh, place.  
Q: In # 11 right on the corner? Is he still there?  
A: Yeah. And then when he come out he had go way down the street to Sherry building where all the other Bloods at.  
Q: And that's like the manager's office across the street, right down where I talked to...  
A: Yeah the white building.  
Q: ...kind of right where...  
A: Yeah.  
Q: ...I talked to him at.  
A: Yeah but, uh, you know, the white - the white apartment building that's where all the Bloods hang out at.  
Q: Have you seen Juge with the gun since or no?  
A: No. Uh, no I ain't seen him with it but, uh, I heard somebody, uh, one of the Bloods got it in - in Sherry building in the manager building.  
Q: Where does she live at? Oh the one over by the office, like...  
A: Yeah she stay right there in the white building.  
Q: How many Bloods are there over there, is it a lot?  
A: Yeah it's a lot of 'em over there.

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 22

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

A: He ain't been there that long. But...  
Q: Normally he - normally he okay or is he always kind of...  
A: Normally he all right. First he started off sellin' weed but you know, uh, then he started sellin' dope, powder to crystal, everything. But see the manager, she play a big of part too because she the one who givin' everybody these apartments.  
Q: Sherry?  
A: Yeah.  
Q: Now what did you - have you heard anything since, like I know that obviously Juge took - took T-Rex's gun so there...  
A: Mm-hm.  
Q: ...was no gun left there for T-Rex...  
A: Right.  
Q: ...what about his phone? I heard he was on the phone, call his baby mama and then someone has the phone now.  
A: Yeah somebody took his phone, somebody took his money out his pocket, somebody took his jewelry off and everything.  
Q: Okay.  
A: The only one probably could di- could've did that was Juge 'cause he was the - he was the only one - he was the only Blood right there when it happened.  
Q: Oh like takin' it just to keep...

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 24

EVENT #: 180211-3549  
STATEMENT OF: Raymond Moore

Q: What kind of Bloods are they, do you know or have you heard 'em say?  
A: Um, one of 'em Crenshaw Mafia, Black P Stone Bloods, uh, CenterView Piru, uh, Athens Park Bloods, uh, 135 Piru, uh...  
Q: Now Dre, what's Dre? Is he anything?  
A: He a Crip.  
Q: He's a Crip. Is he...  
A: Yeah.  
Q: ...associated or just - or documented somewhere or...  
A: Yeah he from Insane Crip, that's in Long Beach, California.  
Q: So was there anything about the argument that was gang - like is it Blood...  
A: Evil.  
Q: ...Cuz goin' on or is it just more business...  
A: No just...  
Q: ...a more business type argument?  
A: No T-Rex the one - the one who kept sayin', "Blood this, Blood that," like he kept sayin', "Blood, Blood, Blood." But Dre wasn't even sayin' cuz or nothin' like that...  
Q: No?  
A: ...but, you know, everybody know where Dre from.  
Q: How long's Dre been around?  
A: He been around for a little while. Probably almost a year.  
Q: Al- over there a year? It's longer than...

Voluntary Statement (Rev. 03/10)

PA000369



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 26

EVENT #: 180211-3548  
STATEMENT OF: Raymond Moore

A: Almost.  
Q: ...longer than T-Rex then?  
A: Yeah he was over there way before T-Rex.  
Q: All right.  
A: Then right - right after that that's when Juge and all - everybody else came.  
Q: So did you see where Dr- er, T-Rex ended up fallin' down at or - or...  
A: Uh, right the- uh, right by the hallway like, you know, right by the gate in the middle between the streets and the gate.  
Q: Kind of - was he toward his window or no? Like...  
A: Um...  
Q: ...you know where that back window of his, kind of?  
A: Yeah the - the front window...  
Q: Yeah. Yeah.  
A: ...he lay right there.  
Q: Right underneath there?  
A: Yeah.  
Q: How close together were - how close together were Dre and T-Rex when the shooting took place?  
A: Like this.  
Q: Like they're right on top of one another?  
A: They was close stance just like this face to face.

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 27

EVENT #: 180211-3548  
STATEMENT OF: Raymond Moore

have been getting into it?  
A: Mm...  
Q: I don't know if Jeremiah's...  
A: ...yeah they had got into it.  
Q: ...I don't know what his nickname is.  
A: Yeah what it was it was between, uh, Jeremiah and, uh, Dre's baby mama. So he came and shot at - shot at the house and that's why Dre shot back at him.  
Q: That was all recently, right...  
A: Yeah everything...  
Q: ...like pretty recent?  
A: ...right around that - that time. Like a couple of days down the line between Jeremiah and them.  
Q: None of these other folks died though, right? These are all...  
A: No.  
Q: ...just shootings, right?  
A: Yeah only one that died was T-Rex. All right Gerry is there anything you can think of?  
Q1: Hey so when - when T-Rex has the gun in his pocket and he's kind of going back and forth...  
A: Mm-hm.  
Q1: ...and all this conversation's going on before the shooting...

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 28

EVENT #: 180211-3548  
STATEMENT OF: Raymond Moore

Q: Does Dre have to put his arm out, extend his arm out or no?  
A: Yeah 'cause see 'cause Dre - 'cause T-Rex got - 'cause T-Rex know Dre keep his gun and T-Rex know Dre is gonna shoot so he kept comin' back and forth so, you know, once he got a little arm length that's when Dre pull up out, boom boom boom.  
Q: Mm.  
A: Shot three time.  
Q: What color - do you remember what color Dre's revolver is?  
A: It was chrome.  
Q: Chrome. You had seen it on him before?  
A: Yeah. All the time.  
Q: Now has Dre done any other type of shootings over there? I mean is he...  
A: Yeah he did a couple of 'em. He, uh, shot the other dude, uh, like last year. Shot the dude name Goo in the foot or in - or - or in the leg.  
Q: Goo?  
A: Yeah.  
Q: Where was that at?  
A: That was right there, uh, on Sherwood betw- in the alley.  
Q: Why'd he do that?  
A: I don't know why.  
Q: How about anything else? Anything lately? Did he shoot - did him and Jeremiah

Voluntary Statement (Rev. 05/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 29

EVENT #: 180211-3548  
STATEMENT OF: Raymond Moore

A: Mm-hm.  
Q1: ...does Juge have his gun out at all?  
A: No.  
Q1: Okay so his gun isn't visible...  
A: No.  
Q1: ...the 25 he has is somewhere also?  
A: Somewhere else, in his pocket or somethin'...  
Q1: Okay.  
A: ...but he never - he never brung it out, he never - 'cause he didn't - he didn't even think nothin' was gonna happen.  
Q1: Right.  
A: Really...  
Q1: So...  
A: ...I didn't even know nothin' was gonna happen.  
Q1: Okay so no one else has a gun out with T-Rex...  
A: No.  
Q1: ...and then T-Rex gets shot and then Juge takes T-Rex's gun, fires a couple of from that...  
A: Mm-hm.  
Q1: ...and then - then shoots off his 25?  
A: Yeah.

Voluntary Statement (Rev. 05/10)

PA000370

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 29

EVENT #: 182211-3549  
STATEMENT OF: Raymond Moore

Q1: Okay.  
A: Yeah.  
Q: Was Juge involved in the shit-talking?  
A: No.  
Q: No?  
A: Nobody - see nobody - we was all right there but...  
Q: Just - just T-Rex and...  
A: And Dre.  
Q: ...and Dre just goin' back and forth.  
A: They was - they was the only ones goin' back and forth. Nobody else said nothin'.  
Q: Was anybody - do you remember anybody drinking out of a Coke can that was on the wall?  
A: Mm...  
Q: There's a little, you know, that little - right outside the gate there's a little wall?  
A: Yeah, uh, it probably a female I think 'cause it was a few females but then they had left...  
Q: Mm-hm.  
A: ...but whatever, but they wasn't there during the shooting...  
Q: No.  
A: 'Cause you know - you know when you drink something they'll just throw it down.

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 31

EVENT #: 182211-3549  
STATEMENT OF: Raymond Moore

forgot to ask you that you thinks important? Has - have Dre and him got into it before? Is this something like- like's been going on...  
A: No.  
Q: ...for a long time or...  
A: No. They never got into it, they never had words. Like, you know, Dre is respectful sometimes, you know what I mean, and T-Rex he respectful at times too so when this happened everybody was surprised when they was like, "Man that's messed up man. Like what he was on like? You know, why did he went so far?" And I'm like shit that's what I wanted to know. Why did - why did T-Rex come in flexing like that. We just right there chillin' mindin' our own business, we wasn't botherin' nobody.  
Q: Yeah everybody has a bad day though, right? I mean...  
A: Yeah true that, but then...  
Q: ...for whatever reason.  
A: ...matter of fact he just came back from California.  
Q: T-Rex?  
A: Yeah he just came back from California from a concert. But I knew what it was, he was just bad 'cause he seen TY right there. But he nev- he ain't - he not gonna say nothin' to TY always quiet.  
Q: Wasn't TY in the building before T-Rex?  
A: No T-Rex was in it before him.

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 30

EVENT #: 182211-3549  
STATEMENT OF: Raymond Moore

Q: And there's - you know there's a little water box next to the landscaping?  
A: Mm-hm.  
Q: Had that thing been shot before do you - do you know?  
A: Not that I know of, no.  
Q: So if there was bullet holes in it it might be from the shooting?  
A: Yeah they sa- yeah 'cause they said Dre gun was a, uh, 357, and then Juge had the - the little sauce-five, that's why everybody said it's a big hole and it's a little hole.  
Q: What, in the box?  
A: Yeah in the hole...  
Q: Oh...  
A: ...yeah in the wall.  
Q: Oh in the wall, in the wall.  
A: Yeah.  
Q: All right.  
A: So I didn't even - I didn't even know.  
Q: All right. And sorry Gerry, anything?  
Q1: No that's it.  
Q: T.J?  
Q2: No.  
Q: All right Ray, is there anything - is there anything else you can think of that I

Voluntary Statement (Rev. 03/10)

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT  
PAGE 32

EVENT #: 182211-3549  
STATEMENT OF: Raymond Moore

Q: Oh.  
A: 'Cause at first, uh, we used to just go hangout right there and, uh, but then he started messin' with my cousin and that's when my cousin moved in and he moved in the same day.  
Q: Who stays in # 1, the apartment right across the aisle, like right across the gateway from...  
A: Oh, uh, they another Blood.  
Q: Blood family?  
A: Yeah.  
Q: Or is it a...  
A: Yeah they from, uh...  
Q: Is there a girl that lives there, like a young girl?  
A: Yeah it's a girl, yeah it's a young girl. She, uh, her mother an her, uh, step-pops is, uh, from CentarView.  
Q: What's her name, do you know the young girl's name?  
A: I don't even know her name.  
Q: How old is she about?  
A: Probably like 15, 16. Probably 15, 16. See because NuNu, she working - the girl NuNu she working with the Bloods tryin' to set us up. Like she...  
Q: Set you up, what do you mean like?  
A: Like she be tryin' to get us outside at 1:00, 2:00 in the morning...

Voluntary Statement (Rev. 03/10)

PA000371

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 53

EVENT #: 160211-3848  
STATEMENT OF: Raymond Moore

Q: Who's Nulu?

A: That's another girl that know - it be like everything that the Crips say she'll go back and tell the Bloods and then what the Bloods say she'll come back and tell some - some of 'em but not everybody.

Q: Mm-hm. All right is there anything else you can think of about this particular shooting that I haven't asked that you thinks important.

A: No. Not right now.

Q: All right. Operator that's the, uh, end of the interview. It's the same location, the same people present. Time is approximately 1605 hours. Thank you.

---

THIS VOLUNTARY STATEMENT WAS COMPLETED AT COMMERCIAL CENTER  
LAS VEGAS, NV ON THE 21ST DAY OF FEBRUARY, 2018 AT 1605 HOURS.

TS:nettranscripts  
TS004

\*Reviewed by Detective Sanborn PN 5450 on 03-20-18.

**EXHIBIT L / L1 - DEFENDANT'S REPLY  
IN SUPPORT OF MOTION TO SUPPRESS  
EVIDENCE FOR PRELIMINARY  
HEARING**

1 **RPLY**

2 **ADRIAN M. LOBO, ESQ.**  
3 Nevada Bar # 10919  
4 400 S. 4th Street, Ste. 500  
5 Las Vegas, Nevada 89101  
6 702.290.8998  
7 702.442.2626 (fax)  
8 adrianlobo@lobolaw.net  
9 Attorney for the Defendant

**FILED**

2018 MAY 24 P 1:38

JUSTICE COURT  
LAS VEGAS NEVADA  
BY DEPUTY **SMH**

7 **JUSTICE COURT**

8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

12 **DEANDRE GATHRITE,**

13 **Defendant**

Case No.: 18F03565X

Dept. No.: 11

14  
15 **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE FOR**  
16 **PRELIMINARY HEARING**

17 COMES NOW the Defendant, DEANDRE GATHRITE, by and through his counsel of  
18 record Adrian M. Lobo, Esq., and hereby files this Reply in Support of his Motion to Suppress  
19 Evidence for Preliminary Hearing. The State is attempting to substitute a suspect's familiarity  
20 with his charges, and with California's extradition process, for a proper Miranda warning. The  
21 State provides no authority for this and thus the Defendant's statement must be suppressed for a  
22 failure to observe the Defendant's civil rights.

23 DATED this 24th day of May, 2018.

24  
25  
26 By: 

Adrian M. Lobo, Esq. (#10919)  
Attorney for Defendant

18F03565X  
REPL  
Reply  
9472093



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 None of these factual scenarios have *any* bearing on this situation. The Defendant here was  
2 not attending a regularly-scheduled check-in with his probation officer; the Defendant was not  
3 being asked to submit to a drug test pursuant to his parole; and the Defendant did not voluntarily  
4 come into a police station and give a statement.

5 Instead, the Defendant had *just been arrested* by Metro's "Criminal Apprehension  
6 Team,"<sup>1</sup> and placed in the back of a car while handcuffed. The CAT then called the homicide  
7 detectives to come speak with Defendant. There is absolutely no question that Defendant was in  
8 custody, and was not free to leave. The State even acknowledges all of this, even as it attempts to  
9 argue that, somehow, Defendant was not arrested when CAT placed him in handcuffs and put him  
10 in the back of a car to wait for homicide detectives:

11 On February 16, 2018, Defendant was located by the LVMPD Criminal  
12 Apprehension Team (CAT) and arrested. When Defendant was arrested on  
13 the warrant, he had no Nevada charges pending. In fact, after Defendant was  
14 questioned and the firearm was recovered, the Defendant was not arrested  
15 on either the Murder or Possession of Firearm by Prohibited Person charge.  
16 Instead, Defendant was transported to the Clark County Detention Center  
17 exclusively on his California warrant.  
18 *Id.* at 11 (emphasis added).

19 Thus the State's argument appears to be that while the Defendant *was* arrested, it was not  
20 for the instant charges. Instead, because Defendant was arrested on other charges, he was not in  
21 custody for the purposes of being questioned.

22 This is exactly the trap that many errant law enforcement officials fall into with regard to  
23 Miranda. The *Miranda* case and its progeny do not require a formal arrest; indeed, custodial  
24 interrogation often takes place prior to the determination and application of any formal charges.  
25 Thus the State's argument that Defendant was not charged with the instant charges until after his

---

26 <sup>1</sup> The argument that the arrest by a team specifically formed, trained, and sent forth to apprehend  
27 somehow does not amount to custodial restraint on freedom is not only logically disingenuous, it  
28 ignores the very name of the team itself.

1 arrest by CAT on the parole warrant is unavailing, and the State's own case law undermines its  
2 position (both the case law that is applicable to this situation and the extraneous case law dealing  
3 with other factually distinct scenarios). Instead, the State is trying to argue that "the Defendant's  
4 status of being in custody on his California felony offense for which he was on parole had no  
5 bearing on the independent Nevada investigation" on these charges. *Id.* at 12.

6 Furthermore, the State is putting the proverbial cart before the horse in arguing that  
7 Defendant was free to terminate the interrogation at any time. Without a proper Miranda warning,  
8 this is an ineffective argument; Miranda is what triggers for a defendant the proposition that they  
9 hold the ability to terminate questioning. Indeed, proper Miranda warnings require that a suspect  
10 in custody and subject to questioning be advised that they have the right to remain silent- that is,  
11 to terminate questioning. In the absence of that warning, the State cannot argue that the Defendant  
12 was free to do precisely what he had not yet been advised he could do- that is the very essence of  
13 a Miranda warning.

14 The actions of the detectives also undermine the State's argument of a non-custodial  
15 interrogation. While the detectives may have created the impression that the Defendant was not  
16 under arrest, this is undermined by their other actions as set forth in the underlying Motion: not  
17 allowing Defendant to leave (they make it a point to tell him to remain, and they will retrieve  
18 things from the apartment); the statements wherein they "allow" Defendant to hug his child again  
19 before they take him; and where the Detectives play dumb about Defendant's California warrant  
20 as they question him *with CAT members looking on*. This "mummer's farce" of a show of how  
21 free the Defendant was (despite having just been arrested by a team whose sole job it is to locate  
22 suspects and arrest them on warrants) is undermined by the Defendant's own cognition of the  
23 entire charade: "'Cause I have a warrant for Cali, so I know I'm goin'..." *Id.* at 13.

24 No matter how much the detectives may have tried to create the impression that they were  
25 all just having a casual chat, the Defendant was still very much in custody (could *not* leave), and  
26 even acknowledged that he was in custody. Any argument to the contrary simply is not supported  
27 by the facts of this case.



Lastly, as perhaps the most salient example of custodial interrogation, the detectives ultimately *did* give Miranda warnings to the Defendant once they realized they had elicited incriminating statements. If the State's position is that Miranda was not required, it is contradicted by the detective's decision to provide it once Defendant had given his statements.

For the foregoing reasons, Defendant was in custody and the lack of Miranda warning requires suppression of his statement.

Regardless, the State is arguing that the statements were voluntarily given- first, because the environment was not coercive, and because the Defendant waived his rights under *Miranda*.

The environment absolutely was coercive. Again, Defendant had just been arrested by CAT and then made to wait while the detectives were summoned to speak with him. The detectives then questioned him at length, while prompting the Defendant that they would let him hug his child again; let him smoke a cigarette again; and that if Defendant did not tell them what they wanted to know, it could result in his girlfriend's apartment being torn apart during a search.

The nature of the questioning itself is very coercive. Defendant is under arrest for a mere parole violation, of which Defendant knows he may face extradition, do six months in California corrections, and then be re-released as before, multiple times. Suddenly, Defendant has two homicide detectives questioning him extensively, repeatedly, and with the threat of those charges if he does not tell them “his side” of the story. The seriousness of the case is implied in the way detectives gingerly let him hug his child again (on the implication that he may not see them for some time after this). The detectives also tell him that if he does not consent to a search, the apartment—which is not Defendant’s abode, but rather his girlfriend’s and his children’s home—will be torn apart and left a mess for her to deal with after they have left.

Ignoring for a moment the inherently coercive environment of an arrest by a Criminal Apprehension Team, the questioning by sophisticated, trained detectives, and the possibility of multiple felony charges, the detectives then decided to throw in carrot-on-a-stick tactics of allowing “going-away” hugs with a child, and low-key threatening to trash the child’s and mother’s

1 apartment if Defendant did not cooperate. If this is not inherently coercive in and of itself, then it  
2 begs the question of what constitutes coercive interrogation.

3       3. *The Defendant Did Not Have Actual Authority Over the Wyandotte Address*

4       Once more, the State's own case law undermines its position in this matter. Simply,  
5 Defendant was there merely to watch his child and did *not* have any actual authority over the  
6 property. Nor can the State claim any subjective, good faith belief by the detectives that Defendant  
7 had actual authority, as this was specifically disclaimed by Defendant, and *acknowledged* by the  
8 detectives.

9       As set forth in the Motion, Defendant informed the detectives multiple times that it was  
10 not his apartment, he was not the primary resident, and that he was merely there in itinerant,  
11 transient fashion. Not only did detectives know that Defendant did not live at that address, they  
12 *also* knew where he *did* live- At Van Patten, in the apartments where the underlying shooting took  
13 place. This fact was not only acknowledged by detectives, but it was memorialized in their report  
14 on the shooting.

15       The State's Opposition verifies this, without even realizing it: "Defendant further states  
16 that he and his girlfriend have been together for five (5) years, share two children together, *and*  
17 *see each other when they can.*" *St. 's Opp.* at 19 (emphasis added). People who live together do not  
18 "see each other when they can"- ergo Defendant was merely a guest at Wyandotte and had no  
19 authority to consent to the search. Furthermore, "Defendant tells Detectives that his girlfriend is  
20 the only family he has in Las Vegas and that he stays with their baby *when she goes to work.*" *Id.*  
21 (emphasis added). Somebody who lives at a resident does not stay there only when the primary  
22 resident "goes to work"- ergo Defendant was merely a guest at Wyandotte and had no authority to  
23 consent to the search.

24       Nor is the State's position convincing- that detective's subjective understanding was  
25 sufficient to rely on Defendant's apparent consent. Again, as cited in the Motion, the detectives  
26 acknowledge that the apartment was the girlfriend Tia's home, and not the Defendant's. Any  
27 argument of a subjective reliance is undermined by this acknowledgement, and the detectives were  
28

1 obligated to secure a warrant (in advance, not subsequent to defective consent), or wait for Tia. In  
2 fact, the detectives did so acknowledge that they could wait for Tia to return home. *Id.* at 18. Again,  
3 this was tempered by the coercive suggestion to Defendant that if he did not consent, the apartment  
4 would be torn apart and wrecked, leaving Tia and Defendant's children to clean up, and with the  
5 risk that their property would be broken or damaged.

6 As set forth in the Motion, the property at Wyandotte was under Fourth Amendment  
7 protections, with the power of waiver and/or consent belonging *only* to the girlfriend, Tia.  
8 Therefore, any consent given by Defendant was insufficient, and the resulting entry and search of  
9 the apartment without a search warrant was improper. As such, any evidence, including the firearm  
10 in question, must be suppressed and deemed inadmissible at preliminary hearing.

11 *4. Suppression is Appropriate*

12 The State's argument here is premised on the fact that no Miranda violation occurred, that  
13 the consent was valid, and that the weapon would have been found via inevitable discovery.  
14 Obviously these are hotly contested matters, and indeed the basis of the Motion and related  
15 pleadings herein before this Court. Therefore if the Court finds that a Miranda violation did occur,  
16 and/or that the consent to search was invalid, then the appropriate remedy is suppression.

17 The inevitable discovery argument is more concerning, as it is a quick-coat of varnish over  
18 the defective warrant itself. The State's entire argument is as follows:

19 Detectives acquired a telephonic search warrant for the apartment where the  
20 firearm was previously recovered. The basis for establishing probable cause  
21 to search the apartment did not include any of the Defendant's statements  
22 or the firearm recovered. Thus, even if this court were to find that  
23 Defendant's statement were illegally obtained, police had an independent  
24 basis to obtain a search warrant for the apartment whereby the firearm  
25 would have been recovered.

26 *St. 's Opp.* at 25.

27 However, the warrant application, attached to the Motion as Exhibit E (and again here for  
28 convenience), tells a different story:

Through my training and experience I've learned the examination of the  
crime scene and the recovering of the above described property is necessary

1 in providing the cause and manner of death, the circumstances involved  
2 related to the death, and to potentially identify the perpetrator of the crime.  
3 A thorough microscopic crime scene search of the premises is necessary in  
4 order to establish the location of the crime, its extent, and the circumstances  
5 surrounding the crime. This search may involve the damaging or removal  
6 of items such as carpeting, wallboard, and other interior/exterior surfaces.  
7 The evidence of dominion and control as described is necessary in  
8 establishing dominion and control over the premises and often assists in  
9 identifying the perpetrator. Such evidence is normally left or maintained  
10 upon or within the premises.

11 *Ex. E – Warrant Application* at 4.<sup>2</sup>

12 Then, incredibly, the detective made the following statement to the judge: “Just one second,  
13 Judge. I want to make sure that I noted earlier that we’re looking for all handguns and ammunition  
14 and the cell phone that was taken off the person of Gathrite in our Search Warrant.” *Id.* at 5.

15 Accordingly, the warrant is defective. First, it indicates to the judge that the Defendant had  
16 dominion and control over the area, despite the apartment having been established as Tia’s primary  
17 residence and the Defendant as only an itinerant, transient guest. Second, the warrant application  
18 tips the judge off that certain items already have been found- specifically, the handgun,  
19 ammunition, and cell phone. Third, the warrant application misrepresents Wyandotte as the scene  
20 of the crime; that the evidence sought at Wyandotte would be crucial to establishing “the location  
21 of the crime, its extent, and the circumstances surrounding the crime”- all of which were already  
22 known to detectives since the shooting had occurred at Van Patten, and Defendant by this point  
23 had already given them numerous statements to establish all of details.

24 Additionally, the warrant application contained additional details not germane to the  
25 investigation, but which may have had a prejudicial, coercive effect on the judge’s decision.  
26 Specifically, the warrant application sought “gang paraphernalia”- a term not only undefined, but  
27

---

28 <sup>2</sup> The first, second, and last pages of the Warrant Application are not numbered, and the third page  
is numbered as “2”. For clarity, the Warrant Application will be treated as pages 0 through 8.

1 for which detectives never discussed or even attempted to search for when they re-entered the  
2 apartment. *Id.* at 0, 3.

3       Lastly, the warrant application falsely represented to the judge that “The apartment which  
4 Gathrite was removed from has been secured awaiting the Search Warrant for the items we have  
5 listed earlier.” *Id.* at 4. Obviously, the apartment not only was not secured (detectives went back  
6 in to recover cigarettes, and to recover the firearm), but the entire purpose of the warrant was  
7 retrospective in nature in that the items recovered were “NOTHING,” a buccal swab, and the cell  
8 phone already recovered from Defendant. *Id.* at 8.

9       As such, State’s representation that the warrant was fully information and thus based on  
10 valid probable cause is disingenuous. As is clear from the application itself, the detectives sought  
11 to cure their defective consent by representing that the apartment itself was the scene of a crime;  
12 that “gang paraphernalia” might be found there, despite not being part of their investigation or  
13 reason for investigating the crime; that other evidence necessary to the case would be found there,  
14 despite having everything they needed from Defendant’s statements and the recovery of the  
15 firearm; and by finding “NOTHING” in a cursory, post-warrant search of the apartment.

16       Lastly, the warrant application does not even list the firearm and ammunition recovered  
17 prior to the warrant application. *Id.* at 8.

18  
19  
20  
21  
22  
23  
24  
25 //

26 //

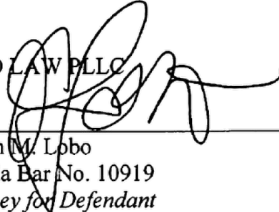
27 //

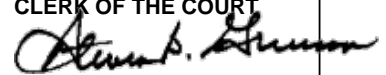
1 **CONCLUSION**

2 Based on the foregoing, Defendant moves this court to suppress any statements made to  
3 detectives, as Defendant was not properly advised of his Miranda rights, and even after such  
4 attempt to Mirandize Defendant his waiver of rights was not knowing and voluntary. Furthermore,  
5 evidence recovered from the Wyandotte address, to include the firearm, must be suppressed as  
6 Defendant did not have authority over the property sufficient to consent to a search of the premises.  
7 The evidence recovered is not subject to inevitable discovery, as the warrant details were  
8 improperly presented to the judge.

9 DATED this 24th day of May, 2018.

10  
11 LOBO LAW PLLC

12 By:   
13 Adrian M. Lobo  
14 Nevada Bar No. 10919  
15 Attorney for Defendant  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DEANDRE GATHRITE,

Defendant.

CASE NO. C-18-334135-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 25, 2018

***RECORDER'S TRANSCRIPT OF PROCEEDINGS***  
**DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS AND**  
**DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT**

APPEARANCES:

For the State:

NICOLE J. CANNIZZARO  
Chief Deputy District Attorney

For the Defendant:

ADRIAN LOBO, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 25, 2018, 11:41 A.M.

2 \* \* \* \* \*

3 THE COURT: So let's do Gathrite on page 2. He's present in custody.  
4 Ms. Lobo's here on his behalf. Ms. Cannizzaro on behalf of the State. So  
5 here -- here's why I kind of called it out of order, first off, I didn't have a  
6 chance to read the replies because I didn't get them until this morning and I  
7 didn't get here until late because of our other meeting. That being said, my  
8 sense is a lot of what's in the petition and certainly what's in the motion to  
9 dismiss stems from the allegation of failure to advise of Miranda, fruit of the  
10 poisonous tree, obviously a request to suppress everything, fair?

11 MS. LOBO: In the State's opposition.

12 THE COURT: Well, I mean, in --

13 MS. LOBO: In -- in -- or the underlying, yeah.

14 THE COURT: -- in your moving papers as well it's alleging that  
15 Judge Goodman granted a motion to suppress, State never should have put this  
16 on at the grand jury, we're still in a state of constitutional considerations that  
17 would warrant, you know, suppressing it and therefore dismissing it, right?

18 MS. LOBO: Yes, and then in my reply I address some of, like, the  
19 procedural -- I analogized essentially to different case law. So I would like the  
20 Court to consider and if you haven't --

21 THE COURT: Well, all I was getting at was I think it needs to have a  
22 hearing. So before we get into any of the other allegations from the writ, I  
23 mean, the core issue in my mind, is getting to the motion to dismiss and the  
24 suppression issues which, in my mind, I think is appropriate to have an  
25 evidentiary hearing. I don't know how many witnesses or how long you-all



1 think you need for that, I can set it, you know, any time in the next week or so  
2 if you're available. Our trial kind of went away.

3 MS. LOBO: Well, and it -- yeah, it would be my recommendation at least  
4 or -- at least like my position that we would like to be heard on the writ as to  
5 the applicability as to whether or not the justice court has the authority given  
6 the Grace decision.

7 THE COURT: Right.

8 MS. LOBO: And how that applies to the statutory authority and if  
9 Your Honor then decides that you know, it's not binding --

10 THE COURT: Right.

11 MS. LOBO: -- and that it was proper and that we're moving forward in  
12 that direction, then I would want to submit additional moving papers. But it  
13 would be my preference to do the writ argument.

14 THE COURT: So I think the justice court does have authority, pursuant to  
15 Grace, that was my case.

16 MS. LOBO: Right. I -- I --

17 THE COURT: And I'm the one that invited Robert O'Brien to appeal it  
18 because I thought they should have that discretion. But I also think if you're  
19 going to do that then maybe they should have had an evidentiary hearing as  
20 well, maybe, maybe not.

21 But ultimately what I think about the suppression issue is pertinent  
22 to if -- if Judge Goodman was right and if there is any carry forward to the  
23 State having some obligation to then not do -- not present it at the grand jury.  
24 If I disagree with it, then it's really moot and they present it to the grand jury.  
25 But at least in my mind and what I've read so far, and I haven't seen the replies

1 yet, it starts with that level of an evidentiary hearing about the suppression  
2 issues. So that's kind of the thing that I want to get out of the way first.

3 MS. LOBO: I would object, just for the record, I respect the Court, but I  
4 would object to that based upon the way that the arguments are laid out in the  
5 pleadings. I actually had an opportunity to listen to the oral argument last night  
6 because I figured it's on point. I wanted to hear what the justices asked in the  
7 Grace oral argument and I think that it's pretty on point to the writ, but I  
8 understand, I respect the Court's ruling if you want the hearing on the  
9 evidentiary issue, but that goes straight to the heart of my argument is that  
10 there were procedural mechanisms that were in place for the State to use.

11 The proper thing to have, at least from our position, would have  
12 been to have an appeal and Your Honor would have decided it or Doug Smith  
13 would have decided it, actually I think it would have been you because it was a  
14 homicide. So to appeal it that way and the way that I've seen it done, at least  
15 when variations of these issues have come up is that they do it concurrent. I  
16 don't doubt anything that they have the right to go to the grand jury. But I  
17 usually see it concurrent, you know, pleading there and then an appeal going on  
18 at the same time in other cases. And this was not done in this case. So there  
19 was no reconsideration. There was other appropriate mechanisms to challenge  
20 Goodman's ruling and it's our position that he didn't need an evidentiary hearing  
21 and it's part of my argument as to how thorough and why it took so long to get  
22 there because I knew something nefarious was going on.

23 THE COURT: Well, I'm not disputing that, you know, what Eric thought  
24 at the time that he made his ruling. I just know that from my perspective, me  
25 deciding that issue is at the core of moving forward with the other thing. So it

1 just seems to be appropriate to have an evidentiary hearing. So we can, like I  
2 said, we can set it any time in the next week if you-all are available.

3 MS. CANNIZZARO: And, Your Honor, the only thing the State would ask  
4 for is two weeks so we can get subpoenas. And I don't know who this case is  
5 going to be assigned to. It was Ms. Overly's case. She has since been  
6 reassigned to another team, so this case will have to be reassigned as well. I'm  
7 obviously standing in for today's purposes to sort of help. I don't know if I will  
8 inherit this case or another deputy will inherit this case.

9 THE COURT: Okay.

10 MS. CANNIZZARO: But we would probably just need a little bit of time  
11 even for myself to kind of make sure I'm up to speed on all of that as well.

12 THE COURT: How about like the 8<sup>th</sup>, Monday the 8<sup>th</sup>?

13 MS. LOBO: Well, and, Judge, if I can just for the record, I know that the  
14 Court's going to set this, but I'm inclined to ask for a stay to take this exact  
15 issue up. I don't believe an evidentiary hearing was necessary and that just the  
16 way it resides within Your Honor's sound discretion, if this motion had been  
17 brought here, it resides in that judge's sound discretion at the justice court  
18 level.

19 THE COURT: Okay. But you're taking a stay to appeal something where  
20 I haven't even issued a decision?

21 MS. LOBO: No, no, no. So you want to go forward with an evidentiary  
22 hearing?

23 THE COURT: To decide what I think about the constitutional issue that's  
24 being raised that -- that you're alleging that --

25 MS. LOBO: Right.

1 THE COURT: -- the evidence should have been suppressed.

2 MS. LOBO: I understand.

3 THE COURT: That Judge Goodman was right in suppressing it and that  
4 the State shouldn't have been able to take that evidence to the grand jury. And  
5 I'm saying I want to decide that issue for myself and I think it needs to have an  
6 evidentiary hearing rather than just looking at the transcript of the prelim.

7 MS. LOBO: Okay.

8 THE COURT: So, I mean, I'm going to -- I think you're correct in asking  
9 for the stay. I would deny the stay. But you can certainly file the writ and --  
10 and request a stay from the Supreme Court. So if --

11 MS. LOBO: Okay. I have an order.

12 THE COURT: Okay.

13 MS. LOBO: For --

14 THE COURT: If they --

15 MS. CANNIZZARO: And I --

16 THE COURT: If they grant that in the next couple of weeks, then we'll  
17 vacate whatever hearing we have and -- and see what they're going to do. My  
18 sense would be they would kind of say their intervention isn't warranted  
19 because I haven't really issued a decision yet, so.

20 MS. LOBO: Right.

21 THE COURT: But so let's hold off on that a second.

22 MS. LOBO: Okay. Okay.

23 THE COURT: Let's just see, how about Monday the 8<sup>th</sup>? Can we do  
24 Monday the 8<sup>th</sup>?

25 MS. CANNIZZARO: I would tentatively say yes, Your Honor.

1 THE COURT: Okay.

2 MS. CANNIZZARO: That should give us enough time to at least

3 subpoena the case.

4 THE COURT: And get somebody assigned to it.

5 MS. CANNIZZARO: And get someone --

6 THE COURT: Okay.

7 MS. CANNIZZARO: -- to handle it.

8 THE COURT: What about, Adrian, are you available on that date?

9 MS. LOBO: Let's see.

10 THE COURT: We'd be looking at maybe 1:00 o'clock if you're available.

11 MS. LOBO: I could do 1:00 o'clock on that day.

12 THE COURT: Okay. So let's plan on that. And then obviously if you file

13 the writ or request a stay from the Supremes and they grant that, then we'll

14 just vacate that and await their decision.

15 MS. LOBO: Okay.

16 THE CLERK: That will be October 8<sup>th</sup>, 1:00 p.m.

17 MS. LOBO: All right. Thank you.

18 THE COURT: Okay. Thank you.

19 MS. LOBO: And then if I can approach, I brought an order but I didn't

20 know if it would be as to which issue.

21 THE COURT: Yeah. What, exactly what is it that --

22 MS. LOBO: Just to, I had actually the grant or the denial so I don't know

23 if the Court's comfortable with interlineation.

24 THE COURT: Sure

25 . MS. LOBO: As to --

1 THE COURT: Let me take a look.

2 MS. LOBO: Okay.

3 Thank you.

4 THE COURT: All right. You can -- you can sign at the bottom.

5 MS. LOBO: Yes.

6 THE COURT: And just file it open court.

7 MS. CANNIZZARO: And can -- may I inquire as to what the order is that  
8 was sent --

9 THE COURT: The order is just a motion -- a motion to stay proceedings  
10 was denied and I interlineated it to put your name in there instead of Sarah's.

11 MS. LOBO: It doesn't say the basis on it.

12 THE COURT: I wrote the date in.

13 MS. CANNIZZARO: That's fine. I just wanted to make sure because I  
14 wasn't sure about what it was. That's fine, Your Honor.

15 THE COURT: Yeah, no, you're okay. It's just a generic order saying they  
16 moved for a stay and I denied it.

17 PROCEEDING CONCLUDED AT 11:51 A.M.

18 \* \* \* \* \*

19

20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

23

24

25



SARA RICHARDSON  
Court Recorder/Transcriber

SEP 25 2018

BY: Kory Schlitz  
KORY SCHLITZ, DEPUTY

1 **ORDR**

2 **ADRIAN M. LOBO, ESQ.**

3 Nevada Bar #10919

4 **LOBO LAW PLLC**

5 400 S. 4<sup>th</sup> Street Suite 500

6 Las Vegas, Nevada 89101

7 Phone: (702) 290-8998

8 Fax: (702) 442-2626

9 Email: adrianlobo@lobolaw.net

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA, )

13 Plaintiff, )

14 vs. )

15 DEANDRE GATHRITE, )

16 Defendant, )

CASE NO. CASE NO. C-18-334135-1

DEPT. NO. III

17 **ORDER DENYING DEFENDANT'S MOTION TO STAY PROCEEDINGS**

18 DATE OF HEARING:

19 TIME OF HEARING:

20 THIS MATTER having come on for hearing before the above entitled Court on  
21 the 25 day of September, 2018 the Defendant being present, represented by ADRIAN M.  
22 LOBO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,  
23 through NICOLE CANIZZARO, Chief District Attorney, and the Court having heart the arguments of  
24 counsel and good cause appearing therefor,

25 IT IS HEREBY ORDERED that DEFENDANT'S MOTION TO STAY PROCEEDINGS  
26 shall be, and is, DENIED.

27 DATED this 25 day of September, 2018.

28 District Judge  
DISTRICT JUDGE

Submitted by:

LOBO LAW, PLLC

By

ADRIAN M. LOBO (#10919)

Lobo Law PLLC

400 South Fourth Street Suite 500

Las Vegas, NV 89101

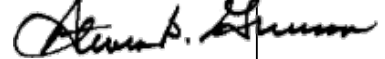
Telephone: (702) 290-8998

Facsimile: (702) 442-2626

Attorney for Defendant

C-18-334135-1  
ODM  
Order Denying Motion  
4782585





1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-18-334135-1

DEPT. III

10 vs.

11 DEANDRE GATHRITE,  
12 Defendant.

13  
14 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
15 MONDAY, OCTOBER 8, 2018

16 **RECORDER'S TRANSCRIPT OF PROCEEDINGS:**  
17 **EVIDENTIARY HEARING**

18 APPEARANCES:

19 For the State:

TALEEN R. PANDUKHT, ESQ.  
Chief Deputy District Attorney

20  
21 For the Defendant:

ADRIAN LOBO, ESQ.

22  
23  
24  
25 RECORDED BY: SARA RICHARDSON, COURT RECORDER



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**INDEX OF WITNESSES**

**STATE’S WITNESSES**

**PAGE**

**JARROD GRIMMETT**

Direct Examination by Ms. Pandukht	5
Cross-Examination by Ms. Lobo	24
Redirect Examination by Ms. Pandukht	81

**TATE SANBORN**

Direct Examination by Ms. Pandukht	82
Cross-Examination by Ms. Lobo	93

1 Las Vegas, Nevada, Monday, October 8, 2018

2  
3 THE COURT: All right. We'll be on the record. Mr. Gathrite  
4 with his attorney, Ms. Lobo, 334135. Ms. Pandukht present for the  
5 State. This is the time that we had set for evidentiary hearing. So, what  
6 do you got, ladies?

7 MS. PANDUKHT: We're ready to proceed.

8 MS. LOBO: Yes. We have --

9 MS. PANDUKHT: We think at this point we're going to have  
10 three witnesses between us.

11 THE COURT: Okay.

12 MS. LOBO: Possibly, yeah, three, four. One of them will be  
13 really quick though.

14 MS. PANDUKHT: Depends.

15 MS. LOBO: Are you putting the audio into evidence at all or  
16 no?

17 MS. PANDUKHT: I can. I have the audio recording and a  
18 transcript. I can just put it into evidence. I wasn't going to play the  
19 audio.

20 THE COURT: Okay.

21 MS. PANDUKHT: But I do have clean copies that I can mark  
22 and [indiscernible].

23 THE COURT: Okay.

24 MS. LOBO: Okay. Perfect.

25 MS. PANDUKHT: And that would be just [indiscernible] today.

1 THE COURT: And just for the record we had a discussion last  
2 time we were in court when the Court set the hearing and procedurally,  
3 correct me if I'm wrong, Ms. Lobo, but you did file the writ. The -- I think  
4 it was last week. And the Court of Appeals issued a decision denying  
5 the writ kind of on the -- our intervention isn't warranted right now.

6 MS. LOBO: Yes, yes.

7 THE COURT: Right? Okay. So, the Court has jurisdiction  
8 back and we can go ahead and proceed today.

9 MS. LOBO: Yes.

10 THE COURT: All right. And we will have those marked as  
11 Exhibits 1 and 2. Or -- 1 and 2, yeah. The hard copy of the transcript is  
12 1 and the CD will be 2.

13 MS. PANDUKHT: So, I'll begin.

14 THE COURT: Okay.

15 MS. PANDUKHT: I will call Detective Grimmiett.

16 MS. LOBO: And then I'm going to need -- I can't connect. I  
17 only see Department 16, 14. See I don't see Department 20.

18 THE COURT RECORDER: We're not courtroom 20. We're  
19 16D.

20 MS. LOBO: I -- okay.

21 THE COURT RECORDER: It says 20.

22 MS. LOBO: So, the wireless isn't going to --

23 **JARROD GRIMMETT**

24 [having been called as a witness and being first duly sworn,  
25 testified as follows:]

1 THE COURT CLERK: Thank you. Please be seated. If you  
2 could state and spell your name for the record please.

3 THE WITNESS: Jarrod Grimmett. That's J-A-R-R-O-D, last  
4 name Grimmett, G-R-I-M-M-E-T-T.

5 THE COURT: All right, sir. Thank you. Ms. Pandukt.

6 MS. PANDUKHT: Thank you.

7 **DIRECT EXAMINATION**

8 BY MS. PANDUKHT:

9 Q Good afternoon. How are you employed?

10 A As a detective with the Las Vegas Metropolitan Police  
11 Department. Currently assigned to the homicide section.

12 Q How long have you been with the Las Vegas Metropolitan  
13 Police Department in total?

14 A Seventeen years.

15 Q And how long have you been a detective with the homicide  
16 department?

17 A Two years.

18 Q Were you on duty on February 16<sup>th</sup>, 2018 where you made  
19 contact with an individual by the name of Deandre Gathrite?

20 A Yes, ma'am.

21 Q Is Deandre Gathrite in the courtroom today?

22 A Yes, ma'am. The Defendant sitting right here at the table to  
23 my left.

24 MS. PANDUKHT: May the record reflect identification of the  
25 Defendant?

1 THE COURT: Yes.

2 BY MS. PANDUKHT:

3 Q And was that the first time that you had made contact with the  
4 Defendant on February 16<sup>th</sup>, 2018?

5 A Yes, it was.

6 Q At what location did you make contact with him?

7 A Over off of Wyandotte Street in an apartment complex.

8 Q Would that be 2630 Wyandotte, spelled W-Y-A-N-D-O-T-T-E  
9 Street?

10 A Yes, ma'am.

11 Q And is that in Clark County, Nevada?

12 A Yes, ma'am.

13 Q Were you the -- were you given information with regard to why  
14 you were going out to that address on that day?

15 A Yes, I was. I was provided information that days prior there  
16 had been a homicide that had occurred in the area of Sahara and Van  
17 Patton Sherwood area. And I was asked to assist with the interview of  
18 Mr. Gathrite in regards to getting information regarding the homicide. He  
19 was a person of interest, if you will.

20 Q Okay. And this homicide that you mentioned, that occurred --  
21 I think you already said it, but that occurred on February 11<sup>th</sup> 2018?

22 A Yes, ma'am.

23 Q Were you the lead homicide detective assigned to investigate  
24 that case or were you at that scene at all on that date?

25 A No, ma'am. I was not the lead detective. A matter of fact, I

1 never even responded to that particular scene at all.

2 Q So, would it be accurate that you had very limited information  
3 going in to speaking to the Defendant on February 16<sup>th</sup>, 2018.

4 A That's correct. The information I was given was that from the  
5 initial onset of the investigation it appeared that it could be a self-  
6 defense case. Other than that, I had no other additional information  
7 about Mr. Gathrite or the crime scene itself.

8 Q Now, do you recall approximately what time you arrived at that  
9 location?

10 A Approximately, I want to say, maybe 1430-1500 hours. It was  
11 later in the afternoon.

12 Q So, in regular time that would be 2 or 3 o'clock in the  
13 afternoon?

14 A Yes, ma'am.

15 Q Okay. But it was definitely during the day?

16 A Yes.

17 Q Were there other people that were present at that address  
18 when you arrived?

19 A Yes. There were other homicide detectives. Detective  
20 Mauch, M-A-U-C-H, Detective DePalma, D-E-P-A-L-M-A, Detective  
21 Boucher, B-O-U-C-H-E-R, and there were several of the members of the  
22 Criminal Apprehension Team that were present as well.

23 Q And when you arrived -- well, first let me ask you, as a general  
24 practice, do you try to interview all the witnesses including potential  
25 suspects in an investigation?

1           A     Yes, we do.

2           Q     Why do you try and interview everyone that you can,  
3 especially in a homicide investigation?

4           A     Well, it's to get a complete story. You want to do a complete  
5 and thorough investigation. And by doing the need to interview all the  
6 folks that were potentially witnesses or potentially involved in the  
7 incident need to be interviewed. That's just what we do. That's our job.  
8 That's our expectations is do this, to interview everybody, at least make  
9 an attempt to interview everybody. Not that everyone's willing to speak  
10 with you, but you at least have to make an attempt to contact those and  
11 locate those that were potentially witnesses or involved in the incident  
12 itself.

13          Q     And have you ever spoken to a potential suspect that could be  
14 later exonerated as not being involved in a particular crime?

15          A     Yes.

16          Q     And do you investigate alternate suspects, other potential  
17 suspects who may be persons of interest.

18          A     That's correct.

19          Q     And why is that important?

20          A     Well, that's just -- it's just as important to find the right person  
21 that committed the crime as it is to clear those that are innocent of the  
22 crime as well.

23          Q     And so in this particular case you attempted to speak with the  
24 Defendant?

25          A     Yes, ma'am.

1           Q     Tell me where you first saw the Defendant when you arrived at  
2 the scene?

3           A     When I first arrived at the scene, the Defendant was inside his  
4 apartment seated in a chair. His small child was sitting on his lap. And  
5 he was handcuffed and there were several members of the Criminal  
6 Apprehension Team around him.

7           Q     And I don't know if I asked you already but was this apartment  
8 number 1?

9           A     I believe so, yes.

10          Q     So, could you describe the Defendant's demeanor when you  
11 first made contact with him?

12          A     He was visibly upset. He was emotionally upset. And when I  
13 say that I mean the shaking in his voice. His eyes were watering. He  
14 was very upset. In my initial contact with him I asked him, hey are you  
15 okay, man, are you all right? I wanted to make sure he was all right.  
16 And then I requested that the Criminal Apprehension Team remove the  
17 handcuffs from him.

18          Q     And did they do so?

19          A     Yes, ma'am.

20          Q     Okay. And how did the Defendant respond back to you when  
21 you asked him how he was?

22          A     He told me he was fine. He was very cooperative. I asked  
23 him if he needed anything. At that time no, but he -- we later provided  
24 him with some cigarettes and whatnot that he requested.

25          Q     Let me ask you. Did you explain to him why you were there?



1 Did you introduce yourself? Did you give him some sort of introduction?

2 A Yes, ma'am. I explained to him that I was Detective Grimmett  
3 with Metro. I introduced my partner, Detective Mauch, who was also  
4 with me, standing next to me. I explained to him that we wanted to  
5 speak with him in regards to the shooting if he was willing to do so. He  
6 indicated he was and I asked him if we could speak in our vehicle. We  
7 escorted him out of handcuffs back to Detective Mauch's vehicle where  
8 he was allowed sit in the front passenger seat. Detective Mauch's sitting  
9 in the driver's seat. And I sat in the rear passenger area seat behind the  
10 driver.

11 Q Why did you have the Defendant come out to your patrol  
12 vehicle to talk instead of stay at the apartment?

13 A Just so we could speak in a private setting where it was  
14 climate controlled. It was quiet. You know, again, he had a small child  
15 that was sitting on his lap. Rather than have the child present while we  
16 were questioning him and others intervening in the conversation, it was  
17 more of a private setting where we could have that one on one personal  
18 relationship and conversation with him with regards to what, if anything,  
19 he was willing to tell us about the incident that happened the days prior.

20 Q And was there a reason why you had him seat in the front  
21 seat?

22 A Yeah, I mean, he wasn't under arrest. He was free to go. I  
23 mean, he wasn't by any means being detained, and I was under the  
24 impression that this was more of a self-defense issue. It makes sense to  
25

1 have a seat in the front seat. I wanted him to feel comfortable in his  
2 environment and where he was at in speaking with us.

3 Q And I'm going to ask you some more questions about his  
4 being detained or not. But I wanted to just make sure I cover everything  
5 that occurred when you were inside of the patrol vehicle. So you asked  
6 him are you willing to talk to us and he said he was?

7 A That's correct.

8 Q And he was not in handcuffs when he was inside the patrol  
9 car?

10 A No, ma'am.

11 Q And you sat in the back seat?

12 A Yes.

13 Q And who primarily conducted the interview with the Defendant,  
14 was it you or Detective Mauch?

15 A It was primarily me.

16 Q And why was that?

17 A I seemed to have a better rapport with Mr. Gathrite versus  
18 Detective Mauch. Initially, when Detective Mauch had a brief  
19 conversation or interaction with him inside the apartment and initially in  
20 the car, I got the sense that Detective Mauch just didn't have the rapport  
21 or wasn't able to establish a rapport with Mr. Gathrite. So, I kind of  
22 intervened and jumped in and took lead in the -- in the interview, in the  
23 questioning of Mr. Gathrite regarding the circumstances that surrounded  
24 the incident.

25 Q Did you express to the Defendant that he didn't have to talk to

1 you?

2 A Yeah, several times throughout the interview I told him I  
3 appreciated his cooperation and that he didn't have to do that and I  
4 appreciate his willingness to sit down with us and speak with us regards  
5 to the incident. And I thanked him for his time several times throughout  
6 the interview.

7 Q And you said you offered him cigarettes?

8 A Yes. At one point in time as the interview progressed he  
9 requested his cigarettes. He said he had a pack of cigarettes on the  
10 kitchen counter. I sent a message out to my fellow detectives that were  
11 outside, and seeing that he had cigarettes inside the apartment could  
12 they bring those over. And he was allowed to smoke a cigarette while  
13 seated in the front seat as he spoke with myself and Detective Mauch.

14 Q And you already said it was climate controlled so you had the  
15 air running?

16 A Yes, ma'am.

17 Q Because I'm assuming -- well --

18 A It was -- we had some air running because it --

19 Q Okay.

20 A -- just to keep the air flowing because --

21 Q Okay.

22 A -- of the smoke and things.

23 Q Okay. And it's February so it probably wasn't that hot but,  
24 okay. Okay, and then did you also let him hug his kid? Did you also let  
25 him hug his kid?

1           A     Yes. I gave him an opportunity to spend time with his child.  
2           His girlfriend eventually showed up as the night progressed; I allowed  
3           them to speak. He had some family members that had come and  
4           initially taken care and control of the small child that were nearby. I kept  
5           in contact with them on the scene as well just to kind of give them an  
6           update. But he was very cooperative and so was his girlfriend and --

7           Q     And her name is -- was it Tia Kelley?

8           A     I don't recall her name. I don't recall her name.

9           Q     Okay. And then did you read him *Miranda* at the beginning of  
10          the interview?

11          A     No, I did not.

12          Q     Why not?

13          A     Again, I expressed that he was not in custody. I was under  
14          the impression that this was more of a self-defense issue. We had no  
15          probable cause to arrest him or take him into custody, and I had no  
16          intentions on taking the guy into custody based upon the information I  
17          received on the -- just prior to the interview that this was a self-defense  
18          case, that's pretty much what the physical evidence has stated. We  
19          simply wanted to get a statement from the other half involved. So, I had  
20          no intentions on arresting Mr. Gathrite. I told him multiple times you're  
21          not going to jail. I don't -- there's no reason to take you to jail. That was  
22          my impression. That's what I knew going into the interview and that was  
23          my intent.

24          Q     About a third of the way into the interview did you read him his  
25          *Miranda* rights and why?

1           A     Yes, ma'am. Probably about a third of the way of the  
2 interview I believe we got to the point where we wanted to start speaking  
3 about the location of the gun. And he was very hesitant to offer up the  
4 information in regards to the location of the firearm that we were  
5 seeking.

6           Q     And why did you ask him for that information? Why did you  
7 want to try and recover a firearm inside that apartment?

8           A     Well, the whole purpose of recovering the firearm, I don't want  
9 the firearm to fall into the wrong hands. I knew he had two small  
10 children within the house with his girlfriend. I didn't want the firearm to  
11 fall into the wrong hands. And I also explained to Mr. Gathrite that his  
12 cooperation and his statements, I wanted to be able to go back and tell  
13 my supervisor that, hey, not only did he cooperate and offer a statement  
14 as to what happened in regards to why he pulled the trigger, but he's  
15 also given up the location of the firearm so that we can recover such  
16 firearm.

17          Q     And you -- did you tell him that during the interview?

18          A     I told him that during the interview, yes, ma'am.

19          Q     Okay. And did you actually speak to your supervisor about  
20 that as well?

21          A     Yes, ma'am, yes, ma'am.

22          Q     So those were -- that was true what you said then?

23          A     Yes, ma'am.

24          Q     So -- and you conveyed to him that he was free to stop talking  
25 to you at any time. I already covered that; correct?

1           A     Yes.

2           Q     Okay. So, after you read the Defendant his *Miranda* rights,  
3 did he indicate to you whether he understood those rights and agreed to  
4 continue speaking with you?

5           A     There was some type of physical acknowledgement that he  
6 was willing to continue. He didn't state that he was -- he did not state no  
7 he wasn't willing to continue. He continued the conversation, but he did  
8 give me some type of physical acknowledgement, a head nod, just even  
9 acknowledgement that he understood what I was saying and he was  
10 willing to continue the interview, and we continued such interview.

11          Q     And, again, what was the reason for your doing it at that  
12 point?

13          A     So, the reason I did it was because, again, I was trying to  
14 establish -- you know, we had started talking about the firearm and I got  
15 the sense that he wasn't willing to give up the firearm and the location.  
16 And I explained to him, hey, I've been honest with you. I haven't lied to  
17 you. I've been forthcoming the whole time. I've told you everything that  
18 I know. And at that point in time he -- it felt like I was kind of losing my  
19 rapport with him almost. And Detective Mauch sent me a text message  
20 that says, hey, *Miranda*? You know, so I looked at that as well and I  
21 even told him during the interview I don't have to read you your *Miranda*.  
22 You're not -- you're free to go. You can leave. But if it makes you feel  
23 more comfortable because, again, I wanted him to feel comfortable with  
24 the interview. I wanted him to feel comfortable with me and reestablish  
25 that rapport we had just previously when he had admitted to his actions

1 during the incident. So, I read him his *Miranda* and I explained to him,  
2 you know, you're free to go. You don't have to sit here and talk to me.  
3 But I'm going to read you this if it makes you feel better. And I read him  
4 his *Miranda* rights and then we continued the interview and eventually  
5 he told me the location of the firearm.

6 Q Okay. And did you make any promises to him in return for  
7 making a statement other than what you've already told us?

8 A No, ma'am.

9 Q And did you coerce him in any way, either physically or  
10 verbally into making the statement?

11 A No, ma'am.

12 Q So, you didn't use physical force or threats?

13 A No threats, no physical force.

14 Q Okay. And then in fact didn't your partner, Detective Mauch,  
15 ask him how you guys treated him later on in the interview?

16 A Yes, he did.

17 Q And what was his response?

18 A He was very thankful for the way we treated him. I even told  
19 Mr. Gathrite I thought he was a good person, and throughout the  
20 interview, and he was very thankful for the way we treated him like  
21 professionals and we treated him like a person and allowed him to speak  
22 with this family. He was very thankful. He was very emotional  
23 throughout the interview.

24 Q Okay.

25 A If you listen to the interview you can hear his emotions coming

1 out. He's crying, he has tears, and he was very emotional as he told his  
2 story.

3 Q Why was he emotional?

4 A At one point he mentioned during the interview that you know  
5 he was -- he had some type of a, I guess, for lack of better terms  
6 remorse for his actions. You know, he felt sorry for what had transpired.  
7 And he even said that if he could do things over he would have just  
8 never have come outside on that particular night. And with -- you know,  
9 and could have maybe avoided the whole incident altogether, you know.  
10 So, he was very remorseful for his actions.

11 Q And in your perception was the Defendant's statement given  
12 freely and voluntarily?

13 A Yes, ma'am.

14 Q Was the interview recorded?

15 A Yes, ma'am.

16 Q And did just one person record it or two?

17 A No. It was two people initially. Initially when we started the  
18 interview I started my recorder. Unbeknownst to me Detective -- I  
19 wasn't sure if Detective Mauch had started his recorder. So, that's why  
20 we both had our recorders going at that same time. Once I -- at one  
21 point in time during the interview we had a break, if you will, in the  
22 interview process, and I got out of the car and I turned my tape recorder  
23 off. Detective Mauch remained in the car with Mr. Gathrite and his  
24 recorder continued to record. At that point I realized Detective Mauch  
25 was recording the entire interview and I no longer used my recorder to



1  
2 continue the interview as it continued.

3 Q So, his recording was longer than your recording?

4 A Yes, ma'am.

5 Q And about how long was that recording?

6 A About an hour and a half.

7 Q And it was the same -- you guys were together the whole time  
8 in the car?

9 A Yes, yes. We were together in the whole time. So, the -- both  
10 interviews, you know, at some point in time, you know, you'll see both  
11 recordings marry up to each other. They're the same thing, you know.  
12 His was simply longer because he continued to record the entire  
13 interaction with Mr. Gathrite whereas I didn't.

14 Q And was there a transcript done of his recording?

15 A Yes, ma'am.

16 Q How many pages was that transcript?

17 A I don't recall the exact page number but it was relatively  
18 lengthy. If I saw the transcript I could tell you the --

19 Q Would you agree with me that it was -- it could have been 71  
20 pages?

21 A I was going to say 73 was my guess. But --

22 Q Okay. And you reviewed that transcript to make sure that it  
23 was the same as the recording and what you remember of the  
24 interview?

25 A Yes, ma'am.

Q And other than the break in the recording that you talked

1 about, was there parts of your conversation with the Defendant such as  
2 at the beginning that weren't on the tape?

3 A Yes, ma'am, in the very --

4 Q Can you describe that?

5 A Yeah. In the very beginning when we walked into the  
6 apartment and he was being detained, you know, when the CAT team  
7 guys had, you know, made -- initiated contact with him and had him  
8 sitting in that chair in the living room, as you walk into his apartment his  
9 living room is right there to the left. There was a kitchen to the right. He  
10 was sitting right there to the left in a chair. When we initially made our  
11 initial approach and introduction to Mr. Gathrite there was no tape  
12 recorders playing. It wasn't until we got back into the car and realized  
13 that he was willing to speak with us that the recorders were initiated, and  
14 we did a surreptitious interview Mr. Gathrite.

15 Q Why do you call it surreptitious?

16 A Because it -- a lot of times when we do our interviews there'll  
17 be a preamble, if you will, where we'll go in and talk about I'm detective  
18 so and so, date and time, where we're at, who we're speaking with.  
19 We'll make reference to the event numbers that we're talking the  
20 LVMPD report number, if you will. We didn't do that from Mr. Gathrite  
21 because I could already sense that he was wishy washy about maybe  
22 wanting to provide a statement to us. You know, he was nervous, he  
23 was upset.

24 Like I said earlier when we initiated contact with him in the  
25 living room he was visibly upset. And I was afraid, which not only in

1 suspect interviews or involved interviews, but sometime in witness  
2 interviews people are reluctant to speak to the police if they're being  
3 recorded or if they know they're being recorded. So, on this particular  
4 incident we surreptitiously or secretly recorded Mr. Gathrite while we  
5 were speaking with him as he was providing a statement.

6 Q And you've done that with other witnesses as well --

7 A Yes, ma'am.

8 Q -- that aren't suspects?

9 A Yes, ma'am.

10 Q Okay. And then other than that were there any other breaks in  
11 the transcripts so that the transcript matched up to the recordings?  
12 That's what I'm asking.

13 A No, no, I mean, the transcript was a direct -- or accurate  
14 reflection of the conversation that we had with Mr. Gathrite.

15 Q And was the Defendant transported to jail at approximately  
16 6:18 p.m.?

17 A Yes, he was.

18 Q And that was just a couple hours after your arrival?

19 A Yes, ma'am.

20 Q Okay. So, what was, if you know, what was the Defendant  
21 placed in custody for at that time?

22 A So, I later learned -- well even --

23 Q Well, tell me what you knew on that day.

24 A Well, on that day I had no idea of why the Defendant was  
25 being arrested or any outstanding warrants or anything of that nature. I

1 was simply interviewing the guy with regards to the shooting incident  
2 that happened and the potential self-defense implications that were  
3 involved in the actual incident. So, at the time of the incident I had no  
4 knowledge that he had any kind of outstanding warrants. Although he  
5 mentioned to me during his interview he kept telling me that I know I'm  
6 going to jail, I know I'm going to jail, and I assured him you're not going  
7 to jail. You know, I'm telling you -- you know, believe me, I'm not taking  
8 you to jail. You know, if the story is how depict it today you are not going  
9 to jail. But he was adamant that he was going to jail. He later told me  
10 he had some kind of warrants or something.

11 Q What did he tell you about his warrant?

12 A He told me he had some kind of outstanding probation  
13 warrants or something that he though was in the system and that he  
14 would be detained and he would be arrested and that's what he would  
15 be going to jail for. And I assured him that I knew nothing of these  
16 outstanding warrants he referred to, that we were simply there asking  
17 about the self-defense issue. But I later learned after speaking with my  
18 fellow detectives that he indeed did have an outstanding probation  
19 violation or parole violation warrant out of California, I believe.

20 Q Okay. And to your knowledge he was only arrested on  
21 something like that and not on the murder or any local charges.

22 A No, he was not arrested for the murder. Again, his statement  
23 alone that he provided to us at that time at the time of the interview was  
24 consistent with the information that I had received that this was probably  
25 a self-defense type issue. So, though he was not arrested for anything

1 to do with the shooting incident at that time, he was simply eventually  
2 arrested for the outstanding parole and probation violation out of  
3 California.

4 Q Okay. And you spoke a little bit earlier about this, but did the  
5 Defendant ultimately give you consent to recover the firearm inside the  
6 apartment?

7 A Yes.

8 Q And did he give you verbal consent or written consent?

9 A He gave me verbal consent. I actually asked him if he'd be  
10 willing to sign a consent to search card. He said no. I read the card in  
11 its entirety to him and then he gave verbal consent eventually to retrieve  
12 the firearm from the air conditioning duct vent where he said it was being  
13 hidden.

14 Q And did -- when he also gave you the verbal consent to  
15 recover the gun, did also tell you twice I trust you?

16 A Yes.

17 Q And that's on page 51. So, how long had the Defendant been  
18 staying at the apartment? Did he tell you something about that?

19 A They had just recently moved in. He and his girlfriend had just  
20 recently relocated to the apartment over there, and that was consistent  
21 with the interior as far as the limited furniture and things that were inside  
22 the apartment. It was consistent with someone just moving in or in the  
23 process of relocating and moving in.

24 Q How long had he been with that girlfriend of his?

25

1           A     I don't recall exactly how long they had been together, but I  
2 know they had a small child together as well.

3           Q     Or two, they had two kids.

4           A     Well he had junior and then he also -- he had just had a  
5 daughter, a smaller child.

6           Q     And they're both fairly young?

7           A     Yes, very young.

8           Q     And those were their children in common?

9           A     Yes.

10          Q     Did he explain to you if he worked or watched or the kids or  
11 what was their arrangement?

12          A     I remember he talked about during his interview how he and  
13 his girlfriend were living off of her income. He made reference to -- I  
14 don't remember his exact wording but he talked how they were living off  
15 of her check or her source of income basically, and he was kind of  
16 staying at home taking care of the kids.

17          Q     Watching the kids. Did you try to threaten the Defendant  
18 about tearing up the apartment?

19          A     No, I told him, I said, we don't want to go in and mess, you  
20 know, disturb anything. What I meant by that is -- or rather than go in  
21 and, you know, sorting through the kids toys and the kids belongings  
22 and things looking for a firearm or sorting through his girlfriend's  
23 personal items, we didn't want to go in there and have to disturb those  
24 items for people that weren't necessarily involved in the incident that  
25 we're referring to. So, yeah, I told him, you know, we didn't want to go in

1 there and mess all your stuff or tear your house up or, you know, destroy  
2 the things in the house, you know. We'd rather go right to where the  
3 gun is and get out.

4 Q And when you contacted the Defendant at the apartment was  
5 he the only adult that was present?

6 A Yes.

7 Q His girlfriend wasn't there. Did she ever get there?

8 A Eventually. We waited. I allowed the Defendant on several  
9 times to place phone calls to his girlfriend. He explained that she only  
10 had a WiFi type phone, and that once she leaves work and gets on the  
11 bus I guess the bus service here, local bus service, provides WiFi  
12 connectivity on the busses for this -- for its passengers. So, once she  
13 was -- got on the bus she would be able to receive the call that he was  
14 placing, but I allowed him on several times to try to place that phone call  
15 to her via her WiFi number in hopes that she would be on the bus and  
16 actually get the call. We never really made contact with her. But  
17 eventually she showed up on scene and we explained to her the  
18 situation and what -- why we were there investigating. And then in turn I  
19 allowed her an opportunity to speak with Mr. Gathrite as well.

20 Q Thank you very much. I have no further questions.

21 THE COURT: Ms. Lobo.

22 MS. LOBO: Yes.

23 **CROSS-EXAMINATION**

24 BY MS. LOBO:

1           Q     All right. So, Detective Grimmer, you testified a couple of  
2 times, I think, that you characterized the Wyandotte apartment as his  
3 apartment?

4           A     Yes.

5           Q     And his apartment, how did you come to know that it was his  
6 apartment?

7           A     He was located inside the apartment --

8           Q     Okay.

9           A     -- with his small child, and during the statement he explained  
10 how he and his girlfriend were living off the earnings of his girlfriend off  
11 of her source of income.

12          Q     Okay. We'll just take those one at the time; right? So, one,  
13 you saw him inside of the apartment?

14          A     Yes.

15          Q     Okay. And then you said that he had the small child with him  
16 by himself in the apartment?

17          A     Yes.

18          Q     And he was the only adult that was there?

19          A     Yes.

20          Q     Okay. And then you also said now that you were calling it his  
21 apartment because he was there providing, I guess, child care; is that  
22 fair?

23          A     Yes. Watching his child, I mean --

24          Q     Right. In that same interview where you were recording, do  
25 you recall Mr. Gathrite -- he told you in fact that he was living with



1 another woman?

2 A I don't recall that.

3 Q You don't. Okay. Before I get into the other woman, that  
4 would be Matrina Smith. Did you review the transcript before coming  
5 here today?

6 A Yes, I did.

7 Q Do you recall the name Matrina Smith?

8 A I don't recall the name Trina Smith?

9 Q Okay. Before we go any further, let's talk about -- you said  
10 that you didn't think that he was in custody during this time?

11 A Correct.

12 Q And that you had received information and you were there in a  
13 very limited capacity?

14 A Yes.

15 Q You would agree that the team -- homicide detectives they  
16 work together in a team fashion?

17 A Yes.

18 Q The shooting was 2-11?

19 A Yes.

20 Q And that would be a Sunday night?

21 A Okay -- yes.

22 MS. LOBO: If the Court will take judicial notice that 2-11 was  
23 a Sunday?

24 THE COURT: Okay.

25 BY MS. LOBO:

1 Q And -- I don't know, are you off on Mondays or Fridays?

2 A I'm off on Mondays.

3 Q Okay.

4 A Saturday, Sunday, Monday is my regular days off.

5 Q All right. And so that would explain why you weren't at the

6 scene or called out probably for the actual shooting?

7 A Not necessarily. Not every single homicide detective is called

8 out for every single scene. I wasn't called out for this particular scene.

9 Q Right.

10 A I don't know if I was -- because I was off or unavailable or out

11 of town or --

12 Q Well, it was a Sunday.

13 A I don't know.

14 Q Yes.

15 A But just 'cause it's on a Sunday doesn't mean we don't

16 respond. We work together as a team fashion, as you stated. So, I just

17 wasn't called out on this particular scene.

18 Q Okay. And homicide has meetings every single week?

19 A Yes.

20 Q On Tuesdays?

21 A Yes.

22 Q And Tuesday would then be, I believe, the 13<sup>th</sup>?

23 A Yes.

24 Q Okay. And this interview, as you characterize it, took place on

25 the 16<sup>th</sup>?

1           A     Yes.

2           Q     And in between that time period, who was the person who  
3 was briefing you?

4           A     During which particular time period?

5           Q     From the 11<sup>th</sup> when the shooting happened, you're off. So,  
6 then from the time the Tuesday meeting occurs, where do you receive  
7 your information from?

8           A     Well, I received my initial information from our sergeant,  
9 Sergeant John Scott. He's the one who provided me the initial  
10 information about this being a self-defense type issue and how he  
11 simply wanted me to assist Detective Mauch with the interview of Mr.  
12 Gathrite.

13          Q     Okay. And that was because you -- he thought you might  
14 have better rapport with Mr. Gathrite?

15          A     Well, Detective Sanborn, who was the lead investigator,  
16 wasn't there during a time of the interview. Detective Mauch, I don't  
17 believe, was present for the scene as well, but Detective Mauch is  
18 Detective Sanborn's partner. So, that's why he was there. So, I don't  
19 know why the sergeant, you know, other than the fact that maybe he  
20 thought I could establish a rapport with Mr. Gathrite, I don't know. I  
21 mean, you'd have to ask him that.

22          Q     Okay. Do you think it's because you're African-American?

23          A     I have no idea.

24          Q     Okay.

25          A     I'm a people person. I like to talk to people.

1           Q     Is there any other African-American detectives that are on  
2 homicide?

3           A     No, ma'am. Just me.

4           Q     Okay. Let's see. So, you received the information -- the  
5 limited information that you have and when you get to the scene, are  
6 you told about how he's in custody?

7           A     No. I just -- I simply knew that the criminal apprehension team  
8 had located Mr. Gathrite. I was given an address to respond to and I  
9 responded. I didn't know the circumstances surrounding how they had  
10 located him or any of the other circumstances surrounding his detention  
11 by the criminal apprehension team.

12          Q     None of the -- that wasn't discussed at your Tuesday meeting  
13 about how to find him?

14          A     No, ma'am. I don't know that I was even at that Tuesday  
15 morning meeting. So, I don't recall the specifics about what was said  
16 during the Tuesday morning meeting and I don't know if I was even  
17 present for that Tuesday morning meeting.

18          Q     Okay. And before somebody is placed in custody -- have you  
19 ever been on the criminal apprehension team, I guess? Let me start  
20 there.

21          A     No, ma'am.

22          Q     You've not? But there has to be confirmation of a warrant?

23          A     Not all the times. They're not always looking for people who  
24 have warrants out. Sometimes they're looking for people that -- if we  
25 want to interview somebody, a person of interest, you know. Sometimes

1 they assist us with locating folks that we're trying to find, you know,  
2 whether they be a potential witness or a potential suspect.

3 Q Okay. And are you familiar with the saying, like, we catch  
4 'em, they clean 'em?

5 A I've heard that before, yes, ma'am.

6 Q Okay. And the person who is catching is CAT and then you're  
7 cleaning it is the person who is the detective on homicide?

8 A Yeah. Or the persons that are putting the case together, if  
9 you will.

10 Q Okay. And let's talk about this now because you said I believe  
11 your words were is that he agreed to speak with you willingly?

12 A Yes.

13 Q You said -- you indicated that he was a little wishy-washy?

14 A Yes.

15 Q And I think you characterized that when he was inside of the  
16 apartment?

17 A Yes. He was a little -- you could see just emotionally he was  
18 upset and just, I guess, overwhelmed by the presence of all the  
19 detectives that were there, myself and when Detective Mauch made his  
20 initial introduction, I could tell that he didn't have that rapport with  
21 Detective Mauch. And that's why I kind of jumped in and introduced  
22 myself, Detective Mauch, and explained to him why we were there.

23 Q Okay. And both of you were surreptitiously recording?

24 A Eventually, yes. Once we got back to the car we started the  
25 surreptitious recording of the interview with -- or with Mr. Gathrite.

1 Q Okay. And when you're -- do you, I guess -- you said -- I  
2 believe that you were recording. Was it on a device that was in your  
3 pocket, your phone; what was it?

4 A It was just digital recorder that we carry.

5 Q Okay. And where was that located?

6 A It was -- I typically keep it in my notebook and, you know, and  
7 it's tucked inside of my coat or a pocket in my notebook with my notes.

8 Q Okay. And what about if you know where Detective -- is it  
9 saying Mauch or Mosh [phonetic]?

10 A Mauch.

11 Q Mauch. Okay.

12 A Yeah, I don't know exactly where his placement of his  
13 recorder is, but I know he also has a similar pocket in his notebook for  
14 his recorder to fit. So, I don't know if that's -- you'd have to ask him as to  
15 where he kept his recording device.

16 Q Okay. And Deandre never saw those recorders?

17 A Not to my knowledge.

18 Q Okay. And at that time, right, you're saying that he wasn't in  
19 custody?

20 A That's correct.

21 Q Okay. And if he had asked for a lawyer you would have  
22 provided one?

23 A Yes.

24 Q You would have stopped the questioning?

25 A Yes.

1 Q Okay. And both of the -- I think you said that Detective  
2 Mauch's recording was longer, about an hour and a half?

3 A Roughly, yes.

4 Q And your recording was how long?

5 A I'm not sure how long my recording was, but I know it was  
6 substantially shorter than his because I only had my recorder on for the  
7 initial onset of the interview, and then when I got out of my car to brief  
8 my sergeant as to Mr. Gathrite's cooperation, I had turned the recorder  
9 off. So, I don't know exactly how long mine was, but it was substantially  
10 shorter than Detective Mauch's.

11 Q Okay. And you said that you compared -- because you guys  
12 were sitting in the car together the whole time?

13 A Yes. I mean, I got of the car to speak with my sergeant. I got  
14 back in the car. I think Detective Mauch got out at one point in time and  
15 I stayed in the car, and then Detective Mauch came back in, you know.  
16 So, there was back and forth, you know, but Detective Mauch's  
17 recording was primarily the one that was -- encompassed the entire  
18 interview or interaction, if you will, with Mr. Gathrite.

19 MS. LOBO: Okay. And does the Court have a copy of the  
20 statement?

21 THE COURT: I do.

22 MS. LOBO: Okay.

23 BY MS. LOBO:

24 Q And so you didn't get a chance to read this one though;  
25 correct?

1           A     The transcript?

2           Q     Uh-huh.

3           THE COURT: And just to be clear, Adrian. It's the 71 page  
4 statement from 2-11-18 -- or excuse me -- from February 16, 2018;  
5 correct?

6           MS. LOBO: Yes.

7           THE COURT: Yeah.

8 BY MS. LOBO:

9           Q     In the sentence its says G. Mauch because I'm assuming it's  
10 coming off of his recording device; is that right?

11          A     Yes, ma'am.

12          Q     Okay. I'm going to play this file for you. I believe like the first  
13 question, because you're doing the talking, even though it says Mauch  
14 here, it's your voice for the majority of it?

15          A     That's correct.

16          Q     And so the first question that you asked him -- if you want to  
17 see this I'm happy to approach -- hey, how did these fools roll up. Paint  
18 a picture for me how they come up at you and how they, you know, how  
19 did that whole confrontation go down, man. Does that sound right?

20          A     Yes.

21          MS. LOBO: Okay. So, that was the beginning of it. Let's see.  
22 I'm just going to play from the beginning.

23               [Colloquy between the Court Recorder and Defense counsel]

24               [Pause in proceedings]

25          MS. LOBO: Sorry. Court's indulgence.



1 THE COURT: That's okay.

2 BY MS. LOBO:

3 Q Okay. So, before we get to the CD, I think that -- let's see. I'll  
4 talk to you a little bit about -- so did you have, I guess, any contact  
5 before you arrived on the scene with any CAT personnel? How were  
6 you notified, I guess, to come to Wyandotte?

7 A My sergeant, John Scott, advised the -- myself, Detective  
8 DePalma, Detective Boucher, and I believe Detective Mauch that -- of  
9 Gathrite's location and for us to respond to the Wyandotte address.

10 Q Okay. And when you got to Wyandotte, who is the first person  
11 who you spoke to?

12 A When I got out of my vehicle, my -- the first person I spoke  
13 with was Detective Boucher. He was present on scene; he had arrived  
14 before I did from the office. I was probably the last homicide guy to  
15 arrive, and I had asked him where is everyone at, and he directed me  
16 over toward the area of the -- apartment number one. So, I went over  
17 there and got with Detective Mauch and we walked inside the apartment  
18 where we initiated contact with Mr. Gathrite.

19 Q Is there a reason why Detective Boucher or Detective Mauch  
20 were not being on the CAD log?

21 A I have no idea. I don't know. Sometimes homicide detectives  
22 don't necessary log on when they're going out to assist.

23 Q Okay. All right. So, you're familiar with how to read a CAD;  
24 right?

25 A Yes, I'm familiar with it.

1 THE COURT: Hold on. I can't have that playing, sir. All right.

2 Go ahead, Adrian.

3 BY MS. LOBO:

4 Q Yes, sir. If the CAD depicts – it showed that USAR, that's  
5 when you arrived and your call sign is H15?

6 A I don't remember what my call sign was at the time of the  
7 incident. The call signs have rotated, but if you look at the CAD report, I  
8 believe it'll have – typically they'll have our names by it sometimes.

9 Q Or the major incident or log report?

10 A Yeah, yeah, the log report it'll have who – what our call sign  
11 was on that particular day.

12 Q Okay. And you were H15. I can approach.

13 A Oh, that's fine. I trust that you're – that's an accurate  
14 depiction.

15 Q I'll sure she'll object --

16 A Okay.

17 Q -- if I say something incorrectly. All right. So, you arrived at  
18 2:55 p.m.?

19 A Okay.

20 Q And H is for homicide at least in these sort of notes here on  
21 the side?

22 A Yes, ma'am.

23 Q And the first – you said you were the last person to arrive?

24 A Yes. I believe I was the last homicide detective to arrive.

25 Q Okay. But 518H, three digits, that would be Sergeant Scott?

1 A Correct.

2 Q Okay. And H23, if you at all know –

3 A I believe that was Detective DePalma.

4 Q Correct. And so he was there before you and Boucher was  
5 there as well?

6 A Correct.

7 Q Did you speak to any of the CAT detectives?

8 A I don't recall having direct contact. I mean, I know they were  
9 present in the room. I asked them to remove the handcuffs off of Mr.  
10 Gathrite like I stated previously. So, I guess that would speaking with a  
11 CAT detectives or interacting with them, but other than that --

12 Q Okay. All right, Detective. I was asking you a question  
13 beforehand. I think I started with the first sentence that's in the  
14 transcription. And just so the record's clear, that first question would be,  
15 hey, how do these fools roll; that's how it starts?

16 A Yes, ma'am.

17 MS. LOBO: And this recording right here -- and I'm just going  
18 to move the microphone over.

19 [Audio played]

20 BY MS. LOBO:

21 Q So, he said he'd feel comfortable. That's different from what's  
22 on this transcript; correct?

23 A Yeah, that's -- yeah. I'm not sure if that was prior to the  
24 Detective Mauch starting the recorder or what but, yes, that is different  
25 than how that transcript begins, if you will.

1 Q Right. And you said to him you'd feel better if we didn't record  
2 it?

3 A Yes.

4 Q And so he did see -- actually a recording device at some point  
5 in the car?

6 A I don't know if -- obviously, I don't know if he saw a recording  
7 device, if that's what prompted that. I know Detective Mauch was  
8 seated in the front seat with him. I don't know if he saw Detective  
9 Mauch's recorder and if that's what prompted that particular  
10 conversation or not.

11 Q Okay. You testified on direct examination that he did not see  
12 it because it was surreptitious?

13 A Surreptitious recording.

14 Q Correct. But he did see it?

15 A He may have seen a recorder.

16 MS. PANDUKHT: Well, I object. Calls for speculation about  
17 what the Defendant actually saw.

18 BY MS. LOBO:

19 Q You asked --

20 THE COURT: Go ahead. You can rephrase.

21 BY MS. LOBO:

22 Q Okay. So, at the beginning of this it doesn't start with hey how  
23 you fools roll up. Would you feel better if we weren't recording it?

24 A Okay. Yes, that's how -- that's what you just played; correct?

25 Q Right. And then he said, no, I'd feel better if I have a lawyer?

1 A Okay.

2 Q Right?

3 A Yes. I believe that's what he stated.

4 Q Okay. And at that point in time the questioning did not stop?

5 A Okay. He didn't ask for an attorney. He stated his feelings.

6 He said he would feel better if he had an attorney. He did not request

7 the presence of an attorney before or during questioning.

8 Q That's your opinion. He didn't use those words though; right?

9 A Correct.

10 Q Okay. And you had asked him, you said will you feel better if

11 we aren't recording; right?

12 A Yes.

13 Q And he said I'd feel better if I had a lawyer?

14 A That was just -- so we just discussed, yes. He stated that he

15 would feel better. That was his feelings. He never requested the

16 presence of an attorney before questioning.

17 MS. LOBO: All right. Let's keep going.

18 [Audio played]

19 BY MS. LOBO:

20 Q You are there?

21 A That's correct. I'm not there to give him legal advice.

22 Q That's right.

23 A That's correct.

24 Q What do you mean by thirsty?

25 A They're thirsty. They're greedy, they're envious. It's a street

1 term that's commonly used. They have a desire to go out and get what  
2 they want.

3 [Audio played]

4 BY MS. LOBO:

5 Q He says I'm homeless; is that right?

6 A I can barely hear his side of the statement. So, I'm not sure  
7 what he said at that point in time.

8 Q Well, you were there. Do you remember him saying that he  
9 was homeless?

10 A I don't recall if he said he was homeless or not.

11 [Audio played]

12 BY MR. LOBO:

13 Q If he said that he'd rather be at home with his kid, you didn't let  
14 him go back up to the apartment; right?

15 A Not at that time, no.

16 Q If he had wanted to go, he could have gone back up to the  
17 apartment with his kid?

18 A Yeah, he was free to leave at any time.

19 Q Okay. And there was how many CAT detectives that were  
20 there?

21 A Oh, I'm not sure how many. There was several CAT  
22 detectives but I don't know a specific number, but there was several of  
23 the Criminal Apprehension Team guys there when I arrived.

24 Q Okay. When the Criminal Apprehension Team arrived, they  
25 contacted homicide?

1           A     Somebody contacted homicide at some point because, like I  
2 said earlier, my sergeant, John Scott, notified us that they had located  
3 Mr. Gathrite and to respond out to the Wyandotte address.

4                               [Video played]

5           Q     So, while I think that's where the transcript starts?

6           A     Yes, ma'am.

7           Q     So, that first five minutes wasn't captured?

8           A     Correct, in the transcript.

9           Q     Right. And so your -- I believe your recording, it looks like,  
10 was 56 minutes?

11          A     I'm not sure exactly how long it was. I know it was  
12 substantially shorter than what Detective Mauch's was.

13          Q     This recording that I have right here is 56 minutes. I can show  
14 you at least just the property, just a print-out of what was provided if that  
15 helps. Okay. You turned over everything in this case to the District  
16 Attorney's office?

17          A     Yes. I provided my recording over to Detective Mauch who  
18 was working the case in conjunction with Detective Sanborn. I believe  
19 those two eventually turned over the case file or the digital case file to  
20 the District Attorney's office.

21          Q     Okay. And roughly, if you remember, what time does your --  
22 did this recording start?

23          A     Within five or ten minutes of us arriving on the scene.

24          Q     Okay. And the properties on this file show that it's about 3:20;  
25 would that be fair?

1           A     Okay. That's fair.

2           Q     Okay. And – well, since you wouldn't know what was on this  
3 disc because you weren't the person who gave it to me, I'll wait for  
4 Detective Mauch to ask him some questions about this. But did you  
5 ever have occasion to listen to the full interview?

6           A     I listened to the audio portion that corresponded with the  
7 transcript.

8           Q     Not your own?

9           A     No.

10          Q     Okay. You mentioned that you had gotten out of the car I  
11 believe you said a couple times?

12          A     Yes.

13          Q     And you got out of the car – I believe in the transcript it says  
14 that you went to go to talk to Sergeant Scott?

15          A     Yes.

16          Q     And then you got out of the car also at a certain point to talk to  
17 Detective Sanborn, whom I'm guessing was on the phone or --

18          A     Yes. I contacted Detective Sanborn at some point in time  
19 whether it was when I got out and spoke with Sergeant Scott or on a  
20 separate occasion, but throughout the course of the interview I did have  
21 an opportunity to speak to Detective Sanborn via the telephone.

22          Q     How many times did you get out of the car?

23          A     Maybe twice.

24          Q     Okay. And you talked to Detective Sanborn how many times?

25          A     I don't recall. Maybe once or twice.



1           Q     Okay. So, possibly you talked to Sergeant Scott and Sanborn  
2 at this -- like the same time you exited the car?

3           A     Oh, no, I don't think it was at the same time. You know, it may  
4 have been. I might had Sanborn on the phone while I was speaking with  
5 Sergeant Scott. I don't recall. But I do recall speaking with Detective  
6 Sanborn in reference to the statement that Mr. Gathrite had provided,  
7 and likewise I also advised Sergeant Scott of the statement that Mr.  
8 Gaithrite had provided and his cooperation and willingness to cooperate  
9 and speak with us at that time. So, I did speak with Detective Sanborn  
10 because he was not present. He was out of town and he was -- out of  
11 myself and Detective Mauch, he was the only that had worked the actual  
12 scene. So, I wanted to relate to him the information as Mr. Gathrite had  
13 related to myself.

14          Q     Okay. And when you spoke to them outside of the car, were  
15 you pausing your recorder or stopping it?

16          A     I probably stopped it.

17          Q     Okay. And when you went back to the car, you then hit play  
18 again or record again?

19          A     Yeah, I don't know if I hit record again or at that point -- at  
20 some point in time I know I realized that Detective Mauch was recording.  
21 So, I know -- and that's why mine is substantially shorter because I  
22 realized that he had been recording the conversation. So, I wasn't going  
23 to duplicate the recordings and that's why I had stopped and that's why  
24 mine is significantly shorter than Detective Mauch's recording.

25          Q     Yours is 56 minutes and his is one hour and 37?

1 A Right.

2 Q So, there's at least 40 something minutes --

3 A Correct.

4 Q -- that were captured? And then Detective Mauch at a certain  
5 point he got out of the car?

6 A Yes, yes.

7 Q And how many times did he get out of the car in your opinion?

8 A I want to say there was -- one time when he got out of the car  
9 and I remained in the car, one time that I recall but that's all.

10 Q Okay. Did you know that he was recording at that time?

11 A Yeah. That's why my recording was -- my recorder was not  
12 recording because at that point in time Detective Mauch was recording.

13 Q Okay. What kind of recorder is it?

14 A It's just like the little digital pocket recorders.

15 Q And how is it recorded? What does it record on, to what  
16 media?

17 A It's just a digital recorder. It's a digital file. So, it's within the  
18 record. Some of 'em --

19 Q Like an SD card?

20 A Mine doesn't have an SD card and it's old. I can't speak on  
21 Detective Mauch's as to how his actually stores the data, but my  
22 recorder doesn't have an SD card. It's just a digital recorder. It has so  
23 much memory built into the recorder itself. So, once I get the recording  
24 -- and every recorder is different. Some detectives have recorders that  
25 record MP3 versions, some record as a like a WAV file. I believe mine

1 does like a WAV file and I typically will either leave it as a WAV or  
2 maybe convert it to an MP3 so they can transcribe it and all that stuff.

3 Q Mm-hmm.

4 A But every recorder is different. I can't speak on Detective  
5 Mauch's recorder and his placement and how he operates it.

6 Q Okay. But just as yours though, you -- what you're saying is is  
7 that once the recording is, you know, captured on your device, you then  
8 take it and then how does that file get to, I guess, the DA's office?

9 A So, I take the recorder and I get back to the office, I'll plug it in  
10 to our computer in the USB port. I'll open up the file finder menu, if you  
11 will. I'll go into the actual file that's the recorder or the drive, if you will.  
12 It's typically -- it'll have like a little drive name by it. I'll click into that  
13 drive. I'll find the actual audio file of the recording that we just did. It's  
14 pretty distinctive; you can see it. I'll take that, I'll copy it, and I'll paste it  
15 into the actual case file, and then I'll also drop it in -- you know,  
16 typically, I'll drop it into transcriptions.

17 If it's my case, I'll take it and actually drop it into our  
18 transcription folder for our clerical folks or whether they outsource it so  
19 that the actual audio can be transcribe. And then I delete off my  
20 recorder because now it's in part of the digital case file.

21 In this particular case it was -- it wasn't my particular case, but  
22 I wanted to Detective Mauch to have a copy of what I had started. So, I  
23 took the digital -- opened it up, took the digital file, and I dropped it into  
24 the case file for Detective Mauch so that he would have not only his  
25 recording because I wasn't sure when he had actually started his

1 recording versus mine, but I wanted him to have both versions, you  
2 know, or my version of the sort recording for the 56 minutes, I believe  
3 you said, was the recording.

4 Q Okay. And when you say you dropped it in a case file, what is  
5 that? What drive is that inside of the system?

6 A It's a digital case file where homicide stores all their case files  
7 and digital files. It's the H drive on our drive and within that H drive is  
8 the case file section for each year. So, this would have been a 2018  
9 type of case file So, we'll go to 2018 and then you find the event  
10 number and within that case file for that particular case is a section for  
11 audio, for audio files, and that's where we would store a particular audio  
12 file.

13 Q Okay. Did you ever listen to this once you put the file into the  
14 H drive?

15 A I listened to the audio file that corresponded with the transcript  
16 -- the 71 page transcript is what I listened to.

17 Q I'm talking about when you got back for yours not the  
18 transcript?

19 A No, no, I did not.

20 Q You did not. And you put it in the case file?

21 A Yes.

22 Q And Detective Mauch would have been the person to send  
23 that out to transcription because it was his case?

24 A Yes. Detective Mauch and Detective Sanborn, they're  
25 partners. So, they take the audio files, if you will, or interviews and

1 whoever -- because this is his case even though I was present, it was  
2 his case. He would have been the one to put it into transcriptions to be  
3 transcribed. That's correct.

4 Q Okay. Did you request or for it to be in transcription or tell him  
5 that -- anything to transcribe this one?

6 A No. I told him here's my digital -- when I had my recorder on  
7 for the brief moment, here's my copy of the audio file. He said he had  
8 his. I said, okay, well here you go, here's mine too, you know, and I left  
9 it at that. It's his case, it's their case, and I don't typically follow-up with  
10 other detectives to make sure they're transcribing things or what they're  
11 not transcribing or -- I mean, it's his case and Detective Sanborn's case.  
12 They're going to transcribe things as need be.

13 Q Okay. And as far as once it's in -- off to transcription, I guess,  
14 then where it is going? Do you know if this one was ever transcribed?

15 A No. I don't know if this particular -- and when you say one,  
16 you're referring to the audio that I recorded; correct?

17 Q Correct.

18 A Yeah. I don't know if the one that I recorded or the one that I  
19 got off of my recorder was ever transcribed. I don't know it was ever  
20 submitted for transcriptions or not.

21 Q And as far as -- I think you said you stopped recording, that  
22 you might have, like, hit pause or stopped the recorder when you got out  
23 to speak to the sergeant?

24 A Yes.

25 Q And when you stop your recorder and then click it back on if

1       you're walking towards the car, that creates a separate file --

2           A     Yes.

3           Q     -- correct?

4           A     Yes.

5           Q     Okay. So, when you got back to your computer with your  
6       digital recorder, was there multiple files that were, I guess, your  
7       recording?

8           A     No. I had the one recording, the one audio file that I initially  
9       started and topped and that was that, and that's what I provided to  
10      Detective Mauch digitally by dropping it into the case file.

11          Q     Okay. Do have any sort of software in your computer that  
12      would be used to like enhance the audio or so you can hear better or  
13      anything like that?

14          A     No, ma'am.

15          Q     Okay. Is that something that would be handled by forensics  
16      and not within the purview?

17          A     Yeah, I'm not tech savvy like that, and if I needed something  
18      enhanced, then I would reach out to our -- maybe our forensic lab or  
19      someone else who was more technologically sound and able to provide  
20      those types of enhancements. But I don't have any software on my  
21      computer that would allow me to enhancement the -- other than just  
22      turning the volume up. That's it.

23          Q     Okay. And you only had one file then that you sent over?

24          A     Yes, yes.

25          Q     And so that would be the accurate 56 minute one?

1           A     Yes.

2           Q     Okay. So, were you aware at any point of anybody from your  
3 team using a person from CAT to locate Mr. Gathrite?

4           A     No, ma'am.

5           Q     Okay. That would be Detective Sanborn or Detective Mauch?

6           A     Yes. I guess one of those guys they may have more  
7 information in regards to how he was located or who was in contact with  
8 the Criminal Apprehension Team, but I had no knowledge of efforts by  
9 Detective Mauch or Sanborn or what efforts or steps the Criminal  
10 Apprehension Team was taking to even locate him. Again, I wasn't  
11 really involved in their investigation and didn't know anything really  
12 about it until the day we went to interview Mr. Gathrite.

13          Q     Right. But the Criminal Apprehension Team, they assist in  
14 locating individuals for the various divisions within Metro?

15          A     Yes.

16          Q     And they also execute or help out in, I guess, finding fugitives  
17 that have extraditable warrants?

18          A     Yes.

19          Q     And in this case, Mr. Gathrite was not wanted within the state  
20 of Nevada?

21          A     Not to my knowledge.

22          Q     And he was being taken into custody per a warrant from  
23 California?

24          A     Yeah. I'm not -- I wasn't privy to any of the information as to  
25 why he was being taken into custody in reference to the California

1 warrant. Like I explained earlier, I had no idea Mr. Gathrite had any kind  
2 of outstanding warrants for anything until he brought 'em up during the  
3 course of our interview when he explained to me that he had some kind  
4 of probation or -- he kept telling me he was going to jail, he had warrants  
5 out for his arrest. And I told him you aren't going to jail and we're just  
6 talking about it. I'm telling you you aren't going to jail. Mr. Gathrite kept  
7 explaining to me that I'm telling you, man. I know I got something  
8 outstanding. I know I'm going to jail. But I had no knowledge of any of  
9 that prior to going into the interview. I didn't learn of his probation parole  
10 warrant until way later.

11 Q So, Detective Mauch didn't tell you that he had a warrant out  
12 of California?

13 A No, ma'am.

14 Q Okay, okay then. Well, with the CAT team being there, you  
15 knew that he was not going to be returning back to the Wyandotte  
16 apartment?

17 Q Quite the opposite. I believed he was going to be returning  
18 back to Wyandotte. Like I explained to Mr. Gathrite during the interview,  
19 I had no intention on arresting him.

20 A Right.

21 Q Despite the fact that the CAT team was there?

22 A Again, like I explained to you earlier, the CAT team doesn't  
23 only find people who are wanted, but if we have a potential witness or  
24 someone we're trying to locate, they will assist in that as well, you know.  
25 I knew he was a person of interest, if you will. I knew probable cause



1 did not exist to make an arrest for the homicide and that it was more of a  
2 self-defense case is what I told going into the interview. That's all the  
3 information I had. It was a self-defense case that they believed that he  
4 had returned fire during the course of his confrontation in self-defense  
5 and I was simply there to assist with the interview of Mr. Gathrite. And  
6 that's why, if you look through the interview, I was so adamant that --  
7 with Mr. Gathrite that, hey, you're not going to jail. You're going to walk  
8 out of here, you're free to go. That was my intent, that was my true  
9 intent is to let him walk and return back to Wyandotte.

10 Q That was your true intent even -- despite that Detective Mauch  
11 was sitting in the front seat and would have been trying to locate the  
12 whereabouts of a person?

13 A Detective Mauch wasn't even present during the onset of the  
14 investigation at the actual scene. So, I don't know what information  
15 Detective Mauch had available to him at the time. It was never  
16 communicated to myself that Mr. Gathrite had any kind of outstanding  
17 warrants or anything. He was simply a self-defense case and they  
18 wanted a statement from Mr. Gatherite in regards to his involvement in  
19 the shooting that had occurred.

20 Q So, did the CAT team leave?

21 A I -- you know what. I know at some point in time, yeah, they  
22 did leave, and I believe -- because I remember when I got out of the car  
23 to speak with Sergeant Scott and tell him about Mr. Gathrite's  
24 cooperation, I don't recall seeing the CAT team there. I remember  
25 Detective Boucher was there, Sergeant Scott was there, Detective

1 DePalma was there. I believe there was a patrol officer there in a black  
2 and white because we like to have a marked patrol unit present.

3 Q Right.

4 A Just to be present for security purposes, if you will, and  
5 presence. But I believe the CAT team had already left by the time I had  
6 gotten our initial statement when I initially got out of the car with Mr.  
7 Gathrite. It was my intent, like I told Mr. Gathrite, he was free to go, you  
8 know. Even obtaining his statement, I still didn't believe probable cause  
9 existed to make an arrest for the shooting death of the individual that  
10 happened just days prior. The way he explained his involvement was  
11 still that of self-defense. And so when I told him he was going to be free  
12 to leave and I had no intention on arresting him for this event, that was  
13 my true -- that was my true belief.

14 Q Okay. So, that was your true belief that he was going to be  
15 just released then?

16 A Yes, ma'am.

17 Q Okay. Despite the fact that only homicide detectives were  
18 there and patrol was there?

19 A Yes. We were making contact with an individual, the homicide  
20 guys. We were in charge of the investigation. Whether it was self-  
21 defense or not, we were still investigating the death of an individual. So,  
22 I would expect homicide detectives to be present. That's why we were  
23 there to interview Mr. Gathrite in regards to his involvement, you know,  
24 whether he was the person involved or a witness or whatever, you know.  
25 We were already interviewing him in regards to his involvement or his

1 knowledge of the shooting.

2 Q Well, Detective, how many years have you been on homicide?

3 A Two years.

4 Q Okay. And how many years have you been a detective?

5 A I've been a detective since -- 12 years, 13 years.

6 Q Okay. So, you - -I'm sure you've done many interviews?

7 A Yes, ma'am.

8 Q How many do you think you've done?

9 A I can't speculate. There's been a bunch, hundreds of not  
10 thousands; I mean, just a bunch.

11 Q Okay. And out of those interviews, how many of those would  
12 you, I guess, if you can estimate a percentage, how many of those were  
13 actually like interrogations when a person of interest is being  
14 questioned?

15 A Interrogation. What do you mean by interrogation?

16 Q Well, there's a difference between an interview versus an  
17 interrogation; you would agree?

18 A I guess. I would interpret -- I mean, using that terminology, I  
19 would probably say an interrogation is probably more of a  
20 confrontational interview, if you will. I mean, that's how I would define it.

21 Q Well, I'll go with that.

22 A Okay.

23 Q Okay. So, an interview -- when I say that it's just for  
24 witnesses; right?

25 A Mm-hmm.

1           Q     And witnesses that might have seen something or heard  
2 something in the area?

3           A     Okay. Yes, ma'am.

4           Q     And an interrogation would be somebody who is a person of  
5 interest or suspect?

6           A     Not necessarily. An interrogation, again, like I explained  
7 earlier, was probably more of a confrontational interview. Not every  
8 suspect we interview is confrontational.

9           Q     That's correct.

10          A     Some suspects are very cooperative, some are more than  
11 willing to speak and provide statements to detectives. So, not every  
12 interview gets confrontational and turns into what I call an interrogation.

13          Q     Right. Well, at some point in time if you're interviewing  
14 somebody who you believe is a suspect of a person of interest, you're  
15 going in there with the objective to gain information about what  
16 happened; right?

17          A     Right. That's the purpose of an interview.

18          Q     Right. And in this case there -- you obviously know that a  
19 shooting happened?

20          A     Yes.

21          Q     And that you know that the person who passed was involved  
22 in drugs?

23          A     I didn't know any of that at that time. All I knew was that there  
24 was some type of shooting that took place between Mr. Gathrite and  
25 some other folks and that he was a person of interest. I knew the

1 general area of where it happened, on Sahara and Van Patton,  
2 Sherwood area over there.

3 Q So, you didn't use the words trap house when you were --

4 A Yes. I used the words trap house.

5 Q Okay. And what is a trap house?

6 A A drug house.

7 Q Okay.

8 A A narcotics house, a place where narcotics are frequently sold  
9 out of.

10 Q Okay. And so you knew that at least there was some sort of  
11 like drug involvement?

12 A That was my thought process was that knowing the area and  
13 being familiar with Sahara and Van Patton and the crime that typically  
14 takes place in that particular area and, again, to establish a rapport with  
15 Mr. Gathrite, yeah, I used the word trap house during the course of our  
16 interview.

17 Q Okay. And during your interview of Mr. Gathrite when you're  
18 speaking to him, I think you characterized initially that he was wishy  
19 washy?

20 A Yes.

21 Q And that you agree that not everybody is willing to speak to  
22 the police?

23 A That's correct.

24 Q I'm sure that you said you have people who are cooperative?

25 A Yes.

1 Q And pleasant?

2 A Yes.

3 Q And then you're in a situation where necessarily you might not  
4 have to read *Miranda* because they're voluntarily speaking to you?

5 A Well, *Miranda* applies to custodial interrogation.

6 Q Right. And he wasn't in custody according to your  
7 interpretation?

8 A That's correct.

9 Q But you were asking questions about a shooting or a person  
10 had passed?

11 A Correct.

12 Q And those statements if he's the shooter would inculcate him  
13 for murder possibly?

14 A Yes, possibly.

15 Q And I think you said when you were testifying on direct that  
16 there are times that you deem it to be self-defense and charges aren't  
17 filed?

18 A That's correct.

19 Q Okay. Well, that wasn't the case here; right? He eventually  
20 was charged with murder; right?

21 A I believe so at some point in time. I'm not sure of the whole  
22 process behind that because I wasn't involved in the whole follow-up  
23 investigation that followed after the interview was conducted with Mr.  
24 Gathrite. I'm not privy -- I wasn't privy to the follow-up that Detective  
25 Mauch and Detective Sanborn had conducted that ultimately led to an

1 arrest of Mr. Gathrite.

2 Q So, then -- let's see. So, if Deandre -- he did end up going to  
3 jail that night; right?

4 A Yes. He ended up going to jail that night for a parole or  
5 probation violation or something out of California, I believe.

6 Q Right.

7 A The same thing that he had actually told me about during the  
8 interview that he was adamant that existed.

9 Q Right. I mean, if he was free to go back, you didn't tell the  
10 patrol guy to go and to leave because he was free to go; right?

11 A No, I didn't tell the patrol officer that.

12 Q Okay. So, he ended up going to jail; that was a Friday night,  
13 February 16<sup>th</sup>?

14 A Okay.

15 Q And through the course of that weekend it was President's  
16 Day. If you would agree with me, I think President's Day was on the  
17 20<sup>th</sup>?

18 A Okay.

19 Q And that would be a Monday?

20 A Okay.

21 Q And when he got to Court he was not in fact extradited or  
22 were you aware of any that? That was on a Tuesday. That would have  
23 been the day that homicide was having a meeting?

24 A Yeah. I had no involvement in reference to Mr. Gathrite's  
25 ongoing investigation or his status after that evening, you know. I simply

1 assisted with the interview with Detective Mauch and had nothing further  
2 to do with the follow-up of Mr. Gathrite or his containment in the county  
3 jail for the probation parole violation out of California or his -- ultimately  
4 his arrest for murder, I think you said. I had nothing -- I had no personal  
5 knowledge or any involvement in that process.

6 Q Would it have still been discussed at your Tuesday homicide  
7 meeting then because he wasn't charged?

8 A Most of the homicide meetings -- when you get the initial onset  
9 of, hey, we went out this night and this is the case we worked, but as far  
10 as follow-up, follow-up is not always discussed in the interview or the  
11 Tuesday morning meetings.

12 Not every Tuesday morning meeting goes back and does  
13 follow-up on every case as you can imagine, we would be discussing a  
14 hundred and some odd cases every year follow-up; I mean, the meeting  
15 would never end. So, typically you just get the onset of, hey, we went  
16 out this night and this is what we got in reference to an investigation, just  
17 the basic details. But as far as follow-up, if there was any follow-up, I  
18 don't -- I mean, I can't stipulate as to that particular Tuesday following  
19 his arrest if there was ever discussed because --

20 Q Would you agree --

21 A That's not the norm.

22 Q Right. Would you agree, I guess, you discuss the ones that  
23 are still open and close in time?

24 A Well, the ones that just happened not the ones that are still  
25 open, the ones that just happened.



1 Q Yeah and close in time. That's what I meant.

2 A Okay.

3 Q And this was one week ago?

4 A One week ago?

5 Q On the 11<sup>th</sup>?

6 A Oh, okay, okay. Yeah, so it happened at, you said on a  
7 Sunday, I believe.

8 Q Mm-hmm.

9 A So, initially on that Tuesday. I mean, again, I'm just  
10 speculating how we do things.

11 So, that Tuesday morning following the 11<sup>th</sup>, there would have  
12 been a discussion about, hey, under event number so and so, we  
13 responded to, you know, the cross streets of, you know, Sahara and Van  
14 Patton, or whatever, you know, the address was in reference to a  
15 shooting. If there was, you know, you get whatever basic details you  
16 have, whatever details you have, you give it to 'em in front of the unit, if  
17 you will, the homicide section. This is what we did. We showed up. We  
18 developed information about A, B and C and that's where we're at with  
19 it. I mean, it's just basic information about a shooting, you know,  
20 involved so many folks and this is where we're headed with the  
21 investigation and that's that. I mean, there's no follow-up meeting to  
22 what was initially presented on that first Tuesday. That would be  
23 something that's out of the norm. Does that makes sense?

24 Q Right. That makes sense. And it was mostly a self-defense  
25 sort of conversation that you had with him?

1           A     Completely. I mean, the way Mr. Gathrite explained his  
2     circumstances. He explained to me that the individuals had firearms.  
3     They presented the firearms, and fearing for his life as he fled the area,  
4     he shot back and kept running as he was shooting in self-defense as  
5     they in return were shooting at him.

6           Q     So, did you ever make a recommendation, I guess, to  
7     Detective Mauch or Detective Sanborn that in fact you disagreed with a  
8     murder charge being filed or submitted?

9           A     No. I've never made any recommendations to them. I mean, I  
10    didn't have anything other than Mr. Gathrite's statement after  
11    interviewing Mr. Gathrite.

12                Again, I wasn't there at the scene so I didn't work any of the  
13    physical evidence to know that Mr. Gathrite's statement corroborated the  
14    physical evidence at the scene or not because I wasn't there and neither  
15    was Detective Mauch. But Detective Mauch sat in with me on Mr.  
16    Gathrite's interview, you know. It would be his position to go and have a  
17    discussion with his partner, Detective Sanborn, who he was working the  
18    case with to discuss the direction of the investigation and whether or not  
19    Mr. Gathrite's statement corroborated the physical evidence that was at  
20    the scene.

21           Q     Well, you got out of the car several times. I believe there was  
22    a conversation where you reference -- you were talking to Tate on the  
23    phone, that's Detective Sanborn?

24           A     Yes.

25           Q     And you got back in the car and asked about clothing of the

1 individuals; do you remember that?

2 A Yes, yes, yes. I remember trying to recall the conversation I  
3 had with Detective Sanborn, but I believe it was a -- he mentioned  
4 something about -- something about the clothing. He wanted to know  
5 who was positioned where and wanted me to get specifics, I think, with  
6 Mr. Gathrite about who was wearing what and, you know, positioning  
7 because I think Detective Sanborn was trying to make sense out of the  
8 physical evidence that he had there at the scene, you know. I mean, he  
9 wasn't there to ask Mr. Gathrite those questions, but I wanted Tate  
10 Sanborn, Detective Sanborn to know that this is the statement that Mr.  
11 Gathrite has provided, the way he depicts the incident, and recalls the  
12 incident is consistent with that of self-defense.

13 Q Okay. You recall that, I guess he told you that there was a  
14 couple nights before that this individual was killed that someone had  
15 shot at an apartment he was at?

16 A Yes, yes. Mr. Gathrite explained that there was an apartment  
17 that he was in that was shot up either in the night or a couple of days  
18 before, yes.

19 Q And that was in Wyandotte?

20 A No, no, that was over off of Sahara and Van Patton, the same  
21 area where the incident Mr. Gathrite was involved in took place.

22 Q Okay. And he told you that he was homeless?

23 A I don't remember if he said homeless, but if it's in the  
24 transcript I'll agree with that.

25 Q Okay. And it's page four, I think, about half way down the

1 page, about a third of the way down. Your question: Competition, man,  
2 is this a shooting at the trap spot or what? And then his answer: No, no,  
3 trap. Okay. I had this -- and it says unintelligible. I was basically  
4 homeless.

5 A Okay.

6 Q Okay. So, you would agree with that?

7 A I would agree with the statement. But it's not the first time an  
8 individual I've interviewed has provided me false information or misled  
9 me. But if he stated he was homeless I'll agree that's what the transcript  
10 requests.

11 Q But you were aware that there was a shooting and that the  
12 police were called referencing this shooting that he mentions; right?

13 A Per Mr. Gathrite I was aware of it. I had no personal  
14 recollection of an ongoing investigation involving a shooting over there.  
15 The information that I knew about the shooting was provided by Mr.  
16 Gathrite and he explained that the house was shot up.

17 Q Right. But at a certain point Detective Mauch chimes in about,  
18 you know, facts of the Matrina Smith apartment shooting?

19 A Okay. But, again, that's information maybe Detective Mauch  
20 was privy to. I had no personal knowledge other than the information  
21 that Mr. Gathrite provided to me during the interview when he talked  
22 about the apartment being shot up, you know, days prior to the shooting  
23 that he was involved in. I had no personal knowledge or I'm not aware  
24 of any ongoing or open investigation nor was I at the time in reference to  
25 the shooting over there that Mr. Gathrite had told me about. I mean, he

1 told me about it and that was the extent of my knowledge.

2 Q Okay. And to that end, I guess -- and so you didn't know who  
3 Matrina Smith was?

4 A No, ma'am.

5 Q And Detective Mauch didn't really say anything contrary that  
6 that in fact wasn't true at that point? There's nothing in the transcript;  
7 right?

8 A Yeah, not that I recall.

9 MS. PANDUKHT: What page are you referring to?

10 BY MS. LOBO:

11 Q And in fact he did tell you that they weren't in a relationship  
12 anymore, Tia and Mr. Gathrite?

13 A Who's telling that?

14 Q He told you that.

15 A Okay.

16 Q On page four.

17 A Okay.

18 Q And that he said he was there with a girl that he talked to and  
19 her children. He didn't say the name Matrina Smith but he references  
20 another woman on page four.

21 A Okay.

22 Q If he's living at a different location, that wouldn't be his  
23 apartment at Wyandotte?

24 MS. PANDUKHT: I don't see that on page four.

25 MS. LOBO: So, after being in the apartment that gets shot at

1 you got to be feeling some kind of way. That was actually his question.

2 BY MS. LOBO:

3 Q Your question was, okay, so after being in the apartment,  
4 man, that apartment is not Wyandotte; right?

5 A Correct. He was -- at that time he was talking about the  
6 apartment that had been shot up prior to his involvement in the other  
7 shooting?

8 Q Not Wyandotte?

9 A Not Wyandotte.

10 Q Okay. And you said -- you went on with your questions. It got  
11 shot up. You got to be feeling some kind of way?

12 A Right.

13 Q You're in there with your people or what?

14 A Okay.

15 Q And then he says, no, this older girl that I talked to, Ann. All of  
16 her kids were there.

17 A Okay.

18 Q Right. And he had been staying at that apartment?

19 A I didn't -- nothing that you read to me back indicates that he  
20 had been staying there or living there. He said that he was in there  
21 when the apartment was shot up with a female and several kids. I  
22 mean, I don't know -- I mean, there's nothing about what you just read  
23 that stated that that's where he was living. He said that he was in the  
24 apartment --

25 Q Sure. I'll get the pinpoint citation for you. Don't worry. And

1 that shooting -- he went on to say -- he gave details that it happened  
2 earlier in the morning when they were waking up? That was on page  
3 five.

4 A Okay.

5 Q So, he slept over there that night?

6 A Okay. I mean, you're assuming he slept over there that night.  
7 I don't know if he was there for breakfast in the morning or what. I don't  
8 -- I don't know. He gave details about the shooting that took place days  
9 prior.

10 Q Correct.

11 A That's correct, that's correct.

12 Q Right. And that was not at Wyandotte?

13 A Correct. That was over off the Van Patton Sherwood area  
14 over there, that same area where the shooting took place where he was  
15 involved.

16 Q And did you ever see the lease for Wyandotte?

17 A I don't know that I personally ever saw a lease for Wyandotte.  
18 I want to say I had a conversation with one of the detectives that stated  
19 that the lease was under his girlfriend's name and I believe it had -- and I  
20 could be mistaken -- but I believe it had the girl, his girlfriend and  
21 Deandre Gathrite, Jr., I believe, as the listed occupants, I believe is the  
22 information that I got from -- and I don't remember from -- that was  
23 Detective Mauch or Detective DePalma or Detective Boucher who was  
24 present at the scene. But for some reason I recall that information being  
25 relayed at some point time that the persons on the lease were listed as

1 the girlfriend and I want to say Deandre Gathrite, Jr. which would be his  
2 son, not senior, him.

3 Q Right. And another -- the other little girl that was there at the  
4 house with him?

5 A I don't recall if the other little girl was listed on -- I specifically  
6 remember for some reason the female and I remember junior being  
7 listed on there. I don't recall if the other, if his daughter, was listed on  
8 there.

9 Q Okay. And his wasn't on there?

10 A No, he was not.

11 Q Okay. And so when somebody's not on the lease, right, you  
12 have to have some sort of authority to consent to the search of the  
13 house; right?

14 A That's correct.

15 Q And that's why you went to great lengths to read the search  
16 warrant or the consent card?

17 A Yes, ma'am.

18 Q And Mr. Gathrite did not want to sign that card?

19 A That's correct.

20 Q And he, in fact, went on to say that he didn't want to sign it two  
21 times?

22 A That's correct.

23 Q You wanted him to sign that, and he wanted to, of course, not  
24 sign it; right?

25 A Right. That's what you just -- that he didn't want to sign the



1 card.

2 Q Right. And you never got it signed?

3 A Correct. He never signed the card.

4 Q It appears -- because I wasn't there, I don't know, it sounds  
5 like you were listing like the date and his name. Did you write those  
6 things physically in?

7 A I think -- I don't know if I as in the process -- well, again, he  
8 didn't want to sign the card so the read the card. So, what I was reading  
9 was on the card -- the card is blank, if you will, and we typically fill in the  
10 card.

11 Q Yeah. I just didn't know if you completed the date or anything.

12 A No; so what I was doing was reading the card and when I  
13 would come across a blank, I would fill it in with like I, Deandre Gathrite,  
14 you know, and I would read the card to its entirety and then places to be  
15 searched, item to be seized, I would, you know, note the admit number  
16 and so forth. So, I was filling in the blanks. I wasn't filling out the card  
17 because, as you stated, he didn't to sign the card.

18 Q Right. And he was asking that you guys wait for his girlfriend  
19 Tia to come home?

20 A Correct.

21 Q And that she should be home shortly?

22 A Correct. And we made several phone calls to her in an effort  
23 to try to contact her.

24 Q How many phone calls did you make?

25 A I don't know. You'd have to ask Mr. Gathrite. He made

1 several phone calls. I didn't personally make the phone calls. I allowed  
2 him because he was free to go. I allowed him to use the phone and call  
3 and make an effort to try to reach her, and I know he placed several  
4 phone calls but, again, he was waiting for -- the way he explained was  
5 she had a WiFi only phone number --

6 Q Uh-huh.

7 A -- and she would get WiFi connection when she boarded the  
8 local CAT bus that would -- she took from work to home So, once she  
9 got into a WiFi area she would be able to receive a signal and then he  
10 would be able to communicate. It was about that time when she should  
11 have been arriving home or been in transit on the CAT bus and that's  
12 why he repeated tried to call but it seemed like the calls weren't going  
13 through.

14 Q Okay. And so how many -- did she ever answer then, I guess,  
15 is the question?

16 A I don't recall her ever answering the phone. I remember  
17 eventually she showed up.

18 Q Okay. And she did not provide consent to search the house?

19 A By the time she showed up, we were in -- we had already  
20 obtained the telephonic search warrant and Mr. Gathrite had already  
21 given his verbal consent to go in and retrieve the firearm from the air  
22 conditioning duct vent.

23 Q Okay. So, did you, I guess, the question is you so weren't  
24 having -- conducting any sort of surveillance on the house to establish  
25 that he in fact was living there?

1           A     I didn't conduct any surveillance at all to establish whether or  
2 not Mr. Gathrite was physically living there or anything prior to having  
3 contact with him.

4           Q     Okay. And he wasn't listed on any of the utilities?

5           A     I can't speak on the utilities as to whether or not he was listed  
6 as a utility person or anything.

7           Q     Okay. I think -- you know, it was pretty clear, I think, during  
8 the interview he in fact told you that his son was junior and showed you  
9 a picture of him?

10          A     I can't remember if he showed us a picture of his son or not.

11          Q     Okay. We told you that he was a junior. It might have been  
12 Detective Mauch towards the end?

13          A     Yeah, I don't remember him showing me a picture of his son  
14 or really -- I don't remember Mr. Gathrite and myself really talking about  
15 his kids in detail like that. I remember he wanted to spend -- give his  
16 child a hug, and I can't remember it was junior or the daughter, but he  
17 wanted to hold his child and speak with his child and he wanted to speak  
18 with his girlfriend who eventually arrived and we allowed him to do that, I  
19 allowed him to do that because I told him I would. And he was very  
20 cooperative with him. I wanted to be -- he was very cooperative with  
21 me. I wanted to be cooperative with him.

22          Q     Okay. So, then when you decided to read *Miranda* to him, in  
23 fact that was, I think you said on direct it's a request from Detective  
24 Mauch?

25          A     It wasn't a request. Detective Mauch had sent me a text

1 message. It said *Miranda*. I looked at that as, and I even stated in the  
2 interview with Mr. Gathrite that, hey, man, look, I don't have to do this.  
3 You're free to leave, but if it makes you feel better I'm going to read you  
4 your *Miranda* rights so that there's no tricks because I felt like I was  
5 losing my rapport with him. He had told me so much about the shooting,  
6 but when it came to the location of the firearm, he's I don't know if I want  
7 to tell you that. It felt like I was losing my rapport. I read *Miranda* with  
8 the intent to try and gain his trust back again to establish that rapport  
9 with him again so that he would at least tell me where the gun was at.  
10 So, I explained to him I don't have to do this but I'm reading your  
11 *Miranda*, and he continued the interview and eventually he told me the  
12 location of the firearm.

13 Q Have you heard of the technique, again, you know, taken any  
14 classes on question first *Miranda* late?

15 A No, I haven't heard that technique or taken any classes in  
16 reference to that.

17 Q You have not. So, it's where a detective -- you've never seen  
18 this where you get a statement, then you Mirandize them, and then try to  
19 to re-elicite the same statement afterwards?

20 A No. I've never taken any classes or had any training in  
21 reference to trying to elicit a statement and reading *Miranda* -- elicit the  
22 same statement; is that what you --

23 Q Sure. Maybe you can get more the second time around.

24 A No. I've never taken any classes or been a part of any type of  
25 trickery or any techniques that would suggest that I get a statement and

1 then -- I forget your verbiage, but no, I haven't.

2 Q Okay. You're familiar with the Reed technique though; right?

3 A The Reed technique? Somewhat familiar.

4 Q Okay. What classes did you take in fact then in trying to, you  
5 know, conduct interrogations and -- versus interviews?

6 A Well, I've taken a lot of interview interrogation classes  
7 throughout out my career. I've been in law enforcement for 23 years,  
8 you know, and not just here in the state of Nevada but back east. And  
9 so I've taken several interview and interrogation technique classes. I'm  
10 also -- I have a background as being a crisis negotiator for the Las  
11 Vegas Metropolitan Police Department. So, I've had a vast experience  
12 with talking to people in crisis type situations or trying to elicit information  
13 from folks and trying to establish a rapport and or gain their trust and to  
14 get them to talk.

15 Q Right. Most people who, I guess -- most people who don't  
16 have a criminal history, would you agree that they do in fact more  
17 willingly talk to law enforcement?

18 A It's hard to say in today's age, you know. It seems like more  
19 and more people are against law enforcement nowadays. So, more  
20 often than not, you know, well more often in the past, I put it that way,  
21 we'll come across people who have no criminal history or background  
22 but yet their still unwilling to cooperate and speak to us and provide  
23 statements.

24 Q So, if they're unwilling then, people who do have some sort of  
25 criminal history and maybe more knowledge about the system, you'd

1 agree that they in fact probably don't want to talk as much?

2 A It's based on every individual and every different case. Every  
3 case I've come across has been different.

4 Q Yeah, I know. But I'm asking about the totality of your  
5 experience.

6 A Yeah, it's hard to say. I mean, I couldn't put a number on it. I  
7 mean, the totality of my experience, you know, some people talk, some  
8 people don't. I mean, I don't have a number to put on to you. I can't say  
9 50-50 or -- some people talk, some people don't. A lot of it depends on  
10 the rapport the detective establishes with the person he's talking to.

11 Q But when he referenced the lawyer and said that I think I  
12 should have an attorney you didn't stop?

13 A He said he felt more comfortable if he would have had an  
14 attorney.

15 Q Right. But you didn't stop?

16 A No, I didn't.

17 Q Despite the fact that, you know, he was free to go, you didn't  
18 give him a phone and say, here, you can call an attorney?

19 A No, I didn't offer that to him, no.

20 Q No, because then he probably would have stopped talking to  
21 you; right?

22 A I don't know. That's his right. If he would have wanted to call  
23 an attorney then he was free to call to an attorney.

24 Q So, you would have given him his phone back then if he would  
25 have wanted to call?

1           A     Yeah. If he would have asked and said, hey, I want to call an  
2 attorney -- as a matter of fact I'm not sure I even had possession of his  
3 phone. I'm not sure if he had it the whole time or -- because I know he  
4 was trying to get a hold of his girlfriend. I'm not even certain that I  
5 actually or the detectives had possession -- I'm not sure where the  
6 location of his phone was, but for some reason I recall I believe Mr.  
7 Gathrite was in possession of it because he was constantly calling his  
8 girlfriend. So, if he wanted an attorney he could have easily called an  
9 attorney himself.

10          Q     Well -- and in the transcript, I believe you stated that you got  
11 the phone actually from Sergeant Scott --

12          A     Okay. So, Sergeant Scott had it.

13          Q     -- when you got out of the --

14          A     Okay, okay. And then it was given back to Mr. Gathrite to  
15 make those phone calls to his girlfriend.

16          Q     That is correct. And those phone calls weren't recorded on  
17 the -- both your and Mauch's recordings; were they?

18          A     I don't recall seeing those in the transcripts, no.

19          Q     Okay.

20          A     He never got ahold of her I know that.

21          Q     Okay. Are you sure about that?

22          A     Yeah, I don't recall him ever getting ahold of his girlfriend. I  
23 don't know. I remember he kept trying and trying and trying but I don't  
24 recall them ever speaking.

25               MS. LOBO: Court's indulgence.

1 BY MS. LOBO:

2 Q So, on page 70 and he's on the phone with her, it says, hello,  
3 that's her, hello, babe, babe, where you at?

4 A I don't know. Was I in the car at the time or --

5 Q It appears that you were in the car at the time from --

6 A Okay. I don't know that I was --

7 Q -- entering and exiting.

8 A I don't know that because I know when the interview  
9 concluded with Mr. Gathrite, he and Detective Mauch were the ones in  
10 the car. So, I'm not sure. Maybe I wasn't present during that particular  
11 -- when that phone call was actually made.

12 Q So, when you reviewed this transcript to prepare for today,  
13 were you listening to the audio?

14 A I listened to the audio last week. I read the transcript today.

15 Q Okay. And on, I guess, page 67, did you notice any points in  
16 Detective Mauch's recording where it sounds as though it's being turned  
17 on and off?

18 A I can't recall; I mean, if you could play it for me, I will listen to  
19 that and give you my opinion on it.

20 Q Okay. Well, for the sake of brevity, I'll do it with Detective  
21 Mauch --

22 A Okay.

23 Q -- since, you know, his recording in fairness. So, did you  
24 notice any when you heard it last week?

25 A Nothing that I can recall but, again, I'd be glad to listen to it for



1 you to give you my opinion on what I'm hearing, you know, but I don't  
2 recall any clicks or anything or anything that would indicate the  
3 recordings being turned off at that time, but I'm willing to listen to it if you  
4 want to produce the audio or play it for me.

5 Q Sure. I'll do it with Detective Mauch. There was a time when  
6 both of you guys got out of the car; do you remember that?

7 A At the same time?

8 Q Mm-hmm.

9 A There may have been one point when both of us were out. I  
10 can't remember exactly who would have been watching Mr. Gathrite or if  
11 anyone else was sitting in the car with him or -- I do remember speaking  
12 to Detective Mauch outside the car. I just don't remember at what point  
13 in time, whether it was during an interview with Mr. Gathrite or if it was  
14 after the interview was conducted. But I do at some point remember  
15 speaking with Detective Mauch about the statement that had been  
16 provided by Mr. Gathrite.

17 Q Okay. And that conversation was not part of the recording?

18 A No, ma'am.

19 Q Okay. And any time you spoke to Sergeant Scott when it was  
20 your recorder that wasn't part of the recording either?

21 A No, ma'am.

22 Q Only when you were sitting in the car with Mr. Gathrite?

23 A Yes, ma'am.

24 Q Were there parts of the -- I guess the recording where you're  
25 in the car that are not being captured on the audio?

1           A     No, ma'am.

2           Q     They're not. So, you're, I guess, characterizing what you're  
3 saying is that you believed that he had consent because he had  
4 proceeded in the house with a child?

5           A     Yes.

6           Q     Okay. And that wasn't based on seeing the lease?

7           A     No. That wasn't based on seeing the lease.

8           Q     Okay. And you hadn't conducted any sort of surveillance?

9           A     No.

10          Q     And when you read him his *Miranda* rights that was because  
11 you in fact thought you were losing rapport with him?

12          A     That's correct.

13          Q     And so it was not the purposes in your testimony today to get  
14 him to reconfirm the things that he had already told you?

15          A     Correct. And a matter of fact in the transcript I even explained  
16 to him if it makes you feel more comfortable I'll read you your *Miranda*  
17 rights, just like I explained to you, again, to establish a rapport to make  
18 him feel more comfortable and continue the interview. And that's even  
19 documented in the transcript.

20          Q     Yes, it is. And you asked him yes, no, maybe; do you  
21 remember saying that at the end?

22          A     I said yes, no, maybe so.

23          Q     Okay. You remember saying that?

24          A     Yes, yes.

25          Q     And he didn't say anything for a period of time?

1           A     Well, he didn't say anything, but I remember there was some  
2 type of -- there had to have been some type of visual cue, a non-verbal  
3 cue, if you will, from Mr. Gathrite, otherwise I wouldn't have continue the  
4 interview.

5           Q     So, you would have just stopped right then?

6           A     Well, he's not acknowledging, he's not saying no, I don't want  
7 to continue. He didn't say no. I'll put it that way. He didn't say, no, he  
8 didn't want to continue the interview after reading *Miranda*. He gave me  
9 some type of non-verbal cue that he was willing to continue. And a  
10 matter of fact, he did continue and the interview continued and we  
11 continued to have the conversation.

12          Q     He didn't ever say anything to give you any sort of, I guess,  
13 feeling that he understood his rights though; right?

14          A     He never said --

15          Q     He didn't say anything?

16          A     He never said the words yes, I understand my rights. He  
17 never said that.

18          Q     Okay. So, it would have been verbal?

19          A     It would have been a non-verbal cue that he gave me, non-  
20 verbal.

21          Q     Non-verbal. Sorry, I misspoke. So, the car that you were  
22 sitting in, that was Detective Mauch's?

23          A     Yes.

24          Q     Did that car have the ability to record?

25          A     No, ma'am.

1           Q     Okay. So, the only recorders that were the car was the ones  
2 that were inside of the folders that you described earlier?

3           A     That's where my particular recorder was. You'd have to ask  
4 Detective Mauch where he kept his. I know his folder also has a slot  
5 similar to mine for his recorder. Now, whether he had in there or  
6 someplace else, I have no idea. You'd have to ask that of Detective  
7 Mauch. Mine was inside my folder inside the slot.

8           Q     And when we heard the beginning of this audio statement and  
9 you said will you feel better if the recorder's away, whose recorder was  
10 out that he was viewing? Was your recorder out?

11          A     It would have been Detective Mauch because Detective  
12 Mauch was seated in the front seat with him. So, at some point in time  
13 Detective Mauch would have had his recorder out visible to Mr. Gathrite  
14 who was seated next to him in the front seat.

15          Q     Okay. And so you were telling Mr. Gathrite that he had care  
16 and custody of the apartment, care and control of the apartment in order  
17 to get his permission; right?

18          A     Yes.

19          Q     Because that was the objective at that point to get inside and  
20 get the gun?

21          A     Well, the objective was to see if he was willing to consent to  
22 us to go in. I know simultaneously Sergeant Scott was obtaining a  
23 telephonic search warrant for the apartment based upon the information  
24 that Mr. Gathrite had already provided to me about the gun being inside  
25 and all that good stuff. He was still obtaining a telephonic search

1 warrant for the apartment itself. I was asking Mr. Gathrite for a consent  
2 to search the apartment and that's when I presented him with a consent  
3 to search card that you previously stated he did not want to sign. So,  
4 then I obtained -- I asked him for verbal permission to go -- verbal  
5 consent to search the apartment and that's when I explained to him that  
6 he was an adult, he was in care and control of the apartment.

7 Q Okay. So, it looks like on page 47 Deandre asked what time it  
8 was and you had told him, and I think this when, you know, it was in  
9 reference to possibly the consent card, you said it's 4:20?

10 A Is that a question or --

11 Q You'd agree with that it's in the transcript; right?

12 A Okay, okay, it's in the transcript.

13 Q And then I think the property on the [indiscernible] show that at  
14 3:20 this recording was started?

15 A At 3:20. I don't know if the recorder time is correct or not. I  
16 mean, I don't --

17 Q Well, you arrived at 2:55?

18 A Yeah, roughly around 2:30, 3 o'clock, something like that,  
19 yeah.

20 Q Okay. So, it makes sense maybe at 3:20. Do you have any  
21 reason to dispute Detective Mauch's recording?

22 A Correct.

23 Q Right. So, it says 3:20 and then at 4:20 on page 47; right?

24 A Mm-hmm; okay.

25 Q And you said that Sergeant Scott was in the process of getting

1 a telephonic search warrant?

2 A Yeah, yeah. He was -- I know he's, as a sergeant, that's what  
3 he does. A lot of times he'll obtain the telephone search warrant while  
4 the detectives are conducting interviews or whatnot. I know he gathers  
5 his notes and does what he does; you know, I mean, he's gathering the  
6 details of the case. He knows more about the case than I do. So, he'll  
7 gather the details of the case and his paperwork associated with the  
8 telephonic search warrant process, and when he's ready and has all his  
9 facts together and the story, then he proceeds to contact the judge for a  
10 telephonic search warrant at some point in time.

11 Q Okay. Would it, I guess, surprise you to know that that  
12 telephonic search warrant did not actually go through until 5:35?

13 A That wouldn't surprise me.

14 Q It would not?

15 A No, it wouldn't surprise me.

16 Q Would it surprise you that in the search warrant on the return  
17 there's no gun on the return for that warrant?

18 A Okay. I don't -- I've never seen the return for the telephonic  
19 search warrant.

20 Q Would you like to see it?

21 A Sure.

22 MS. LOBO: And, Judge, for today's purposes, these weren't  
23 part of the underlying moving papers. I didn't address the warrant.

24 THE COURT: Okay.

25 MS. LOBO: So, I don't know what the parameters -- if we're

1 going to go there, if the Court wants us to, I'll go through this but --

2 THE COURT: I mean, you can -- look, the reality is, the  
3 gentleman's been on the stand for, like, two hours. So, I really kind of  
4 want to confine this to what we need to need to decide the issue of  
5 suppression of the statement or not. But it doesn't have to be in the  
6 moving papers to be something you can ask him questions about,  
7 obviously.

8 MS. LOBO: I understand that. Right.

9 THE COURT: So, if you want to show him the return for the  
10 telephonic warrant, you can certainly do so.

11 MS. LOBO: Okay. May I approach?

12 THE COURT: Yeah.

13 THE WITNESS: Okay.

14 MS. LOBO: Okay.

15 BY MS. LOBO:

16 Q No gun?

17 A There's no gun. It says there's nothing, in quotation marks, in  
18 residence. Buccal swab from Deandre Gathrite and cell phone from  
19 Deandre Gathrite.

20 Q Okay.

21 A And Detective DePalma and Detective Mauch signed the  
22 bottom of the inventory or the return.

23 Q Okay. And the front part right here was done by John Scott?

24 A The telephonic search warrant was done by Sergeant John  
25 Scott.

1 Q And the time is 5:35?

2 A 1735 which would be 5:30 p.m. or 5:35 p.m.

3 Q Okay. Did you ever read the application for this?

4 A No, ma'am.

5 Q Okay. I guess then -- you told them that you got consent;

6 right?

7 A Yes.

8 Q To retrieve everything?

9 A Yes.

10 Q Okay.

11 MS. LOBO: I'll pass the witness.

12 THE COURT: Thank you. Ms. Pandukht, anything further?

13 MS. PANDUKHT: I just have one question about the last

14 question that she asked.

15 **REDIRECT EXAMINATION**

16 BY MS. PANDUKHT:

17 Q So, the gun had been already retrieved on the basis of

18 consent; is that why it didn't show up on the warrant?

19 A Yes, ma'am.

20 MS. PANDUKHT: I just wanted to make sure that was clear. That's

21 the only question I have.

22 THE COURT: Okay. All right. Thank you very much for your

23 time. I appreciate it. You can go ahead and step down, sir. And then

24 we will take like five minutes before we call your next witness, guys.

25 MS. LOBO: Okay. Thank you.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

[Recess taken at 3:55 p.m.]

[Proceedings resumed at 4:10 p.m.]

THE COURT: All right. We will be back on the record. Mr. Gathrite and his attorney and the State's attorneys are all present. You all can call your next witness.

MS. PANDUKHT: Yes. The State calls Detective Tate Sanborn.

THE COURT: Okay.

**TATE SANBORN**

[having been called as a witness and being first duly sworn,  
testified as follows:]

THE COURT CLERK: Thank you. Please be seated. If you could state and spell your name for the record.

THE WITNESS: Tate Sanborn, T-A-T-E S-A-N-B-O-R-N.

THE COURT: You can go ahead.

MS. PANDUKHT: Sorry.

**DIRECT EXAMINATION**

BY MS. PANDUKHT:

Q How are you employed?

A I'm a detective with the Las Vegas Metropolitan Police Department.

Q And how long have you been a detective -- well, how long have you been with Metro in total?

A A total of about 22 years.

Q And you're currently assigned to the homicide department?

1 A Correct.

2 Q How long have you been with homicide?

3 A Eleven years.

4 Q And were you actually the lead detective assigned to  
5 investigate a shooting death of Kenyon Tyler on February 11<sup>th</sup>, 2018?

6 A Yes.

7 Q So, you were assigned as lead to that, it was your case?

8 A Correct.

9 Q And during the course of your investigation, did you develop a  
10 potential suspect by the name Deandre Gathrite?

11 A Yes.

12 Q Is Deandre Gathrite in the courtroom today?

13 A Yes, he is.

14 Q Could you point him out?

15 A He's seated off to my left wearing dark blue scrubs.

16 MS. PANDUKHT: May the record reflect the identification of  
17 the Defendant?

18 THE COURT: Yes, it will.

19 BY MS. PANDUKHT:

20 Q Did you -- during the course of your investigation, did you  
21 receive information where you want to talk to him and did you try to  
22 locate him to interview him?

23 A Yes.

24 Q Okay. And how do you attempt to have suspects located or  
25 witnesses located sometimes?

1           A     We contact the Criminal Apprehension Team.

2           Q     And in this particular case, did you contact the Criminal  
3 Apprehension Team to try and find the Defendant?

4           A     Yes.

5           Q     And is that a common procedure that you use to, to use the  
6 CAT team to help you find people?

7           A     Yes, we use them regularly.

8           Q     Okay. And that's to help you find both suspects and  
9 witnesses?

10          A     Correct.

11          Q     Sometimes. So, is the CAT team's responsibility to gather  
12 additional evidence for your murder investigation or just to find people?

13          A     No. The CAT team's responsibility is just to locate the -- just  
14 to apprehend people. They don't seek additional evidence in the murder  
15 investigation that I'm working on. They just find the person that I'm  
16 looking for.

17          Q     And are they full briefed on all the details of your murder  
18 investigation?

19          A     Not fully briefed. They would aware of the general set of facts  
20 and circumstances, and if we were to be interested in any outstanding  
21 evidence, they would be aware of that in case they find someone at a  
22 location that we would be interested in serving a search warrant in or in  
23 a vehicle that we're looking for an outstanding vehicle. They would  
24 know -- they would know certain facts and circumstances. I don't fully  
25 brief on every case, maybe not the case.

1 Q Okay. So, they would know all the details of their  
2 investigation?

3 A Correct.

4 Q And do you tell them how to find individuals in a certain way?

5 A No.

6 Q You kind of leave that up to them?

7 A Correct. That's their function.

8 Q Okay. And did you become aware that the Defendant had a  
9 parole violation for a 2010 felony conviction for manufacturing or  
10 possession of dangerous weapons out of San Diego, California?

11 A Yes.

12 Q When did you become aware of that; if you recall?

13 A It would have been a few days after we started the murder  
14 investigation.

15 Q So, a few days after February 11, 2018?

16 A Correct.

17 Q Were you aware of it before or after you contacted the CAT  
18 team?

19 A It would have been after.

20 Q So, to your knowledge, did someone -- well, first of all, did you  
21 contact California parole?

22 A No.

23 Q You personally didn't do it?

24 A No.

25 Q To your knowledge, did anyone in the homicide department

1 call California parole?

2 A No.

3 Q To your knowledge, did anyone at the CAT team contact  
4 California parole at your request?

5 A I don't know.

6 Q So, you don't know if anybody -- you don't know who  
7 contacted them or how?

8 A Correct. I have no idea.

9 Q Okay. And you don't know specifically -- let me ask you this.  
10 Who did you contact specifically at the CAT unit?

11 A I contacted Special Agent Dan Coxon of the FBI.

12 Q And at the time you contacted him, did you know that the  
13 Defendant had a parole warrant out of California that was extraditable?

14 A No.

15 Q So, you don't know who contacted California parole? Do you  
16 have an idea what unit might have reached out to California parole?  
17 And I know I'm asking you to speculate a little bit, but that is because the  
18 defense and I really don't know.

19 A Well, since I reached out to the Criminal Apprehension Team,  
20 it would have been someone from the Criminal Apprehension Team or  
21 their support staff or someone from their bureau is all I could imagine. I  
22 mean, that was -- they were requested to find a guy. So, their staff  
23 would have been working on trying to locate that person. I have no idea  
24 who it was. I don't tell them how to find people; I don't tell them what to  
25 do. I just say I need to find someone and they find -- but they also --

1 they have civilian staff, they have all kinds of people that assist them, the  
2 detectives, just like we do on homicides so --

3 Q To your knowledge, did the parole violation case have other  
4 technical violations other than this case that you were investigating?

5 A I'm sorry. Can you ask that again?

6 Q So, was there independent basis for the California parole  
7 department to issue a warrant that had nothing to do with your murder  
8 investigation?

9 A Oh, correct, correct, yes. Yes, that's true.

10 S So, what was it?

11 A My understanding was it was a violation of his conditional  
12 release, that they hadn't been able to contact or locate him.

13 Q And because he'd absconded and come here to Nevada and  
14 left California?

15 A Correct.

16 Q Okay. So, if there had been a basis for California parole to  
17 issue a warrant on the [indiscernible]?

18 A Yes, what we just talked about.

19 Q Okay. So, do you know whether or not -- well, let me ask you  
20 this. When was the California parole warrant issued; do you know that  
21 date?

22 Q Yes. I believe it was issued February 14<sup>th</sup>.

23 A 2018?

24 A Correct.

25 Q Okay. And I've already asked you that California parole

1 warrant authorized extradition of the Defendant back to California?

2 A Correct.

3 Q So, that's your understanding?

4 A Yes.

5 MS. PANDUKHT: Thank you for testifying to these questions.

6 BY MS. PANDUKHT:

7 Q At the time that you asked the CAT team to locate the  
8 Defendant, were you planning on submitting charges for the murder of  
9 Mr. Tyler?

10 A At the time --

11 Q At that time?

12 A At the time of my initial request to locate him?

13 Q Yes.

14 A No. I wouldn't have been far enough along to be looking into  
15 submitting charges though.

16 Q So, at the time that you asked the CAT team to locate the  
17 Defendant, was the Defendant just a suspect? Had you developed  
18 enough PC, probable cause?

19 A No. We did not have enough -- we did not have any probable  
20 cause to arrest Mr. Gathrite for the murder of Mr. Tyler when I requested  
21 the CAT team to locate him for me.

22 Q Okay. So, why did you -- when the CAT team found the  
23 Defendant on February 16<sup>th</sup>, 2018, were you on vacation and not on  
24 duty that day?

25 A Yes.

1           Q     Did you want him interviewed regardless of whether it was you  
2 or someone else?

3           A     Absolutely.

4           Q     And why did you want the Defendant interviewed?

5           A     Because we had received preliminary information on the day  
6 of our briefing for the murder that he had been possibly named as a  
7 suspect in the shooting.

8           Q     And did you want to get his side of the story?

9           A     Yes.

10          Q     At that point were you looking at this like it was a self-defense  
11 case or you weren't sure?

12          A     We weren't sure. The scene and the description of events, it  
13 definitely had the potential to be a self-defense type case, yes.

14          Q     And as a general practice, do you try and interview all  
15 potential suspects?

16          A     Yes.

17          Q     And is it important to try and find out all the information even if  
18 that would exonerate a Defendant such as a potential alibi defense?

19          A     Oh, absolutely, yes.

20          Q     And if the Defendant had provided you, for instance,  
21 information about a potential alibi, would you have followed up on that  
22 and talked to other witnesses and tried to determine if that was correct?

23          A     Yes. If you interview someone and they provide enough  
24 information for someone else to be interviewed in regards to their  
25 statement, then we would continue following up on all the information



1 that we received, yes.

2 Q And so you also interview alternate suspects?

3 A Correct.

4 Q And why is that important?

5 A Well, the alternate suspects -- until you have developed  
6 probable cause that some's responsible, you have to keep -- the  
7 investigation has to be open and go wherever the evidence leads. So,  
8 we would continue to interview people that were named whether through  
9 other witnesses or the Defendant himself or suspects themselves until  
10 we have developed probable cause that would have someone  
11 responsible for it.

12 Q So, after the Defendant was interviewed on February 16,  
13 2018, did you, as the lead detective in this case, follow-up and interview  
14 some additional witnesses in this case?

15 A Yes.

16 Q Did you interview two additional witnesses?

17 A There were two additional witnesses interviewed, yes.

18 Q And what were their names?

19 A There was Raymond Moore and Towan Abrams.

20 Q Okay. And as a result of your interview with those two  
21 individuals, did that further your investigation to the point of developing  
22 probable cause?

23 A Correct. I was not involved -- for the record I was not involved  
24 in the interview of Mr. Abrams.

25 Q Thank you. We knew that but --

1 A Okay. Sorry.

2 Q I'm just asking you general questions.

3 A Okay.

4 Q So, you were aware of those interviews?

5 A Yes.

6 Q With those two individuals?

7 A Yes.

8 Q Okay. And you also weren't involved in the Defendant's

9 interview, and you weren't there at all?

10 A Correct.

11 Q And after additional witnesses were interviewed and after

12 additional investigation was done, did there come a point where you took

13 further action with your case? Could you tell us what happened?

14 A Yes. We had developed probable cause to charge Mr.

15 Gathrite with the shooting death of Mr. Tyler on or about February 21<sup>st</sup> of

16 2018 and then we obtained a warrant for his arrest on that case on

17 February 26<sup>th</sup> of 2018, I believe.

18 Q So, when you submitted charges to the DA office and obtained

19 the warrant, it was ten days after the Defendants interview?

20 A Correct.

21 Q On February 26<sup>th</sup>, 2018?

22 A Yes.

23 Q And then I know you weren't there at the scene on February

24 16<sup>th</sup> at Wyandotte, but to your knowledge was the Defendant extradited

25 back to California for this parole hold?

1           A     No, he was not.

2           Q     And do you recall what happened with that?

3           A     I believe on the hold that had been placed on Mr. Gathrite by  
4 California authorities was lifted on February 21<sup>st</sup> and he was released  
5 from custody due to having no pending charges and no hold from  
6 California.

7           Q     And also at that point no pending charges or hold in Nevada?

8           A     Correct.

9           Q     And did you know that California was going to decide not to  
10 extradite the Defendant before that actually happened?

11          A     No, not at all.

12          Q     You had no idea -- you didn't contact California even after  
13 February 16<sup>th</sup>; did you?

14          A     No. I never contacted California, but had I known they were  
15 going to release him on the 21<sup>st</sup>, I mean, I would have rebooked him  
16 after my interview with Raymond Moore. I wasn't prepared for the  
17 release, however.

18          Q     And so Raymond Moore's interview was critical to your  
19 investigation?

20          A     Yes, and it was on the same day, the 21<sup>st</sup>.

21          Q     Okay. And then I think we have already gone through with  
22 Detective Grimmer about how a telephonic warrant was already  
23 obtained by your sergeant, Sergeant John Scott, to search the  
24 apartment on Wyandotte?

25          A     He did obtain one, yes.

1 Q And you're aware of that?

2 A Yes.

3 Q And I just wanted to ask a brief question just because this did  
4 come up in some of -- I might be going far afield. I just wanted --

5 THE COURT: You asking me?

6 MS. PANDUKHT: I don't know. I don't want you to be mad.

7 THE COURT: It's the same thing I told Adrian, I mean, --

8 MS. PANDUKHT: I just want to ask a couple questions --

9 THE COURT: I kind of want you guys to keep it on what you  
10 need to talk about for this, but I'm not limiting your questions. So, go  
11 ahead.

12 BY MS. PANDUKHT:

13 Q I know, I know. I just wanted to ask a couple questions  
14 because I think you had information with regard to an issue I had read  
15 about in the motions about bringing Raymond Moore in to testify at the  
16 preliminary hearing. Could you tell the Court if you assisted the District  
17 Attorney's office in helping to secure the presence of Raymond Moore to  
18 testify at the preliminary hearing?

19 A Oh, yes, absolutely. Raymond Moore, we had definitely tried  
20 to remain in close contact with though his ex-wife and through himself.  
21 He was homeless and transient and had been staying at a motel. So,  
22 we had San Bernardino police check on him at the hotel so the DA's  
23 office out of state desk could get a bus ticket to him so he could be here  
24 to testify. The only time that we had got close and had Mr. Moore at the  
25 bus station where he had checked in, the preliminary hearing had been

1 cancelled that morning and they told him not to board the bus and he  
2 walked out and we've never seen him since.

3 Q So, that was in April of this year. The preliminary hearing was  
4 on April 5<sup>th</sup> and April 19, 2018 and you had him for at least one of those  
5 dates?

6 A Correct.

7 Q And then they were continued -- both of those were continued  
8 by the defense?

9 A That I'm not aware of.

10 Q But you weren't aware that they were getting continued?

11 A Not until the morning. The one was that morning Mr. Moore  
12 had checked in at the bus station. That's how we knew where he was.

13 Q And you couldn't find him after that?

14 A Correct.

15 MS. PANDUKHT: Okay. That's all I wanted to ask. Thank  
16 you. I'll pass the witness.

17 THE COURT: Ms. Lobo.

18 MS. LOBO: Yes.

19 **CROSS-EXAMINATION**

20 BY MS. LOBO:

21 Q Okay. So, Detective Sanborn, who specifically -- I think you  
22 said it was just Dan Coxon is the individual who you spoke to on the  
23 CAT team?

24 A Correct.

25 Q When did you contact him?

1           A     It would have been in the first few days following picking up  
2 the case.

3           Q     Okay. So, the shooting was on February 11<sup>th</sup>?

4           A     Eleventh.

5           Q     And the warrant issued from California on February 14<sup>th</sup>?

6           A     Correct.

7           Q     So, in between those days is probably when you contacted  
8 them?

9           A     Correct. We tied up -- the first couple days are pretty busy  
10 after we pick up a new case. So, you pick up the case, you have the  
11 autopsy, some of the stuff that has to be done. So, it just -- it would  
12 have been in that initial few days of after going through -- sifting through  
13 all the preliminary information and talking about it with your partner and  
14 saying, hey, what do you think we bring -- we try to find Mr. Gathrite and  
15 find out what happened.

16          Q     Okay.

17          A     So, it would be somewhere along those lines.

18          Q     So, did you contact him by telephone or by email, text  
19 message?

20          A     Typically by telephone.

21          Q     Okay. And did you ever follow-up with him via email?

22          A     No. I don't exchange a whole lot of emails with Dan Coxon,  
23 but it would just be phone calls basically to keep each other in the loop  
24 as to the status of, you know, what's going on because we like to be  
25 prepare if he's going to find someone -- if he's going to find someone for

1 us and we like to stay in the loop, is it going to be at 5 p.m. on Friday  
2 when you have plans. So, I mean, we're constantly in communications,  
3 hey, what's the status of locating this individual, what's the status of  
4 locating this individual just so we know.

5 Q So, basic stuff. Before you even get to the point where you  
6 contact Dan Coxon, you're running him through SCOPE obviously once  
7 you got an idea of who he is?

8 A Correct.

9 Q And do you check Odyssey prior cases, things like that?

10 A No, not Odyssey. That's a court -- typically like a court  
11 program. We would have just been looking for, you know, some of the  
12 stuff that we had been told about, additional cases in the area. We  
13 would have been looking up stuff like that to see if there had been prior  
14 cases Mr. Gathrite was involved in, previous addresses, and reading on  
15 some of those cases to see what the deal was with some of those prior  
16 cases.

17 Q So, whenever the CAT team picks up somebody, they  
18 generate a general declaration of arrest just like a Metro document?

19 A Yeah. They have like a pre-printed form. If it's like a warrant  
20 arrest, it's pretty -- it's kind of fill in the blank warrant form.

21 Q It's pretty basic?

22 A Yes.

23 Q And those documents are saved on [indiscernible]?

24 A Yes.

25 Q And so before you contact Dan Coxon, did you know that he in

1 fact had been extradited back and forth many times?

2 A No. Before this case I didn't know who Mr. Gathrite was. So,  
3 I didn't have an intimate knowledge of, you know, what he was all about  
4 prior to hearing his name late that night on the 11<sup>th</sup>.

5 Q Okay. And how was that -- how was he the person who was  
6 developed on the 11<sup>th</sup>?

7 A Actually, his name was mentioned. During our initial briefing,  
8 the case had been worked for several hours, at least two hours by our  
9 gang unit and our patrol detectives in that area command before Mr.  
10 Tyler passed away.

11 So, it was during that preliminary time that, I guess, some of  
12 the gang detectives had received information kind of, you know, off the  
13 record. The area is tough and not a lot of people wanted to provide  
14 formal statements, but the name or the nickname of Dre had been  
15 mentioned to those detectives. And then the patrol detectives who are  
16 familiar with the area when they hear the name Dre, they mention that  
17 at our briefing -- hey, just a heads up. There's a guy possibly that you  
18 could be looking for and his name is Deandre Gathrite who goes by Dre  
19 and they provided me that information.

20 Q Okay. And that was intel, you said, from gangs?

21 A Correct.

22 Q Okay. Was there any sort of information that he was involved  
23 in a gang or it just happened they were in the area?

24 A No. They were conducting the follow-up investigation into the  
25 shooting.



1 Q Okay.

2 A The gang investigations was --

3 Q Okay.

4 A -- prior to the case being assigned to me.

5 Q All right. Did you have any -- I guess if gangs is involved,  
6 were they saying that he was a gang member?

7 A No. Our victim was a gang member.

8 Q Okay. And -- all right. So, once you have that information,  
9 you call Dan Coxon and you have a chat with him and he says he'll start  
10 looking?

11 A Correct.

12 Q And do you know when Mr. Coxon called you back or emailed  
13 you and said we found a person that you might have a warrant out of  
14 California?

15 A Oh, no. I don't remember when it was that he -- I just  
16 remember that he communicated with me that they -- they had a line on  
17 a place they thought that Gathrite would be and that they were going to  
18 look for them, and I remember that being close to the time that I was  
19 going to be gone. I just remember that just because I was leaving town  
20 and he was calling and saying that they probably were going to have  
21 him. And so I said well, I'm leaving town. You're going to have to give it  
22 oo my partner if you catch up to him.

23 Q Okay.

24 A I don't remember what day of the week the 16<sup>th</sup> was so I'm  
25 guessing. I think on Friday, judging by it, because I remember traveling

1 like when this whole thing was happening.

2 Q Right. It was a holiday weekend.

3 A Correct.

4 Q Okay. So, Mr. Coxon tells you at least like we think we found  
5 him. Did he say how he found him?

6 A No.

7 Q Okay. Did he in fact, I guess, let you know that the warrant  
8 had been activated on the 14<sup>th</sup>?

9 A I don't know if he let me know that the warrant -- whether the  
10 warrant had been activated. I have just since seen the NCIC print-out of  
11 the warrant so I'm familiar with that. I just -- I just remember being  
12 informed he had a warrant, they were going to look for him, and then  
13 within a couple days him reaching out and saying, hey, I think we're  
14 going to have him, we have a line of where he is and we'll have him  
15 soon so --

16 Q Okay. And then in the days that, I guess -- well, before I even  
17 I go back to the warrant, let's talk about what happened that day  
18 because you weren't there --

19 A Correct.

20 Q -- right? So, your partner Mauch was there?

21 A Correct.

22 Q And he was the person who at least did some of the interview  
23 with Mr. Gathrite?

24 A Yes.

25 Q But you were available via phone?

1 A Correct.

2 Q How many phone calls did you receive that evening?

3 A I remember there was a few calls back and forth on the drive.

4 Q Okay. And this was on your LVMPD cell phone?

5 A Probably my personal phone.

6 Q Okay. Any estimate of how long you spoke to either Detective  
7 Grimmatt or Detective Mauch; I don't know if it was one or both?

8 A Yeah. I don't recall. I was driving and traveling and we were  
9 just talking about the situation. So, I don't know. I can't estimate how  
10 long we spoke, no.

11 Q Okay. You provided additional questioning that you wanted  
12 Detective Grimmatt to do?

13 A I don't recall specifically.

14 Q Okay. Do you recall asking him to follow-up about what  
15 certain people were wearing at the scene, like clothing?

16 A I mean, vaguely, it sounds familiar but I can't recall  
17 specifically. But any type of situation where you have multiple subjects  
18 outside that people are describing, you know, that would that something  
19 different and prudent to follow-up on.

20 Q Right. Okay. And -- well that day, I guess, you said that there  
21 was no PC at that point that was developed to arrest him for murder?

22 A Correct. On the 16<sup>th</sup> of February?

23 Q Right.

24 A Correct.

25 Q And you were aware that there was a warrant that was applied

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**DEANDRE GATHRITE,**

Petitioner,

**THE HONORABLE JUDGE  
DOUGLAS W. HERNDON,  
EIGHT JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA**

Respondent,

And

**THE STATE OF NEVADA,**  
Real Party in Interest.

Electronically Filed  
Supreme Court Docket No: \_\_\_\_\_ Nov 30 2018 08:31 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DISTRICT COURT CASE NO.: CASE NO. C-18-334135-1

**APPENDIX TO PETITION FOR WRIT OF  
PROHIBITION AND MANDAMUS DIRECTING  
THE HONORABLE DOUGLAS HERNDON TO  
DISMISS THE CASE AGAINST THE  
PETITIONER**

**(VOLUME II)**

**ADRIAN M. LOBO**  
Lobo Law PLLC  
Nevada Bar No. 10919  
400 South 4<sup>th</sup> Street, Suite 500  
Las Vegas, Nevada 89101  
Office: (702) 290-8998  
Fax: (702) 442-2626

**THE HONORABLE JUDGE  
DOUGLAS W. HERNDON**  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
Office: (702) 671-4312  
Fax: (702) 671-4311

**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar No. 1565  
Regional Justice Center  
200 Lewis Avenue  
PO Box 552212  
Las Vegas, Nevada 89155  
Office: (702) 671-2500

**ATTORNEY FOR THE PETITIONER**

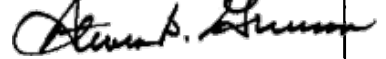
**ATTORNEYS FOR THE STATE**

**INDEX**

<b>VOLUME</b>	<b>DOCUMENT NAME/FILE DATE</b>	<b>PAGE NO.</b>
1	Criminal Complaint Justice Court Case No. 18F03565X (February 26, 2018) .....	PA000001-PA000002
1	Register of Actions Justice Court Case No. 18F03565X.....	PA000003-PA000005
1	Indictment District Court Case No. C-18-334135-1 (August 15, 2018) .....	PA000006-PA000008
1	Petition for Writ of Habeas Corpus District Court Case No. C-18-334135-1(September 7, 2018).....	PA000009-PA000034
	EXHIBIT A – Officer’s Report.....	PA000035-PA000048
	EXHIBIT B – Declaration of Arrest.....	PA000049-PA000050
	EXHIBIT C – Reporter’s Transcript of Proceedings for 05/25/18 Justice Court Case No. 18F03565X.....	PA000051-PA000055
	EXHIBIT D – Email Correspondence between counsel and Deputy District Attorney Sarah Overly (Dated 04/11/18).....	PA000056-PA000057
	EXHIBIT E – CAD Log Event No. 18021600-2092.....	PA000058-PA000062
	EXHIBIT F - Defendant’s Transcribed Statement for 02/16/18.....	PA000063-PA000134
	EXHIBIT G – Search Warrant, Application and Return .....	PA000135-PA000144
	EXHIBIT H – Grand Jury Transcript of Proceedings for 08/14/18 District Court Case No. C-18-334135-1 .....	PA000145-PA000170
	EXHIBIT I - Marcum Letter sent to the State of Nevada with enclosures (Dated 06/20/18) .....	PA000171-PA000178
1	Return on Petition for Writ of Habeas Corpus (Exhibits Omitted) District Court Case No. C-18-334135-1 (September 21, 2018).....	PA000179-PA000211
1	Reply in Support of Petition for Writ of Habeas Corpus District Court Case No. C-18-334135-1 (September 24, 2018).....	PA000212-PA000224
1	Defendant’s Motion to Dismiss for Prosecutorial Misconduct District Court Case No. C-18-334135-1 (September 7, 2018) (All Exhibits Incorporated from Defendant’s Petition for Writ of Habeas Corpus as A1-L1).....	PA000225-PA000245
2	State’s Opposition to Defendant’s Motion to Dismiss for Prosecutorial Misconduct District Court Case No. C-18-334135-1 (September 20, 2018).....	PA000246-PA000262
2	Reply in Support of Defendant’s Motion to Dismiss for Prosecutorial District Court Case No. C-18-334135-1 (September 24, 2018).....	PA000263-PA000278

<b>VOLUME</b>	<b>DOCUMENT NAME/FILE DATE</b>	<b>PAGE NO.</b>
	EXHIBIT A-1 - DNA Report (Dated 09/19/18).....	PA000279-PA000281
	EXHIBIT B-1 - State's Motion to Continue Justice Court Case No. 18F03565X (June 8, 2018).....	PA000282-PA000286
	EXHIBIT C-1 - Reporter's Transcript of Dismissal Justice Court Case No. 18F03565X (June 29, 2018).....	PA000287-PA000289
	EXHIBIT D-1 – San Bernardino Docket for Case FSB18001710 .....	PA000290-PA000297
2	Defendant's Supplemental Exhibits J/J1 – L/L1 to Petition for Writ of Habeas Corpus and Defendant's Motion to Dismiss for Prosecutorial Misconduct District Court Case No. C-18-334135-1 (September 28, 2018).....	PA000298-PA000314
	EXHIBIT J/J1 – Defendant's Motion to Suppress Evidence Acquired in Violation of the Fourth and Fifth Amendment Justice Court Case No. 18F03565X (Exhibits Omitted).....	PA000315-PA000336
	EXHIBIT K/K1 – State's Opposition to Defendant's Motion to Suppress Evidence Justice Court Case No. 18F03565X (Exhibits Omitted with the exception of Exhibit 5 – Statement of Raymond Moore).....	PA000337-PA000372
	EXHIBIT L/L1 – Defendant's Reply in Support of Motion to Suppress Justice Court Case No. 18F03565X (Exhibits Omitted) .....	PA000373-PA000383
2	Recorder's Transcript of Hearing (September 25, 2018) District Court Case No. C-18-334135-1.....	PA000384-PA000391
2	Order Denying Defendant's Motion to Stay Proceedings District Court Case No. C-18-334135-1 (September 25, 2018) .....	PA000392
2	Recorder's Transcript of Hearing (October 8, 2018) District Court Case No. C-18-334135-1.....	PA000393-PA000492
3	Recorder's Transcript of Hearing (October 8, 2018) ***CONTINUED*** District Court Case No. C-18-334135-1.....	PA000493-PA000509
3	Recorder's Transcript of Hearing (October 11, 2018) District Court Case No. C-18-334135-1.....	PA000510-PA000630
3	Ex Parte Application for Order Authorizing Application Regarding Defendant's Request for a Certificate of Materiality Under Seal.....	PA000631-PA000689
3	Ex Parte Application for a Records Request District Court Case No. C-18-334135-1.....	PA000690-PA000693

<b>VOLUME</b>	<b>DOCUMENT NAME/FILE DATE</b>	<b>PAGE NO.</b>
3	Email Correspondence Re: Evidentiary Hearing (Date: 10/05/18).....	PA000694-PA000695
3	Email Correspondence Re: Order for San Diego Probation Records (Date: 10/09/18).....	PA000696-PA000698
3	Order Denying Defendant's Motion to Suppress Evidence, Motion to Dismiss for Prosecutorial Misconduct, And Petition For Writ of Habeas Corpus District Court Case No. C-18-334135-1.....	PA000699-PA000701



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SARAH E. OVERLY  
6 Deputy District Attorney  
7 Nevada Bar #012842  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 DEANDRE GATHRITE,  
13 #2592432

14 Defendant.

CASE NO: C-18-334135-1

DEPT NO: III

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR**  
16 **PROSECUTORIAL MISCONDUCT**

17 DATE OF HEARING: SEPTEMBER 25, 2018  
18 TIME OF HEARING: 9:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through SARAH E. OVERLY, Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss  
22 For Prosecutorial Misconduct.

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

26 //

27 //

28 //



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

14 On May 10, 2018, Defense filed a motion to suppress evidence. The State filed an  
15 Opposition on May 23, 2018. On May 25, 2018, the Justice Court ruled that the Defendant's  
16 statements provided to police and the firearm recovered by police suppressed. On June 8, 2018,  
17 the State filed a Motion to Continue based on the unavailability of an essential witness,  
18 Raymond Moore. The Court granted the motion and the preliminary hearing was reset for June  
19 29, 2018 with a status check on negotiations set for June 21, 2018.

20 On June 21, 2018, both parties indicated the case was not resolved and that the defense  
21 counsel had received Marcum Notice from the State via email on June 19, 2018. On June 29,  
22 2018, the State made a Motion to Dismiss the case and made additional representations  
23 regarding the unavailability of witness Raymond Moore. Defense made an oral motion to  
24 dismiss the case with prejudice, which was denied by the Justice Court. The case was instead  
25 dismissed without prejudice pursuant to the State's Motion.

26 On August 15, 2018, an Indictment was filed charging Defendant with one (1) count of  
27 Ownership or Possession of Firearm by Prohibited Person (Category B Felony) stemming  
28 from the facts associated with the prior Justice Court case. The Defendant was arraigned in

1 District Court on September 4, 2018 where he pled not guilty and invoked his right to trial  
2 within sixty (60) days. Jury trial is currently scheduled for November 13, 2018, with a  
3 respective Calendar Call date of November 8, 2018.

4 On September 7, 2018, the Defense filed the instant Motion To Dismiss For  
5 Prosecutorial Misconduct. The State responds as follows.

6 **STATEMENT OF FACTS**

7 On February 16, 2018, Detectives with the Las Vegas Metropolitan Police Department  
8 were conducting an investigation that led them to an apartment complex located at 2630  
9 Wyandotte Street in Clark County. "Grand Jury Transcript" GJT, 7-8. Pursuant to that  
10 investigation, Detectives made contact with the Defendant<sup>1</sup> at Apartment #1 of that apartment  
11 complex. GJT, 7-8. The Defendant was not in custody pursuant to the investigation police  
12 were conducting but was in custody on separate charges. GJT, 8. Detective Mauch and  
13 Grimmitt spoke with the Defendant in an unmarked police vehicle. GJT, 9. Defendant  
14 indicated he was involved in the current shooting investigation being conducted by police and  
15 revealed that he was in possession of a revolver involved in that shooting. GJT, 9. The  
16 Defendant indicated that the revolver was located in Apartment #1, the apartment he was  
17 residing at with his girlfriend and child. GJT, 11.

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

23 **LEGAL ARGUMENT**

24 Defendant primarily contends the State engaged in prosecutorial misconduct because it  
25 presented evidence the Justice Court ruled could not be admitted at the time of a preliminary  
26

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

1 hearing. Further, Defendant argues the State engaged in misconduct because it impermissibly  
2 introduced character evidence in violation of NRS 48.045, and asks this Court to dismiss the  
3 instant case in its entirety.<sup>2</sup> First, a motion to dismiss is an inappropriate vehicle to challenge  
4 the validity of a Grand Jury Indictment, and thus this Motion should be denied in its entirety.  
5 Second, dismissal is not warranted because the State did not engage in prosecutorial  
6 misconduct, and dismissal of an indictment, even on the basis of actual governmental  
7 misconduct is “an extreme sanction that should be utilized infrequently.” Lay v. State, 110  
8 Nev. 1189, 1198-99, 886 P.2d 448, 454 (1994) (citing Sheriff v. Keeney, 106 Nev. 213, 216,  
9 791 P.2d 55, 57 (1990)). Accordingly, the State requests this Court to deny the instant Motion  
10 in its entirety.

11 **I. DEFENDANT’S MOTION TO DISMISS IS AN IMPROPER PROCEDURE**  
12 **FOR DISMISSING THE INSTANT INDICTMENT, AND SHOULD BE**  
13 **DENIED IN ITS ENTIRETY.**

14 In the instant Motion, Defendant is ostensibly challenging the probable cause  
15 determination made by the grand jury, albeit on the basis the State engaged in prosecutorial  
16 misconduct. Although the pleading is entitled a “Motion to Dismiss”, it is in fact seeking a  
17 remedy provided by way of a pre-trial petition for writ of habeas corpus. NRS 34.710 provides  
18 that, “A district court shall not consider any pretrial petition for habeas corpus . . . based on  
19 alleged lack of probable cause or otherwise challenging the court’s right or jurisdiction to  
20 proceed to the trial of a criminal charge unless a petition is filed in accordance with NRS  
21 34.700.” NRS 34.710(1)(a) (2017).

22 As indicated in NRS 34.710(1)(a), any pretrial petition for writ of habeas corpus is  
23 governed by the requirements of NRS 34.700. NRS 34.700 states in whole:

24 1. Except as provided in subsection 3, a pretrial petition for a writ of  
25 habeas corpus based on alleged lack of probable cause or otherwise  
challenging the court's right or jurisdiction to proceed to the trial of a  
criminal charge may not be considered unless:

26 <sup>2</sup> The State notes these arguments are also detailed at length in Defendant’s Pretrial Petition  
27 for Writ of Habeas Corpus. While the State’s position is that a Motion to Dismiss is an  
28 improper vehicle for challenging the validity of a Grand Jury Indictment, as discussed, infra,  
the State nevertheless addresses Defendant’s arguments for dismissal here. The State also will  
address the substance of these arguments in the context of its Return to Defendant’s Petition.

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

2 (b) The petition contains a statement that the accused:

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

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

5 NRS 34.700(1) (2017). The Defendant's Motion to Dismiss fails to comply with NRS 34.700,  
6 and as such should be denied.

7 **II. THE STATE DID NOT ENGAGE IN PROSECUTORIAL MISCONDUCT.**

8 **A. The State Did Not Commit Misconduct In Presenting Defendant's**  
9 **Statement To The Grand Jury.**

10 Defendant's primary contention focuses on the State's presentation of Defendant's  
11 statements to police as evidence at the Grand Jury. In this case, the Justice Court entertained  
12 Defendant's Motion to Suppress evidence prior to the preliminary hearing in this case, and  
13 during that hearing, the Justice Court reviewed arguments of counsel and ruled the statement  
14 could not be admitted at the time of the preliminary hearing. It bears noting, the Justice Court  
15 did not conduct a hearing to elicit testimony from the detectives involved in this case, and  
16 relied solely upon the arguments made by counsel. Additionally, although the Justice Court  
17 ruled on the suppression motion, a preliminary hearing never took place in the instant case,  
18 and the motion to suppress was filed and heard separately from the probable cause  
19 determination.

20 The Nevada Supreme Court has continuously held "dismissal of an indictment on the  
21 basis of governmental misconduct is an extreme sanction which should be infrequently  
22 utilized." Keeney, 106 Nev. at 216, 791 P.2d at 57 (1990) (quoting United States v. Owen,  
23 580 F.2d 365, 367 (9th Cir. 1978)). To support an allegation of prosecutorial misconduct  
24 regarding a Grand Jury, there must be a finding that government misconduct "unfairly  
25 manipulated or invaded the independent province of the grand jury." Id. at 220. In State v.  
26 Babayan, 106 Nev. 155, 787 P.2d 805 (1990), the Supreme Court addressed the dismissal of  
27 an indictment with prejudice. "Dismissal with prejudice is warranted when the evidence  
28 against a defendant is irrevocably tainted or the defendant's case on the merits is prejudiced

1 to the extent that 'notions of due process and fundamental fairness would preclude  
2 reindictment.' United States v. Lawson, 502 F. Supp 158, 169 (D.Md1980)." Id. at 171, 787  
3 P.2d at 817 (citations omitted). In Babayan, the Court held that trial court did not abuse its  
4 discretion in dismissing indictments against defendant, as prosecution failed to present clearly  
5 exculpatory evidence to grand jury, and therapists who gave expert testimony before grand  
6 jury did so with substantial conflicts of interest that were not brought to grand jurors' attention.  
7 Id. at 155, 787 P.2d at 805. The Court further held that trial court improperly dismissed  
8 indictments with prejudice. Id.

9 The Court further stated:

10 The district court also found that the prosecutorial misconduct  
11 directed towards respondent Babayan rose to a constitutional level as  
12 it violated his right to due process. Although we agree that portions  
13 of the prosecution's presentations before the grand jury were deficient  
14 and denied respondent Babayan due process of law, the denial of due  
15 process before the grand jury, in and of itself, does not mandate  
16 dismissal with prejudice. If it did, then every instance in which a  
17 prosecutor failed to present exculpatory evidence or was otherwise  
18 deficient in presenting the State's position, would require that  
19 indictment be dismissed with prejudice. Although errors occurred in  
20 this case, dismissal without prejudice will remedy the derelictions in  
21 the absence of an irremedial evidentiary taint or prejudice to the  
22 defendant's case on the merits.

23 Id. at 171, 787 P.2d at 817.

24 Thus, the first question before this Court is whether the State engaged in prosecutorial  
25 misconduct at all. Defendant argues the State was somehow bound by the Justice Court's  
26 decision when presenting evidence to the Grand Jury, yet, cites no statute or case law that  
27 expressly prohibits the State from alternatively presenting a case to the Grand Jury before a  
28 preliminary hearing is held. In support of his Motion, Defendant relies heavily on a justice  
court's inherent authority to suppress evidence *at the time of preliminary hearing* as  
acknowledged in Grace v. Eighth Judicial District Court, 132 Nev. Adv. Rep. 51, 375 P.3d  
1017 (2016).

In Grace, the defense made a motion at the time of the preliminary hearing to suppress  
narcotics found on the defendant's person at the time of her arrest because the State failed to

1 call the officer who initially arrested the defendant pursuant to a probation warrant. Id. at 51,  
2 375 P.3d at 1019-20. Instead, the State called only the officer who searched the defendant after  
3 the arresting officer had transferred custody of the defendant, who testified he had found the  
4 narcotics in defendant's possession after conducting a search incident to arrest. Id. At the time  
5 of the preliminary hearing, the defense moved to suppress the narcotics, arguing the State had  
6 failed to establish a proper and valid arrest, and therefore, the search incident to arrest was  
7 invalid. Id. The justice court agreed and ordered the evidence suppressed and the case  
8 dismissed. Id. The State appealed the justice court's order, arguing the justice court was a court  
9 of limited jurisdiction, and therefore lacked the authority to rule on a motion to suppress at the  
10 time of the preliminary hearing. Id. The district court agreed and remanded the case back to  
11 the justice court for a preliminary hearing. Id.

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

1 seeking a grand jury indictment in the same case. The Grace decision simply clarifies that at  
2 the time of a preliminary hearing, the justice court has the limited and inherent authority to  
3 hear motions to suppress in relation to the evidence presented at the time of the preliminary  
4 hearing.

5 Defendant's reliance on Grace for the proposition that the State was forever bound by  
6 the justice court's legal decision on a motion to suppress when no preliminary hearing  
7 occurred is misplaced. Indeed, the Supreme Court has ruled a legal ruling by the justice court  
8 does not render a subsequent grand jury presentation impermissible. See, Sheriff v.  
9 Harrington, 108 Nev. 869, 840 P.2d 588 (1992). In Harrington, the defendant was facing  
10 charges of felony driving under the influence ("DUI") during the course of a preliminary  
11 hearing. Id. at 870-71, 840 P.2d at 588. At the preliminary hearing, the justice court ruled the  
12 defendant's prior convictions for DUI were constitutionally invalid, and therefore, the State  
13 had failed to prove a necessary element for the felony DUI charge. Id. The justice court then  
14 dismissed the case at the preliminary hearing. Id. at 870-71, 840 P.2d at 588-89.

15 Following the dismissal, the State presented the case – including the same precluded  
16 prior convictions – to the grand jury, who returned an indictment for the felony DUI charge.  
17 Id. at 871, 840 P.2d at 588-89. The defendant filed a petition for writ of habeas corpus, arguing  
18 the State violated its duty to preset exculpatory evidence to the grand jury by failing to disclose  
19 the justice court had ruled the prior conviction constitutionally infirm. Id. The district court  
20 granted the petition, and the State appealed. Id. In ruling that the State did not violate its ethical  
21 obligations when presenting the case to the grand jury, the Supreme Court stated a legal ruling  
22 by a justice of the peace is "not evidence regarding the charge, but was rather an opinion on a  
23 legal issue." Id. at 871, 840 P.2d at 589.

24 Similarly, there is nothing that prevents the State from seeking an indictment even when  
25 a preliminary hearing is still pending, or has been bifurcated, or even when a complaint – for  
26 any number of reasons – is dismissed. NRS 173.015 specifically states "the first pleading on  
27 the part of the state is the indictment or information." NRS 173.015 (2017). This statute makes  
28 no distinction between when or even if the State must choose one procedure over the other.

1 See, State v. Maes, 93 Nev. 49, 559 P.2d 1184 (1977). The Nevada Supreme Court has held  
2 the State may choose one or the other, and, may seek an indictment, even while an information  
3 may still be pending, or where a preliminary hearing has only partially taken place. Id.

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

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

17 In reviewing NRS 173.015, the Nevada Supreme Court held the State had not engaged  
18 in “contemptible procedure” by presenting the case to the grand jury, and furthermore, had no  
19 duty to follow the arguments of counsel before the justice court in electing to pursue either a  
20 preliminary hearing or an indictment from the grand jury even if the arguments of counsel  
21 indicated some of the evidence may be deemed inadmissible at a preliminary hearing. Id. at  
22 51, 559 P.2d at 1185. Specifically, the Court held the State was not required to pursue one  
23 process simply because it began first, but rather, it was up to the State to elect how to proceed  
24 in charging a defendant, even if it means the State pursues an indictment while a preliminary  
25 hearing began, but had not yet finished. Id.

26 Here, the State did not engage in prosecutorial misconduct simply because the  
27 prosecutor elected to present the case to the Grand Jury prior to a preliminary hearing being  
28 held. As with Maes, the State was well within its rights to proceed in charging Defendant



1 however it deemed appropriate in accordance with NRS 173.015. Further the State did not  
2 engage in prosecutorial misconduct by presenting evidence that the Justice Court deemed  
3 inadmissible for the purposes of a preliminary hearing, similar to Harrington. The Justice  
4 Court's ruling was a legal opinion regarding the evidence at the time of the preliminary  
5 hearing. While Defendant argues this was a binding decision on all future proceedings, that  
6 position is inconsistent with the progeny of case law granting the State the authority to pursue  
7 indictment even in cases where the justice court *dismisses* the case for lack of probable cause.  
8 See NRS 172.145 (2017) (providing process for the reading of a statement to the grand jury  
9 specifically in cases where the same case is presented to a justice court and dismissed for lack  
10 of probable cause).

11 Moreover, Defendant's position regarding the binding nature of the justice court's legal  
12 opinion on a motion is untenable in the nature of criminal proceedings generally and  
13 inconsistent with Nevada law. For example, during a preliminary hearing, the parties often  
14 object to testimony for a number of evidentiary reasons – hearsay, impermissible character  
15 evidence, lack of foundation – yet, the same testimony, questions, and even objections may be  
16 raised in a subsequent motion, or at the time of trial without argument that the justice court's  
17 evidentiary ruling was or is binding on the district court at the time of trial. Similarly, for  
18 motions to suppress that are denied by the justice courts, the defense is free to file the same  
19 exact motion with the trial court. The plain language of NRS 189.120 does not provide that a  
20 determination of the justice court on a motion to suppress is mandatory, binding authority for  
21 the district court. Nor does the statute prohibit the District Court from hearing the same motion.  
22 Indeed, District Courts have original jurisdiction to decide issues of admissibility at the time  
23 of trial, including ruling on motions to suppress. It is inconsistent to assume because a justice  
24 court, for example, denied a motion to suppress at the time of a preliminary hearing that the  
25 defense would be absolutely barred as perhaps law of the case, from raising the issue of  
26 suppression before the trial court. If it were the case that the district courts were inherently  
27 bound by the rulings of the justice court, NRS 172.145 would be superfluous, and the district  
28 court would be prohibited from re-addressing any issue raised on and ruled on at the justice

1 court level – presumably including findings of probable cause, decisions of bail, objections at  
2 preliminary hearing, and the like.

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

15 Defendant argues the State’s decision to present the probable cause hearing to the grand  
16 jury rather than in the form of a preliminary hearing is tantamount to cases wherein prosecutors  
17 are repeatedly admonished or ordered by the trial court not to engage in certain conduct, yet  
18 continue to do so, irrespective of the trial court’s order. See, Motion, p. 12-13. In support of  
19 this, Defendant cites to McGuire v. State, 100 Nev. 153, 677 P.2d 1060 (1984), and argues  
20 that the circumstances presented in McGuire mirror the State’s presentation of evidence before  
21 the grand jury in this case. McGuire is acutely distinguishable from the instant case. In  
22 McGuire, the Supreme Court felt it necessary given the three (3) pending appeals involving  
23 the same indiscretions committed by the same prosecutor during three (3) separate trials  
24 warranted a published opinion admonishing him of his misconduct. Id. at 154-56, 677 P.2d at  
25 1062-63. The prosecutor in these trials attempted to elicit details of prior robbery convictions  
26 from the defendant, expressly told the jury they could consider the defendant’s prior  
27 convictions as evidence of the instant crime, referred to the defendant as an “Aryan Warrior”,  
28 argued to the jury about whether the defendant was the “type” of person they should let out on

1 the streets, commented on the defendant's invocation of his right to remain silent, made  
2 disparaging comments about defense counsel's ability as an attorney to the jury, referred to  
3 the cost of taxpayer dollars to bring in certain witnesses, argued the jury should consider their  
4 own daughters in determining the guilt of a defendant facing rape charges, told the jury if they  
5 found the defendant not guilty he never wanted to "hear [them] complain," and argued to the  
6 jury he would not present a case if the defendant was not truly guilty. Id. at 156-159, 677 P.2d  
7 at 1063-65. In both cases, the trial judge admonished the prosecutor at the time of trial,  
8 however, the prosecutor continued to engage in misconduct. Id.

9 The instant case is inapposite from McGuire. The trial court's order, as discussed supra,  
10 was a legal conclusion related to the preliminary hearing, and was not an order admonishing  
11 the prosecutor at the time of trial. Here, the parties were not before a jury at the time of trial,  
12 and unlike the facts here, the actions of the prosecutor in McGuire were specifically prohibited  
13 by statute, had previously been addressed to the prosecutor in prior cases, and prohibited by  
14 previous, multiple Nevada Supreme Court decisions. In this case, there is no statute or case  
15 law prohibiting the State from seeking an indictment following a legal opinion of the justice  
16 court, and in fact, as argued supra, the State is not bound at the grand jury from presenting  
17 evidence irrespective of a legal opinion from the justice court. See Harrington, 108 Nev. at  
18 871, 840 P.2d at 589. This case is not a case of blatant, rampant misconduct on part of the  
19 State or a willful and deliberate disregard for court orders. As such, it does not constitute  
20 prosecutorial misconduct, and cannot warrant dismissal of the Indictment.

21 **B. The State Did Not Engage In Prosecutorial Misconduct By Discussing The**  
22 **Shooting At the Grand Jury.**

23 Defendant next argues the State engaged in impermissible misconduct because the  
24 prosecutor referenced the shooting during the grand jury testimony. While it is true NRS  
25 48.045 prohibits the admission of character evidence or evidence of other acts at the time of  
26 trial to prove conformity therewith, there are nevertheless exceptions to that general rule. The  
27 State is entitled to present the complete story surrounding the facts and circumstances of a case  
28 in order to provide the grand jury with the complete story. The general rule of law pertaining

1 to the "complete story" or *res gestae* was set forth by the Nevada Supreme Court in Dutton v.  
2 State, 94 Nev. 461, 581 P.2d 856 (1978). There the Court stated:

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

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

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

18 The Nevada Supreme Court reaffirmed the doctrine in State v. Shade, 111 Nev. 887,  
19 900 P.2d 327 (1995). Shade was charged with possession of controlled substances:  
20 Methamphetamine and Cocaine. Id. The drugs were found by officers pursuant to a vehicle  
21 stop, following an investigation involving the purchase/sale of a quantity of heroin by  
22 defendant Shade and his son-in-law. Id. The trial court prohibited the prosecution from  
23 revealing to the trial jury evidence pertaining to the uncharged heroin transaction. Id. The  
24 Nevada Supreme Court in overruling the trial court stated:

25 "If the agents are not allowed to testify regarding their surveillance,  
26 the State cannot inform the jury how Shade obtained the drugs or that  
27 officers suspected Shade was participating as a lookout during the  
28 purchase of the drugs that were ultimately found in the car he was  
29 driving. *Without such testimony, the State cannot effectively  
30 prosecute the transportation of illegal narcotics charges pending  
31 against Shade.*

32 . . . The charges at issue were contemporaneous to the heroin  
33 purchase, arose out of the same transaction, and involved the same  
34 participants. *The excluded evidence was inextricably intertwined with  
35 the charged crimes and completed a story leading up to Shade's*

1 *ultimate arrest.* We conclude that the State's witnesses could not  
2 adequately testify about the methamphetamine and cocaine charges  
3 without some reference to the heroin sale and the accompanying  
surveillance activity. The district court, thus abused its discretion by  
granting the motion in limine. The district court should have admitted  
the evidence and issued a cautionary instruction to the jury.

4 (emphasis added).

5 It is important to note that the Shade court relied upon Allan v. State, 92 Nev. 318  
6 (1976), a case where the defendant complained that the trial court erred by admitting evidence  
7 of uncharged lewd behavior in a Sexual Assault on Minor case. The Allan court explained the  
8 complete story doctrine:  
9

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

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

16 The testimony regarding the additional acts of fellatio, as well as the  
17 act of masturbation, was admissible as part of the *res gestae* of the  
18 crime charged. Testimony regarding such acts is admissible because  
19 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*.

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

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

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

1 Id. at 9.

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

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

16           Additionally, the description of Brackeen’s pilfering was admissible  
17 as an integral part of the Millers’ narration of the events leading up to  
18 Brackeen’s removal of the personal property from the vehicles in the  
19 parking lot. We have adopted the rule that the State is entitled to  
20 present a full and accurate account of the circumstances surrounding  
21 the commission of a crime, and such evidence is admissible even if it  
implicates the accused in the commission of other crimes for which  
he has not been charged.

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

24 Here, the State did not present impermissible character evidence to the grand jury, but  
25 rather, presented such facts as part of the res gestae of the instant case. The three complained  
26 of instances wherein the State discussed the shooting with Detective Mauch served to  
27 demonstrate to the grand jury why the detectives were interviewing the defendant, and why  
28 they asked specifically about whether he had a firearm in his possession. Notably, the State

1 never once advised the Grand Jury of the facts surrounding the murder, or even the fact that  
2 the Defendant was charged with murder, or even that the victim died as a result of a gunshot  
3 wound inflicted by the Defendant. Rather, the State merely elicited very limited testimony to  
4 demonstrate the circumstances for why the detectives had spoken with Defendant, and why  
5 they were asking questions about his individual possession of the firearm. Because this  
6 evidence was elicited as part of the complete story of the case and to give context to the facts  
7 at hand, the State did not violate NRS 48.045.

8 This argument, as discussed above, is without merit. However, even if this Court finds  
9 the evidence admitted at the Grand Jury was improper, the appropriate remedy is not, contrary  
10 to Defendants' position, to dismiss the Indictment in its entirety. Rather, the remedy is to  
11 review the evidence without regard to any improper evidence and determine whether there is  
12 sufficient probable cause. Robertson v. State, 84 Nev. 559, 445 P.2d 352 (1968).

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

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

23 Furthermore, as discussed above, in Sheriff v. Keeney, 106 Nev. 213, 791 P.2d 55  
24 (1990), the Nevada Supreme Court specifically stated, "[p]reliminarily, we observe that  
25 dismissal of an indictment on the basis of governmental misconduct is an extreme sanction  
26 which should be infrequently utilized." Id. at 216, 791 P.2d at 57.

27 The evidence presented to the Grand Jury in this case far exceeds the State's burden to  
28 present "slight or marginal" evidence that Defendants committed the crime alleged in the

1 Indictment. Here, Defendant readily admitted he had a firearm in his possession. He also  
2 advised detectives where he was residing, and where the firearm could be located, even giving  
3 consent for the search of the apartment. Thus, even if this Court finds the reference to the  
4 shooting was improper, when striking that evidence and disregarding it, the State has  
5 nevertheless met its burden of establishing probable cause for the crime charged.

6 **CONCLUSION**

7 The instant Motion to Dismiss is procedurally improper, and as a result, should be  
8 denied in its entirety. Even if this Court declines to dismiss the instant Motion for its  
9 procedural defects, the Motion should nevertheless be denied because the State did not engage  
10 in prosecutorial misconduct. For these and the foregoing reasons, the State requests this Court  
11 to DENY Defendant's Motion to Dismiss For Prosecutorial Misconduct in its entirety.

12 DATED this 20<sup>th</sup> day of September, 2018.

13 Respectfully submitted,

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

17 BY   
18 SARAH H. OVERLY  
19 Deputy District Attorney  
20 Nevada Bar #12842

21 **CERTIFICATE OF SERVICE**

22 I certify that on the 20<sup>th</sup> day of September, 2018, I mailed a copy of the foregoing  
23 Order to:

24 ADRIAN M. LOBO, ESQ.  
25 [adrianlobo@lobolaw.net](mailto:adrianlobo@lobolaw.net)

26 BY   
27 M. HERNANDEZ  
28 Secretary for the District Attorney's Office

SEO/mah/L1





1 **RIS**

2 ADRIAN M. LOBO, ESQ.  
3 Nevada Bar # 10919  
4 400 S. 4th Street, Ste. 500  
5 Las Vegas, Nevada 89101  
6 702.290.8998  
7 702.442.2626 (fax)  
8 adrianlobo@lobolaw.net  
9 Attorney for the Defendant

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12  
13 GATHRITE, DEANDRE aka GATHRITE,  
14 DEANDRE TERELLE, ID# 2592432

15 Defendant.

Case No.: C-18-334135-1

Dept. No.: III

16 **REPLY IN SUPPORT OF MOTION TO DISMISS FOR PROSECUTORIAL**  
17 **MISCONDUCT**

18 COMES NOW, the Defendant, DEANDRE GATHRITE aka DEANDRE TERELLE  
19 GATHRITE, by and through the undersigned counsel of record, Adrian M. Lobo, Esq. and hereby  
20 files this Reply in Support of the Motion to Dismiss for Prosecutorial Misconduct.

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

23 **ADRIAN M. LOBO, ESQ.**

24 By: /s/ Adrian M. Lobo  
25 Adrian M. Lobo, Esq. (#10919)  
26 400 S. Fourth St., Ste. 500  
27 Las Vegas, NV 89101  
28 702.290.8998  
*Attorney for Defendant*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Additional Facts Pertinent to This Reply**

3 Rather than produce *any* alternative evidence to support its continued pursuit of a  
4 conviction against the Defendant, the State instead doubled down on the firearm in question- a  
5 piece of evidence that has already been ordered suppressed. Specifically, the State sought a DNA  
6 analysis of the firearm in order, presumably, to establish possession by the Defendant. This DNA  
7 analysis was performed on July 26, 2018—almost a full month after the dismissal of the justice  
8 court case—and completed on September 19, 2018. *See Exhibit A-1 – DNA Report, Sept. 19, 2018.*

9 No appeal of the justice court’s ruling seeking admission of the firearm was, or has been,  
10 filed. The State therefore requested DNA testing on a suppressed piece of evidence.

11 **2. Legal Argument**

12 The State’s Opposition is unavailing for several reasons- all of which shall be explored  
13 below. For the following reasons, dismissal of the case against the Defendant is the most  
14 appropriate remedy given the State’s clear misconduct, as evidenced by the record in this case.

15 **A. *The Motion to Dismiss is Proper***

16 The State argues that the instant Motion is “seeking a remedy provided by way of a pre-  
17 trial petition for writ of habeas corpus ... based on alleged lack of probable cause or otherwise  
18 challenging the court’s right or jurisdiction to proceed to the trial of a criminal charge.” *State’s*  
19 *Opp.* at 4 (citing NRS 34.710(1)(a)). This is an interesting take, since the Motion does not  
20 challenge either probable cause, or this Court’s jurisdiction; the Motion alleges that the State has  
21 broken a number of its ethical responsibilities as a prosecutor. The Motion is exactly that- a motion  
22 to dismiss based on reasons other than probable cause or this Court’s jurisdiction.<sup>1</sup> The Motion is  
23 in no way styled as a petition for anything, but is a document moving this Court to consider the  
24 legal argument presented and to render a decision.

25 \_\_\_\_\_  
26  
27 <sup>1</sup> Indeed, filing a motion before this Court is relying upon the court’s jurisdiction to dismiss the  
28 case.

1 This is permissible pursuant to the Rule of Practice for the Eighth Judicial District Court  
2 (EDCR). Under Rule 3.20—appropriately titled “Motions”—there are no restrictions on the types  
3 of motions that may be brought before the district court, provided the procedural requirements of  
4 the Rule are met. As the Motion complies with Rule 3.20, there is no reason to dismiss it outright,  
5 as the State argues.

6 Lastly to this point, NRS 174.095 states that “Any defense or objection which is capable  
7 of determination without the trial of the general issue may be raised before trial by motion. The  
8 prosecutorial misconduct evident in this case is capable of determination without the presumptive  
9 trial on a weapons charge, therefore the underlying Motion is properly before this Court.  
10 Furthermore, NRS 174.105(1) mandates that a challenge of prosecutorial misconduct be raised by  
11 motion, and not as part of a Petition for a Writ of Habeas Corpus:

12 Defenses and objections on defects in the institution of the prosecution,  
13 other than insufficiency of the evidence to warrant an indictment, or in the  
14 indictment, information or complaint, other than that it fails to show  
15 jurisdiction in the court or to charge an offense, may be raised only by  
16 motion before trial.

16 The underlying Motion is properly before this Court, and properly distinct from the  
17 contemporaneous Petition for a Writ of Habeas Corpus.

18 *B. The State’s Conduct “Unfairly Manipulated or Invaded the Independent Province of the*  
19 *Grand Jury”*

20 The State cites case law more appropriate in a defense motion (such as the instant Motion),  
21 to wit:

22 “To support an allegation of prosecutorial misconduct regarding a Grand  
23 Jury, there must be a finding that government conduct ‘unfairly manipulated  
24 or invaded the independent province of the grand jury.’” *State’s Opp.* at 5  
(citing *Sheriff v. Keeney*, 106 Nev. 213, 216, 791 P.2d 55, 57 (1990);

25 “Dismissal with prejudice is warranted when the evidence against a  
26 defendant is irrevocably tainted or the defendant’s case on the merits is  
27 prejudiced to the extent that ‘notions of due process and fundamental  
28 fairness would preclude reindictment.’” *State’s Opp.* at 5-6 (citing *State v.*  
*Babayan*, 106 Nev. 155, 171, 787 P.2d 805, 817 (1990).

1 In this case, both of the State's own scenarios are present. First, the State unfairly  
2 manipulated *and* invaded the independent province of the grand jury in two ways. First, the State  
3 ignored defense counsel's request to be informed of the date and time of the proceedings, as set  
4 forth in the underlying Motion. This denied to Defendant the opportunity to appear if he chose; to  
5 provide to the State exculpatory evidence for inclusion and presentation to the grand jury; and/or  
6 otherwise to seek further relief from the court. The only notice the Defendant had was when he  
7 was arrested on the warrant, after the proceedings had already occurred.

8 Second, the State failed to advise the grand jury of the lower court's disposition of the very  
9 same evidence it presented to the grand jurors in seeking and securing an indictment. Not only did  
10 this violate the statutory mandate that a grand jury be presented with only legal evidence (NRS  
11 172.135(2)), it improperly led the grand jury to return an indictment. Where the grand jury is  
12 concerned, its role is not to question the legality of the evidence (arguably, NRS 172.135(2) exists  
13 to assure grand jurors that the evidence presented for its consideration is legal and admissible) but  
14 to determine if the evidence so presented is sufficient for a probable cause determination in support  
15 of an indictment.

16 *C. This Is Not a Matter of the State Merely Choosing One Vehicle of Prosecution Over*  
17 *Another*

18 The State mistakenly presumes that only the preliminary hearing is controlling in the lower  
19 court; that anything preceding or not directly occurring at the preliminary hearing somehow does  
20 not count when it comes to presenting evidence to the grand jury. This undermines the very system  
21 of the justice court and the bind-over process in that if a prosecutor is not bound by a justice court's  
22 determinations on substantive issues such as *the admissibility of the State's evidence*, then the  
23 grand jury will be merely another means to a prosecutorial end as it has been in this case.

24 The State's position is ridiculous because the State is arguing against both logic and  
25 common sense. The State's argument is that because the preliminary hearing never took place, the  
26 justice court's order is ineffective as to the admissibility of evidence before a grand jury:  
27 "Defendant argues the State was somehow bound by the Justice Court's decision when presenting  
28

1 evidence to the Grand Jury, yet, cites no statute or case law that expressly prohibits the State from  
2 alternatively presenting a case to the Grand Jury before a preliminary hearing is held.” *State’s Opp.*  
3 at 6. To adopt the State’s reasoning ignores three very important, very basic concepts of our justice  
4 system.

5 First, if a justice court rules in a defendant’s favor on a *suppression* issue and *suppresses*  
6 *the State’s evidence*, this could very well obviate the need for a preliminary hearing. That is  
7 precisely what occurred in this case- the State’s evidence was suppressed and the State was forced  
8 to dismiss its Complaint against the Defendant prior to (without holding) a preliminary hearing.  
9 Should the State then be permitted to proceed to a grand jury, with no mention of its woes in the  
10 lower court and essentially have a second bite at the apple just because the weakness of its case  
11 throttled the prosecutorial exercise in its infancy and before the apparently critical stage of a  
12 preliminary hearing? What, then, is the point of having an impartial magistrate in a justice court  
13 setting to weigh evidentiary issues and render such decisions?

14 Second, the State could purposefully use this supposed loophole as a way of harassing or  
15 otherwise pursuing questionable prosecution (for a multitude of reasons). In this case, the evidence  
16 was suppressed at the justice court level leaving the State to find some other evidence it could use  
17 in an effort to have the Defendant bound over to district court. Coming up empty (the State made  
18 a gesture of calling Raymond Moore, who, inexplicably, did not appear to testify) the State was  
19 forced to dismiss its Complaint for a lack of evidence upon which to proceed. Rather than accept  
20 this as a poorly supported and insufficiently presented case (owing to the evidence suppression),  
21 the State strategically dismissed and instead went to a grand jury where it presented all of the  
22 previously suppressed evidence as the universe of proof in this case and with no mention of its  
23 adverse treatment at the justice court level.

24 Thirds, the issue of admissibility is not exclusive of the grand jury procedure. In this case,  
25 the State was given a prognostication as to its fortunes at trial: the evidence is inadmissible.  
26 Bypassing this ruling and submitting the matter to a grand jury, in a vacuum, is so much “kicking  
27 the can down the road” where the later proceedings at the district court level would be presented

1 with the same matter of admissibility. Sure, a grand jury (not presented with the existence and  
2 outcome of the evidentiary issues) would indict (as it often does), but a similarly situated defendant  
3 is going to move immediately for the suppression of evidence, as was done in the justice court,  
4 and will cite for the district court the prior record and order of suppression. In other words, the  
5 State is wasting time, judicial resources, and taxpayer dollars.

6 The grand jury indicted on the basis of evidence that had already been held *by a judge* to  
7 be inadmissible. To argue that this is not binding on a prosecutor ignores the case law and statutory  
8 provisions cited to in the underlying Motion (despite the State's claim to the contrary). In the  
9 interests of being thorough, however, NRS 177.015 is informative on this point. According to that  
10 statute, the proper remedy for the State when faced with an order suppressing the whole of its  
11 evidence was to appeal to the district court. *NRS 177.015(1)(a)*. To argue that the State can merely  
12 dismiss its complaint against a defendant and then seek a more favorable forum elsewhere to evade  
13 the inadmissibility of its evidence ignores common sense and sets an unhealthy precedent.

14 The State's Opposition attempts to frame everything as a decision between whether to  
15 pursue an information or an indictment: "[NRS 173.015] makes no distinction between when or  
16 even if the State must choose one procedure over the other." *State's Opp.* at 8. Again, this ignores  
17 the core controversy in this matter- the statutory mandate that only *legal* evidence be presented to  
18 the grand jury. Obviously this means that the State must be on the "honor system" in presenting  
19 evidence to a grand jury, in that the grand jury's function is not to determine the legality of the  
20 evidence presented. This whole duty-based system is informed by evidentiary determinations-  
21 when a court of competent jurisdiction (the State so acknowledges that a justice court has the  
22 authority to make evidentiary rulings) has ruled evidence inadmissible, this ruling *must* be  
23 respected and such evidence necessarily must be precluded from presentation to the grand jurors.

24 The State again misstates the issue in its reliance on *State v. Maes*, 93 Nev. 49, 559 P.2d  
25 1184 (1977). In the *Maes* case, the core issue was whether the State was restricted only to an  
26 information *or* an indictment, as indicated in the *Maes* court's holding: "There can be no  
27 exclusivity of one process over the other simply because it was instituted first." 93 Nev. at 51, 559

1 P.2d at 1185. Most tellingly, and fatal to the State’s argument here, the *Maes* court went on to  
2 “uphold the validity of this indictment *subject only to claims of prosecutorial abuse.*” *Id.* (emphasis  
3 added).

4 What the State has conveniently left out of its hasty generalization of the *Maes* case is the  
5 most distinguishing facet of the holding that ultimately sets it apart from this case: “Defense  
6 counsel chose to make in open court and within the hearing of the prosecution certain  
7 representations concerning defense strategy which it is contended prompted the indictment.” *Id.*  
8 In other words, the State is attempting to substitute the courtroom banter of *Maes* for the formal,  
9 noticed, argued, and decided *evidentiary* issue in this case. Here, defense counsel did not merely  
10 expound on the weaknesses of the State’s case in open forum and within earshot of the prosecutor;  
11 counsel filed a motion, tendered argument, and was granted a favorable opinion as a result that  
12 suppressed the State’s evidence.

13 And this order of the justice court was no mere “opinion,” as the State argues. *State’s Opp.*  
14 at 8. In support of this proposition, the State cites to *Sheriff v. Harrington*, 108 Nev. 869, 840 P.2d  
15 588 (1992). The *Harrington* case deals with whether the lower court’s *ruling itself* should have  
16 been presented to the grand jury as exculpatory evidence: “Specifically, Harrington claimed that  
17 the state should have presented to the grand jury the fact that in the preliminary hearing, the justice  
18 of the peace determined that Harrington’s 1990 DUI conviction was constitutionally infirm for  
19 enhancement purposes.” 108 Nev. at 871, 840 P.2d at 589.

20 What the *Harrington* court was ruling on was whether or not the justice of the peace’s  
21 decision not to allow a felony DUI charge was in and of itself exculpatory evidence. Whether or  
22 not the defendant’s prior DUI conviction was sufficient to support the felony DUI charge is not  
23 exculpatory—it does not “explain away the charge”—and therefore the State’s reliance on  
24 *Harrington* is entirely misplaced. The *Harrington* court’s classification of the lower court’s ruling  
25 as “an opinion” is not meant to diminish the effect of that opinion, but rather to *distinguish* it on  
26 the important point of whether the lower court’s decision was, in and of itself, exculpatory  
27 evidence. Indeed, any order by a court at *any* level is “a legal opinion”—the critical distinction is

1 what force and effect the opinion has. In *Harrington*, the court held that such an opinion did not  
2 fill the capacity of exculpatory evidence- a very limited holding indeed.

3 Here, the Defendant is not arguing that the justice court's suppression of the State's  
4 evidence is in itself exculpatory (or even that it should be), but instead the Defendant is arguing  
5 that the order rendered the evidence inadmissible for subsequent purposes, regardless of the forum  
6 (the grand jury, in this case). While the justice court's suppression of evidence is not itself  
7 exculpatory, it *is* dispositive (the State was forced to dismiss its Complaint), that decision should  
8 have been respected going forward. Otherwise the appropriate procedure would have been to  
9 pursue an appeal of that decision in order for the State to redeem its evidence.

10 Instead, the State has moved the proceedings to a new venue, with a new body making a  
11 probable cause determination, and attempted to hide behind an improperly applied discretion to do  
12 so. Nevertheless, the State has ignored its obligation to present "none but legal evidence" to a  
13 grand jury, and has purposefully, intentionally, and willfully presented inadmissible (not legal)  
14 evidence in its ongoing crusade against the Defendant.

15 *D. The State Ignores the Proper Procedure(s)*

16 The State's own questionable conduct in this case—justice court ruling aside—is itself  
17 improper conduct of a prosecutor. "A prosecutor must be prepared to present his case at the time  
18 scheduled or show 'good cause' for his inability to do so." *Sheriff v. Terpstra*, 111 Nev. 860, 861,  
19 899 P.2d 548, 549 (1995). There is no presumption that good cause exists. *Joey E., a Minor v.*  
20 *State*, 113 Nev. 621, 622, 939 P.2d 1056, 1057 (1997) (citation omitted). The prosecution bears  
21 the burden of proving a legal excuse where it has caused the dismissal of an earlier case. *Sheriff v.*  
22 *Marcus*, 116 Nev. 188, 191, 995 P.2d 1016, 1018 (2000). Furthermore whether, based on the facts  
23 not in dispute, the State has demonstrated good cause and met the constitutional standard of  
24 reasonable diligence in procuring witnesses for trial, is a question of law to be determined upon a  
25 consideration of the totality of circumstances. *Hernandez v. State*, 124 Nev. \_\_\_, \_\_\_, 188 P.3d  
26 1126, 1132-34 (2008) (applying good cause analysis applicable for continuances to the issue of  
27 good cause to admit preliminary hearing testimony).



It is well established that “[a] new proceeding for the same offense (whether by complaint, indictment or information) is not allowable when the original proceeding has been dismissed due to the willful failure of the prosecutor to comply with important procedural rules.” *Maes v. Sheriff*, 86 Nev. 317, 319, 468 P.2d 332, 333 (1970) (even though NRS 178.562(2), addressing voluntary dismissals, may not have been intended to bar a subsequent criminal complaint under such circumstances, basic fairness does). This rule applies “equally to situations where there has been conscious indifference to rules of procedure affecting a defendant’s rights,” and where the prosecutor acted intentionally or in bad faith to violate procedural rules. The State’s representatives do not have “an unrestricted right to blunder interminably, which they may exercise by repeated refiling of the same charges, limited only by the applicable statute of limitations.” *State v. Austin*, 87 Nev. 81, 83, 482 P.2d 284, 285 (1971). “[O]ur criminal justice system can ill afford to bestow on prosecutors... largesse... for which no cause is shown.” *McNair v. Sheriff*, 89 Nev. 434, 436, 514 P.2d 1175, 1176 (1973).

The State acts with conscious indifference and thereby waives its right to proceed anew when it fails to take advantage of procedures (such as seeking a continuance) to avoid an involuntary dismissal, though it has the opportunity to do so. For example, in *Maes* the State was not prepared to go forward at a preliminary hearing but had the opportunity to seek a continuance by making a proper showing of good cause and willfully failed to utilize it. Instead the State allowed the case to be dismissed on a defense motion. The Nevada Supreme Court determined that the State could not later file a second complaint charging identical offenses. *Id.* at 319-20, 468 P.2d at 333. Similarly, in *McNair*, 89 Nev. at 436-41, 514 P.2d at 1178-79, the Nevada Supreme Court held that where a justice court dismissed a complaint after the prosecutor, who was unprepared, failed to support an oral request for continuance with a showing of good cause, the subsequent indictment by the State was barred. In doing so, the Court noted that to condone the prosecutor's conduct would allow prosecutors to avoid the rules designed to prevent delay and do nothing, resulting in forced dismissals with no consequence. *Id.* See also *Salas v. Sheriff*, 91 Nev. 802, 543 P.2d 1343 (1975) (holding that defendant's habeas petition should have been granted

1 because the justice court erred in allowing a continuance where the necessary witness had not been  
2 subpoenaed and the prosecutor offered no legal reason for his failure to arrange for the appearance  
3 of a necessary witness or to be prepared to go forward with the preliminary hearing); *Ormound v.*  
4 *Sheriff*, 95 Nev. 173, 591 P.2d 258 (1979) (willful failure found where prosecutor failed to utilize  
5 uniform act to obtain attendance of non-resident witness at the preliminary hearing); overruled in  
6 part by *Terpstra*, 111 Nev. at 863, 899 P.2d at 550 (overruling Ormound's requirement that the  
7 Uniform Act must be utilized before good cause can be found, and concluding that failure to use  
8 legal means to secure a witness's testimony is not necessarily a dispositive factor in analyzing  
9 whether a prosecutor has been diligent, but it is a significant one).

10 Here, the State's Complaint in justice court was not "involuntarily" dismissed as with the  
11 foregoing cases, but it very likely could have been. As set forth in the underlying Motion, the  
12 State's evidentiary universe was suppressed, and the justice court admonished the State that it  
13 would need to present other evidence to support a probable cause determination. On the  
14 preliminary hearing date, June 8, 2018, the State sought a continuance and asserted that good cause  
15 existed to continue the matter because Raymond Moore had a prescheduled court date in San  
16 Bernardino, California. See *Exhibit B-1- State's Motion to Continue* at 3. At the following  
17 preliminary hearing date, June 29, 2018, the State told the court that the District Attorney's office  
18 had contact with Moore on June 25 and with an unknown individual on June 26 who told them  
19 that Moore would not be present in court because he was in a car accident and comatosed. See  
20 *Exhibit C-1 Reporter's Transcript of proceedings June 29, 2018* at 3. Upon the failure of the  
21 State's witness to appear, the State moved to have the Complaint dismissed.<sup>2</sup>

22 Based on the foregoing case law, this would have been sufficient to warrant dismissal of  
23 the State's case (although the State had its own case dismissed). Under these facts—all similar to

---

24  
25  
26 <sup>2</sup> The defense requested that this dismissal be with prejudice because court records revealed  
27 Raymond Moore, in fact, did not have a court date in California on June 8, 2018. See *Exhibit D-*  
28 *1 San Bernardino County Docket for Case FSB18001710*.

1 the facts in the cited jurisprudence—the State would be barred from bringing a new charging  
2 instrument alleging the same offense(s). The State did that in this case because it sought a different  
3 venue—the grand jury—and used suppressed evidence while *again* failing to produce the witness  
4 it claimed to have in the lower court proceedings (either by design or because the witness again  
5 failed to show). This is precisely the type of interminable blundering warned against in the case  
6 law- that the State is seeking the proper venue whereby no one will be able to question the evidence  
7 it presents (despite a prior ruling that the evidence was inadmissible), and its own procedural  
8 missteps (an unreliable witness) are resolved by simply moving to a venue wherein the witness  
9 was not required in light of the other evidence put forth.

10 *E. The State’s Policy Arguments Ignore Existing Procedures*

11 The State’s final set of arguments center on policy and procedure:

12 If it were the case that the district courts were inherently bound by the  
13 rulings of the justice court, NRS 172.145 would be superfluous, and the  
14 district court would be prohibited from re-addressing any issue raised on  
15 and ruled on at the justice court level—presumably including findings of  
16 probable cause, decisions of bail, objections at preliminary hearing, and the  
17 like.

18 *State’s Opp.* at 10-11.

19 This, of course, ignores the fact that for *every single one* of the State’s examples, there is a  
20 statutory scheme in place addressing exactly how to proceed in those situations. We shall take the  
21 examples one by one.

22 First, the State argues that a justice court order would bind the district court with regard to  
23 “findings of probable cause.” This ignores the very detailed procedure set forth with regard to  
24 petitions for a writ of habeas corpus (the State should be aware of this- it cites to the relevant  
25 statutes in its effort to paint the underlying Motion as being in violation of that statutory scheme).  
26 That such a procedure exists undermines the State’s claim of a slippery slope whereby justice  
27 courts control any subsequent challenges to probable cause determinations.

28 Second, the State argues that a justice court order would bind the district court with regard  
to “decisions of bail.” This ignores the very detailed procedure set forth in NRS chapter 178 for

1 the admission of defendants to bail, when bail is appropriate, conditions upon bail, bail during the  
2 pendency of appeals, bail hearings following justice court proceedings, factors to consider when  
3 granting bail, etc. These procedures, with a veritable library unto themselves of statutory  
4 provisions and jurisprudence, thoroughly undermine the State's concern that justice courts would  
5 bind the district courts from making bail determinations.

6 Third, the State argues that a justice court order would bind the district court with regard  
7 to "objections at preliminary hearing." This ignores NRS chapter 177, providing various means by  
8 which both the State and defendants in criminal actions may appeal both final and intermediate  
9 orders of a lower court. In addition, the State is ignoring the reality of jurisdiction here. The justice  
10 court proceedings exist to make probable cause determinations for bind-over to district court.  
11 Accordingly, the objections are made for the purposes of the probable cause determination, and  
12 thus subsequent bind-over necessarily means relitigating various issues before the district court as  
13 the quantum of proof and calculus of the analyses is changed due to the different ultimate end- for  
14 district court, trial and potential conviction.

15 To argue otherwise is not only disingenuous, but it ignores the very real history of this case.  
16 The State, not satisfied with its difficulties in obtaining a probable cause determination for bind-  
17 over, chose instead to move to a different venue but one in which the ultimate goal was still the  
18 same: a probable cause determination. Accordingly, the objections, arguments, motion, order, etc.  
19 from justice court *absolutely* should still apply in a grand jury hearing- a proposition supported by  
20 the heretofore cited cases and statutes (for example, the obligation to present only legal evidence).  
21 The State is here making a defective argument that this Court is somehow bound by the justice  
22 court's decision, which is not the Defendant's argument. Instead, the Defendant is arguing that the  
23 *State* was bound by the justice court's decision, and therefore should not have presented suppressed  
24 evidence to a different body (the grand jury) for the same purpose (a probable cause determination).

25 Ultimately, the State's argument on this point betrays its own impropriety. While it  
26 attempts to cite numerous examples (above) that would otherwise be beholden or somehow  
27 controlled by the justice court, it instead demonstrates its own failure to appreciate the numerous.

1 specific statutory schemes and other procedures put in place specifically to preserve those areas of  
2 law or otherwise to provide remedies from the justice court (such as an appeal to the district court-  
3 a remedy that the State did not elect here despite the statutory mandates). That these carve-outs  
4 exist only serves to demonstrate with clarity the State's ongoing failure to observe proper  
5 procedure, to the detriment of the Defendant.

6 *F. There Was No "Complete Story" or Res Gestae Excuse for Introducing Uncharged Bad*  
7 *Acts*

8 The State claims that its focused examination of Det. Mauch was part of an effort to present  
9 a complete story to the grand jurors, and therefore was not impermissible introduction of prior bad  
10 acts. *State's Opp.* at 15. This argument must give way to the plain meaning of the charge presented  
11 in the proposed indictment: possession of a firearm by a prohibited person. Ignoring, for a moment,  
12 the plain wording of that charge, we turn to the elements necessary to prove such a charge.

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

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

The grand jury could have made a probable cause determination on the mere possession of a firearm without additional, prejudicial information that tended to show the Defendant was connected to other crimes, was already under arrest on unrelated charges, and that the weapon had not only been fired recently, but that it had been fired by the Defendant as part of a homicide.<sup>3</sup> The State also claims that it presented this extraneous information in as limited a manner as possible: “Notably, the State never once advised the Grand Jury of the facts surrounding the murder, or even the fact that Defendant was charged with murder, or even that the victim died as a result of a gunshot wound inflicted by the Defendant.” *State’s Opp.* at 15-16. However, the transcript speaks for itself.

One of the witnesses, Det. DePalma, testified that is a homicide detective; that he was working in that capacity pursuant to this case; and that he was working the case alongside of the *other* detective-witness who testified before the grand jury.<sup>4</sup> It is not difficult to connect those dots and see that the “shooting” alluded to resulted in the death of the person shot. This was impermissible bad acts evidence, and propensity evidence, that tainted the grand jury proceedings.

## CONCLUSION

Based on the foregoing, the appropriate remedy is a dismissal of the Indictment. The prosecutor's misconduct in this case is both the sum of its parts, and determinable from any of those "parts" in isolation.

The prosecutor ignored numerous procedural requirements in seeking to charge the Defendant for whatever crime the State feels will stick regardless of the lower court's ruling and the patent defects in its case. The prosecutor presented inadmissible, and therefore not legal, evidence to the grand jury. The prosecutor improperly tainted the evidence against the Defendant

<sup>3</sup> The Defendant is not conceding to any of these allegations, but merely summarizing the witness's testimony for illustrative purposes.

<sup>4</sup> See underlying Motion, Ex. G at 16-17.

1 by introducing uncharged bad acts evidence and propensity evidence for a simple weapons charge.  
2 Lastly, the prosecutor's conduct in this case flies in the face of controlling case law and is nothing  
3 but an exercise in excess in terms of time, judicial economy, and taxpayer resources for both grand  
4 jury proceedings and DNA testing on a simple weapons charge.

5 Accordingly, the Defendant prays for relief by way of a dismissal of the Indictment against  
6 him.

7 DATED this 24<sup>th</sup> day of September, 2018.

8 **LOBO LAW PLLC**

9 By: /s/ Adrian M. Lobo  
10 Adrian M. Lobo, Esq. (#10919)  
11 400 S. Fourth St., Ste. 500  
12 Las Vegas, NV 89101  
13 702.290.8998  
14 *Attorney for Defendant*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7

8  
9  
10



# **EXHIBIT A-1**

<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b>  <b>Report of Examination</b>  <b>Biology/DNA Forensic Casework</b>		<b>Distribution Date:</b> September 19, 2018 <b>Agency:</b> LVMPD <b>Location:</b> Homicide & Sex Crimes Bureau <b>Primary Case #:</b> 180211-3549 <b>Incident:</b> Homicide <b>Requester:</b> Tate A Sanborn <b>Lab Case #:</b> 18-01476.5
<b>Subject(s):</b>	Deandre Gathrite (Suspect)	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description	Examination Summary
Item 13	016064 - 2	3	Swab from the revolver (grip, cylinder release and hammer)	
Item 14	016064 - 4	5	Reference Standard from Deandre Gathrite*	• Full male profile

\* Last name spelled differently than on the request

#### DNA Results and Conclusions:

Lab items 13 and 14 were subjected to PCR amplification at the following STR genetic loci: TH01, D3S1358, vWA, D21S11, TPOX, DYS391, D1S1656, D12S391, SE33, D10S1248, D22S1045, D19S433, D8S1179, D2S1338, D2S441, D18S51, FGA, D16S539, CSF1PO, D13S317, D5S818, and D7S820. The sex-determining Amelogenin locus was also examined. Where applicable, STRmix was used for interpretation.

#### Lab Item 13: Swab from the revolver

Number of Contributors: 4, at least one male  
Approximate Mixture Proportions: 50:37:7:5  
Individually Included: Deandre Gathrite (Item 14) LR = at least 260 trillion,  $260 \times 10^{12}$

The probability of observing the DNA profile is at least 260 trillion times more likely if it originated from Deandre Gathrite (Item 14) and three unknown random contributors than if it originated from four unknown random contributors.

#### Notes:

- The evidence is returned to secure storage.
- The performance of the tests referenced in this report commenced on 7/26/18 and is considered final in accordance to the "Distribution Date" listed on page 1 of the report.
- DNA extracts generated during the analysis of this case and/or cuttings taken from the evidence may be available for future testing.
- For comparison purposes, please collect reference buccal swab(s) from individuals believed to be involved in (or who have had reasonable access to) this incident. When a reference buccal swab is obtained, please submit a Forensic Laboratory Request in Property Connect to complete the case.
- Where applicable, likelihood ratios (LR) were calculated to assess whether each submitted reference standard is statistically included or excluded, individually, as a contributor to the reported DNA profile(s). The reported LR value for an "Individually Included" reference standard is reflective of the likelihood ratio calculation associated with the listed individual, without being considered in combination with other reference standards, except where an "Assumed Contributor" is denoted.
- Mixture proportions signify the approximate percentage of each contributor to the mixture DNA profile.
- The likelihood ratios are based upon propositions that can explain the evidence. This includes assumptions as to the number of contributors present in the DNA profile and, unless otherwise noted, that each unknown contributor is unrelated to the named reference standards. Since a range of propositions might explain the evidence, either interested party to this case, prosecution and/or defense, may request an additional likelihood ratio that incorporates an additional proposition that more accurately represents their position. All requests must be submitted in a timely manner, must be reasonable given the test results, and must be within the capability and validated application of the program used.
- Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the NIST database (Hill, C.R., Duewer, D.L., Kline, M.C., Coble, M.D., Butler, J.M. (2013) U.S. population data for 29 autosomal STR loci. Forensic Sci. Int. Genet. 7: e82-e83 and Steffen, C., Coble, M., Gettings, K., Vallone, P. Corrigendum to 'U.S. Population Data for 29 Autosomal STR Loci' [Forensic Sci. Int. Genet. 7 (2013) e82-83]. Forensic Sci. Int. Genet. 31: e36-e40). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Hispanic (HSP) population databases. All likelihood ratios calculated by the LVMPD are truncated to three significant figures.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



---

Allison Rubino, #14784  
Forensic Scientist II

- END OF REPORT -

# **EXHIBIT B-1**

**ORIGINAL**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
SARAH E. OVERLY  
Deputy District Attorney  
Nevada Bar #012842  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

LAS VEGAS JUSTICE COURT  
FILED IN OPEN COURT

JUN - 8 2018

*RP*  
Clerk

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

DEANDRE GATHRITE,  
aka Deandre Terelle Gathrite, #2592432  
Defendant.

CASE NO: 18F03565X

DEPT NO: 11

**STATE'S NOTICE OF MOTION AND MOTION TO CONTINUE**

DATE OF HEARING: JUNE 8, 2018  
TIME OF HEARING: 9:00 A.M.

TO: DEANDRE GATHRITE, aka Deandre Terelle Gathrite, Defendant; and

TO: ADRIAN LOBO, ESQ., Attorney for Defendant

YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that the State  
respectfully moves this Court to continue the above entitled case.

///

///

///

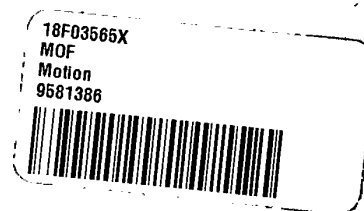
///

///

///

///

///




1 This Motion, which will be heard in Justice Court on the 8th day of June, 2018, at 9:00  
2 o'clock, A.M., is based upon Hill v. Sheriff of Clark County, 85 Nev. 234 (1969), and is  
3 supported by the following Affidavit.

4 DATED this \_\_\_\_\_ day of June, 2018.

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

8 BY

  
9 SARAH E. OVERLY  
10 Deputy District Attorney  
11 Nevada Bar #012842  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AFFIDAVIT

STATE OF NEVADA        }  
COUNTY OF CLARK       }ss:

SARAH E. OVERLY, being first duly sworn, deposes and says:

1. That RAYMOND MOORE is a witness for the State of Nevada in this matter; that RAYMOND MOORE is currently homeless and resides in San Bernardino, California;

2. The following efforts were made to procure the attendance of this witness at the preliminary hearing scheduled for June 8, 2018. The LVMPD Homicide Detectives, along with the Clark County District Attorney's Office Out of State Desk have had contact with Moore since the inception of the case on February 26, 2018. Travel arrangements for Moore were made for him to appear at the preliminary hearing date scheduled for April 5, 2018. The preliminary hearing was subsequently continued at the request of defense and reset to May 11, 2018. Subsequent motions were filed and the May 11<sup>th</sup> preliminary hearing date was vacated by stipulation of both parties and continued to June 8, 2018. Moore contacted LVMPD Detective Gerald Mauch on June 6, 2018 with a different telephone number inquiring into his appearance for a future court date. The Clark County District Attorney's Office Out of State desk made contact with Moore the same day whereby he indicated he would be unable to attend the preliminary hearing due to his prescheduled court appearance in San Bernadino, California on June 8, 2018;

3. Raymond Moore is an essential witness for the State of Nevada in that he is expected to testify that on February 11, 2018, he was at the apartment complex of 2612 Van Patten in Clark County, that he witnessed the victim Kenyon Tyler and the Defendant exchange words, that both Tyler and the Defendant possessed firearms, and that Defendant removed the firearm from his pants pocket and shot Tyler while Tyler's gun remained in his pants pocket;

///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. It is necessary to seek a continuance in this matter because Raymond Moore is an essential witness and is unavailable to testify at the preliminary hearing scheduled for June 8, 2018.

5. Raymond Moore will be available to testify at a future court date. Your affiant first learned on or about June 7, 2018 that this witness would not be available to testify at the scheduled hearing.

6. That this motion is made in good faith and not for the purpose of delay.

Executed on \_\_\_\_\_  
(Date) (Signature)

mah/L1



# **EXHIBIT C-1**

1 CASE NO. 18F03565X

2 DEPT. NO. 11

3

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

6

7

8 THE STATE OF NEVADA,

9 Plaintiff,

10

Vs

11 DEANDRE GATHRITE,

12 Defendant.

13

14 REPORTER'S TRANSCRIPT  
15 OF  
16 DISMISSAL

17 BEFORE THE HONORABLE ERIC A. GOODMAN

18 JUSTICE OF THE PEACE

19

20 TAKEN ON FRIDAY, JUNE 29, 2018  
21 AT: 9:00 A.M.

22 APPEARANCES:

23 For the State:

SARAH OVERLY  
Deputy District Attorney

24 For the Defendant:

ADRIAN LOBO, ESQ.

25

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

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-37951 resulted in his hospitalization, which resulted in his  
2 current placement in a coma.3 The State's not aware of any additional  
4 information that has to do with his condition, but by  
5 virtue of that, he is clearly not able to come to court  
6 today and testify.7 So, as a result, I recognized that the  
8 State already sought to have a Hill Motion. So the State  
9 would be dismissing pursuant to statute today, but I would  
10 note that a Marcum Notice was emailed on June 19th to  
11 defense counsel and I would also just make a record with  
12 regards to the offer that was extended.13 There was an offer of a battery with  
14 substantial bodily harm, a C felony. The most recent offer  
15 that was discussed was to stipulate to the minimum sentence  
16 of 12-to-30 months with the State not seeking habitual  
17 treatment, with the State not pursuing any of the murder  
18 charges in the future, with no referral to the Feds, and  
19 with the Feds agreeing themselves not to pursue additional  
20 charges against the defendant.21 It's my understanding that that offer has  
22 been rejected and so I just wanted to make a record of  
23 that.24 THE COURT: Sir, you want to reject the  
25 offer?PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 LAS VEGAS, NEVADA, FRIDAY, JUNE 29, 2018

2 \* \* \* \* \*

3

4 THE COURT: Ms. Lobo, let's go on your  
5 case, Gathrite, Deandre Gathrite.

6 DEFENDANT: Yes, sir.

7 THE COURT: Good morning.

8 THE DEFENDANT: Good morning.

9 THE COURT: State, it's my understanding

10 you have some representations you want to make.

11 MS. OVERLY: That's correct, your Honor,  
12 and I had informed defense counsel about this yesterday.13 At this point in time, the State would  
14 like to make a record.15 The State had continued this case at the  
16 last setting by use of filing a Hill Motion for its -- its  
17 essential witness, Raymond Moore. That was granted and the  
18 prelim was continued to today's date.19 Since that time, the State has, by way of  
20 its out-of-state desk, made contact with Mr. Moore and  
21 other individuals contacting our out-of-state office and  
22 relaying information about Mr. Moore.23 Twice, both on June 25th and also early  
24 this morning, an individual reached out to our office  
25 indicating that Mr. Moore had been in a bad accident, whichPATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 You know what the offer is, don't you?

4 THE DEFENDANT: Yes.

5 THE COURT: You know it cleans it up with  
6 a 12-to-30 with whatever credit you have so far?

7 THE DEFENDANT: Yes.

8 THE COURT: That's your decision. I just  
9 need to make a record. I need to make a record.

10 Ms. Lobo.

11 MS. LOBO: Yes, your Honor, I believe on  
12 June 8th, when we were scheduled for our last prelim, I  
13 told the Court I was in trial. I accepted the State's  
14 representations that Mr. Moore was unavailable because he  
15 had a pending matter, I believe, in San Bernardino County,  
16 then I inquired further as to the case number or what he  
17 was in custody for so I could at least see when or if he  
18 was going to be released.19 When I looked it up on the docket system  
20 on June 8th, there's no entry as to the court setting. He  
21 had a May 8th court date. It looks like he was, in fact,  
22 on probation. This, of course, happened after, of course,  
23 it had been continued.24 Now we're in a situation where it appears  
25 on June 25th and again this morning the State had contact  
PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 and it appears he's going to be unavailable again and we  
2 don't know when he'll be available or anything about his  
3 medical condition, but I was going to be asking the State  
4 or the Court today to dismiss pursuant to -- to dismiss  
09:18AM 5 with prejudice pursuant to NRS 174.085.

6 I know the State can voluntarily do this  
7 at any time, but the substance of the case and the crux of  
8 this case is the gun and it's also his statement. The  
9 witness Ray Moore, who we did not hear from, who I don't  
09:19AM 10 know if you ever will get the opportunity to hear from,  
11 would have said things that were beneficial towards us.

12 I understand that at this point it seems  
13 that the State's not going to be able to be successful on a  
14 re-filing of a charge that has to, presumably, come back in  
09:19AM 15 front of this Court if they were to then be able to get Mr.  
16 Moore or another individual or procure other evidence  
17 beside the gun and his statement, if he gave another one.  
18 I mean we're in a situation where, under NRS 174.085,(6),  
19 it has to be brought back before your Honor.

09:19AM 20 So we're in a situation where I believe,  
21 at least as of right now -- I don't know. I'm certainly  
22 not accusing Ms. Overly of intentionally misrepresenting  
23 anything. I don't know where the source of that  
24 information came from on June 8th, but we would be asking  
09:19AM 25 that the State dismiss this with prejudice.

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 THE COURT: I'm not going to dismiss it  
2 with prejudice at this point. I think most lawyers, both  
3 for the defense and the State, just work with what they're  
4 given. I don't think there's any kind of bad faith in  
09:20AM 5 making these representations to the Court, but I do expect  
6 that if this gentleman is in a coma in a hospital, that at  
7 some point, if they are going to take this forward, they  
8 are going to bring proof that he's in the hospital in a  
9 coma --

09:20AM 10 MS. LOBO: Correct.

11 THE COURT: -- not just somebody trying to  
12 avoid coming to court.

13 So I'm not going to dismiss it with  
14 prejudice, but, State, if you are making representations  
09:20AM 15 he's in a coma in the hospital, you better make sure to get  
16 proof that he's in a hospital in a coma.

17 So this case will be dismissed today.

18 MS. LOBO: All right. Thank you.

19 THE COURT: All right.

09:20AM 20 Is anything else holding him?

21 MS. LOBO: No, there's not. There's no  
22 hold from California.

23 THE COURT: I didn't think there was going  
24 to be.

09:20AM 25 MS. LOBO: Yeah, I didn't think so either,

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 even though I would kind of prefer it.

2 THE DEFENDANT: Thank you.

3 THE COURT: Thank you.

4 MS. LOBO: Thank you.

09:21AM 5 THE COURT: You should thank her. She did  
6 the work.

7 THE DEFENDANT: I know.

8  
9 (Off the record discussion not reported.)

10  
11 (Off the record at 9:25 A.M.)

12  
13 \* \* \* \* \*

14  
15 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF  
16 PROCEEDINGS.

17 /s/ Pats. K. Smith  
18 PATSY K. SMITH, C.C.R. #190

19  
20  
21  
22  
23  
24  
25  
  
PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

# **EXHIBIT D-1**

## Case Information

FSB18001710 | The People of the State of California vs. Raymond Dwayne Moore

Case Number	Court	File Date
FSB18001710	San Bernardino Criminal	05/02/2018
Case Type	Case Status	
Felony	Inactive	

## Party

Plaintiff  
The People of the State of California

Defendant	Active Attorneys▼
Moore, Raymond Dwayne	Lead Attorney
DOB	Public Defender
XX/XX/XXXX	Retained

## Charge

Moore, Raymond Dwayne

	Description	Statute	Level	Date
001	PC236-F: False Imprisonment	236	Felony	05/01/2018
002	PC243(E)(1)-M: Battery on Spouse/Cohabiting/Noncohab Former Spouse/Etc	243(E)(1)	Misdemeanor	05/01/2018

## Disposition Events

05/03/2018 Plea ▼

Judicial Officer  
Gilbert, Ronald J

Defendant  
Moore, Raymond Dwayne

001	PC236-F: False Imprisonment	Not Guilty
002	PC243(E)(1)-M: Battery on Spouse/Cohabiting /Noncohab Former Spouse/Etc	Not Guilty

05/08/2018 Plea ▼

Judicial Officer  
Bilash, Colin J

Defendant  
Moore, Raymond Dwayne

001	PC236-F: False Imprisonment	No Contest
-----	-----------------------------	------------

05/08/2018 Disposition ▼

Judicial Officer  
Bilash, Colin J

Moore, Raymond Dwayne

001	PC236-F: False Imprisonment	Convicted - Plea
002	PC243(E)(1)-M: Battery on Spouse/Cohabiting/Noncohab Former Spouse/Etc	Dismissal/Stricken - Pursuant to Plea

05/08/2018 Felony Probation ▼

001	PC236-F: False Imprisonment	Felony Probation
-----	-----------------------------	------------------

#### Probation

Type: Formal Probation (Supervised)

Start Date: 05/08/2018

Term: 3 Years

End Date: 05/07/2021

Status

Status	Date	Comment
Active	05/08/2018	

## Events and Hearings

05/02/2018 eFiling - Initial Filing

05/03/2018 Defendant Arraigned on Complaint

05/03/2018 Defendant Advised of Rights

05/03/2018 10th Day:

05/03/2018 60th day is:

05/03/2018 Case assigned for all purposes to: ▼

Judicial Officer  
Malone, Steve C

05/03/2018 Bail Setting

05/03/2018 Pursuant to PC1270.2(a)

05/03/2018 District Attorney Notified

05/03/2018 Public Defender Notified

05/03/2018 Commitment Pending scanned

05/03/2018 Waiver of Personal Presence

05/03/2018 In Custody Arraignment ▼

\*\*Portal Minute Order

Judicial Officer  
Gilbert, Ronald J

Hearing Time  
1:00 PM

Result  
Held

05/08/2018 Change Of Plea Form Filed

05/08/2018 Referred to Probation for Pre-sentence Report

05/08/2018 Referred to Probation - PC29810

05/08/2018 Criminal Protective Order Issued/Filed

05/08/2018 Defendant released from custody

05/08/2018 Restitution Fine stayed - PC1202.45 (CC)

05/08/2018 Const./court operations fee of \$70 per conviction (CC)

05/08/2018 Total monthly payment schedule ordered at:



05/08/2018 Court finds NO ability to pay probation supervision fee

05/08/2018 Restraining Orders Entered Into Clets.

05/08/2018 Probation Officer Notified

05/08/2018 Conviction Certified By Clerk of the Court

05/08/2018 Defendant Waived Right to Trial by Jury

05/08/2018 Defendant Waived Privilege Against Compulsory Self-Incrimina

05/08/2018 Defense Counsel Concurred in Defendants Plea or Admission

05/08/2018 Defendant Waived Right to Confront And Cross Examine Witness

05/08/2018 Court Found Plea Was Knowledgeable, Intelligently Made,

05/08/2018 Defendant advised of Charges and Direct Consequences of Plea

05/08/2018 Pre-Preliminary Hearing ▼

Judicial Officer  
Bilash, Colin J

Hearing Time  
8:30 AM

Cancel Reason  
Vacated

05/08/2018 Pre-Preliminary Hearing ▼

\*\*Portal Minute Order

Judicial Officer  
Bilash, Colin J

Hearing Time  
8:30 AM

Result  
Held

05/15/2018 Preliminary Hearing ▼

Judicial Officer  
Bilash, Colin J

Hearing Time  
8:30 AM

Vacated

06/18/2018 Probation Officer's Memo Received ▼

Comment

Rcvd Prohibited Persons Relinq Form - placed in Cal/Split Clerk In-Bin

06/18/2018 Probation Officer's Memo Received ▼

Comment

Court Memo Rcvd - JA Bin

06/18/2018 Relinquishment Form Findings

06/22/2018 Modification of Probation ▼

Judicial Officer

Bilash, Colin J

Hearing Time

8:30 AM

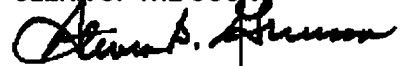
## Financial

No financial information exists for this case.

## Documents

\*\*Portal Minute Order

\*\*Portal Minute Order



**SUPE**  
ADRIAN M. LOBO, ESQ.  
Nevada Bar # 10919  
400 S. 4th Street, Ste. 500  
Las Vegas, Nevada 89101  
702.290.8998  
702.442.2626 (fax)  
adrianlobo@lobolaw.net  
*Attorney for the Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

vs.

GATHRITE, DEANDRE aka GATHRITE,  
DEANDRE TERELLE, ID# 2592432

Defendant.

Case No.: C-18-334135-1

Dept. No.: III

DATE: October 8, 2018

TIME: 1:00p.m.

**SUPPLEMENTAL EXHIBITS J/J1-L/L1 TO DEFENDANT'S PETITION  
FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS FOR  
PROSECUTORIAL MISCONDUCT**

COMES NOW, the Defendant DEANDRE GATHRITE, by and through his attorney,  
ADRIAN M. LOBO ESQ., and hereby submits Supplemental Exhibits to Defendant's Petition for  
Writ of Habeas Corpus and Motion to Dismiss for Prosecutorial Misconduct to provide  
background information as to the pleadings filed in 18F03565X.

- Exhibit J/J1- Defendant's Motion to Suppress Evidence Acquired in Violation of  
both the Fourth and Fifth Amendments (filed May 10, 2018)<sup>1</sup>

<sup>1</sup> (With the exception of State's Opposition to Defendant's Motion to Suppress Exhibit 5-  
Statement of Raymond Moore, all exhibits to pleadings filed in 18F03565X are omitted as they  
are part of the record in the instant moving papers before the court.)

- Exhibit K/K1- State's Opposition to Defendant's Motion to Suppress Evidence with Exhibit 5 (filed May 23, 2018)
- Exhibit L/L1- Defendant's Reply in Support of Motion to Suppress Evidence for Preliminary Hearing (filed May 24, 2018)

DATED this 28<sup>th</sup> day of September, 2018

**LOBO LAW PLLC**

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

//

//

//

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

TO: DISTRICT ATTORNEY, its attorneys:

DATED this 28<sup>th</sup> day of September, 2018.

Attorney for Petitioner

## Attorney for Defendant

# EXHIBIT A- OFFICER'S REPORT

(Exhibit A has been omitted as they are part of the record in the instant moving papers before the court).

# EXHIBIT B - DECLARATION OF ARREST FOR 02/16/18

(Exhibit B has been omitted as they are part of the record in the instant moving papers before the court).



**EXHIBIT C – REPORTER’S TRANSCRIPT OF  
NEGOTIATIONS / MOTION BEFORE  
HONORABLE ERIC A. GOODMAN JUSTICE  
OF THE PEACE TAKEN ON 05/25/2018**

Page 1

1 CASE NO. 18F03565X  
2 DEPT. NO. 11

**CERTIFIED  
COPY**

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

8 THE STATE OF NEVADA, )  
9 Plaintiff, )  
10 Vs ) Case No. 18F03565X  
11 DEANDRE GATHRITE, )  
12 Defendant. )

14 REPORTER'S TRANSCRIPT  
15 OF  
16 POSSIBLE NEGOTIATIONS/MOTION  
17 BEFORE THE HONORABLE ERIC A. GOODMAN  
18 JUSTICE OF THE PEACE

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

## APPEARANCES:

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

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

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

07:51AM

07:52AM

07:52AM

07:52AM

07:52AM

1 would rule on it and then I have just brief  
2 supplementation, another tidbit I didn't put in the Reply.  
3 THE COURT: Okay, go ahead.  
4 MS. LOBO: Okay.  
5 One of the things that was not fully  
6 flushed out, and forgive me because I'm in trial right now,  
7 is that I didn't state in there that it was explicit. I  
8 think the Court knows and is well aware how the CAT Team  
9 works and that they're not out there just, you know,  
10 finding who's on parole violations or probation violations  
11 or who's a fugitive in another state.  
12 This is done at the request of another  
13 jurisdiction or it's done at the request of detectives  
14 locally here and it's a focused team that is designed to,  
15 you know, extract a particular person for a particular  
16 reason and one of the things that was a little bit -- not a  
17 little, a lot disturbing about this case was the fact that  
18 it was Homicide who contacts CAT, CAT who contacts  
19 California Parole, and has that warrant listed on NCIC in  
20 order to, you know, actually execute the arrest warrant at  
21 the house.  
22 So I just don't know how they get around  
23 the fact that this is, you know, not something that, you  
24 know, trying to keep an arms-length distance away as either  
25 though it's parole or probation. That is not analogous to  
PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 2

1 LAS VEGAS, NEVADA, FRIDAY, MAY 25, 2018

2 \* \* \* \* \*

07:50AM 4 THE COURT: All right, let's go on Deandre  
5 Gathrite.

6 Good morning.

7 MS. LOBO: Good morning.

8 THE DEFENDANT: Good morning.

07:50AM 9 THE COURT: All right, this is basically  
10 on for possible negotiations.

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

13 MS. LOBO: That is correct, Judge.

07:51AM 14 THE COURT: -- as being, basically, the  
15 fruit of the poisonous tree and other reasons, but really  
16 if the statement gets suppressed, the gun gets suppressed.

17 MS. LOBO: Correct.

07:51AM 18 THE COURT: So there was also possible  
19 negotiations. Is this going to be negotiated or are we  
20 actually just going on the Motion?

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

07:51AM 24 THE COURT: All right.

25 MS. LOBO: So we would wish the Court

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 4

1 that. This is directly at their behest and request.

2 THE COURT: Okay.

3 MS. OVERLY: And, your Honor, I want to  
4 address that and then if I can address something else as  
07:53AM 5 well?

6 THE COURT: Sure.

7 MS. OVERLY: With regards to the CAT  
8 Team's arrest of the defendant on his parole violation, as  
9 your Honor is well aware, the CAT Team has no control over  
07:53AM 10 issuing warrants. California, that jurisdiction --

11 THE COURT: Oh, but who triggered it?

12 MS. OVERLY: Triggered what?

13 THE COURT: Who triggered it? Who  
14 triggered the arrest? Was it San Diego? Did San Diego  
07:53AM 15 call Metro and say, Please don't pick him up, or was it the  
16 homicide detectives that got CAT to go pick him up so they  
17 could interview him about a murder you are interested in?

18 MS. OVERLY: Homicide detectives became  
19 well aware that he was on parole while this was going on,  
07:53AM 20 this investigation was going on.

21 THE COURT: Right, I understand.

22 MS. OVERLY: They contacted California.

23 THE COURT: Right.

24 MS. OVERLY: They indicated to California  
07:53AM 25 he was on parole and they said, Well, actually, we need to

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 5

1 issue a warrant for him because he's been MIA. He keeps  
2 doing this since 2014 where he disappears.  
3 THE COURT: So this is triggered by Metro?  
4 MS. OVERLY: Yes, their contact to Metro.  
07:54AM 5 THE COURT: There is triggered by Metro.  
6 They want to get him in custody.  
7 MS. OVERLY: Yes.  
8 THE COURT: They have information he may  
9 have committed a murder. They want to get him in custody  
07:54AM 10 so they can interview a murder, correct?  
11 MS. OVERLY: They want to locate him, yes,  
12 the CAT Team, yes. That's what they do. They have a basis  
13 to arrest him on a parole violation, but contact with them  
14 is independent of that. They have no control of whether or  
07:54AM 15 not he is going to get arrested on a parole violation.  
16 Ultimately, that was the circumstances  
17 under which he was located and found, but there was -- it's  
18 not like Metro contacted them and said, Hey, issue this  
19 warrant. He had a active warrant validly issued out of  
07:54AM 20 California by California's Department of Parole & Probation  
21 and the means by which they located him was that, but that  
22 warrant was an independent valid warrant nonetheless and,  
23 when he was arrested in this particular incident, he was  
24 arrested exclusively on that warrant. He was never, during  
07:55AM 25 any of the interaction, arrested on this murder.

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 6

1 THE COURT: But he was arrested for the  
2 sole purpose of allowing the detectives to go over and  
3 interview him about the murder.  
4 MS. OVERLY: Well, I mean that's something  
07:55AM 5 that I think would need to be flushed out by the detectives  
6 themselves, if they were to testify at a preliminary  
7 hearing, which was kind of what I think --  
8 THE COURT: Why do they need to flush it  
9 out? This is the information I have in front of me. This  
07:55AM 10 is what's in the application. This is everything I have in  
11 front of me is that they wanted to arrest him solely so  
12 they could get over there, talk to him because they have  
13 all this information about him, but it's on the streets.  
14 Nobody on the street is going to stand up and say, Yeah, he  
07:55AM 15 did it and I will testify.  
16 MS. OVERLY: Right.  
17 THE COURT: So they have to get him in  
18 custody. They have to arrest him and get him in custody so  
19 they can come interview him about the murder.  
07:55AM 20 MS. OVERLY: Well, yes, they wanted to --  
21 I think the State's Motion is, yes, they wanted to locate  
22 him. If the means by which they located him was, in fact,  
23 he was arrested on a parole violation, then, yes, he was.  
24 He was arrested on a parole violation and that was the  
07:56AM 25 means by which CAT contacted him. They went over there and

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 7

1 they interviewed him, but --  
2 THE COURT: So to get this straight, they  
3 contact San Diego, San Diego says, Okay, we will issue a  
4 warrant, now you have a basis to go arrest him.  
07:56AM 5 MS. OVERLY: That's correct.  
6 THE COURT: Which is triggered by Metro --  
7 MS. OVERLY: That's correct.  
8 THE COURT: -- wanting to arrest him so  
9 that -- wanting to locate him, arrest him so they can have  
07:56AM 10 him in custody to interview him.  
11 MS. OVERLY: That's my understanding, yes.  
12 THE COURT: So he was in custody and he  
13 was in custody on behalf of Metro --  
14 MS. OVERLY: No.  
07:56AM 15 THE COURT: -- so homicide detectives can  
16 go over and talk to him about this murder case.  
17 MS. OVERLY: But I think that's where the  
18 legal issues are alleged in the Motion is that, yes, he was  
19 technically in custody, as they were in those cases cited  
07:56AM 20 in the Motion. Yes, he was in custody and that was the  
21 means and under the circumstances by which they went and  
22 interviewed him, but he was not under a custodial  
23 interrogation and in custody in reference to this case.  
24 THE COURT: They know exactly why they  
07:56AM 25 wanted to talk to him. They know exactly why they want to

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

Page 8

1 arrest him, get him in custody. Why didn't they just read  
2 him his Miranda rights?  
3 MS. OVERLY: I mean I think that arguably  
4 they could have, at the outside, read him his Miranda  
07:57AM 5 rights.  
6 THE COURT: They could have or should  
7 have?  
8 MS. OVERLY: Well, the State's argument is  
9 that they were not legally required to read him Miranda at  
07:57AM 10 the time.  
11 THE COURT: It's 28 pages into the  
12 interview with him before they even bother to read him his  
13 Miranda and it's one of the worse things I have seen, in  
14 terms of reading him his Miranda rights, and I'm just going  
07:57AM 15 to turn to page 28 on this. I think it was 28; I may be  
16 off a page.  
17 From the detective, and this is on the  
18 third line of the page towards kind of the end of that, "I  
19 mean would you -- would you feel better if I read you your  
07:57AM 20 Miranda rights and stuff, man?"  
21 I mean that's what the detective said.  
22 The standard isn't does it make you better if he had his  
23 Miranda rights read to him. The standard is if he is in  
24 custody, he needs to have his Miranda rights read before  
07:58AM 25 they interview him. It's not whether somebody feels

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

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

2 MS. OVERLY: No, I understand that, your

3 Honor, and I think if the detective believes he was, in

4 fact, under custodial interrogation and in custody with

07:58AM 5 regards to this case, they would have read him Miranda,

6 either by card or memory, at the outset of the interview,

7 but based on their position, it was the State's position in

8 its Opposition was that he, in fact, was not. They didn't

07:58AM 9 feel the need to issue these Miranda warnings at the outset

10 or throughout any point in time in the interview, as they

11 didn't in Fields rather.

12 THE COURT: The interviews basically are

13 voluntary. They are always voluntary interactions with the

14 police. You cited a case where the guy's in prison, they

07:58AM 15 bring him in the interview room, and he is free to leave.

16 He may have be in prison, but in prison, his cell is his

17 home. So they say, You are free to leave. That means go

18 back to your cell and just go back to what is basically his

19 home.

07:59AM 20 MS. OVERLY: Correct.

21 THE COURT: If he was free to leave, that

22 means he was going to be uncuffed, let out, put in a police

23 car, go back to his apartment, make a sandwich, turn on the

24 TV, and go on with his day or by free means he is going to

07:59AM 25 be in handcuffs and put in the back of the car?

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 MS. OVERLY: Well, free to leave in the

2 same respect as he was in Fields. I mean like that's why

3 the State believes it's analogous. In that case, they even

4 indicated that he was free to leave and by that, they meant

07:59AM 5 free to leave and go back to his cell.

6 THE COURT: His cell is his home.

7 MS. OVERLY: Correct.

8 THE COURT: Right. He's not free to go

9 back to his home, right?

07:59AM 10 MS. OVERLY: No, he's not because of this

11 active parole violation where he was going to independently

12 go back to California, as he had been doing since 2014.

13 THE COURT: And that's the ball that Metro

14 got started rolling.

07:59AM 15 MS. OVERLY: Correct.

16 THE COURT: Correct.

17 MS. OVERLY: And the ball -- Metro's ball

18 started rolling, but it's a ball he created for himself and

19 had this warrant issued nonetheless.

07:59AM 20 THE COURT: All right.

21 MS. OVERLY: So the State's argument was

22 similar to that case. He could have indicated, with his

23 extensive criminal history and his knowledge about the

24 criminal justice system, and merely say to them, I don't

08:00AM 25 want to talk to you about this. They would have taken him

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 back to CCDC and that would have been, granted, his

2 temporary home, but just like in Fields, it's like him

3 going back to his cell. He was going to be extradited back

4 to California, as he indicated he well knew in the

08:00AM 5 interview.

6 MS. LOBO: One other thing for the Court

7 too.

8 Mr. Gathrite, it was so bazaar and strange

9 to him. He's appeared a few times before your Honor on the

08:00AM 10 fugitive calendar. He's been extradited back and forth.

11 This is the one time California didn't come to get him.

12 California was not interested this time. He's gone back

13 and forth like two, three times. They always come get him.

14 Somebody said, Don't bother, he's got a murder case.

08:00AM 15 MS. OVERLY: Well, I think that's --

16 THE COURT: Well, no, whatever you have

17 locally, you have to clean up the new local charges first

18 before they come pick you up. So he does have an open

19 murder case. They are not going to come get him.

08:00AM 20 MS. LOBO: Here's the thing, Judge. He is

21 not booked for murder, though. It's just they don't bother

22 to come get him. It's not until a week later.

23 MS. OVERLY: And, your Honor, just one

24 brief thing.

08:01AM 25 THE COURT: Sure.

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 MS. OVERLY: If they were to be --

2 typically, as your Honor knows, these issues are litigated

3 up in District Court as well and after they're litigated in

4 a motion, like in Jackson V Denno, a preliminary hearing is

08:01AM 5 typically ordered at that point in time.

6 The reason I mentioned the preliminary

7 hearing is because it would be the State's position that

8 given the jurisdiction in which we are in right now, if

9 that your Honor felt that under Jackson V Denno or

08:01AM 10 something of equal footing would be appropriate, that a

11 preliminary hearing would suffice, so forth, that would

12 flush out those issues.

13 THE COURT: I'm not sure what issues there

14 are to flush out. He is clearly in custody. This was all

08:01AM 15 triggered by Metro. They was all set in motion. They knew

16 exactly what they were doing. They knew exactly what they

17 were doing. They wanted to get him in custody so they

18 could interview him on the murder case.

19 That is the only reason how this thing

08:02AM 20 starts. It's the only reason to contact San Diego. This

21 is all a ruse. This is all a ruse by Metro to get him in

22 custody to interview him about the murder case. So he was

23 in custody and, when he is custody, they should have read

24 him his Miranda Rights. They didn't, not until 28 pages

08:02AM 25 into this.

PATSY K. SMITH, OFFICIAL COURT REPORTER  
(702) 671-3795

1 They violated his rights. The fact it's a  
 2 murder case doesn't matter to me. It doesn't matter if he  
 3 is caught with 20 pounds of weed or if it's a murder case.  
 4 They violated his rights.  
 08:02AM 5 Because they violated his rights when he  
 6 was in custody, I'm going to suppress his statement.  
 7 Because the gun comes from the statements made during the  
 8 interview, I'm going to suppress the gun --  
 9 MS. OVERLY: And, your Honor --  
 08:02AM 10 THE COURT: -- and that's going to be this  
 11 Court's ruling.  
 12 So you can proceed to prelim, if you want  
 13 to, but the statement is not coming in and the gun is not  
 14 coming in.  
 08:02AM 15 MS. OVERLY: And, your Honor, can I ask  
 16 then what your specific ruling would be in reference to the  
 17 State's Opposition in reference to how Miranda does not  
 18 apply to the issue of consent with regards to the retrieval  
 19 of the gun?  
 08:03AM 20 THE COURT: The gun is a fruit of the  
 21 poisonous tree. The only information they have is the  
 22 information they gleaned while interviewing him illegally  
 23 because they knew he wasn't read his Miranda rights  
 24 properly. All of this is the fruit of the poisonous tree.  
 08:03AM 25 MS. OVERLY: But, your Honor --  
 PATSY K. SMITH, OFFICIAL COURT REPORTER  
 (702) 671-3795

1 THE COURT: So the only information they  
 2 have about the gun is the information he gave during the  
 3 interview. So if the statement goes out, the gun goes out.  
 4 MS. OVERLY: Okay.  
 08:03AM 5 So, specifically, the State's Opposition  
 6 references how the Miranda warnings and any illegally  
 7 obtained statements is non-testimonial for purposes of  
 8 somebody's rights being violated.  
 9 So I just want to be clear that your  
 08:03AM 10 Honor's ruling is independent of that, I guess, case law?  
 11 THE COURT: Do they have the gun without  
 12 the statement? Do they get the gun without the statement  
 13 from him as to where the gun was?  
 14 MS. OVERLY: Well, the argument is, your  
 08:03AM 15 Honor, that his consent is not testimonial. So it's not  
 16 technically considered his statement. It's independent of  
 17 the usual Miranda suppression because it's not testimonial.  
 18 THE COURT: I have a gun that he said was  
 19 hidden here. That's the information received in the  
 08:04AM 20 investigation. I have the gun used in the murder. It's  
 21 located here.  
 22 MS. OVERLY: I understand, but the State's  
 23 argument is that he consented to them accessing the  
 24 apartment to retrieve a firearm and that that consent  
 08:04AM 25 allowed them to go inside and obtain that and then,  
 PATSY K. SMITH, OFFICIAL COURT REPORTER  
 (702) 671-3795

1 additionally, the State's Inevitable Discovery Doctrine,  
 2 I'm not sure if your Honor wants to rule on that issue as  
 3 well?  
 4 THE COURT: No. The statement is out, the  
 08:04AM 5 gun is out. You can proceed however you want, but the  
 6 statement is not coming in at prelim. The gun is not  
 7 coming in at prelim. So --  
 8 MS. OVERLY: So the Inevitable Discovery  
 9 Doctrine would be denied as well in that respect?  
 08:04AM 10 THE COURT: Counsel, the statement is out.  
 11 The gun is out.  
 12 MS. OVERLY: Okay.  
 13 THE COURT: So okay.  
 14 MS. LOBO: Thanks, Judge.  
 08:04AM 15 THE COURT: Okay, do we have a prelim set?  
 16 MS. LOBO: Friday.  
 17 THE CLERK: June 8.  
 18 MS. LOBO: Next Friday, one week.  
 19 THE COURT: All right.  
 08:05AM 20 MS. LOBO: Thank you.  
 21 THE CLERK: June 8, 9 A.M. stands.  
 22  
 23 (Off the record discussion not reported.)  
 24  
 25 \* \* \* \* \*

PATSY K. SMITH, OFFICIAL COURT REPORTER  
 (702) 671-3795

1  
 2 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF  
 3 PROCEEDINGS.

4 /s/ Patsy K. Smith  
 5 PATSY K. SMITH, C.C.R. #190  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

PATSY K. SMITH, OFFICIAL COURT REPORTER  
 (702) 671-3795

**EXHIBIT D – EMAIL CORRESPONDENCE FROM  
DEPUTY DISTRICT ATTORNEY SARAH OVERLY**

Adrian Lobo <adrianlobo@lobolaw.net>

**Deandre Gathrite, 18F03565X**

**Sarah Overly** <Sarah.Overly@clarkcountyda.com>  
To: Adrian Lobo <adrianlobo@lobolaw.net>

Wed, Apr 11, 2018 at 2:25 PM

Hi Adrian,

Per Detective Sanborn, the CAT team reached out to Defendant's parole officer in California. CA P&P issued a warrant for Defendant's arrest. The CAT team was able to locate him through his girlfriend's lease. However, there were no reports generated by the CAT team.

Once the warrant was issued it was put into NCIC. However, per Detective Sanborn, once the Defendant is booked on the warrant it is cleared from NCIC. Thus, any NCIC run currently done would not reflect the warrant back when it was originally issued by CA.

As for the gun, that was recovered after Defendant gave consent to retrieve it. Metro subsequently did a SW to recover other evidence, which is why the gun is not on the return. The gun will be reflected in the CSA impound report. However, that has not yet been prepared. I'll provide that as well as the autopsy report when I receive it.

Thanks.

Sarah Overly  
Deputy District Attorney  
(702) 671-2627 (direct)  
(702) 868-2445 (fax)  
Sarah.Overly@ClarkCountyDA.com

**From:** Adrian Lobo [mailto:adrianlobo@lobolaw.net]  
**Sent:** Tuesday, April 10, 2018 10:34 AM  
**To:** Sarah Overly <Sarah.Overly@clarkcountyda.com>  
**Subject:** Re: Deandre Gathrite, 18F03565X

Hi Sarah,

[Quoted text hidden]

PA000309

# EXHIBIT E – LVMPD CAD LOG (EVENT NO. LLV180216002092)

(Exhibit E has been omitted as they are part of the record in the instant moving papers before the court).



**EXHIBIT F – DEANDRE GATHRITE’S  
SURREPTITIOUS RECORDING  
STATEMENT FROM 02/16/18**

**(Exhibit F has been omitted as they are part of the record in the instant moving papers before the court).**

# EXHIBIT G – LVMPD APPLICATION FOR TELEPHONIC SEARCH WARRANT

(Exhibit G has been omitted as they are part of the record in the instant moving papers before the court).

# EXHIBIT H – REPORTER’S TRANSCRIPT OF PROCEEDINGS TAKEN ON 08/14/18

(Exhibit H has been omitted as they are part of the record in the instant moving papers before the court).

EXHIBIT I – LETTER  
CORRESPONDENCE FROM ADRIAN  
M. LOBO 06/20/18

(Exhibit I has been omitted as they are part of the record in the instant moving papers before the court).

**EXHIBIT J/J1 – DEFENDANT’S  
MOTION TO SUPPRESS  
EVIDENCE ACQUIRED IN  
VIOLATION OF BOTH THE  
FOURTH AND FIFTH  
AMENDMENTS**

1 **MOT**

2 **ADRIAN M. LOBO, ESQ.**

3 Nevada Bar # 10919

4 400 S. 4th Street, Ste. 500

5 Las Vegas, Nevada 89101

6 702.290.8998

7 702.442.2626 (fax)

8 adrianlobo@lobolaw.net

9 Attorney for the Defendant

**FILED**

2018 MAY 10 A 8:53

JUSTICE COURT  
LAS VEGAS NEVADA  
BY AMC  
DEPUTY

7 **JUSTICE COURT**

8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DEANDRE GATHRITE,

13 Defendant

Case No.: 18F03565X

Dept. No.: 11

14 **DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ACQUIRED IN VIOLATION OF**  
15 **BOTH THE FOURTH AND FIFTH AMENDMENTS**

16  
17 COMES NOW the Defendant, DEANDRE GATHRITE, by and through his counsel of  
18 record Adrian Lobo, Esq., and hereby files this Motion to Suppress Evidence for Preliminary  
19 Hearing. The evidence in question was obtained in violation of the Defendant's constitutional  
20 rights under both the U.S. and Nevada Constitutions, and must not be introduced or heard at the  
21 Preliminary Hearing.

22 This Motion is based on the pleadings and papers on file with the court, the attached  
23 Memorandum of Points and Authorities, and oral argument entertained by the court at the time  
24 set for hearing.

25 DATED this 10<sup>th</sup> day of May, 2018.

26 By: 

27 Adrian M. Lobo, Esq. (#10919)  
28 Attorney for Defendant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

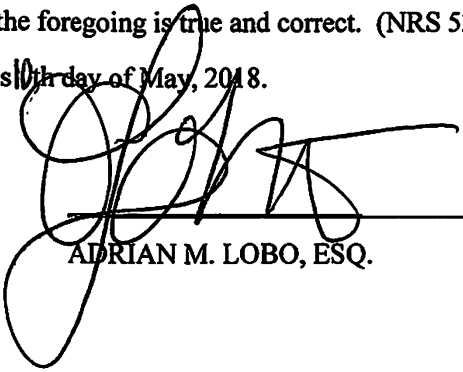
**DECLARATION**

ADRIAN M. LOBO makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada.
2. I am the appointed attorney for DEANDRE GATHRITE that has been assigned by the Office of Appointed Counsel to represent GATHRITE in the instant matter.
3. I make this Declaration in support of this Motion to Suppress Evidence Before Preliminary Hearing.
4. I am more than eighteen (18) years of age, and I am competent to testify as to the matters stated herein. I am familiar with the facts, circumstances, and procedural history of this case.
5. I have personal knowledge pertaining to the facts stated herein, or I have been informed of these facts and believe them to be true.

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

EXECUTED this 10th day of May, 2018.

  
ADRIAN M. LOBO, ESQ.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Statement of Facts**

3 The Defendant is charged by the State with two counts: 1) Open Murder, with a deadly  
4 weapon enhancement; and 2) Owning or possessing a gun by a prohibited person. This case  
5 stems from the February 11, 2018 shooting death of a drug dealer by the name of "T-Rex,"<sup>1</sup> at  
6 approximately 2612 S. Van Patten Street in Las Vegas, near the intersection of E. Sahara Ave.  
7 and Joe Brown Dr. *See Exhibit A – Officer's Report Continuation* at 1.

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

16 "Dre" was, somehow, identified as the Defendant, and the Report also claims that he  
17 "was the subject of several active criminal investigations." *Id.* Despite apparently being the  
18 subject of "several active" investigations, on February 11, 2018 the Defendant did not have a  
19 warrant for his arrest in Nevada or California. *See Exhibit B - Declaration of Arrest for Fugitive*  
20 *Arrest.* The report references a police records check was conducted but does not say what date  
21 this search was conducted on or even which database was searched. *Ex. A* at 10.<sup>2</sup> Oddly as luck  
22 would have it, on February 14, 2018, a California warrant was issued for Defendant's arrest on a  
23 Parole Violation for a weapons related offense. *Id.*

24  
25  
26  
27 <sup>1</sup> T-Rex's real name was Kenyon Tyler.

28 <sup>2</sup> A simple SCOPE search would reveal Gathrite's prior fugitive filings in Clark County.



1 The Metro Criminal Apprehension Team (CAT) was tasked with locating the Defendant,  
2 and tracked him to 2630 Wyandotte St., Apt. #1 in Las Vegas. The Defendant was arrested on  
3 the outstanding San Diego warrant on February 16, 2018 at approximately 1:24 p.m. *Id. See also*  
4 *Exhibit C- CAD LOG Event #180216-2092* .

5 Following the CAT arrest, Metro Homicide detectives arrived at Wyandotte at 2:56 p.m.  
6 and contacted the Defendant at the scene of his arrest and began to question him surreptitiously  
7 about the T-Rex shooting. *Ex. C.* at 1. This interview was only partially transcribed,<sup>3</sup> and is  
8 described as a “post-Miranda” interview with the Defendant. *Ex. A* at 9. The Report goes on to  
9 summarize that the interview resulted in the Defendant admitted that he fired at T-Rex, but  
10 “didn’t know if he hit anyone”. *Id.* The Defendant further told the detectives the location of the  
11 gun used in the shooting. *Id.*

12 In fact, these details were not “post-Miranda,” as the Report claims. In fact, the detectives  
13 also misrepresented to Defendant that he was free to leave at any time during the interview,  
14 despite this interview taking place immediately following the Defendant’s apprehension by  
15 CAT:

16 Q: Let me ask you this, man. ‘Cause here’s – here’s the magic question,  
17 man. I mean, I know they kinda run up. You ain’t out looking for trouble,  
18 you know, ‘cause that ain’t you ‘cause I know all about your history. I  
19 know all about what you, you know, we done done our research. You e-  
20 you feel me? So, I mean, I know I ain’t talking to some bad dude. That’s  
21 why I came in there and took the cuffs off of you, got you comfortable,  
22 and let you hug your kid. Be cool with you. You – you feel me? ‘Cause I  
23 know what kinda p- I know what kinda person you are, man. So what I’m  
24 asking, man, basically, what it boils down to is why’d you pull the trigger,  
25 man? What happened? Walk me through it, man. Walk me through how it  
26 went down. You know what I’m sayin’? So I can explain that. That’s what  
27 I’m trying to say ‘cause I know that wasn’t what – you didn’t go lookin’  
28 for it.

26 <sup>3</sup> Both the audio recording of the Defendant’s questioning and the corresponding transcript  
27 clearly begin partway through the interview (and both begin at the same point). The only  
28 discernable timeline is through the CAD Log of his arrest. Homicide detectives arrive at 2:56  
p.m., and then Gathrite is not booked into CCDC until 6:18 p.m. *Ex. C* at p.1-2.

1                    *Exhibit D – Transcribed Interview with Defendant at 3.*

2  
3                    The detective continued to elicit details of the shooting from the Defendant:

4                    Q: So what point in time did you pull yours out? I mean, 'cause he got  
5                    they shit out first, so at what point in time you pull yours out? Was it  
6                    before or after them?

7                    A: Wasn't – wasn't before them.

8                    Q: So it was after them.

9                    A: Or I wouldn't have been able to be out there.

10                  Q: Right. Exactly. So they got they's out, and at some point in time  
11                  during this whole talking that they goin' back and forth, at what point in  
12                  time do you pull yours out? It was, I mean, was it...

13                  A: I don't know. It just – it just happened so fast.

14                  *Id.* at 10.

15                  It is clear that during this questioning, the Defendant was not free to leave:

16                  A: Can – can I smoke a cigarette? I'm just...

17                  Q: You got a cigarette?

18                  A: I do. My pack in on the counter in there [in the Wyandotte Apartment].  
19                  I...

20                  Q: Uh...

21                  Q1:            Hey, you care if you have an old one? I got some old ones  
22                  there if that's okay. You just wanna step out [of the patrol car]?

23                  A: Uh, yeah. I had just...

24                  Q: I'll text my boy and have him go – I'll text him to have – you said it's  
25                  on the kitchen counter? All right.

26                  *Id.* at 10-11.

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

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

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

A: Yeah.

*Id.* at 45.

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

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

21 In addition, the Warrant Application indicated that detectives would search for additional,  
22 handwritten items: "Handguns and Ammunition"; "Cell phone off person of [Defendant]"; and  
23 "Gang Paraphernalia [sic]". *Id.* The Application indicated the address of "2630 Wyandotte #1"-  
24

25  
26  
27 <sup>4</sup> Line Items 2-3, and 7-9 contained additional items to be recovered, but these lines had been  
28 crossed out. *See Ex. E* at 1.

1 the apartment belonging to Defendant's girlfriend. *Id.* The Application was dated February 16,  
2 2018 at 1735 hours (5:35 p.m.). *Id.*

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

4 **B. Legal Argument**

5 *1. Jurisdiction Is Proper Before This Court*

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

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

17 *2. Defendant's Statement Must Be Suppressed Due to the Failure to Mirandize Him*  
18 *Before Questioning*

19 Certain rights are guaranteed to a suspect facing questioning by law enforcement,  
20 conducive to the Amendment V right against self-incrimination. *Miranda v. Arizona*, 384 U.S.  
21 436 (1966). Specifically, "the prosecution may not use statements, whether exculpatory or  
22 inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the  
23 use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at  
24 444. These procedural safeguards have been memorialized as the so-called "Miranda warnings"  
25 and typically encompass admonitions that the accused has the right to remain silent; that waiving  
26 the right may result in his statements being used against him in court; and that he has the right to  
27 an attorney. *Id.* at 479.

1 A valid waiver of Miranda must be knowing, voluntary, and intelligent. *United States v.*  
2 *Garibary*, 143 F.3d 534, 536 (9th Cir. 1998), citing *United States v. Binder*, 769 F.2d 595, 599  
3 (9th Cir. 1985). A reviewing court must consider the totality of the circumstances to determine  
4 the validity of the waiver. *Id.* In the case of determining the validity of a waiver, there is a  
5 presumption against waiver, and the State bears the burden of overcoming that presumption by a  
6 preponderance of the evidence. *United States v. Crews*, 502 F.3d 1130, 1139-40 (9th Cir. 2007),  
7 citing *Garibay*, 143 F.3d at 536. To meet the burden, “the Government must prove that, under  
8 the totality of the circumstances, the defendant was aware of the nature of the right being  
9 abandoned and the consequences of such abandonment.” *Crews*, 502 F.3d at 1140.

10 “Custody” means “a ‘formal arrest or restraint on freedom of movement’ of the degree  
11 associated with a formal arrest.” *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517,  
12 3520 (1983); *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 714 (1977). When no  
13 formal arrest is made, the inquiry, as with Fourth Amendment claims, “is how a reasonable man  
14 in the suspect’s position would have understood his situation.” *Berkemer v. McCarty*, 468 U.S.  
15 420, 442, 104 S.Ct. 3138, 3151- 52 (1984); *State v. Taylor*, 114 Nev. 1071, 1082, 968 P.2d 315,  
16 323 (1998).

17  
18 Furthermore, a later advisement of Miranda rights will not render subsequent statements  
19 admissible. In *Oregon v. Elstad*, 470 U.S. 298 (1985), a burglary suspect was initially contact by  
20 detectives and, without a Miranda warning, gave a statement that implicated himself in the crime.  
21 470 U.S. at 301. The suspect was then taken to the police station, where he was advised of his  
22 Miranda rights before he gave more details as to his involvement in the crime. *Id.* at 301-02.  
23 Before trial, the suspect moved to suppress his statement on the grounds that his initial, non-  
24 Mirandized admission had “let the cat out of the bag,” and therefore tainted his subsequent  
25  
26  
27  
28

1 confession. *Id.* at 302. The trial court suppressed the initial statement, but not the subsequent,  
2 post-Miranda confession. *Id.*

3         On appeal, the U.S. Supreme Court considered whether a post-Miranda confession is  
4 admissible if incriminating statements are elicited prior to the Miranda warning- the proverbial  
5 “cat out of the bag” situation. The Court relied on the principle that “an accused’s in-custody  
6 statements [are] judged solely by whether they were ‘voluntary’ within the meaning of the Due  
7 Process Clause,” or whether “a suspect’s statements had been obtained by ‘techniques and  
8 methods offensive to due process.’” *Id.* at 304 (internal citations omitted). Indeed, “When police  
9 ask questions of a suspect in custody without administering the required warnings, *Miranda*  
10 dictates that the answers received be presumed compelled and that they be excluded from  
11 evidence at trial in the State’s case in chief.” *Id.* at 317. With regard to additional statements  
12 made post-Miranda, where incriminating, pre-Miranda statements have already been made, the  
13 Court held “that a suspect who has once responded to unwarned yet uncoercive questioning is  
14 not thereby disabled from waiving his rights and confessing after he has been given the requisite  
15 *Miranda* warnings.” *Id.* at 318. This inquiry would focus on “the surrounding circumstances and  
16 the entire course of police conduct with respect to the suspect in evaluating the voluntariness of  
17 his statements.” *Id.*

18         Such coercive effects upon the second, post-Miranda confession/incrimination was  
19 examined in *Missouri v. Seibert*, 542 U.S. 600 (2004). In that case, the Court examined “a police  
20 protocol for custodial interrogation that calls for giving no warning of the rights to silence and  
21 counsel until interrogation has produced a confession. Although such a statement is generally  
22 inadmissible, since taken in violation of [*Miranda*], the interrogating officers follows it with  
23 *Miranda* warnings and then leads the suspect to cover the same ground a second time. 542 U.S.

1 at 604. This was apparently becoming a common tactic- something the Court referred to as “a  
2 question-first practice of some popularity.” *Id.* at 610-11. The Court further described the intent  
3 of such a practice: “The object of question-first is to render *Miranda* warnings ineffective by  
4 waiting for a particularly opportune time to give them, after the suspect has already confessed.”  
5 *Id.* at 611.

7 A plurality of the Court in *Seibert* held that “By any objective measure applied to  
8 circumstances exemplified [in a question-first interrogation], it is likely that if the interrogators  
9 employ the technique of withholding warnings until after interrogation succeeds in eliciting a  
10 confession, the warnings will be ineffective in prepared the suspect for successive interrogation,  
11 close in time and similar in content.” *Id.* at 613. More specifically, “Upon hearing warnings only  
12 in the aftermath of interrogation and just after making a confession, a suspect would hardly think  
13 he had a genuine right to remain silent, let alone persist in so believing once the police began to  
14 lead him over the same ground again. *Id.* Ultimately, the plurality held that “when *Miranda*  
15 warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to  
16 mislead and ‘depriv[e] a defendant of knowledge essential to his ability to understand the nature  
17 of his rights and the consequences of abandoning them.’” *Id.* at 613-14 (internal citation omitted).

20 Under the totality of the circumstances standard, the Defendant cannot be said to have  
21 waived his *Miranda* rights.

22 First, Defendant absolutely was in custody at the time of his questioning. Defendant had  
23 just been arrested by CAT on his warrant out of California: “On 2-16-18 at approximately 1440  
24 hours, the Criminal Apprehension Team located [Defendant] at 2630 Wyandotte Street,  
25 apartment 1.” *Ex. A* at 10. The CAD log is quite telling of the timeline. *Ex. C* at 1. At 2:40 p.m.  
26 an additional police unit is requested to transport the defendant to the jail to be booked on the  
27

1 warrant. *Id.* Six minutes after Gathrite is arrested, "Homicide detectives were advised of  
2 Gathrite's location and responded." *Id.*

3 The homicide detectives then questioned the Defendant extensively as to the T-Rex  
4 shooting, to the tune of *twenty-three* (23) pages of transcript, or *twenty-six* (26) minutes of  
5 questioning, prior to issuing any Miranda warning. *Ex. C* at 23. Prior to this warning, Defendant  
6 gave several statements, and provided numerous details, that will now presumably be offered as  
7 evidence against him on the instant charges.

8 The detectives made every effort to create the illusion that Defendant was providing his  
9 statements voluntarily:

10 So, I mean, I know I ain't talking to some bad dude. That's why I came in  
11 there and took the cuffs off of you, got you comfortable, and let you hug  
your kid. Be cool with you. (*Ex. D* at 3);

12 No, no, no. Dude – dude, hey, look. Hey. I know you're here talking to us.  
13 I know you got – you feel some kinda way, man, but I – I – I mean, you  
know, you can leave at any time, dude. We – we ain't gotta, you know, I  
14 know you here, I mean, you know, I ain't trying to – I ain't trying to jam  
you up. Nothing like that. That's why we let you smoke, took you, I mean,  
15 we ain't got you handcuffed, nothing. You – you – you a free man.  
Everything's good right now. (*Id.* at 22); and

16 I mean, would you – would you feel better if I read you your Miranda  
rights and stuff, man? I mean, I don't have, I mean, you free to go, man. I  
17 mean, you know what I'm saying? I – I'm not here to jam you up. I'm  
18 here to simply get your side of the story. (*Id.* at 23).

19 However, these were unquestionably misrepresentations on the detectives' part- at all  
20 times they believed the Defendant to be in custody, under arrest, and facing potentially serious  
21 charges. Yet they continued to question him without properly advising him of his rights. Recall  
22 the excerpt above, under the "Facts" section, wherein Defendant asked permission to retrieve  
23 cigarettes from the apartment, only to be told that he needed to remain with the detectives and  
24 that someone else would recover his cigarettes for him. Additionally, consider the language of  
25 the telephonic warrant application, wherein the details of Defendant's custody status were  
26 provided to the judge:

27 ///



1 [Detective, "JS"]: Judge, do you find there's probable cause exists [sic]  
2 for the issuance of a Search Warrant?

3 [Judge, "JW"]: I do. One of the things you asked for was a  
4 buccal swab but that guy's not going to be there anymore. Does it matter?

5 JS: No, he is still here. He's outside the residence in a patrol car.

6 JW: Okay.

7 JS: He's being arrest [sic] on the Warrant which is not related to the  
8 investigation that we're conducting but he is still here.

9 *Ex. D* at 5-6.

10 Having just been arrested by CAT—a specialty team “tasked with locating [the  
11 Defendant]” (*Ex. A* at 10)—the Defendant knew, or at the very least *reasonably believed* that he  
12 was under arrest, and that he was not free to go:

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

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

18 *Ex. D* at 49-50.

19 Second, even when detectives finally Mirandized the Defendant, he did not give a  
20 knowing, voluntary waiver of his right to remain silent.

21 The Detectives dispensed with his Miranda warning in quick, conversational fashion, all  
22 while downplaying the need even to do so:

23 Q: I – I'm not here to jam you up. I'm here to simply get your side of the  
24 story. And that's why I appreciate – and I'll read 'em for you, you want  
25 me to read 'em to you, man. I mean, know, uh, you got the right to remain  
26 silent. Anything you say can be used against you in a court of law. You  
27 have a right to consult with an attorney before questioning. You have a  
28 right to the presence of a attorney during questioning. If you cannot afford  
an attorney, one will be appointed before questioning.

*Id.* at 23.

The detective then tried to get an acknowledgement of these rights from Defendant, but  
never received one:

///

///

1 Q: You understand all that? You unders- you understand all that, Dre?  
2 Yeah? Yes, no, maybe so? I mean, I ain't trying to jam you – I'm just  
3 letting you know I ain't trying to trick you with nothing. You see what I'm  
4 sayin'? Those are your rights. You know what I'm sayin'? Those are your  
5 rights. Now, I'm not saying that, uh, you're under arrest, not like that. I'm  
6 just telling you those are your rights. If you – if you feelin' some kinda  
7 way – if that makes you feel better – you understand that? Yes, no? Am I  
8 making sense?

9 A: It's just that the situation sucks so bad.

10 Q: Right.

11 A: I...

12 Q: I mean, you didn't start it, right?

13 A: No.

14 Q: Okay.

15 A: It just...

16 Q: Tell me this, Dre. [Questioning continues.]

17 *Id.* at 23-24.

18 Having belatedly realized the need to Mirandize Defendant, the detective did it in rough,  
19 slipshod fashion, and all while disclaiming the need even to do so because the detective was  
20 telling Defendant that he was not under arrest, and was free to leave (clearly untrue).  
21 Furthermore, once the detective did manage to provide a somewhat Miranda warning, he did not  
22 obtain from Defendant any acknowledgement that he had hear, acknowledged, or even  
23 understood the warning ("Yes, no, maybe so?"). Lastly, before Defendant could make any  
24 affirmation, assertion of his right to remain silent, to request an attorney, or make any other  
25 statement to indicate even that he had heard the Miranda warning, the detective continued ahead  
26 with his questioning.

27 The presumption is against the State, in this case. As with the case law cited above, the  
28 State now has the burden to show that any claimed waiver of Miranda rights was knowing and  
voluntary. Even if the State is able to overcome this burden, this could arguably only apply to the  
statements made *after* the Miranda warning was actually given. Prior to the warning, the  
Defendant had already provided a significant narrative of events to detectives- details that no  
doubt will be introduced against him in court.

1 Accordingly, based on the above, the Defendant's statements—the entire interview and  
2 questioning with police—must be suppressed, and deemed inadmissible.

3 3. *The Defendant Could Not Consent to a Search of the Wyandotte Address*

4 Under *Katz v. United States*, the mere occupation of a public place (there, a phone booth)  
5 does not render an individual's expectation of privacy unreasonable. 389 U.S. 347, 88 S.Ct. 507,  
6 19 L.Ed.2d 576 (1967). What an individual “seeks to preserve as private, even in an area  
7 accessible to the public, may be constitutionally protected.” *Katz*, 389 U.S. at 351–52, 88 S.Ct. at  
8 511–12 (citations omitted). However, “[w]hat a person knowingly exposes to the public, even in  
9 his own home or office, is not a subject of Fourth Amendment protection.” *Id.* at 351, 88 S.Ct. at  
10 511 (citations omitted).

11 Whether an individual was entitled to the protection of the Fourth Amendment depends  
12 on whether that individual harbored both a subjective and objective expectation of privacy. *Katz*,  
13 389 U.S. at 361, 88 S.Ct. at 516 (Harlan, J., concurring). A subjective expectation of privacy is  
14 exhibited by conduct which shields an individual's activities from public scrutiny. *Id.* In *Katz*, the  
15 critical fact for the court in determining that the defendant had a subjective expectation of  
16 privacy was that he “shut the [phone booth] door behind him.” By so doing, *Katz* excluded the  
17 public and was entitled to assume his conversation was not being intercepted. *Id.*

18 An objective expectation of privacy, i.e., one which society recognizes as reasonable,  
19 must also exist. *Id.*, 389 U.S. at 361, 88 S.Ct. at 516; see also, *Oliver v. United States*, 466 U.S.  
20 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1983). “The test of legitimacy is not whether the  
21 individual chooses to conceal assertedly ‘private’ activity. Rather, the correct inquiry is whether  
22 the government intrusion infringes upon personal and societal values protected by the Fourth  
23 Amendment.” *Oliver*, 466 U.S. at 182–183, 104 S.Ct. at 1743–44. In determining whether a  
24 reasonable expectation of privacy exists, the Court has considered such factors as “the intention  
25 of the Framers of the Fourth Amendment (citation omitted), the uses to which the individual has  
26 put a location (citation omitted), and our societal understanding that certain areas deserve the  
27  
28

1 most scrupulous protection from government invasion (citation omitted).” *Oliver*, 466 U.S. at  
2 178, 104 S.Ct. at 1741.

3 While consent to search is a waiver of Fourth Amendment protections, such consent must  
4 come from the person with actual authority over the area to be searched. *Casteel v. State*, 131  
5 P.3d 1, 3 (Nev. 2006); see also *Snyder v. State*, 103 Nev. 275, 280, 738 P.2d 1303, 1037 (“Valid  
6 consent to search can be obtained from a third party who possesses common authority over or  
7 other sufficient relationship to the premises.”). “A warrantless search is valid if the police  
8 acquire consent from a cohabitant who possesses common authority over the property to be  
9 searched.” *Casteel*, 131 P.3d at 3. In such cases, law enforcement must reasonably believe that  
10 the person granting the consent to search so has the authority to grant consent. *U.S. v. Hamilton*,  
11 792 F.2d 837, 842 (C.A.9 (Cal.), 1986) (citing *United States v. Sledge*, 650 F.2d 1075, 1081 (9th  
12 Cir. 1981).

13 Furthermore, the violation of another’s expectation of privacy in a constitutionally  
14 protected space does not divorce the Defendant from his ability to object to the warrantless  
15 search of the premises (prior to the later-issued warrant).

16 Pursuant to the Fourth Amendment of the U.S. Constitution, and further found under  
17 Article 1, § 18 of the Nevada Constitution, an individual must have standing to invoke the Fourth  
18 Amendment protection against unreasonable searches and seizures. *Dean v. Fogliani*, 81 Nev.  
19 541, 544, 407 P.2d 580, 581 (1965). The purpose of this constitutional mandate is to balance the  
20 individual’s right of privacy and to curtail the unlawful activity of law enforcement officials. *Id.*  
21 at 544, 407 P.2d at 582. Accordingly, the Nevada Supreme Court has held that in order for an  
22 individual to claim an unlawful invasion of privacy, one of the following factors must apply:

- 23 1. The individual must be one of the persons against whom the search  
24 was directed;
- 25 2. The individual must be one who is charged with illegal possession of  
26 property to be suppressed; or
- 27 3. The individual must be anyone who was legitimately on the premises  
28 where a search occurs and the fruits of the search are proposed to be  
used against him.  
*Id.* at 544-45, 407 P.2d at 582.

1  
2 An individual is legitimately on the premises where a search occurred, for purposes of  
3 subsection 3 above, if the individual is an overnight guest. *Johnson v. State*, 118 Nev. 787, 794,  
4 59 P.3d 450, 455 (2002) (overruled on other grounds by *Nunnery v. State*, 127 Nev. 749, 263  
5 P.3d 235 (2011)).

6 Here, the detectives were informed multiple times that Defendant did not own the  
7 property, or otherwise was not the primary authority/resident of the property. The Defendant told  
8 the detectives as much during his questioning:

9 Q1: So the first time he goes by, he's by himself?

10 A: No. The first time he go by, he's with his friends.

11 Q1: Okay.

12 A: And that's when he – “Oh, blood, y'all gotta clear this out. On dead  
13 homies. Too much.” So we, uh, all right. You know, we – basically, you  
14 know, we drink and smoke. We do this every day.

15 Q1: Mm-hm.

16 A: We not really – all right. You live here. You have a – we done been up  
17 and down the street for – for months. You just barely been over here  
18 probably two or three months, but you used to stay across the street. Now  
19 your girl and your mom got this spot right across the street. You – you just,  
20 like, he came through, like, politicking, but I, like, we was in Cali. Right.  
21 We not in Cali, bro. You, uh, it's...<sup>5</sup>

22 *Ex. D* at 21.

23 Accordingly, the detectives were on notice that Defendant was known to be staying in the  
24 area of the shooting—Van Patten—and not the Wyandotte address (a quick reference indicates  
25 the two areas to be approximately two and a half miles from each other). This is verified by the  
26 Report: “[Defendant] lives in the immediate area [of Van Patten] and was the subject of several  
27 active criminal investigations.” *Ex. A* at 5.

---

28 <sup>5</sup> Defendant was speaking in the narrative, and was recounting what he was told by T-Rex. As  
further clarification, Defendant makes reference to a statement regarding “your girl and your  
mom got this spot”- but T-Rex’s mother lives in California, not Las Vegas. *Ex. A* at 8 (“Apollo  
provided investigators with the name and telephone number of Tyler’s mother in California”).  
Therefore, Defendant’s recitation can only be what was said *to* him, not *by* him.

1           Moreover, Defendant expressed numerous, vocalized, and articulated concerns that the  
2 detectives would cause damage to the Wyandotte apartment or otherwise inconvenience his  
3 girlfriend and children:

4           A: The apartment not gonna be tore up, is it? 'Cause my girl's still here.  
5           (Ex. D at 40);

6           Q1:       You got family out here or no?

7           A: She's my only family [Tia].

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

9           A: Yeah.

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

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

15          Q1:       Yeah. (*Id.* at 42).

16               Lastly as to this point, one of the detectives questioning Defendant even acknowledged  
17 that Defendant was not living at Wyandotte:

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

22          A: Yeah. (*Ex. D* at 45);

23          Q1:       Tia?

24          A: Only person.

25          Q1:       Was she over *in that area* when everything happened, or no?  
26 So this is where Tia normally stays?

27          A: She just moved here a couple days ago.

28          Q1:       Oh, okay. (*Id.* at 40-41, emphasis added).

              Despite knowing that Defendant lived on Van Patten; that Defendant had only stayed at  
the Wyandotte address the night before; that Defendant was concerned about police searching his  
girlfriend's apartment; and that Defendant and the girlfriend, Tia, would only occasionally see  
each other, the detectives perpetrated a myth about Defendant's "dominion and control" over the  
premises in order to gain flawed consent to search the premises.

              The property at Wyandotte was under Fourth Amendment protections, with the power of  
waiver and/or consent belonging *only* to the girlfriend, Tia. Therefore, any consent given by

1 Defendant was insufficient, and the resulting entry and search of the apartment without a search  
2 warrant was improper. As such, any evidence, including the firearm in question, must be  
3 suppressed and deemed inadmissible at preliminary hearing.

4 *4. All Fruits of the Defendant's Arrest Must Be Suppressed.*

5 The exclusionary rule, adopted by Nevada, requires courts to exclude evidence that was  
6 obtained through a violation of constitutional protections. *Torres v. State*, 341 P.3d 652, 657, 131  
7 Nev. Adv. Op. 2 (Nev. 2015). The policy of this rule is to discourage law enforcement from  
8 disregarding constitutional protections in the pursuit of evidence. *Id.* This rule extends to  
9 evidence that may even be the indirect fruit of an illegal search or arrest. *Id.*, citing *New York v.*  
10 *Harris*, 495 U.S. 14, 19 (1990). Such indirect evidence may be saved from exclusion if the  
11 violation of Amend. IV protection was sufficiently attenuated to “dissipate the taint.” *Torres*, 341  
12 P.3d at 658, citing *Wong Sun v. United States*, 371 U.S. 471, 491 (1963). The taint of an  
13 unlawful search and seizure can be so dissipated if the evidence was acquired “by means  
14 sufficiently distinguishable to be purged of the primary taint.” *Torres*, 341 P.3d at 658, quoting  
15 *Wong*, 371 U.S. at 488, 491.

16 Here, the improper questioning of Defendant is the primary wrong by which all other  
17 evidence in this case became tainted. No subsequent evidentiary pursuits can be said to purge the  
18 taint, either; the evidence recovered all stems from Defendant’s statements made without proper  
19 advisement of his right to remain silent, or the other protections afforded to a defendant under  
20 the *Miranda* line of cases. Ultimately, Defendant’s statements, and later his revealing of not only  
21 the existence of the firearm but its location, would not have occurred but for the homicide  
22 detectives’ improper questioning of Defendant without appropriate, compulsory warnings in  
23 opposition to Defendant’s constitutional rights.

24 The interview transcript, cited above and attached to this Motion, demonstrates that a  
25 *significant* amount of questioning, wherein a *significant* amount of statements were given, all  
26 occurred prior to proper Miranda warnings. Further, Metro has attempted to gloss over this  
27 fact—in essence, doctoring the record—by claiming that the questioning was a “post-Miranda”

1 interview. *Ex. A* at 9. This could not be further from the truth, as the questioning took place for  
2 almost a half-hour without any Miranda warning, at which point the detective acknowledged that  
3 he had not yet given a Miranda warning (“[A]nd I’ll read ‘em for you, you want me to read ‘em  
4 to you, man.”<sup>6</sup>). *Ex. D* at 23.

5 The taint of this improper questioning permeates the investigation, as Defendant’s  
6 incriminating statements occurred prior to the belated Miranda warning. It was only after the  
7 detectives had determined Defendant’s involvement in the shooting that they began to question  
8 him about the details of the weapon, and therefore ultimately gleaned the location of the weapon  
9 from Defendant’s statements. As such, even the late Miranda warning cannot redeem or  
10 otherwise render admissible the statements taken prior to the observation of Defendant’s rights,  
11 as there is no telling what direction the questioning would have taken had Defendant been  
12 advised of his rights prior to almost twenty-seven (27) minutes of ongoing questioning. Indeed,  
13 the Defendant may very well have invoked one or more of his rights advised of under a proper,  
14 timely Miranda warning, and the questioning may very well have ceased from or shortly after the  
15 outset.

16 As such, the taint of the detectives’ violations is not sufficiently attenuated, and all  
17 evidence subsequent to and/or resulting from the Defendant’s questioning *must*, according to  
18 Nevada case authority, be suppressed.

19 ///

20 ///

21 ///

22 ///

23 ///

---

24  
25  
26  
27 <sup>6</sup> The context of the statement is that the detective is clearly reading Defendant his Miranda rights  
28 for the first time.



1 CONCLUSION

2 Based on the foregoing, Defendant moves this court to suppress any statements made to  
3 detectives, as Defendant was not properly advised of his Miranda rights, and even after such  
4 attempt to Mirandize Defendant his waiver of rights was not knowing and voluntary.  
5 Furthermore, evidence recovered from the Wyandotte address, to include the firearm, must be  
6 suppressed as Defendant did not have authority over the property sufficient to consent to a search  
7 of the premises.

8 DATED this 10<sup>th</sup> day of May, 2018.

9 By: 

10 Adrian M. Loba, Esq. (#10919)  
11 Attorney for Defendant  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ACQUIRED IN VIOLATION OF  
BOTH THE FOURTH AND FIFTH AMENDMENTS in the above-entitled Court, on the  
25 day of MAY 2018, at the hour of 7:30 A.m., or as soon thereafter as counsel  
may be heard.

DATED this 10<sup>th</sup> day of May, 2018.

By: \_\_\_\_\_

LOBO LAW PLLC

ADRIAN M. LOBO, ESQ.

**RECEIPT OF COPY**

I hereby certify that on May 2018 I personally received a copy of the foregoing  
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ACQUIRED IN VIOLATION OF  
BOTH THE FOURTH AND FIFTH AMENDMENTS to: DISTRICT ATTORNEY's  
OFFICE

By: \_\_\_\_\_  
DISTRICT ATTORNEY's OFFICE

**EXHIBIT K / K1 – STATE’S  
OPPOSITION TO DEFENDANT’S  
MOTION TO SUPPRESS EVIDENCE  
WITH EXHIBIT 5**

**(Exhibit 1-4 & 6 have been omitted as they are part of the record in the instant moving papers before the court).**

**ORIGINAL**

**OPPS**

**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**SARAH E. OVERLY**  
Deputy District Attorney  
Nevada Bar #012842  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**FILED**

2018 MAY 23 P 3:54

JUSTICE COURT  
LAS VEGAS NEVADA  
BY GMH  
DEPUTY

JUSTICE COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DEANDRE GATHRITE  
#2592432

Defendant.

CASE NO: 18F03565X

DEPT NO: 11

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE**

DATE OF HEARING: MAY 25, 2018  
TIME OF HEARING: 7:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through SARAH E. OVERLY, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress Evidence.

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

//

//

//

//

18F03565X  
OPP  
Opposition  
9468617



PA000338

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On February 11, 2018, Las Vegas Metropolitan Police Department “LVMPD” dispatch  
4 received several 911 calls regarding a shooting at 2612 Van Patten Street in Las Vegas. See  
5 “Officer’s Report” attached as Exhibit 1. When officers arrived, they located Kenyon “T-Rex”  
6 Tyler (hereinafter “Tyler”) lying in the sidewalk with multiple gunshot wounds. Id. at 5. Tyler  
7 was transported to Sunrise Hospital where he succumbed to his gunshot wounds. Id. at 7.  
8 Tyler’s autopsy report revealed his cause of death was multiple gunshot wounds and the  
9 manner of death as homicide. Id. at 8.

10 Through the investigative means of patrol and Gang Detectives, a suspect was  
11 identified as Deandre “Dre” Gathrite (“Defendant”). Id. at 5. Since Defendant was currently  
12 on parole for a felony offense in California, LVMPD Criminal Apprehension Team (“CAT”)  
13 was tasked with finding Defendant and located him at his residence of 2630 Wyandotte Street,  
14 Apt #1. Id. at 10. An LVMPD Event Log was generated at approximately 1:34 p.m. See  
15 “LVMPD CAD Log” attached as Exhibit 2. However, the Defendant was not arrested on the  
16 California warrant until approximately 2:40 p.m. See “Temporary Custody Record” attached  
17 as Exhibit 3. Homicide detectives subsequently arrived and spoke with the Defendant about  
18 the February 11<sup>th</sup> shooting. See “Gathrite Transcribed Statement” attached as Exhibit 4.

19 During questioning, Detective Grimmiett informed Defendant he did not have to speak  
20 to him and was free to leave. Id. at 42-43. Defendant, well aware of how his parole violations  
21 worked, corrected Detective Grimmiett and indicated he would be extradited back to  
22 California. Id. at 49-50. In fact, Defendant clarified he had been arrested on his California  
23 warrant before, “been – been back and forth” and “on the run” since 2014. Id. at 15; 43.  
24 Defendant explained that as a result of his arrest he will likely be required to serve “90 days  
25 and then just come back and report,” establishing his familiarity with the process of being  
26 arrested, held, and extradited on his warrant. Id.

27 Less than a third of the way into the interview, Detective Grimmiett reiterated that  
28 Defendant was not required to speak with them and stated they “appreciate” Defendant talking

1 to them. Id. at 22. In an effort to cultivate a rapport with Defendant, Detective Grimmert  
2 advised Defendant of his Miranda rights:

3  
4 ...there's a reason for everything, right? And that's what you explained to us.  
5 There - there's a reason for everything, man. I mean, would you - would you  
6 feel better if I read you your Miranda rights and stuff, man? I mean, I don't have,  
7 I mean, you free to go, man. I mean, you know what I'm saying? I - I'm not here  
8 to jam you up. I'm here to simply get your side of the story. And that's why I  
9 appreciate - and I'll read 'em for you, you want me to read 'em to you, man. I  
10 mean, know, uh, you got the right to remain silent. Anything you say can be  
11 used against you in a court of law. You have a right to consult with an attorney  
12 before questioning. You have a right to the presence of a attorney during  
13 questioning. If you cannot afford an attorney, one will be appointed before  
14 questioning. You understand all that? You unders- you understand all that, Dre?  
15 Yeah? Yes, no, maybe so? I mean, I ain't trying to jam you - I'm just letting you  
16 know I ain't trying to trick you with nothing. You see what I'm sayin'? Those  
17 are your rights. You know what I'm sayin'? Those are your rights. Now, I'm not  
18 saying that, uh, you're under arrest, not like that. I'm just telling you those are  
19 your rights. If you - if you feelin' some kinda way - if that makes you feel better  
20 - you understand that? Yes, no? Am I making sense?

21 Id. at 23.

22 Without hesitation, Defendant continued to speak with Detectives stating, "It's  
23 just that the situation sucks so bad." Id. After Detectives advised Defendant of his  
24 rights, Defendant continued to detail what occurred on February 11, specifically, that  
25 he was shot towards the victim in self-defense as he was running away. Id. at 24-25.  
26 Later in the interview, Detectives inquired into the whereabouts of the firearm. Id. at  
27 25. Defendant told Detectives the gun was located in the apartment "in the hallway  
28 under the AC thing" and indicated it was loaded. Id. at 39.

When asked, Defendant clarified that his girlfriend, Tia Kelly, resides at the  
apartment with their two (2) children but had only been there the past two days. Id. at  
45. Detectives asked Defendant for consent to retrieve the firearm from the apartment:

...Uh, let me ask you this. Do we have permission to just go in there and get the  
gun out the vent and leave, I mean, without having to search the place? Can we  
just go in there and get that? I mean, you - you the adult inside the apartment, so  
that means you in c- you in care and control of the apartment. So I'm asking you  
for permission without having to do a search warrant, and go in there and just

1 grab the gun out of the vent. That's all I'm - that way we ain't gotta search  
2 through nothing. We ain't gotta go through her stuff. We ain't gotta go through  
3 all that nonsense. We can just go in there - go into the air conditioner vent. I'll  
4 even have you show me where it's at. You can go with me so you know we ain't  
5 going through all your stuff, or going through all her stuff. We can go into the  
6 vent. You can say, "Hey, it's that vent right there." We can open it up, we can  
7 get it, and we can bounce.

8 Id. at 47.

9 Defendant initially avoided the question and discusses his desire to see his  
10 girlfriend and child before he is taken away. Id. at 49. When Detectives ask again, this  
11 time more specifically, Defendant indicated they had his consent to retrieve the firearm  
12 from the apartment. Id. at 51. Detectives subsequently acquired a telephonic search  
13 warrant to search for other evidence of the shooting.

#### 14 **LEGAL ARGUMENT**

15 Miranda rights are required to be given to a defendant before a custodial  
16 interrogation. Mitchell v. State, 114 Nev. 1417, 1423, 971 P.2d 813, 817-818 (1998),  
17 *overruled on other grounds by* Sharma v. State, 118 Nev. Adv. Op. No. 69 (October 31,  
18 2002). Custody has been defined as a "'formal arrest or restraint on freedom of movement'  
19 of the degree associated with a formal arrest.'" Alward v. State, 112 Nev. 141, 154, 912 P.2d  
20 243, 252 (1996) (*citing* California v. Beheler, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520  
21 (1983)). When determining whether a person who has not been arrested is "in custody," the  
22 test "'is how a reasonable man in the suspect's position would have understood his  
23 situation.'" Alward at 154 (*citing* Berkemer v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138,  
24 3151-3152 (1984)).

25 Once voluntariness of a confession has been raised as an issue, there must be a hearing  
26 pursuant to Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964), before an accused's  
27 statements are brought before a jury. At this hearing, the Court must hear evidence concerning  
28 what the defendant told the police and the circumstances under which the defendant made the  
statements. The Court must then decide (1) whether his statement was voluntary using the  
totality of the circumstances, and (2) whether Miranda was violated. In this regard, Nevada