that's the only issue before the Court on the summary judgment.

I'm reminded by co-counsel with respect to the one allegation she made that she testified that she was supposedly a witness and that was the snowplow assault and battery of Egon Klementi, she was the only corroborating witness. The only one. There was no other witness in the trial that said that other than Egon Klementi himself. What Elfride testified to was simply what her husband told her, which is hearsay.

So I would submit, Your Honor, that the summary judgment can't be ordered based upon all of these material issues of disputed fact which, as a matter of law, go to the jury.

MR. ROUTSIS: Thank you. I --

THE COURT: I'm going to ask for a reply, and then make a decision on the amendment and the summary judgment.

MR. PINTAR: Malicious prosecution talks about initiation of the charges. We know that Miss Kinion had nothing to do with the initiation of the charges. Ms. Pence confirmed again today she had nothing to do with the amending of the charges, so I don't know what -- there's no question of fact about that. It's

undisputed, and now they're talking about what happens at the criminal trial.

Well, as the Court well knows, anything is going to be privileged. I mean, there's that judicial immunity whole thing. And plus, the charges have already been brought by that point. So with that, I would submit the motion.

THE COURT: Yeah, but what about the other allegations? I mean --

MR. PINTAR: What?

THE COURT: Defamation, conspiracy?

MR. PINTAR: That's not before the Court. I mean, when we filed this motion two years after the fact, they filed an amended complaint. I mean, we're talking about the complaint that was on file claims malicious prosecution. As Ms. Capers said, the Shaws are not in yet. This second amended complaint is not in yet. And the defamation, I mean, then you go right to everything that she said is privileged. I mean, there's no basis for a defamation. It's all immune.

THE COURT: All right. Now I'm starting to see exactly -- you know, I've read this stuff, but what I parse this, as Mr. Moore said, when I'm trying to eat one bite of the elephant at a time, we're talking only about

the malicious -- if we're talking only about the malicious prosecution defense and plaintiff is talking -- counter claimant is talking about all of the other allegations, that has to do with the amendment.

MR. PINTAR: Correct. The operative counterclaim only pleads malicious prosecution and conspiracy to commit malicious prosecution.

MR. ZANIEL: Your Honor, not to add to the problems, but the plaintiffs have filed an amended complaint that was granted, and nobody had responded to that yet. There's not an answer on file to the plaintiff's amended complaint, so I'm not sure how that -- that's a law school failure question again.

MR. MOORE: Well, we won't fault you.

MR. ZANIEL: No. I see whatever your ruling is today, it's going to have to incorporate something to the fact that we're going to have to file an answer to the amended complaint. When we file an answer to that amended complaint, are we going to see counterclaims to that as well? And what are those counterclaims going to be? And who are the parties going to be to that? And then I don't know where we're going to stand four months down the road when all of that is completed.

THE COURT: Well, okay. If this motion for

summary judgment has only to do with the malicious prosecution, that is exactly why I asked Ms. Pence to be here. I do not believe -- I believe Ms. Pence. I do not believe that the charge was enhanced by anything that Ms. Kinion did in regards to the gross misdemeanor going to a felony. That is very clear to me that it was based on medical records. The exploitation charge was original. Miss Kinion -- she didn't influence the district attorney, Ms. Kinion did not, because that was charged January. Miss Kinion's letter was February. I don't see that, and Miss Kinion had nothing to do with the malicious prosecution charge itself.

The motion for summary judgment is granted as to Ms. Kinion as to the malicious prosecution. Now we get to the amendments. That is exactly why I asked, just rhetorically, why in the hell didn't you just sue all of the neighbors? And I think the answer is we got one, they wrote a letter, we got one that said something, we got one that's got video. So I think we have to sort it out by me granting the motion to amend and having everybody either go over again or having everybody respond to the amended complaint. So I'm granting the amended complaints, but Miss Kinion is out of the malicious prosecution allegation.

Now, I want you to write -- to draft an order, Mr. Pintar, in regards to the malicious prosecution summary judgment.

MR. PINTAR: A point of clarification, Your Honor. In the amended complaint, does that mean they cannot refile the malicious prosecution against anybody?

THE COURT: I'm saying Ms. Kinion.

MR. PINTAR: Okay.

THE COURT: I'm saying just Miss Kinion. I haven't heard anything about the Shaws. I haven't -- we might come back again, Ms. Capers, but --

MS. CAPERS: Well, we would have to unless we're going to call the DA --

THE COURT: Are you going to join in the motion?

MS. CAPERS: I did join in the motion.

THE COURT: We're going to have to come back.

MS. CAPERS: Are we going to have the DA back again?

THE COURT: No, we don't need the DA back.

MS. CAPERS: Because I don't see any of the facts changing regarding the malicious prosecution for my clients.

THE COURT: Well, I agree with that except

for the fact that when Ms. Pierce was reciting fact after fact after fact, that had everything to do with the amendment, in my mind. So you go ahead and amend. Well, the amendment. We have to answer the amended complaint.

MR. ZANIEL: Your Honor, wouldn't it be procedurally more sound if we filed an answer to the plaintiff's amended complaint that's on file now --

THE COURT: Yes.

MR. ZANIEL: -- and then add the counterclaims and whatever complaints the counter claimant wants to add with the exclusion of Mary Ellen Kinion's malicious prosecution claim? Then they could add whatever other claims they want. As opposed to amending the counterclaim to the old complaint, let's just to clean it up and we'll all answer the same amended complaint.

MR. MOORE: And in fact, we are on the same wavelength on that, Your Honor. That's why we have not been pushing for an answer because we thought the last thing this case needed was another pleading floating out there. So I do agree with Mr. Zaniel's suggestion. What Mr. Pintar, following up on your order, can do, is go ahead and reflect the motion is granted as to the motion for summary judgment on Kinion on malicious prosecution. The Court has clearly ordered on that.

With that being issued at the same time, counsel for the Spencers can discuss among themselves the responsive pleading that they should file to my client's amended complaint, which has been filed some time ago. And what I would just ask is if we can just have a time limit for that so that then the Court will have things in order.

THE COURT: Can you respond in 20 days to the amended complaint?

MR. ZANIEL: Yes, Your Honor. My answer is going to stay the same. There's very little procedurally different with the amended complaint, so as the defendant, Jeff Spencer, I can be done with mine in a day and then it would just be the counterclaim issues.

MS. PIERCE: I would just like to put one thing on the record. I'm still not getting all of the e-mails and documents. I've never seen the service, so if we could please be sure that everybody is listed?

MR. ZANIEL: That was my fault.

THE COURT: Yeah, when --

MS. PIERCE: My current address is 515 Court Street.

THE COURT: Now, what I'd like to do -- when I leave, get the addresses straightened out among

yourselves. But what I'd like to do is you have 30 days from -- well, by March 1st, answer the amended complaint. Okay? And do whatever you have to do in regards to responding to the amended complaint. That's all parties. Okay? Yes, we will be back here again, but I'll wait for the pleading, but I'd like to set a trial date, and that depends on this, on Douglas County, the two district courts here as far as availability. Towards the end of the year, October, November, that kind of thing. And how long will trial be?

When I first saw this thing, I saw two weeks, but I don't know if we really -- I don't know. So that is up to you. I've got a calendar here, and the clerk can ask as far as availability.

MR. ZANIEL: Your Honor, I don't know about two weeks anytime the rest of the year.

MR. MOORE: If I may be heard. I don't mean to interrupt you, Counsel, because I know you're working here, but I think I'd better put something right out there right away for everyone to know. My client is over 80 years old. I have the ability, if need be --

THE COURT: Opportunity.

MR. MOORE: -- to file a motion for preferential trial setting. I would much rather have

everyone work and coordinate their calendars. That's much better for everyone, and hopefully we'll do that, but I point that out to hopefully encourage people to recognize we need to have a trial date this year.

MR. ZANIEL: Your Honor, I think if you order that a preferential trial setting be done, then I can attach that to a motion to continue on one of my other trials.

MR. MOORE: That sounds reasonable and we might do that. Maybe we should control our fate by identifying a trial date that we think would work, and then I can follow up with an appropriate motion practice.

THE COURT: All right. Let's start shooting some dates. I'm going to go into October. I'm kind of deferring to the clerk.

MR. MOORE: Judge, we're talking about 60 days with a senior.

THE COURT: Oh, sorry. Very sorry. Absolutely.

MR. MOORE: If need be, we don't want to pull the trigger if we can find a date that works for people this year. I mean, my client is trying to see what's doable.

MR. PINTAR: We could bifurcate the trial,

too.

THE COURT: So when would the 60 days start?

MR. MOORE: When we file it and when the Court issues the order, really. So we'd have to think down the road. Let's say we filed it by March 1, just for the sake of discussion. The Court can rule maybe in two weeks. Well, we'd have to see if it's opposed. So I'm just thinking out loud, Your Honor. I'm thinking okay, filed March 1. That gets us to April. Then 60 days after that, May, June. I think we're talking about really the summer, Your Honor.

MS. CAPERS: I'm out of the country in July.

THE COURT: See, that's where we're going.

MS. CAPERS: Right. I just put that out there.

MR. MOORE: We want to work with people, and I don't know what the Court's calendar is. The preferential setting may dictate that, but I understand this is being shared and this is complicated. I get that.

MR. ZANIEL: What about August 1st, Your Honor, or Ms. Capers is out the entire month or July 31st?

MS. CAPERS: Yeah. I don't get back until

the 25th. I'll have no access. I'm in Haiti, so maybe even the second week in August.

MR. PINTAR: Judge, the PI case will take three days. That's pretty simple. And then we could do our case in a year, which is going to take more time.

THE COURT: Well, I'm open.

MR. MOORE: We're not going to bifurcate this case. It's time and resources, but that --

MR. ZANIEL: August 7th, Your Honor. That week, I do not have a trial. I do have a trial the following week, but if your order says expedite a trial, I file a motion to continue on that one, and we're good.

THE COURT: What about trying the case in Reno in a vacant courtroom?

MR. MOORE: We could stipulate to that.

THE COURT: We're all from Reno, basically, except for Ms. Capers.

MR. MOORE: I think the only question is whether or not -- it may be, but the question will have to do with the jury. The parties have demanded a jury. We may want to have it in this venue.

THE COURT: How many days are you looking at?

MR. ZANIEL: I think the plaintiff's case in chief is not going to take too long.

MR. MOORE: Yeah. I think our case in chief -- although judging what we've seen so far, I'm going to say three days for our case in chief.

THE COURT: We could say seven or eight days for trial.

THE CLERK: We have some lengthy trials coming up starting very end of July and into August. So, I mean, we've got one going on up until September 1st there.

MR. ZANIEL: Your Honor, if everybody stipulates to move to Reno then this calendar becomes irrelevant, correct?

THE COURT: What about the jury though?

MR. MOORE: We'd have to agree. That's the issue.

MR. ZANIEL: What if we stipulate to just a venue change?

THE CLERK: You'd have to change the venue, wouldn't you?

MR. MOORE: You're right. You would, in order to make that work to do that.

MR. ZANIEL: Are you good with that?

MR. SPENCER: No.

MR. ZANIEL: Okay. Then we're back to

Douglas County.

THE COURT: Let's react to your motion for speedy trial based on age. Let's see where we are there and then we can circulate as far as available dates. I will check, of course, with Douglas County because that's the first one. The defendant has the right to have a trial in their own home county, and I've just heard, off the record to the side, that Mr. Spencer wants a Douglas County jury, so we're going to go Douglas County, of course. And I'm good myself August/September.

THE CLERK: And July, you said, wasn't good right? You're gone?

MS. CAPERS: Right. Because then my clients are going to --

MR. MOORE: But that's why we're having this discussion because I will time my motion accordingly because we want to -- we understand people --

MS. CAPERS: Because we answer, you know, then we do a demand for jury trial as well.

THE COURT: And whenever we pick a trial date and how long, I'll say two weeks because I think it's longer than a week. But I volunteer -- and I've been doing this as a senior for the last four years -- I volunteer to do myself, and a jury insulates me from

this, a settlement conference, so we want to pick a settlement conference, too, about a month or six weeks before the jury trial. And we can do the settlement conference in Reno. That will save us because I always can get rooms there.

Mike, here's your -- this is the Douglas County Sheriff.

MR. PINTAR: Thanks.

THE COURT: So I'm waiting March -- at least by March 1st. Well, no. Leave it flexible, too, Mr. Moore.

MR. MOORE: I think we will. And what we will do is we'll contact the Court separately in a month. We'll see because the timing of our motion may impact things. We're just letting parties know we're shooting to have things done before the end of the year. Right now, it's sounding like September, October.

THE COURT: Yeah. Everybody understand that?

THE CLERK: If it's -- if there is availability in the other courtroom, say, it looks like there's a week August 14th through the 18th that is a possibility. So in your guys' discussions, just know that that's a possibility as well.

MR. ROUTSIS: Judge, we'd like to move the

exhibits into evidence.

THE COURT: Right. Exhibit what?

THE CLERK: Just mark it as 5. It's not been admitted.

THE COURT: Okay. Five. Any objection to number five? That's the police report I just handed back to you, Mr. Pintar.

MR. PINTAR: No.

THE COURT: Five will be admitted.

(Exhibit No. 5 was admitted into evidence.)

THE CLERK: Two.

THE COURT: Two is what?

THE CLERK: Two is the first page of the criminal complaint from the justice court.

MR. PINTAR: I object to that because it's incomplete.

THE COURT: All right. Then I just won't admit it.

THE CLERK: Okay. And then you had 3, which was the amended information.

MR. PINTAR: No objection to that.

THE COURT: Three will be admitted.

THE CLERK: And four is already admitted. So everything but two.

THE COURT: Okay. All right. Everybody have my -- and I think what happened to the pleading that I just got before the hearing where Mr. Routsis sent it to me yesterday, but I couldn't open it because it wasn't Word. It wasn't --

MR. MOORE: It was Word Perfect, Your Honor.

THE COURT: It was Word Perfect. I'm PDF/Word. Everyone has my address and phone number and all of that?

MR. MOORE: I think we do, Your Honor. The Court's been very accessible. The record will reflect that.

I have two other matters, if I may, for scheduling because it will be a lot more efficient while we're all here. We've been trying to reschedule the depositions of Jeffery and Marilyn Spencer to take place. We sent out correspondence on December 1st, and that's been in flux. Everyone is here. We should be able to find a date. We had proposed the week of March 6th for those depositions, and I'm just checking to see if we can use that time.

MR. ZANIEL: I have two trials, Your Honor. One trial went off. One trial is still on.

MR. MOORE: I'm in trial as well.

MR. ZANIEL: March 13th looks good. March 14th looks good. March 16th looks good.

MR. PINTAR: I could do March 20, 21st or 22nd.

MR. MOORE: Now you know why we need everyone in one room.

MS. CAPERS: 20th. I'm good on the 20th.

THE COURT: 20th? Going once? Going twice?

MR. ZANIEL: 20th? March 20th?

THE COURT: March 20th.

MR. MOORE: And the 21st, to be on the safe side.

THE COURT: And the 21st.

MR. ZANIEL: I've got a depo that date, two depos that date. What about the 22nd?

MR. MOORE: I'm okay with the 22nd.

MS. CAPERS: I'm good with it.

MR. MOORE: So we have two dates, March 20th and 22nd, reserved for the depositions, hopefully the final depositions of the Spencers.

THE COURT: Okay. 20 and 22?

MR. ZANIEL: 20 and 22. At Sunshine?

MR. MOORE: Yeah. I'll send out notices.

THE COURT: All right. I'm going to leave.

Thanks a lot, everybody. Mr. Pintar is preparing the summary judgment, and everybody is responding to the amended complaint.

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STATE OF NEVADA)
)
DOUGLAS COUNTY)

I, Nicole J. Hansen, Transcriptionist for the Ninth Judicial District Court of the State of Nevada, in and for Douglas County, do hereby certify:

That I took stenotype notes of the proceedings entitled herein from a JAVS CD, and thereafter transcribed the same into typewriting as herein appears;

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

DATED: At Carson City, Nevada, this 17th day of February, 2017.

Nicole J. Hansen

Nicole J. Hansen, Transcriptionist.

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Case No. 14-CV-0260

Dept. No. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant.
_____/

ANSWER TO AMENDED COMPLAINT & AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual, & DOES 1-5,

Counterdefendant & Third Party Defendants.
_____/

COMES NOW, Defendant JEFFREY D. SPENCER, by and through his attorney of record, DAVID M. ZANIEL, ESQ. of the law offices of RANALLI, ZANIEL, FOWLER & MORAN, LLC and Counterclaimant/Third-Party Plaintiff JEFFREY D. SPENCER, by and through his attorneys WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., hereby answers Plaintiff's Amended Complaint as follows:

Defendant denies each and every paragraph contained within the Plaintiff's Complaint on file herein, save and except for those matters that are expressly addressed hereinafter.

JURISDICTION

1. Answering Paragraphs 1 and 2 of Plaintiff's Complaint, Defendant admits each and every allegation contained therein.

2. Answering Paragraphs 3 of Plaintiff's Complaint, Defendant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations contained therein and, therefore, must deny the same.

3. Answering Paragraphs 4 and 5 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF (Negligence)

4. Answering Paragraph 6 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

5. Answering Paragraph 7, 8, 9, and 10 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF (Assault & Battery)

6. Answering Paragraph 11 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

7. Answering Paragraph 12, 13, and 14 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

THIRD CLAIM FOR RELIEF (Pursuant to NRS 41.1395 Damages for injury or loss suffered by older person)

8. Answering Paragraph 15 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

9. Answering Paragraphs 16, 17, 18, and 19 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FOURTH CLAIM FOR RELIEF (Emotional Distress)

10. Answering Paragraph 20 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

11. Answering Paragraph 21 and 22 of Plaintiff's Complaint, Defendant denies each and every

allegation contained therein.

FIFTH CLAIM FOR RELIEF(Punitive Damages Pursuant to NRS 42.005)

12. Answering Paragraph 23 of Plaintiff's Complaint, Defendant repeats, realleges, and incorporates by reference the answers to each of the allegations set forth above.

13. Answering Paragraph 24 and 25 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff, were proximately caused or contributed to by the Plaintiff's own negligence, and such negligence was greater than the negligence, if any, of Defendant.

THIRD AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff has failed to mitigate his damages, if any.

FOURTH AFFIRMATIVE DEFENSE

The occurrences referred to in the Complaint, and all damages, if any, resulting therefrom, were caused by the acts or omissions of third parties over whom this answering Defendant had no control.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, therefore, Defendant reserves the right to amend his Answer to allege additional affirmative defenses or withdraw certain affirmative defenses if subsequent investigation warrants.

SIXTH AFFIRMATIVE DEFENSE

Attorney's fees are only recoverable through contract or by statute and are not recoverable

as damages in a lawsuit for personal injury damages. Plaintiff's claim for attorney's fees as alleged in Plaintiff's Complaint, are not recoverable herein and have been improperly pled in Plaintiff's Complaint. Defendant specifically reserves the right to have Plaintiff's improperly pled claim for attorney's fees dismissed prior to trial.

SEVENTH AFFIRMATIVE DEFENSE

The occurrence referred to in Plaintiff's Complaint and all injuries and damages resulting therefrom, if any, were caused by intervening and superseding causes over which this answering Defendant had no control.

EIGHTH AFFIRMATIVE DEFENSE

The alleged injuries and damages claimed in Plaintiff's Complaint was caused in whole or in part by pre-existing medical conditions neither caused nor contributed to by this answering Defendant.

NINTH AFFIRMATIVE DEFENSE

The alleged injuries and damages claimed in Plaintiff's Complaint were caused in whole or in part by his pre-existing physical, mental and/or emotional conditions and are not the responsibility of this answering Defendant.

TENTH AFFIRMATIVE DEFENSE

The alleged injuries and damages claimed in Plaintiff's Complaint, if any, were caused in whole or in part by accident and/or causes occurring subsequent to the occurrence referred to in Plaintiff's Complaint and are not the responsibility of this answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

All and/or part of the medical damages and/or diagnostic studies performed on Plaintiff were unnecessary and/or unreasonable in costs and were not causally related to the alleged occurrence referred to in Plaintiff's Complaint.

TWELVTH AFFIRMATIVE DEFENSE

Defendant is not liable to Plaintiff under the sudden emergency doctrine.

THIRTEENTH AFFIRMATIVE DEFENSE

The occurrence referred to in Plaintiff's Complaint was unavoidable and not caused or

contributed to by this answering Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

To the extent the Plaintiff, or an agent, representative or subrogee of the Plaintiff, have received compensation from, or on behalf of, the Answering Defendant, the Answering Defendant is entitled to a set-off, or return of the value of such compensation, from Plaintiff, and Plaintiff is estopped from seeking such compensation to the extent it has already been paid.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff is prohibited from more than one recovery for the same injury or harm.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are insufficient for this Court to have jurisdiction over this matter.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Plaintiff has a duty to preserve evidence which he knew, or reasonably should have known, would be relevant to this action, and any failure to do so bars the prosecution of this action against the Answering Defendant and/or requires the application of appropriate sanctions and safeguards to prevent unfair prejudice to the Answering Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

No act or omission of Answering Defendant was a substantial factor in bringing about the damages alleged by Plaintiff, nor was any act or omission a contributing cause thereof. Any alleged act or omission of Answering Defendant was superseded or preceded by the acts or omissions of others, which were the independent, intervening, legal and proximate cause of the damage alleged by Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has waived, relinquished and/or released some or all of his claims against Answering Defendant, he is estopped from pursuing them in this action.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of this action;
2. For such other and further relief as this Court may deem just and proper; and

3. For attorneys fees and costs for having to defend this claim.

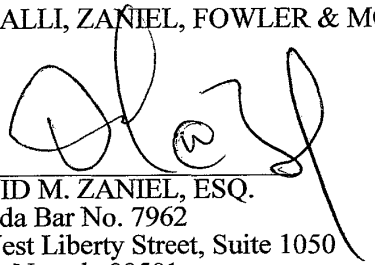
Affirmation

Pursuant to NRS 239B.030

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

DATED this 28 day of February 2017.

RANALLI, ZANIEL, FOWLER & MORAN, LLC



DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Defendant
Jeffrey D. Spencer

AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT

Defendant/Counterclaimant & Third Party Plaintiff JEFFREY D. SPENCER (hereinafter identified as "Counterclaimant"), by and through his attorneys WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., for his causes of action against the underlying Plaintiff and named Third Party Defendants (hereinafter identified as "Counter/3rd Party Defendants") hereby complains, alleges and avers as follows:

1. Counterclaimant JEFFREY D. SPENCER is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

2. Counterdefendant HELMUT KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

3. Third Party Defendant EGON KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

4. Third Party Defendant ELFRIDE KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

5. Third Party Defendant MARY ELLEN KINION is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

6. Third Party Defendant ROWENA SHAW is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

7. Third Party Defendant PETER SHAW is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

8. The true names and capacities whether individual, corporate, associate or otherwise of Third Party Defendants DOES 1 through 5, inclusive, and each of them, are unknown to Counterclaimant at this time. He therefore sues said Third Party Defendants by fictitious names and when their true names and capacities are ascertained, he will amend his Counterclaim and Third Party Complaint accordingly. Counterclaimant is informed, believes and therefore alleges that each of the Third Party Defendants designated herein as a DOE is responsible in some manner for the events and happenings referred to herein and each DOE Third Party Defendant caused the injuries and damages complained of herein.

9. Counterclaimant is informed, believes and therefore alleges that at all times relevant to the causes of action alleged herein, each Counter/3rd Party Defendant was acting as an agent, representative, partner and/or co-conspirator of other Counter/3rd Party Defendants, and was acting in the course and scope of such agency, representation, partnership and/or conspiracy in the events referred to herein.

STATEMENT OF FACTS

10. In or about May 2012, JEFFERY SPENCER and his wife began erecting a fence on their residential property in Stateline for greater privacy in their yard and to contain their dog.

11. On or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about EGON KLEMENTI coming on their property without their consent and taking photographs of two underage boys, nephews of the Spencer's close friend, who were shirtless while working the front yard.

12. On or about May 27, 2012, Officer Flagg of the Douglas County Sheriff's Department responded and spoke to EGON KLEMENTI to advise him of the Spencers' complaint and to advise

him that if he went on the Spencers' property again, he would be subject to arrest for trespassing.

13. On or about May 27, 2012, EGON KLEMENTI made no report nor complaint about JEFFERY SPENCER to Officer Flag.

14. JEFFERY SPENCER is and was working for F & B Inc., a sub-contractor for Kingsbury General Improvement District (hereinafter "KGID") for snow removal on roads within the Township of Stateline, Douglas County, Nevada.

15. On multiple occasions in November and December 2012, EGON KLEMENTI called KGID and complained that when plowing the road, JEFFREY SPENCER was intentionally leaving a snow berm in EGON and ELFRIDE KLEMENTI's driveway. EGON KLEMENTI also presented KGID a photograph depicting snow at the edge of their driveway in support of his complaints, but no photographs were ever produced showing any berms.

16. On or about December 12, 2012, MARY ELLEN KINION called KGID and complained that when plowing the road, JEFFREY SPENCER had intentionally left a snow berm in her driveway.

17. On or about December 12, 2012, EGON KLEMENTI called the Douglas County Sheriff's Department and complained that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway, and that the event had been witnessed by a neighbor MARY ELLEN KINION, who would corroborate his complaint.

18. On or about December 12, 2012, MARY ELLEN KINION called the Douglas County Sheriff's Department and reported that she had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

19. On or about December 12, 2012, Deputy Sanchez of the Douglas County Sheriff's Department responded and spoke with both EGON KLEMENTI and MARY ELLEN KINION regarding their allegations against JEFFREY SPENCER. Deputy Sanchez determined that there was no evidence, no crime had been committed, and accordingly he wrote no police report.

20. On or about December 12, 2012, MARY ELLEN KINION called KGID and stated that she witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with

snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

21. On or about December 12 and/or 13, 2012, EGON KLEMENTI and/or MARY ELLEN KINION made similar statements to other neighbors that JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries, and that MARY ELLEN KINION witnessed this battery.

22. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent a letter to KGID stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

23. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent similar letters to various Douglas County agencies stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

24. On or about December 13, 2012, EGON KLEMENTI called KGID's Director McKay and told him that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway.

25. On or about December 18, 2012, ELFRIDE KLEMENTI, EGON KLEMENTI, MARY ELLEN KINION, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the Directors and members of the public were present.

26. ELFRIDE KLEMENTI spoke at that KGID meeting, reading from a letter she wrote to the Board, stating that there had been several police reports made, that her husband felt threatened by JEFFREY SPENCER, that JEFFREY SPENCER had been intentionally using his snow plow to create berms in their driveway, that JEFFREY SPENCER is aggressive and has a gun so she is afraid, and that she wants JEFFREY SPENCER removed from his position as a snow plow operator.

27. EGON KLEMENTI spoke at that KGID meeting stating that JEFFREY SPENCER had been intentionally using his snow plow to create berms in EGON and ELFRIDE KLEMENTI's driveway to "seal him in" and that JEFFREY SPENCER had intentionally used his snow plow to strike EGON KLEMENTI with snow, ice and debris from the road.

28. MARY ELLEN KINION spoke at that KGID meeting stating that she had personally witnessed the events complained of by EGON KLEMENTI, that JEFFREY SPENCER had a big grin while using his snow plow to strike EGON KLEMENTI with snow, ice and debris, and that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

29. ROWENA SHAW spoke at that KGID meeting reading from her emails to KGID and Mr. McKay complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

30. PETER SHAW spoke at that KGID meeting complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

31. On or about December 18, 2012, at approximately 8:35p.m., JEFFREY SPENCER heard someone near his vehicle in their driveway. Since there had been several vehicle thefts in the neighborhood, he told his wife to immediately call the Douglas County Sheriff's Department.

32. As Mrs. Spencer was calling the Douglas County Sheriff's Department, JEFFREY SPENCER ran down the stairs at the front of his home, yelling to the person near his vehicle to identify himself, asking why that person was breaking into his vehicle.

33. JEFFREY SPENCER ran out onto the icy street in the dark pursuing the intruder, who had not responded to identify himself. The intruder suddenly turned back toward JEFFREY SPENCER and they collided, causing the intruder to fall down in the street. JEFFREY SPENCER then saw the intruder was either HELMUT KLEMENTI or his twin brother EGON KLEMENTI.

34. When the Douglas County Sheriff's Department officers arrived in response to Mrs. Spencer's call, HELMUT KLEMENTI and EGON KLEMENTI both claimed HELMUT KLEMENTI had not been on JEFFREY SPENCER's property, that HELMUT KLEMENTI had been standing in the road taking pictures of the snow berm when JEFFREY SPENCER ran outside and punched HELMUT KLEMENTI before throwing him to the ground.

35. The Douglas County Sheriff's Department officers also spoke with ELFRIDE KLEMENTI and some neighbors that evening.

36. Based on the statements of HELMUT KLEMENTI, EGON KLEMENTI and others, JEFFREY SPENCER was arrested that night for misdemeanor battery of HELMUT KLEMENTI,

and was released after paying a bail that same evening.

37. Based upon the statements of HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others, Douglas County Sheriff's Department instituted an investigation as to whether JEFFERY SPENCER had willfully abused an older person in violation of NRS §200.5092.

38. On or about December 19, 2012, MARY ELLEN KINION called Charles Manchester at KGID to say that JEFFREY SPENCER was arrested the night before for beating up HELMUT KLEMENTI.

39. On or about December 24, 2012, HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI filed for a restraining order against JEFFREY SPENCER.

40. On or about January 8, 2013, HELMUT KLEMENTI attended a Douglas County Planning meeting at which the Planning Board and members of the public were present.

41. HELMUT KLEMENTI spoke at that Douglas County Planning meeting, using the agenda item of the Spencer's fence, stating that JEFFREY SPENCER had assaulted him and he had a restraining order against JEFFREY SPENCER.

42. On or about January 15, 2013, ELFRIDE KLEMENTI, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the Directors and members of the public were present.

43. ELFRIDE KLEMENTI spoke at that KGID meeting stating that she was afraid of JEFFREY SPENCER because he had punched and beaten up HELMUT KLEMENTI and had been arrested.

44. ROWENA SHAW spoke at that KGID meeting, stating she was thankful a Sheriff's Deputy was there at her request, and reading a prepared written speech making accusations against JEFFREY SPENCER.

45. PETER SHAW spoke at that KGID meeting, reading a prepared written speech making accusations against JEFFREY SPENCER.

46. Several weeks after the incident, ROWENA SHAW and PETER SHAW provided Douglas County Sheriff's Department a surveillance video from their home filmed or about December 18, 2012, which had been altered to remove frames showing HELMUT KLEMENTI on JEFFERY SPENCER's property next to his vehicle.

47. On or about January 17, 2013, JEFFERY SPENCER presented himself to the Douglas County Sheriff's Department for re-arrest on felony charges from the December 18, 2012 incident. Representations regarding that incident had been made by HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others at their direction and/or instigation. He was released that same day.

48. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas County District Attorney which included an accusation that JEFFERY SPENCER had threatened to punch EGON KLEMENTI on May 27, 2012, even though she was not a witness to the alleged assault and even though EGON KLEMENTI himself had not reported any such alleged assault on that date when a Deputy came to his home because of a complaint by the Spencers.

49. On or about February 24, 2013, HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI testified at a preliminary hearing, making accusations of criminal behavior against JEFFREY SPENCER.

50. EGON KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER deliberately created berms in their driveway, and that JEFFREY SPENCER had deliberately showered him with road debris injuring him in his own driveway.

51. ELFRIDE KLEMENTI testified at that preliminary hearing that on May 27, 2012, JEFFREY SPENCER had threatened and then punched EGON KLEMENTI, even through she was not present and did not see the alleged assault or battery. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 12, 2012, JEFFREY SPENCER had deliberately used his snow plow to cover EGON KLEMENTI with snow and ice, even through she was not present and did not see the alleged battery. She also testified that JEFFREY SPENCER deliberately created berms in their driveway, that EGON KLEMENTI is frail and feels very threatened by JEFFREY SPENCER. ELFRIDE KLEMENTI testified at that preliminary hearing that on December 18, 2012, JEFFREY SPENCER hurt HELMET KLEMENTI, even though she did not see that alleged battery either.

52. HELMET KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER hit him in the chest and knocked him to the ground on December 18, 2012.

53. On or about March 8, 2013, an Amended Criminal Complaint was filed in Case No. 13-0069,

charging JEFFERY SPENCER with willfully and unjustifiably causing EGON KLEMENTI, ELFRIDE KLEMENTI and HELMUT KLEMENTI to incur pain, injury or mental anguish in violation of NRS §200.5092 and §200.5099.

54. On or about April 9, 2013, ELFRIDE KLEMENTI, MARY ELLEN KINION and ROWENA SHAW attended a Douglas County Planning meeting at which members of the public were present.

55. ROWENA SHAW used the Douglas County Planning meeting agenda item of the Spencer's fence to speak, stating that the Spencers were neighborhood bullies, and accusing JEFFREY SPENCER of battering HELMUT KLEMENTI.

56. MARY ELLEN KINION used the Douglas County Planning meeting agenda item of the Spencer's fence to speak, reading a letter from ELFRIDE KLEMENTI making accusations against JEFFREY SPENCER.

57. On or about April 24, 2013, at the preliminary hearing in Case No. 13-0069, the State claimed JEFFERY SPENCER had: (a) feloniously used a snow plow to create snow berms in the driveway of EGON and ELFRIDE KLEMENTI's home, blocking them into their home; (b) feloniously used a snow plow to intentionally batter EGON KLEMENTI with snow, ice and debris; (c) feloniously battered HELMUT KLEMENTI causing him to incur substantial bodily injury on December 18, 2012; and (d) feloniously verbally assaulted EGON KLEMENTI by threatening to punch him in the nose on May 23, 2012.

58. In or about April 2013, MARY ELLEN KINION, who was not a party to the restraining order proceeding initiated by HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI, wrote an ex-parte letter to the Justice of the Peace hearing that matter trying to get more restrictive restraining orders against JEFFREY SPENCER.

59. On or about September 16 through 27, 2013, JEFFERY SPENCER was tried on the criminal charges brought against him based upon representations of Counterdefendants and each of them.

60. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW and PETER SHAW each testified at JEFFERY SPENCER's trial against JEFFERY SPENCER.

61. There was no credible evidence presented at trial that JEFFERY SPENCER had ever used

a snow plow to intentionally create snow berms in EGON and ELFRIDE KLEMENTI's driveway, to trap them in their home, at any time and specifically not in the winter of 2012-13.

62. There was no credible evidence presented at trial that JEFFERY SPENCER had used a snow plow to batter EGON KLEMENTI with snow, ice and debris while he was shoveling his driveway, intentionally or unintentionally.

63. There was no credible evidence presented at trial that JEFFERY SPENCER had verbally assaulted EGON KLEMENTI by threatening to punch him in the nose on May 27, 2012.

64. Evidence presented at trial established that neither HELMUT KLEMENTI, EGON KLEMENTI nor ELFRIDE KLEMENTI had informed anyone of the alleged assault of May 27, 2012, at any time prior to filing for a protective order on or about December 24, 2012, despite numerous public statements made by them against JEFFREY SPENCER.

65. Further evidence presented at trial established that neither HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI nor MARY ELLEN KINION had made a report to the Douglas County Sheriff's Department of the alleged assault of May 27, 2012, at any time prior to January 2013, despite numerous interviews of them by Deputy Sheriffs regarding their allegations against JEFFERY SPENCER.

66. Evidence presented at trial established that ELFRIDE KLEMENTI and MARY ELLEN KINION were not witnesses of the May 27, 2012, alleged verbal assault, and they had no basis to make such accusations against JEFFERY SPENCER.

67. HELMUT KLEMENTI testified at trial that JEFFERY SPENCER had punched and battered him causing substantial bodily injuries.

68. Evidence presented at trial established that HELMUT KLEMENTI had been knocked down in a collision with JEFFERY SPENCER who had run down his stairs and chased the figure he had seen by his truck out onto the icy street, but there was no evidence that JEFFERY SPENCER had punched HELMUT KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.

69. At the conclusion of the trial, on or about September 27, 2013, the jury returned in short order with the verdicts finding JEFFERY SPENCER not guilty on all charges.

70. EGON KLEMENTI continued to take pictures of the Spencers, their family members, friends and children who would come to visit at the Spencer home, despite being told by the Deputy Sheriff on or about May 27, 2012 to stop such behavior.

71. EGON KLEMENTI had claimed in seeking a Protective Order against JEFFERY SPENCER the end of December 2012, that he was in fear for his life, yet EGON KLEMENTI continued to walk down the Spencer's street past their home, almost daily and sometimes twice a day, even when JEFFERY SPENCER was sitting on his porch or in his driveway.

72. ELFRIDE KLEMENTI had claimed in seeking a Protective Order against JEFFERY SPENCER the end of December 2012, that she was in fear for her life, yet ELFRIDE KLEMENTI continued to walk down the Spencer's street past their home on many occasions

73. In or about March 2014, the restraining orders were all dissolved as there was no credible evidence that JEFFREY SPENCER was a threat of any kind to HELMUT KLEMENTI, EGON KLEMENTI and/or ELFRIDE KLEMENTI.

FIRST CLAIM FOR RELIEF - DEFAMATION

74. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 73 as if fully set forth herein.

75. Counter/3rd Party Defendants, and each of them, made repeated false and defamatory statements concerning JEFFREY SPENCER, publically asserting that he failed to properly do his job as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed felonies against elderly persons.

76. The statements of Counter/3rd Party Defendants, and each of them, were unprivileged and were published verbally and/or in writing to businesses, agencies, boards, and members of the public generally.

77. Counter/3rd Party Defendants, and each of them, knew the statements were false when made, and/or the statements were made with a disregard for the truth.

78. The statements of Counter/3rd Party Defendants, and each of them, were made to get JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion of JEFFREY SPENCER, and to cause him to be held up to contempt.

79. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants,

and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community, and other losses and costs. His damages are both special and general in an amount in excess of $10,000 according to proof.

SECOND CLAIM FOR RELIEF - MALICIOUS PROSECUTION

80. Counterclaimant realleges and incorporates ¶¶ 1 through 79 as if fully set forth herein.

81. Counter/3rd Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, made statements to and/or communicated with and/or provided false evidence to the Douglas County Sheriff's Department and/or the Douglas County District Attorney's Office specifically to procure the institution of criminal charges and/or to add to the criminal charges brought, and/or to actively participate in the continuation of a criminal proceeding against JEFFREY SPENCER.

83. Said Counter/3rd Party Defendants, and each of them, acted with malice since they knew the evidence they were providing in support of the criminal proceeding was false and/or was made with a reckless disregard for the truth.

84. JEFFREY SPENCER was acquitted of all charges brought against him.

85. As a direct and proximate result of the statements and acts of said Counter/3rd Party Defendants, and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and his standing in the community, and other losses and costs. His damages are both special and general in an amount in excess of $10,000 according to proof.

THIRD CLAIM FOR RELIEF - CIVIL CONSPIRACY (DEFAMATION)

86. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 85 as if fully set forth herein.

87. Counter/3rd Party Defendants, and each of them, acted in concert in making repeated false and defamatory statements concerning JEFFREY SPENCER, that he failed to properly do his job as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed felonies against elderly persons.

88. Counter/3rd Party Defendants, and each of them, acted in concert in making statements to and communicating with businesses, agencies, boards, and members of the public generally.

89. Counter/3rd Party Defendants, and each of them, knew or should have known that the objective and purpose of making such statements was to cause harm to JEFFREY SPENCER, and explicitly and/or tacitly agreed to make such statements to cause harm to JEFFREY SPENCER.

90. The statements and acts of Counter/3rd Party Defendants, and each of them, were intended to get JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion of JEFFREY SPENCER, to cause him to be held up to contempt.

91. The statements and acts of Counter/3rd Party Defendants, and each of them, were wrongful and were made with a disregard for the truth, for the sole purpose of harming JEFFREY SPENCER.

92. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants, and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community, and other losses and costs. His damages are both special and general in an amount in excess of $10,000 according to proof.

FOURTH CLAIM FOR RELIEF - CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

93. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 92 as if fully set forth herein.

94. Counter/3rd Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, acted in concert in making repeated false statements concerning JEFFREY SPENCER.

95. Said Counter/3rd Party Defendants, and each of them, acted in concert in making statements to and communicating with the Douglas County Sheriff's Department and Douglas County District Attorney's Office to procure the institution of criminal charges, and/or to add to the criminal charges brought, and/or to actively participate in the continuation of a criminal proceeding against JEFFREY SPENCER.

96. Said Counter/3rd Party Defendants, and each of them, knew or should have known that the objective and purpose of making such statements and taking such acts was to cause harm to JEFFREY SPENCER, and explicitly and/or tacitly agreed to make such statements and take such acts to cause harm to JEFFREY SPENCER.

97. The statements and acts of said Counter/3rd Party Defendants, and each of them, were

intended to initiate criminal proceedings and/or to procure a criminal conviction against JEFFREY SPENCER.

98. The statements and acts of said Counter/3rd Party Defendants, and each of them, were wrongful and were made and taken with a disregard for the truth, for the sole purpose of harming JEFFREY SPENCER.

99. As a direct and proximate result of the statements and acts of said Counter/3rd Party Defendants, and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community, incurred substantial attorneys' fees and costs, and other losses and costs. His damages are both special and general in an amount in excess of $10,000 according to proof.

FIFTH CLAIM FOR RELIEF - PUNITIVE DAMAGES

100. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 99 as if fully set forth herein.

101. Counter/3rd Party Defendants, and each of them, acted with a conscious disregard of the probable harmful consequences of their wrongful acts, with a willful and deliberate failure to avoid those consequences, by intentional misrepresentations, deceptions and/or concealment of material facts known to them with the intent to injure JEFFREY SPENCER.

102. Counter/3rd Party Defendants, and each of them, acted with express or implied malice, with an intent to injure JEFFREY SPENCER, and through despicable conduct with a conscious disregard of his rights, subjected JEFFREY SPENCER to cruel and unjust hardships.

103. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants, and each of them, JEFFREY SPENCER sustained harm and damages, and should be awarded punitive damages.

SIXTH CLAIM FOR RELIEF - INFLICTION OF EMOTIONAL DISTRESS

104. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 103 as if fully set forth herein.

105. Counter/3rd Party Defendants, and each of them, acted intentionally or with a reckless disregard for the likelihood of causing emotional distress.

106. As a direct and proximate result of the statements and acts of Counter/3rd Party Defendants, and each of them, JEFFREY SPENCER sustained severe emotional distress, and suffered and

continues to suffer from physical ailments directly attributable to the severe emotional distress.

107. As a direct and proximate result of the emotional distress caused by the statements and acts of Counter/3rd Party Defendants, and each of them, JEFFREY SPENCER has suffered mental and physical pain, has incurred medical expenses, and other losses and costs. His damages are both special and general in an amount in excess of $10,000 according to proof.

WHEREFORE, Counterclaimant JEFFREY SPENCER prays judgement against Counter/3rd Party Defendants, and each of them, for:

1. Special damages in excess of Ten Thousand Dollars ($10,000);
2. General damages in excess of Ten Thousand Dollars ($10,000);
3. Punitive damages;
4. Prejudgment interest;
5. Attorneys' fees and costs; and,
6. Such other and further relief as the Court may deem just and proper.

The undersigned affirm pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 28th day of February, 2017.

WILLIAM J. ROUTSIS, II, Esq.
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1070 Monroe Street
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Phone 775-785-9100/Fax 775-785-9110

Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading by by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorney for Rowena Shaw & Peter Shaw

DATED this 28th day of February, 2017.

CASE NO.: 14-CV-0260

DEPT. NO.: I

RECEIVED
MAR 21 2017
Douglas County
District Court Clerk

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FILED
2017 MAR 21 PM 3:11
BOBBIE R. WILLIAMS
CLERK
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.
_____/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

MEMORANDUM OF COSTS AND DISBURSEMENTS

Counterdefendant, Mary Ellen Kinion ("Defendant"), by and through her attorneys, Glogovac & Pintar, hereby submit the following Memorandum of Costs and Disbursements as follows:

Clerks' Fees:

Demand for Change of Venue	$230.00
Initial Appearance	$3.19
Reply in Support of Demand for Change of Venue	$3.50

Court Reporters' Fees:

Sunshine Litigation (Depo of Rowena & Peter Shaw)	$262.50
Sunshine Litigation (Video Depo of Jeffery Spencer)	$1,637.25
Reporting Fee and Transcript of Pre-Trial Conference	$150.00
Sunshine Litigation (Appearance Fee for Hearing)	$330.00
Sunshine Litigation (Transcript of Hearing held on 12/12/16)	$216.00
Capitol Reporter (Transcripts of Marilyn & Jeffery Spencer Trial)	$491.25
Sunshine Litigation (Audio tape transcription of Status Hearing)	$460.45

Photocopies:

Sierra Legal Duplicating (12/2/15)	$175.04
9th Judicial District Court (4/21/16)	$17.00

TOTAL COSTS AND DISBURSMENTS: **$3,976.18**

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 6th day of March, 2017.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Counterdefendant,
Mary Ellen Kinion

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

MEMORANDUM OF COSTS AND DISBURSEMENTS

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

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Attorneys for Helmut Klementi

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Tanika Capers, Esq.
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Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 7 day of March, 2017.

Melissa L. Welch

CASE NO.: 14-CV-0260

DEPT. NO.: I

RECEIVED
MAR 21 2017
Douglas County
District Court Clerk

FILED
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

MOTION FOR ATTORNEY'S FEES AND COSTS

Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys of record, Glogovac & Pintar, and pursuant to NRCP 18.005 and NRS 18.010, respectfully submits this motion for attorney's fees and costs.

This motion is based upon the attached Memorandum of Points and Authorities along with all papers and pleadings on file herein.

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///

I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

On February 3, 2015, Spencer filed a document entitled Answer and Counterclaim. In the Counterclaim, Spencer alleged, in relevant part, that Kinion made false statements at a KGID board meeting and then later to the Douglas County District Attorney's Office for the purpose of persuading and inducing the State to prosecute Spencer. On April 22, 2016, Kinion moved for summary judgment on the claim for malicious prosecution. Following a hearing on January 30, 2017, the Court granted that motion.

As will be shown below, in asserting a claim for malicious prosecution, neither Spencer, nor his counsel, conducted a reasonable investigation, or they ignored the documents, other facts and applicable law that specifically identify and establish the impropriety of the claim against Kinion. Because the claim for malicious prosecution was brought and maintained without reasonable grounds, it cannot be considered as anything other than a heavy-handed, unsupported litigation tactic designated to harass. Thus, Kinion is entitled to an award of attorney's fees and costs pursuant to NRS 18.010(2)(b).

B. Background

The undisputed facts show that on December 18, 2012, Kinion attended a neighborhood KGID meeting wherein she informed KGID of the events that took place several days earlier regarding a snowplow incident involving Spencer and Egon Klementi ("Egon"). Later that same evening, Spencer assaulted Egon's brother, Helmut Klementi ("Helmut") while Helmut was taking pictures of the snow berm in front of his brother's house.

The Douglas County Sheriff's Office responded and conducted an investigation of the incident. As part of that investigation, Douglas County Deputy Sheriff McKone interviewed Helmut, Egon, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the Douglas County Sheriff's Report and Deputy McKone's deposition testimony, Spencer informed Deputy McKone that he attacked Helmut because he believed Helmut was breaking into his truck. Spencer also claimed that he thought Helmut was a teenager in a hoodie. Spencer

admitted to Deputy McKone that he grabbed Helmut and threw him to the ground. Ultimately, Deputy McKone did not find Spencer's account to be credible. As a result, Deputy McKone arrested Spencer for battery and abuse of an elder. Deputy McKone never spoke with or obtained a statement from Kinion. In fact, he never had any interaction with Kinion whatsoever and did not base his decision to arrest Spencer on any information originating from Kinion.

Following Spencer's arrest, the Douglas County Deputy District Attorney's office pursued criminal charges against Spencer. Later, at the direction of the Douglas County District Attorney, Kinion was asked to write a letter explaining what she saw and/or heard Spencer do. Kinion did that and sent a letter to the District Attorney's Office that was received in that office on February 22, 2013. Exhibit 1, attached.

On January 31, 2017, a hearing was held on Kinion's motion for summary judgment. At that hearing, Maria Pence, the Douglas County District Attorney who prosecuted the criminal case against Spencer testified. Ms. Pence specifically testified that no one was involved in the decision as to what criminal charges to bring against Spencer other than herself. Ms. Pence further testified that the original criminal charges she filed against Spencer were Battery, a misdemeanor, Intimidation of a Witness to Influence Testimony, a category D felony, and Exploitation of an Elderly Person, a gross misdemeanor. Exhibit 2, Hearing Transcript p. 49: 11-14. Later, the gross misdemeanor charge was enhanced by Ms. Pence to a felony based on the medical records that showed that Helmut Kelmenti had received substantial body injuries. Exhibit 2, p. 64: 4-9.

Ms. Pence's testimony confirms that Plaintiff's claim for malicious prosecution against Kinion was brought without a reasonable investigation and/or in ignorance of the facts. Ms. Pence's testimony was that nothing Kinion said or did affected the criminal charges filed against Spencer. Kinion had no involvement in the Douglas County Deputy Sheriff's decision to arrest Spencer on December 18, 2012 and nothing that Kinion wrote or said in her letter to the Douglas County District Attorney's office resulted in the charges against Spencer being enhanced. Kinion was simply told by Ms. Pence that, "if you have any information you think

that would be relevant or helpful, please write it down and send it to the District Attorney's Office." Exhibit 2, p. 22: 16-23.

C. **Discussion.**

1. Sanctions

NRS 18.010(2)(b) provides in pertinent part:

> Without regard to the recovery sought, when the court finds that the claim, **counterclaim**, cross-claim or third-party complaint or defense of the opposing party **was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.** It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and **impose sanctions pursuant to Rule 11** of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.(*Emphasis added*).

In addition to Ms. Pence categorically denying that Kinion had any involvement in the criminal charges against Spencer it is clear that Spencer and his attorneys did no investigation before filing the claim for malicious prosecution. To this end, in asserting their claim against Kinion, Spencer did *not* have a copy of the February 22, 2013 letter written by Kinion that was received by the Douglas County District Attorney's office. Moreover, as established at the recent hearing, Spencer did *not* have a copy of the Criminal Complaint upon which the initial criminal charges against Spencer were based. Further, Spencer did *not* have a copy of the amended criminal charges. If they did, Spencer and his attorneys, would have known that the criminal charges asserted against Spencer were filed *before* the Douglas County District Attorney spoke to Kinion and that they were enhanced only upon the District Attorney's office learning of the severity of Helmut Klementi's injuries and damages. Nothing that Kinion said or did affected the criminal charges against Spencer. Based on the foregoing, the malicious prosecution claim was filed without reasonable grounds and solely to harass. Kinion should therefore be awarded her attorney's fees and costs.

2. **Attorney's Fees.**

In addition to an entitlement to attorney's fees under NRS 18.010(2)(b), Kinion is also entitled to an award of attorney's fees and costs by reason of her being the prevailing party in summary judgment. "To be a prevailing party, a party need not succeed on every issue," MB Am., Inc. v. Alaska Pac. Leasing Co., 367 P.3d 1286, 132 Nev. Adv. Op. 8 (2016), quoting LVMPD v. Blackjack Bonding, Inc., 131 Nev. ——, ——, 343 P.3d 608, 615 (2015). In the MB Am case, the court affirmed attorney's fees awarded to Alaska Pacific after Alaska Pacific was granted summary judgment making Alaska Pacific the prevailing party. In this case, Kinion defeated a significant portion of the counter-claims against her. Therefore, attorney's fees and costs related to litigating the motion for summary judgment should be awarded.

"The decision whether to award attorney's fees is within the sound discretion of the trial court." Bergmann v. Boyce, 109 Nev. 670, 674 856 P.2d 560, 563 (1993), citing to County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982); see National Tow v. Integrity Ins. Co., 102 Nev. 189, 191, 717 P.2d 581, 583 (1986). The Bergmann Court stated, "'The fact that not all claims are frivolous does not prevent an award of attorneys' fees.'" Bergmann at 675, citing to Department of Revenue v. Arthur, 153 Ariz. 1, 734 P.2d 98, 101 (Ct.App.1986). Attorney's fees should be allocated with relation to "grounded and groundless claims." Id at 675-676.

From the beginning, the claim for malicious prosecution that Spencer brought against Kinion was frivolous, vexatious, and without merit. It was designed solely to harass and intimidate. As a result, Kinion was forced to seek legal counsel and her attorneys were required to perform written discovery and depositions to establish that the malicious prosecution claim was without merit.

The law firm of Glogovac & Pintar incurred $16,160 in fees defending Kinion from Spencer's claim of malicious prosecution See Affidavit of Michael A. Pintar, attached hereto as Exhibit 3. Attorney Pintar performed most of the work himself, but also had the assistance of his partner, Scott Glogovac, associates, and paralegals.

What began as a criminal case against Spencer has now evolved into a civil action by which Spencer seeks to harass and intimidate Kinion and the other counter-defendants. Working up a case to the point where summary judgment is granted requires much time and effort. It requires specific written discovery and deposition questions which focus in on the pertinent issues in dispute. As a culmination of the time and attention, summary judgment was entered in favor of Kinion.

3. Costs.

Costs must be actual costs that are also reasonable. Gibellini v. Klindt, 110 Nev. 1201, 1206, 885 P.2d 540, 543 (1994).

> "'Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered . . . [i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.'" NRS 18.020(3). In actions not specifically enumerated in NRS Chapter 18, the district court has discretion in awarding fees to the prevailing party. NRS 18.050. Under either statute, a party must prevail before it may win an award of costs.'" Golightly & Vannah, PLLC v. TJ Allen, LLC, 132 Nev. Adv. Op. No. 41 at *8 (2016).

As put forth above, Kinion was the prevailing party. NRS 18.005 defines the costs allowed to be recovered. As set forth in Exhibit 3, Kinion has also incurred costs in the amount of $3,976.18 in defending this matter through the January 31, 2016 hearing.

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 6th day of March, 2017.

GLOGOVAC & PINTAR

By: _____

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Counterdefendant,
Mary Ellen Kinion

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

MOTION FOR ATTORNEY'S FEES AND COSTS

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Counter-Defendant Helmut Klementi

Tanika M. Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Defendants Rowena Shaw and Peter Shaw

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Counter-Claimant Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge St., Suite 2
Reno, NV 89501
Attorneys for Counter-Claimant Jeffrey Spencer

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Defendant Jeffrey Spencer

Dated this 7 day of March, 2017.

Melissa L. Welch

EXHIBIT 3

EXHIBIT 3

CASE NO.: 14-CV-0260

DEPT. NO.: II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

AFFIDAVIT OF MICHAEL A. PINTAR IN SUPPORT OF COUNTER-DEFENDANT MARY ELLEN KINION'S MOTION FOR ATTORNEY'S FEES AND COSTS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

MICHAEL A. PINTAR, ESQ., does hereby swear under penalty of perjury that the following assertions are true:

1. I am an attorney duly licensed and admitted to practice before all courts in the State of Nevada, and I am a member in good standing with the State Bar of Nevada.

2. I am the attorney of record for Counter-defendant, Mary Ellen Kinion ("Kinion") in the above-entitled action.

3. I make this affidavit in support of Kinion's Motion for Attorney's Fees and Costs.

4. Attorneys' fees and paralegal fees in the amount of $16,160.00 (85.9 hours @ $150/hr.; 24.5 hours @ $125/hr. and 2.5 hours @ $85/hr.) have been incurred by the law firm of Glogovac & Pintar with respect to defending Kinion against the claim for malicious prosecution and for the preparation of Kinion's Motion for Summary Judgment and the subsequent hearings held on December 15, 2016 and January 30, 2017. (Attached hereto as Exhibit 1 are copies of the redacted invoices reflecting the legal work performed).

5. That the attorneys' and paralegal fees charged are just, reasonable and fair under the circumstances.

6. That attached to the motion as Exhibit 1, is a true and correct copy of Kinion's letter to the Douglas County District Attorney.

7. Attached as Exhibit 2, is a true and correct copy of the January 30, 2017 hearing transcript.

8. Further affiant sayeth not.

Dated this 6th day of March, 2017.

MICHAEL A. PINTAR, ESQ.

SUBSCRIBED and SWORN to before me,
this 7 day of March, 2017.

NOTARY PUBLIC

MELISSA WELCH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 16-3926-16 - Expires September 23, 2020

EXHIBIT 1

EXHIBIT 1

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

May 2, 2016
Our File No. ALL.1741
Invoice Number: 62698

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through April 30, 2016

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
[redacted]				
03/04/16	KCK	Legal research re: testimony immunity for Kinion.	1.00	125.00
03/04/16	KCK	Prepare memo re: testimony immunity for Kinion.	1.50	187.50
03/08/16	MAP	E-mails with Zaniel's office re: depositions.	0.20	30.00
03/09/16	SM	Prepare draft interrogatories to plaintiff.	1.50	127.50
03/11/16	SM	Prepare draft request for production of documents to plaintiff.	1.00	85.00
03/14/16	MAP	Revise and finalize interrogatories and request for production of documents to plaintiff.	1.00	150.00
[redacted]				
03/17/16	MAP	Meeting with client re: case strategy and further handling.	1.50	225.00
[redacted]				

Date	Atty	Description	Hours	Amount
[redacted]				
03/28/16	MAP	Review subpoenas to Peter and Rowena Shaw.	0.10	15.00
04/04/16	MAP	Phone call with insured re: upcoming deposition.	0.20	30.00
[redacted]				
04/06/16	MAP	Meeting with insured re: deposition preparation.	3.00	450.00
04/08/16	MAP	Phone call with Klementi's counsel re: declaratory relief action.	0.50	75.00
[redacted]				
04/08/16	MAP	Review letter from Klementi's counsel to Spencer's counsel re: lack of 16.1 production.	0.20	30.00
04/12/16	MAP	Review Spencer's request for production of documents to Klementi.	0.10	15.00
04/12/16	RRH	Review and analyze deposition of Jesse McKone in preparation to draft motion for summary judgment.	0.50	62.50
[redacted]				
04/13/16	MAP	Phone call with insured re: deposition.	0.30	45.00
[redacted]				
04/13/16	MAP	Review Officer McKone's deposition transcript.	1.00	150.00
04/14/16	MAP	Attend Helmut Klementi's deposition.	4.50	675.00
04/14/16	MAP	Attend Elfie Klementi's deposition.	3.50	525.00
04/14/16	MAP	Meeting with Klementi's counsel re: discovery.	0.80	120.00
[redacted]				

Date	Atty	Description	Hours	Amount
04/14/16	RRH	Review claim file materials and documents in preparation to draft motion for summary judgment.	1.00	125.00
04/14/16	RRH	Review and analyze deposition of Mary Kinion in preparation to draft motion for summary judgment.	1.50	187.50
04/14/16	RRH	Begin drafting defendant's motion for summary judgment.	5.50	687.50
[redacted]				
04/15/16	RRH	Continue drafting defendant's motion for summary judgment.	3.00	375.00
04/15/16	RRH	Revise and edit draft of defendant's motion for summary judgment.	1.00	125.00
04/17/16	MAP	Review insured's deposition transcript.	1.00	150.00
04/17/16	MAP	Revise motion for summary judgment on counter-claims.	0.80	120.00
[redacted]				
04/20/16	MAP	Further revision to motion for summary judgment.	1.00	150.00
04/20/16	MAP	Review case file at the courthouse re: pleading and procedural irregularities.	2.50	375.00
04/20/16	MAP	Prepare demand for prior pleadings to defendant/counterclaimant Spencer.	0.30	45.00
04/21/16	MAP	Prepare demand for prior discovery and pleadings to	0.50	75.00

Date	Atty	Description	Hours	Amount
		Spencer.		
[redacted]				
04/22/16	MAP	Phone call with Klementi's counsel re: anti-SLAPP laws, discovery.	1.00	150.00
[redacted]				
04/22/16	MAP	Finalize motion for summary judgment.	0.80	120.00
[redacted]				
04/27/16	MAP	Prepare letter to counter-claiment Spencer's attorney Routsis re: past due discovery responses.	0.20	30.00

STAFF SUBTOTALS

Kenton Karrasch	[redacted]	@ 125.00	$ [redacted]
Howey, Robert R.		@ 125.00	$
Sherie Morrill		@ 85.00	$
Pintar, Michael A.		@ 150.00	$

Total Professional Services [redacted]

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

June 6, 2016
Our File No. ALL.1741
Invoice Number: 62751

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through May 31, 2016

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
05/04/16	MAP	E-mails with Helmut Klementi's counsel re: prior attorney.	0.30	45.00
05/04/16	MAP	E-mails with Spencer's attorney re: deposition.	0.30	45.00
05/06/16	MAP	Meeting with insured re: legal status and further handling.	1.00	150.00
05/09/16	MAP	E-mails with counsel re: plaintiff's deposition.	0.20	30.00
05/10/16	MAP	Phone call with Spencer's counsel re: case background.	0.50	75.00
05/17/16	MAP	Review and analyze plaintiff's opposition brief and exhibits.	0.60	90.00
05/18/16	MAP	Phone call with insured re: allegation in Spencer's reply brief.	0.50	75.00
05/18/16	MAP	Legal research re: issues addressed in motion for summary judgment, standards and need for admissible evidence.	3.50	525.00
05/18/16	MAP	Begin preparing reply in support of motion for summary judgment.	2.00	300.00
05/19/16	MAP	Continue preparing reply in support of motion for summary judgment.	1.50	225.00
05/19/16	MAP	Legal research re: immunity for judicial proceedings.	2.00	300.00

Date	Atty	Description	Hours	Amount
05/20/16	MAP	Revisions to reply brief in support of motion for summary judgment.	3.00	450.00
05/22/16	MAP	Revise, finalize reply brief in support of motion for summary judgment.	1.00	150.00
05/22/16	MAP	Legal research re: authorities for amending complaint.	1.50	225.00
05/22/16	MAP	Review request for submission of substitution of counsel.	0.10	15.00
05/23/16	MAP	Legal research re: Nevada's anti-SLAPP laws.	2.00	300.00
[redacted]				

STAFF SUBTOTALS

Pintar, Michael A. [redacted] @ 150.00 $ [redacted]

Total Professional Services [redacted]

[redacted]

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

August 8, 2016
Our File No. ALL.1741
Invoice Number: 62863

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through July 31, 2016

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
[redacted]				

Date	Atty	Description	Hours	Amount
07/28/16	MAP	Prepare for deposition of Jeff Spencer.	2.50	375.00
07/28/16	MAP	Attend deposition of Jeff Spencer.	6.00	900.00
07/29/16	MAP	Phone call with Helmut Klementi's counsel re: status.	0.30	45.00
[redacted]				

STAFF SUBTOTALS

Pintar, Michael A. [redacted] @ 150.00 $ [redacted]

Total Professional Services [redacted]

[redacted]

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

September 6, 2016
Our File No. ALL.1741
Invoice Number: 62884

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through August 31, 2016

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
[redacted]				
08/11/16	MAP	Prepare for hearing.	1.00	150.00
08/11/16	MAP	Attend hearing/oral argument on pending motions.	2.00	300.00
08/11/16	MAP	Meeting with insured re case status.	0.50	75.00
08/18/16	MAP	Prepare opposition to plaintiff's motion to amend complaint.	3.00	450.00
08/19/16	MAP	E-mail with court re: continuance of hearing re: motion for summary judgment and other pending motions.	0.20	30.00
[redacted]				

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

December 5, 2016
Our File No. ALL.1741
Invoice Number: 63040

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through November 30, 2016

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
[redacted]				

Date	Atty	Description	Hours	Amount
[redacted]				
11/08/16	DKW	Legal research re: issues raised by Spencer's insufficient responses to requests for production.	3.50	437.50
11/08/16	DKW	Begin drafting meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	2.00	250.00
11/09/16	DKW	Complete draft of meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	1.80	225.00
11/14/16	DKW	Finalizing meet and confer letter.	0.70	87.50
[redacted]				

GLOGOVAC & PINTAR
Attorneys at Law
427 West Plumb Lane
Reno, Nevada 89509-3766
Telephone (775) 333-0400
Facsimile (775) 333-0412
Employer I.D. No. 88-0340418

Allstate Insurance Company
500 E. Warm Springs Rd., Ste. 200
P. O. Box 98761
Las Vegas, NV 89193-8761

February 2, 2017
Our File No. ALL.1741
Invoice Number: 63163

Re: Klementi and Kinion v. Spencer
DOL: December 12, 2012
0360834337.2
[redacted]

Statement of Account for Services Rendered Through January 31, 2017

ATTORNEY FEES

Date	Atty	Description	Hours	Amount
12/08/16	DKW	Further revisions to meet and confer letter to Lynn Pierce.	1.50	187.50
12/09/16	MAP	Finalize meet and confer letter.	0.50	75.00
12/14/16	SAG	Reviewing file materials and preparing for court hearing on all pending motions.	4.50	675.00
12/15/16	SAG	Additional preparation for court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Travel to Minden, Nevada for court hearing.	1.00	150.00
12/15/16	SAG	Attend court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Post-hearing meeting with clients re: status and further handling of case.	0.50	75.00
12/15/16	SAG	Return trip to Reno.	1.00	150.00

[redacted]

Date	Atty	Description	Hours	Amount
[redacted]				
01/26/17	MAP	Phone call with insured re: upcoming hearing.	0.30	45.00
[redacted]				
01/27/17	MAP	Review pleading in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review legal research in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review extensive file from Douglas Court District Attorney.	2.50	375.00
[redacted]				
01/30/17	MAP	Continue review of extensive file from district attorney's office.	2.50	375.00
01/30/17	MAP	Travel from Reno to Minden for court hearing re: motions.	0.80	120.00
01/30/17	MAP	Attend hearing.	4.00	600.00
01/30/17	MAP	Meeting with clients after hearing to discuss case.	1.00	150.00
01/30/17	MAP	Return trip to Reno.	0.80	120.00
[redacted]				

STAFF SUBTOTALS

Don K. White	[redacted]	@ 125.00	$	[redacted]
Glogovac, Scott A.		@ 150.00	$	
Pintar, Michael A.		@ 150.00	$	

Total Professional Services [redacted]

[redacted]

RECEIVED
MAR 24 2017
Douglas County
District Court Clerk

FILED
2017 MAR 24 PM 1:41
BOBBIE R. WILLIAMS
CLERK
BY [signature] DEPUTY

CASE NO.: 14-CV-0260

DEPT. NO.: II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.
_____/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

ANSWER TO AMENDED COUNTERCLAIM and THIRD-PARTY COMPLAINT

Third-party defendants, Egon Klementi and Elfride Klementi, (collectively "Klementis"), by and through their attorneys, Glogovac & Pintar, and in response to the Third-party Complaint filed in the above-captioned matter by Defendant/ Counterclaimaint, Jeffrey Spencer ("Spencer"), admit, deny and aver as follows:

BURTON, BARTLETT
& GLOGOVAC
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

JURISDICTIONAL ALLEGATIONS

1. Klementis admit the allegations contained in Paragraph 1.

2. Klementis admit the allegations contained in Paragraph 2.

3. Klementis admit the allegations contained in Paragraph 3.

4. Klementis admit the allegations contained in Paragraph 4.

5. Klementis admit the allegations contained in Paragraph 5.

6. Klementis admit the allegations contained in Paragraph 6.

7. Klementis admit the allegations contained in Paragraph 7.

8. Klementis aver that the allegations contained in Paragraph 8 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

9. Klementis aver that the allegations contained in Paragraph 9 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

FACTUAL ALLEGATIONS

10. Klementis admit the allegations contained in Paragraph 10.

11. In response to the allegations of Paragraph 11, Klementis admit that on or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about Egon Klementi, but deny all other allegations contained in Paragraph 11, not admitted.

12. Klementis deny the allegations contained in Paragraph 12.

13. Klementis deny the allegations contained in Paragraph 13.

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14. Klementis aver that the allegations contained in Paragraph 14 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

15. Klementis aver that the allegations contained in Paragraph 15 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

16. Klementis admit the allegations contained in Paragraph 16.

17. Klementis admit the allegations contained in Paragraph 17.

18. Klementis admit the allegations contained in Paragraph 18.

19. Klementis deny the allegations contained in Paragraph 19.

20. Klementis deny the allegations contained in Paragraph 20.

21. Klementis aver that the allegations contained in Paragraph 21 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

22. Klementis aver that the allegations contained in Paragraph 22 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

23. Klementis aver that the allegations contained in Paragraph 23 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

24. Klementis deny the allegations contained in Paragraph 24.

25. Klementis admit that the allegations contained in Paragraph 25.

26. Klementis aver that the allegations contained in Paragraph 26 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient

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to form a belief as to the truth of the same.

27. Klementis aver that the allegations contained in Paragraph 27 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

28. Klementis aver that the allegations contained in Paragraph 28 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

29. Klementis aver that the allegations contained in Paragraph 29 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

30. Klementis aver that the allegations contained in Paragraph 30 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

31. Klementis deny the allegations contained in Paragraph 31.

32. Klementis deny the allegations contained in Paragraph 32.

33. Klementis deny the allegations contained in Paragraph 33.

34. Klementis admit the allegations contained in Paragraph 34.

35. Klementis admit the allegations contained in Paragraph 35.

36. Klementis aver that the allegations contained in Paragraph 36 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

37. Klementis aver that the allegations contained in Paragraph 37 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

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38. Klementis deny the allegations contained in Paragraph 38.

39. In response to the allegations contained in Paragraph 39, Klementis admit that Helmut Klementi filed for a restraining order against Spencer on December 24, 2012. Klementis deny the remaining allegations contained in Paragraph 39, not admitted.

40. Klementis aver that the allegations contained in Paragraph 40 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

41. Klementis aver that the allegations contained in Paragraph 41 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

42. Klementis aver that the allegations contained in Paragraph 42 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

43. Klementis aver that the allegations contained in Paragraph 43 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

44. Klementis aver that the allegations contained in Paragraph 44 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

45. Klementis aver that the allegations contained in Paragraph 45 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

46. Klementis are without knowledge or information sufficient to form a belief

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as to the truth of the allegations contained in Paragraph 46. Klementis deny that the video provided to the Douglas County Sheriff's Department by Shaw was altered.

47. Klementis are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47.

48. In response to the allegations contained in Paragraph 48, Klementis admit that on or about February 22, 2013, Kinion wrote a letter to the Douglas County District Attorney identifying what she had seen and heard at the request of the District Attorney. Klementis deny the remaining allegations contained in Paragraph 48 not admitted.

49. Klementis aver that the allegations contained in Paragraph 49 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

50. Klementis admit the allegations contained in Paragraph 50.

51. Klementis aver that the allegations contained in Paragraph 51 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

52. Klementis admit the allegations contained in Paragraph 52.

53. Klementis are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.

54. Klementis aver that the allegations contained in Paragraph 54 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

55. Klementis aver that the allegations contained in Paragraph 55 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient

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to form a belief as to the truth of the same.

56. Klementis aver that the allegations contained in Paragraph 56 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

57. Klementis admit the allegations contained in Paragraph 57.

58. Klementis aver that the allegations contained in Paragraph 58 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

59. Klementis admit the allegations contained in Paragraph 59.

60. Klementis admit the allegations contained in Paragraph 60.

61. Klementis deny the allegations contained in Paragraph 61.

62. Klementis deny the allegations contained in Paragraph 62.

63. Klementis deny the allegations contained in Paragraph 63.

64. Klementis deny the allegations contained in Paragraph 64.

65. Klementis deny the allegations contained in Paragraph 65.

66. Klementis deny the allegations contained in Paragraph 66.

67. Klementis admit the allegations contained in Paragraph 67.

68. Klementis deny the allegations contained in Paragraph 68.

69. Klementis aver that the allegations contained in Paragraph 69 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

70. Klementis deny the allegations contained in Paragraph 70.

71. Klementis deny the allegations contained in Paragraph 71.

72. Klementis deny the allegations contained in Paragraph 72.

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73. Klementis deny the allegations contained in Paragraph 73.

FIRST CAUSE OF ACTION

74. In response to the allegations of Paragraph 73, Klementis incorporate herein by this reference and restate their answers to the allegations of Paragraphs 1 through 73 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

75. In response to the allegations contained in Paragraph 75, Klementis admit that they made statements concerning Spencer in various judicial and quasi-judicial proceedings about his failure to appropriately do his job as snow plow driver and concerning his assault and battery of Egon and Helmut Klementi on separate occasions. Because these communications were uttered or published in course of judicial or quasi-judicial proceedings and were pertinent to the subject of controversy, they are absolutely privileged. Klementis deny the remaining allegations contained in Paragraph 75 not admitted.

76. Klementis deny the allegations contained in Paragraph 76.

77. Klementis deny the allegations contained in Paragraph 77.

78. Klementis deny the allegations contained in Paragraph 78.

79. Klementis deny the allegations contained in Paragraph 79.

SECOND CAUSE OF ACTION

80. In response to the allegations contained in Paragraph 80, Klementis incorporate herein by this reference and restate their answers to the allegations of Paragraphs 1 through 79 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

81. In response to the allegations contained in Paragraph 81, Klementis

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deny any statements or communications they made to the Douglas County Sheriff's Department and/or the Douglas County District Attorney's Office were false. Further, because their communications were uttered or published in course of judicial or quasi-judicial proceedings and/or were made to employees of a political subsidiary, they are absolutely privileged. Klementis deny the remaining allegations contained in Paragraph 81, not admitted.

82. Klementis deny the allegations contained in Paragraph 82 (misidentified as Paragraph 83).

83. Klementis admit the allegations contained in Paragraph 83 (misidentified as Paragraph 84).

84. Klementis deny the allegations contained in Paragraph 84 (misidentified as Paragraph 85).

THIRD CAUSE OF ACTION

85. In response to the allegations contained in Paragraph 85 (misidentified as Paragraph 86). Klementis incorporates herein by reference and restates their answers to the allegations of Paragraphs 1 through 84 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

86. Klementis deny the allegations contained in Paragraph 86 (misidentified as Paragraph 87).

87. Klementis deny the allegations contained in Paragraph 87 (misidentified as Paragraph 88).

88. Klementis deny the allegations contained in Paragraph 88 (misidentified as Paragraph 89).

89. Klementis deny the allegations contained in Paragraph 89 (misidentified

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as Paragraph 90).

90. Klementis deny the allegations contained in Paragraph 90 (misidentified as Paragraph 91).

91. Klementis deny the allegations contained in Paragraph 91 (misidentified as Paragraph 92).

FOURTH CAUSE OF ACTION

92. In response to the allegations contained in Paragraph 92 (misidentified as Paragraph 93), Klementis incorporate herein by reference and restate their answers to the allegations of Paragraphs 1 through 91 of the Amended Counterclaim and Klementis as if fully set forth herein.

93. Klementis deny the allegations contained in Paragraph 93 (misidentified as Paragraph 94).

94. Klementis deny the allegations contained in Paragraph 94 (misidentified as Paragraph 95).

95. Klementis deny the allegations contained in Paragraph 95 (misidentified as Paragraph 96).

96. Klementis deny the allegations contained in Paragraph 96 (misidentified as Paragraph 97).

97. Klementis deny the allegations contained in Paragraph 97 (misidentified as Paragraph 98).

98. Klementis deny the allegations contained in Paragraph 98 (misidentified as Paragraph 99).

FIFTH CAUSE OF ACTION

99. In response to the allegations contained in Paragraph 99 (misidentified

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as Paragraph 100), Klementis incorporate herein by reference and restate their answers to the allegations of Paragraphs 1 through 98 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

100. Klementis deny the allegations contained in Paragraph 100 (misidentified as Paragraph 101).

101. Klementis deny the allegations contained in Paragraph 101 (misidentified as Paragraph 102).

102. Klementis deny the allegations contained in Paragraph 102 (misidentified as Paragraph 103).

SIXTH CAUSE OF ACTION

103. In response to the allegations contained in Paragraph 103 (misidentified as Paragraph 104), Klementis incorporate herein by reference and restate their answers to the allegations of Paragraphs 1 through 103 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

104. Klementis deny the allegations contained in Paragraph 104 (misidentified as Paragraph 105).

105. Klementis deny the allegations contained in Paragraph 105 (misidentified as Paragraph 106).

106. Klementis deny the allegations contained in Paragraph 106 (misidentified as Paragraph 107).

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Counterclaim and Third-party Complaint and each and every allegation contained therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint are absolutely privileged because they were uttered or published in course of judicial and/or quasi-judicial proceedings and were pertinent to the subject of controversy.

THIRD AFFIRMATIVE DEFENSE

That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint when taken as a whole are statements of opinion protected under the First Amendment.

FOURTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint are true or substantially true and made in good faith.

FIFTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made in good faith, aimed at procuring governmental action, and made to an officer or employee of a political subdivision of this state.

SIXTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made without actual malice.

SEVENTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Klementis and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made after initiation of criminal proceedings.

EIGHT AFFIRMATIVE DEFENSE

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To the extent Spencer sustained any damages as a result of the allegations out of which this matter arises, those damages were caused by the acts or omissions of Third-parties over which Klementis have no control.

NINTH AFFIRMATIVE DEFENSE

Klementis are informed and believe and thereupon aver that at all times relevant hereto, Spencer was negligent, at fault, and otherwise responsible for the allegations which are the subject of this litigation.

TENTH AFFIRMATIVE DEFENSE

That Spencer's damages, if any, were caused in whole or in part, or were contributed to by reason of the actions and wrongful conduct of Spencer himself.

ELEVENTH AFFIRMATIVE DEFENSE

Spencer's action against the Klementis are frivolous, unreasonable, vexatious, and devoid of any legal or factual foundation. The Amended Counterclaim and Third-party Complaint is not well grounded in fact, nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

PRAYER FOR RELIEF

Based upon the foregoing, Third-party Defendants, Egon Klementi and Elfride Klementi, respectfully request relief as follows:

1. That Spencer take nothing by virtue of this action, and that his Amended Counterclaim against the Klementis be dismissed with prejudice;

2. For costs of suit and attorney's fees to the extent allowed by law; and

3. For such other and further relief as the Court deems just and proper.

///

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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 24 day of March, 2017.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Mary Ellen Kinion

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& GLOGOVAC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

Douglas R. Brown, Esq.
Chris Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 24th day of March, 2017.

Roberta Williams Blaze
Employee of Glogovac & Pintar

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CASE NO.: 14-CV-0260

DEPT. NO.: II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

ANSWER TO AMENDED COUNTERCLAIM and THIRD-PARTY COMPLAINT

Third-party defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys, Glogovac & Pintar, and in response to the Third-party Complaint filed in the above-captioned matter by Defendant/Counterclaimaint, Jeffrey Spencer ("Spencer"), admits, denies and avers as follows:

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JURISDICTIONAL ALLEGATIONS

1. Kinion admits the allegations contained in Paragraph 1.

2. Kinion admits the allegations contained in Paragraph 2.

3. Kinion admits the allegations contained in Paragraph 3.

4. Kinion admits the allegations contained in Paragraph 4.

5. Kinion admits the allegations contained in Paragraph 5.

6. Kinion admits the allegations contained in Paragraph 6.

7. Kinion admits the allegations contained in Paragraph 7.

8. Kinion avers that the allegations contained in Paragraph 8 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

9. Kinion avers that the allegations contained in Paragraph 9 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

FACTUAL ALLEGATIONS

10. Kinion admits the allegations contained in Paragraph 10.

11. In response to the allegations of Paragraph 11, Kinion admits that on or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about Egon Klementi, but deny all other allegations contained in Paragraph 11, not admitted.

12. Kinion denies the allegations contained in Paragraph 12.

13. Kinion denies the allegations contained in Paragraph 13.

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14. Kinion avers that the allegations contained in Paragraph 14 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

15. Kinion avers that the allegations contained in Paragraph 15 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

16. Kinion admits the allegations contained in Paragraph 16.

17. Kinion admits the allegations contained in Paragraph 17.

18. Kinion admits the allegations contained in Paragraph 18.

19. Kinion denies the allegations contained in Paragraph 19.

20. Kinion denies the allegations contained in Paragraph 20.

21. Kinion avers that the allegations contained in Paragraph 21 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

22. Kinion avers that the allegations contained in Paragraph 22 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

23. Kinion avers that the allegations contained in Paragraph 23 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

24. Kinion denies the allegations contained in Paragraph 24.

25. Kinion admits that the allegations contained in Paragraph 25.

26. Kinion avers that the allegations contained in Paragraph 26 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to

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form a belief as to the truth of the same.

27. Kinion avers that the allegations contained in Paragraph 27 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

28. Kinion avers that the allegations contained in Paragraph 28 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

29. Kinion avers that the allegations contained in Paragraph 29 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

30. Kinion avers that the allegations contained in Paragraph 30 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

31. Kinion denies the allegations contained in Paragraph 31.

32. Kinion denies the allegations contained in Paragraph 32.

33. Kinion denies the allegations contained in Paragraph 33.

34. Kinion admits the allegations contained in Paragraph 34.

35. Kinion admits the allegations contained in Paragraph 35.

36. Kinion avers that the allegations contained in Paragraph 36 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

37. Kinion avers that the allegations contained in Paragraph 37 are vague and non-specific, and thus, Kinion are without knowledge or information sufficient to form a belief as to the truth of the same.

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38. Kinion denies the allegations contained in Paragraph 38.

39. In response to the allegations contained in Paragraph 39, Kinion admits that Helmut Klementi filed for a restraining order against Spencer on December 24, 2012. Kinion denies the remaining allegations contained in Paragraph 39, not admitted.

40. Kinion avers that the allegations contained in Paragraph 40 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

41. Kinion avers that the allegations contained in Paragraph 41 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

42. Kinion avers that the allegations contained in Paragraph 42 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

43. Kinion avers that the allegations contained in Paragraph 43 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

44. Kinion avers that the allegations contained in Paragraph 44 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

45. Kinion avers that the allegations contained in Paragraph 45 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

46. Kinion is without knowledge or information sufficient to form a belief as to

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the truth of the allegations contained in Paragraph 46. Kinion denies that the video provided to the Douglas County Sheriff's Department by Shaw was altered.

47. Kinion is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 47.

48. In response to the allegations contained in Paragraph 48, Kinion admits that on or about February 22, 2013, Kinion wrote a letter to the Douglas County District Attorney identifying what she had seen and heard at the request of the District Attorney. Kinion denies the remaining allegations contained in Paragraph 48 not admitted.

49. Kinion avers that the allegations contained in Paragraph 49 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

50. Kinion admits the allegations contained in Paragraph 50.

51. Kinion avers that the allegations contained in Paragraph 51 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

52. Kinion admits the allegations contained in Paragraph 52.

53. Kinion is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53.

54. Kinion avers that the allegations contained in Paragraph 54 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

55. Kinion avers that the allegations contained in Paragraph 55 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to

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form a belief as to the truth of the same.

56. Kinion avers that the allegations contained in Paragraph 56 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

57. Kinion admits the allegations contained in Paragraph 57.

58. Kinion avers that the allegations contained in Paragraph 58 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

59. Kinion admits the allegations contained in Paragraph 59.

60. Kinion admits the allegations contained in Paragraph 60.

61. Kinion denies the allegations contained in Paragraph 61.

62. Kinion denies the allegations contained in Paragraph 62.

63. Kinion denies the allegations contained in Paragraph 63.

64. Kinion denies the allegations contained in Paragraph 64.

65. Kinion denies the allegations contained in Paragraph 65.

66. Kinion denies the allegations contained in Paragraph 66.

67. Kinion admits the allegations contained in Paragraph 67.

68. Kinion denies the allegations contained in Paragraph 68.

69. Kinion avers that the allegations contained in Paragraph 69 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

70. Kinion denies the allegations contained in Paragraph 70.

71. Kinion denies the allegations contained in Paragraph 71.

72. Kinion denies the allegations contained in Paragraph 72.

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73. Kinion denies the allegations contained in Paragraph 73.

FIRST CAUSE OF ACTION

74. In response to the allegations of Paragraph 73, Kinion incorporates herein by this reference and restates her answers to the allegations of Paragraphs 1 through 73 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

75. In response to the allegations contained in Paragraph 75, Kinion admits that they made statements concerning Spencer in various judicial and quasi-judicial proceedings about his failure to appropriately do his job as snow plow driver and concerning his assault and battery of Egon and Helmut Klementi on separate occasions. Because these communications were uttered or published in course of judicial or quasi-judicial proceedings and were pertinent to the subject of controversy, they are absolutely privileged. Kinion denies the remaining allegations contained in Paragraph 75 not admitted.

76. Kinion denies the allegations contained in Paragraph 76.

77. Kinion denies the allegations contained in Paragraph 77.

78. Kinion denies the allegations contained in Paragraph 78.

79. Kinion denies the allegations contained in Paragraph 79.

SECOND CAUSE OF ACTION

80. In response to the allegations contained in Paragraph 80, Kinion incorporates herein by this reference and restates her answers to the allegations of Paragraphs 1 through 79 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

81. In response to the allegations contained in Paragraph 81, Kinion denies

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any statements or communications she made to the Douglas County Sheriff's Department and/or the Douglas County District Attorney's Office were false. Further, because their communications were uttered or published in course of judicial or quasi-judicial proceedings and/or were made to employees of a political subsidiary, they are absolutely privileged. Kinion denies the remaining allegations contained in Paragraph 81, not admitted.

82. Kinion denies the allegations contained in Paragraph 82 (misidentified as Paragraph 83).

83. Kinion admits the allegations contained in Paragraph 83 (misidentified as Paragraph 84).

84. Kinion denies the allegations contained in Paragraph 84 (misidentified as Paragraph 85).

THIRD CAUSE OF ACTION

85. In response to the allegations contained in Paragraph 85 (misidentified as Paragraph 86). Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 84 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

86. Kinion denies the allegations contained in Paragraph 86 (misidentified as Paragraph 87).

87. Kinion denies the allegations contained in Paragraph 87 (misidentified as Paragraph 88).

88. Kinion denies the allegations contained in Paragraph 88 (misidentified as Paragraph 89).

89. Kinion denies the allegations contained in Paragraph 89 (misidentified as

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Paragraph 90).

90. Kinion denies the allegations contained in Paragraph 90 (misidentified as Paragraph 91).

91. Kinion denies the allegations contained in Paragraph 91 (misidentified as Paragraph 92).

FOURTH CAUSE OF ACTION

92. In response to the allegations contained in Paragraph 92 (misidentified as Paragraph 93), Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 91 of the Amended Counterclaim and Kinion as if fully set forth herein.

93. Kinion denies the allegations contained in Paragraph 93 (misidentified as Paragraph 94).

94. Kinion denies the allegations contained in Paragraph 94 (misidentified as Paragraph 95).

95. Kinion denies the allegations contained in Paragraph 95 (misidentified as Paragraph 96).

96. Kinion denies the allegations contained in Paragraph 96 (misidentified as Paragraph 97).

97. Kinion denies the allegations contained in Paragraph 97 (misidentified as Paragraph 98).

98. Kinion denies the allegations contained in Paragraph 98 (misidentified as Paragraph 99).

FIFTH CAUSE OF ACTION

99. In response to the allegations contained in Paragraph 99 (misidentified

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as Paragraph 100), Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 98 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

100. Kinion denies the allegations contained in Paragraph 100 (misidentified as Paragraph 101).

101. Kinion denies the allegations contained in Paragraph 101 (misidentified as Paragraph 102).

102. Kinion denies the allegations contained in Paragraph 102 (misidentified as Paragraph 103).

SIXTH CAUSE OF ACTION

103. In response to the allegations contained in Paragraph 103 (misidentified as Paragraph 104), Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 103 of the Amended Counterclaim and Third-party Complaint as if fully set forth herein.

104. Kinion denies the allegations contained in Paragraph 104 (misidentified as Paragraph 105).

105. Kinion denies the allegations contained in Paragraph 105 (misidentified as Paragraph 106).

106. Kinion denies the allegations contained in Paragraph 106 (misidentified as Paragraph 107).

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Amended Counterclaim and Third-party Complaint and each and every allegation contained therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint are absolutely privileged because they were uttered or published in course of judicial and/or quasi-judicial proceedings and were pertinent to the subject of controversy.

THIRD AFFIRMATIVE DEFENSE

That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint when taken as a whole are statements of opinion protected under the First Amendment.

FOURTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint are true or substantially true and made in good faith.

FIFTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made in good faith, aimed at procuring governmental action, and made to an officer or employee of a political subdivision of this state.

SIXTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made without actual malice.

SEVENTH AFFIRMATIVE DEFENSE

That the statements uttered or published by Kinion and referenced in the Amended Counterclaim and Third-party Complaint are privileged by reason of the statements being made after initiation of criminal proceedings.

EIGHT AFFIRMATIVE DEFENSE

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To the extent Spencer sustained any damages as a result of the allegations out of which this matter arises, those damages were caused by the acts or omissions of Third-parties over which Kinion has no control.

NINTH AFFIRMATIVE DEFENSE

Kinion is informed and believe and thereupon aver that at all times relevant hereto, Spencer was negligent, at fault, and otherwise responsible for the allegations which are the subject of this litigation.

TENTH AFFIRMATIVE DEFENSE

That Spencer's damages, if any, were caused in whole or in part, or were contributed to by reason of the actions and wrongful conduct of Spencer himself.

ELEVENTH AFFIRMATIVE DEFENSE

Spencer's actions against Kinion are frivolous, unreasonable, vexatious, and devoid of any legal or factual foundation. The Amended Counterclaim and Third-party Complaint is not well grounded in fact, nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

PRAYER FOR RELIEF

Based upon the foregoing, Third-party Defendant Mary Ellen Kinion, respectfully requests relief as follows:

1. That Spencer take nothing by virtue of this action, and that his Amended Counterclaim against Kinion be dismissed with prejudice;

2. For costs of suit and attorney's fees to the extent allowed by law; and

3. For such other and further relief as the Court deems just and proper.

///

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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 24 day of March, 2017.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Mary Ellen Kinion

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
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Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 24th day of March, 2017.

Roberta Williamson Blaze
Employee of Glogovac & Pintar

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
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Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 3rd day of June, 2019.

/s Kerry S. Doyle
Kerry S. Doyle

only one witness. Are you sure you had other eyewitnesses there?

A I don't know exactly.

Q Then say that.

A Counsel, do you need a break?

Q No. I think you might need one.

A Because I feel very, like, adversarial, and nobody is objecting over here.

MS. CAPERS: Objection, Your Honor. I think number one, he's testifying. Number two, let's give her the courtesy when asking questions, being argumentative, badgering her. Number 3, I think it would be appropriate to maybe we take a break and get the complaints because he's asking questions obviously of something she doesn't remember. It also would help us because I haven't received the DA file, so I'm not exactly sure also what these documents are, but I think in all fairness, get the documents so we can see them and then give her the documents to see if it properly refreshes her recollection. Then ask the questions.

MR. ROUTSIS: Judge, they have -- in all due respect, they have been served an opposition for summary judgment. We attached these transcripts for the purpose so we can clearly --

MS. CAPERS: But your questions are --

MR. ROUTSIS: Please, Counsel, don't interrupt. She has the documents. She hasn't read it. That's not my fault.

MS. CAPERS: The questions are going outside of the complaints, and that was the reason why the judge said give us the DA file beforehand. And again, with not having that information, we can't even properly question her.

MR. ZANIEL: Just for the record, the complaint is not in the DA's file. I was given the subpoena.

Q (BY MR. ROUTSIS:) Your Honor, I'll move beyond the complaint. That's not where I'm at now, and I don't think that's particularly relevant to the issues. I'm simply asking the prosecutor if, at the felony trial, Mary Ellen Kinion was the only corroborating witness to an alleged snowplow assault on Egon Klementi on December 12th. You're under oath. Was she the only corroborating witness? Yes or no.

A Going back to the first part of that, I don't think that you're understanding the process. And I think if you take a look at the original complaint filed at the justice court --

MR. ROUTSIS: Your Honor, I'm going to move to strike.

THE COURT: Be quiet. Just a minute. One of the problems is you're always interrupting, Mr. Routsis. Let her finish. I'm trying to figure out what's going on. Please. I'm sorry, Ms. Pence.

THE WITNESS: The original charge at the justice court level did not involve only one count. The partial piece of paper that you handed me was the first page of a misdemeanor complaint, but there were also two gross misdemeanors, I believe, filed at the justice court level well before my office ever received this piece of paper.

There was a second amended complaint, I believe, that was filed at the justice court level as well. That was the complaint that the prelim was had on. There were no other changes. So when you keep saying isn't it true that I elevated all of these charges and I elevated these different things, nothing was elevated from the original time of the charging back in January until the trial except for the one count that involved Helmut, and it went from a gross up to a felony because the medical records show that there was substantial bodily harm.

As to your question about the snowplow incident, I think if you look at the complaints back at the justice court, that's already been alluded to, and my understanding -- I don't remember who testified at trial, but I think there was information regarding a call that Helmut made to his wife immediately after it had occurred and a call that he made to Miss Kinion, and then also even a call to the company that ran the snowplow business. So I don't believe she was the only person with information about that, but I would have to go back and check the trial transcript.

Q Okay. Mrs. Pence, my question is, you alleged in an amended information that Egon Klementi was the victim of a snowplow assault; correct?

A Yes.

Q Mary Ellen Kinion wrote you a letter on February 22nd where she specifically stated she was an eyewitness to this assault; correct?

A Correct.

Q You indicated that you had contact with her prior to the preliminary hearing where you discussed matters with her, and as a result of that, you received a letter sometime later; correct? Yes or no?

A No.

Q Okay. Did you have a conversation with Miss Kinion before the letter was sent to you?

A Yes.

Q And you discussed her knowledge about this case or the Spencers; correct?

A No.

Q You talked about what?

A She told me that she had information that she thought would be relevant, and I was the district attorney that handled all of the Tahoe calendar at that time. And I told her I did not have time to talk with her. If she thought it was relevant or pertinent, she needed to put it in writing and send it to my office.

Q Okay. Your testimony may be different than that. But in any event, you got a letter on February 22nd, and you alleged a gross misdemeanor against Mr. Spencer. At trial, Mary Ellen Kinion testified, did she not?

MR. MOORE: Your Honor, I have an objection on counsel characterizing testimony to the witness and arguing in the question that her testimony is different.

THE COURT: Sustained.

MR. MOORE: Thank you.

Q (BY MR. ROUTSIS:) Mary Ellen Kinion was an

eyewitness, an alleged eyewitness to that event, the snowplow incident on December 12th, was she not?

A I don't remember. I know that she had information about it.

Q You don't remember if she testified as an eyewitness?

A I don't remember if she testified that she was called after he was struck with the snow or if she actually saw it. I would need to look at the trial transcript, but I want to clarify because --

MR. ROUTSIS: Your Honor, there's not a question pending.

THE WITNESS: Well, your question is confusing because you keep alluding to the gross misdemeanor in the amended information. But there was a gross misdemeanor alleging this, I believe, at the justice court level well before the prelim.

Q (BY MR. ROUTSIS:) I'm not asking you about that, Ms. Pence. That's not really a grave concern of mine. My concern is, you filed an amended information. You had contact with Miss Kinion prior to the letter. You indicate that that contact was discussion about information she had because you told her, according to you, to send a document to you. She testified that she

sent it unsolicited. But in any event, you must have discussed something about the case in order to prompt this type of discussion, right?

A She told me she had information she thought would be helpful.

Q Okay. So when you're prosecuting a man for an elderly abuse count and you charge him with a specific act of assaulting somebody with a snowplow, and Ms. Kinion testifies and provides you a letter in which she offers information -- and I'd like the Court to take judicial notice of Miss Kinion's trial testimony -- "This occurred December 12th, 2012, right? You wrote a letter to the prosecutor to try to get them to prosecute." As you testified, "Mr. Spencer, you signed a letter and it showed it received February 22nd."

"Okay. Correct."

MS. CAPERS: What page are we reading from, Your Honor?

THE COURT: I don't know. That's the honest-to-God answer. I don't know.

MS. CAPERS: I was just bringing it to the Court's attention. If we could get courtesy of where he's reading.

MR. ROUTSIS: I assume incorrectly that when

we file an opposition to a summary judgment motion, even though I'm a criminal lawyer, that they will take the time to look at the document.

THE COURT: All they were asking for was reference to where you're reading.

MR. ROUTSIS: Page 17. Page 17 of Mary Ellen Kinion's testimony that we provided to counsel.

THE COURT: Thank you.

Q (BY MR. ROUTSIS:) Miss Kinion, this -- again, do you recall her testimony?

A No.

Q You wrote -- this is your questioning, Ms. Pence. Okay?

A You asked me if I remembered it. I don't remember it.

MR. ROUTSIS: Well, let me -- can I approach counsel?

THE COURT: Yes.

Q (BY MR. ROUTSIS:) Page 17. I'd ask you to read page 17 where it's highlighted. Does that refresh your memory if you asked Ms. Kinion a question regarding the purpose of that letter?

A This is your questioning of the witness. This is not what I asked.

Q Okay. Can you --

A That's your testimony.

Q My apologies.

A Your questioning.

Q Can you tell me what the question and answer reveals why she wrote that letter to you?

A I'm sorry. You want me to speculate as to why you asked my witness this question?

MR. PINTAR: Your Honor, I'm going to object.

THE COURT: There's no need to object. She's answered.

MR. PINTAR: Again, I want to make clear none of this has ever been produced other than in, apparently, in a motion. I don't know that there was an affidavit supporting that this was produced, but there's -- none of these documents have been produced in the course of discovery, so I'd just like to make that ongoing objection.

THE COURT: Well, I'm trying to follow.

Q (BY MR. ROUTSIS:) I'll just ask a simple question, Judge. From page 17 of Mary Ellen Kinion's testimony. Question regarding the December 12th assault.

"This occurred December 12th, 2012, right? You wrote a letter to the prosecutor to try to get them

to prosecute, as you testified. You signed a letter and it shows it received February 22nd?"

"Correct."

MR. PINTAR: Your Honor, I'm going to object. Mr. Routsis is reading his own questions.

THE COURT: That's what Ms. Pence was saying.

MR. ROUTSIS: Yeah, okay, I'm reading my own question. So what does it matter? It's a trial transcript.

THE COURT: So where are we going with your own question?

MR. ROUTSIS: That the letter was written by Miss Kinion to prosecute.

THE COURT: We know there was a freaking letter written because she's reading it.

MR. ROUTSIS: Right. Right. And the letter was written to prosecute Mr. Spencer.

THE COURT: Take it for what it is. That's why I asked her.

Q (BY MR. ROUTSIS:) And Mrs. Pence filed criminal charges and called Miss Kinion to the stand to testify regarding the December 12th incident; isn't that correct? Yes or no? Please.

A It's not correct.

Q You didn't call her as a witness?

MR. MOORE: I'm going to object. It's compound. That's one of the problems.

MS. CAPERS: And mischaracterization.

THE COURT: That is a problem.

I kind of understand where Mr. Routsis wants me to go --

MR. ROUTSIS: Judge, I just --

THE COURT: -- but you're interrupting yourself so many times that we're losing track of it.

MR. ROUTSIS: Let me just restate it calmly because she won't answer the question.

THE COURT: She did answer the question. She won't answer it the way you want her to answer it.

Q (BY MR. ROUTSIS:) She's not answering the question. The simple question was, did you call her as a witness to testify regarding the December 12th snowplow assault? Yes or no?

A I did call her as a witness.

Q Thank you. And she was alleged to be a material eyewitness; correct?

A I don't remember if she was an eyewitness or not.

Q Well, when you charge the crime and you call

a witness regarding that crime, they're supposed to have evidence to support that crime; correct?

A Again, it's compound.

MR. PINTAR: He's being argumentative.

THE COURT: He is. Sustained.

Q (BY MR. ROUTSIS:) Okay. Here is a copy. We'll mark the criminal complaint, and it doesn't charge, as you've alleged, elderly abuse. Okay?

A Well, that would be in a separate document, Mr. Routsis, because gross misdemeanors have to be charged in a separate complaint. That is the misdemeanor complaint. There's another criminal complaint on file that charges gross misdemeanors. They are separate documents.

Q Okay. So --

MS. CAPERS: And again, I renew my objection. This would go a lot smoother and more efficient if we could get all of the documents for her to have to review because she doesn't remember.

THE COURT: Apparently, we got the DA file.

THE WITNESS: If I can have Volume I, Your Honor, that would help.

THE COURT: Yeah, you can have Volume I. Hang on. Volume I of the DA's file.

THE WITNESS: That's the district court file.

THE CLERK: Yeah.

THE WITNESS: That's all I need.

THE COURT: Thank you. Let's get the DA's file.

THE WITNESS: That's all I need is right there.

THE CLERK: So you can get it?

THE WITNESS: Uh-huh. It's all right there. Everything that I filed would be public record and open to everyone, so go and look at it. But if you give me that, I can put them out in order and then I can let the judge know what the dates are.

MS. PIERCE: For the record, Your Honor, I could not find that two-page criminal complaint in Volume I, which is why I went just now. Somehow, the second page dropped off on the copy we have here.

THE WITNESS: The justice court file? If it wasn't when it got bound over, they didn't send over the first because if it got bound over on the amended, it might still be in the justice court file.

THE COURT: Is that what are we referring to, Mr. Routsis?

MR. ROUTSIS: I'm sorry, Your Honor. I

didn't hear what you said.

THE COURT: Could it be in the justice court file?

MR. ROUTSIS: It would only be, I think, in the --

THE COURT: What are you looking for?

MR. ROUTSIS: The criminal compliant. The original. We've got here the criminal complaint. Not that it's deciding of this issue, but she says that she filed two gross misdemeanors along with the initial criminal complaint.

THE WITNESS: And, Your Honor, here's a copy of that filing with the two gross misdemeanors in justice court.

THE COURT: Very good.

MR. ROUTSIS: What date is that?

THE WITNESS: The same date as the misdemeanor battery.

THE COURT: January 6th?

THE WITNESS: That's correct.

THE COURT: Okay. So? January 16th.

Q (BY MR. ROUTSIS:) January 16th. Okay. So on January 16th, you filed -- can I look at that, Your Honor? Thank you.

Well, Count 1 is not -- Count 1, in your gross misdemeanor complaint, is intimidation of a witness, okay? It has nothing to do with the two elderly abuse counts that are filed in the amended information. Would you agree with that? Yes or no? Do you want to look at it again? Yes or no?

A It's compound and it's complex, and if you want to break that down into something I can answer with a yes or no, I'd be happy to.

Q Count 1 is not an allegation of an elderly abuse charge. It's intimidation.

Can I approach, Your Honor? It's intimidation of a witness count.

A Count 1 in that misdemeanor complaint, that's correct. That is -- excuse me. I'm sorry. Can I just see that one for a minute? Count 1 is a category D felony, intimidation of a witness. And I think that charge was actually either reduced or dismissed.

Q Well, it was never filed.

A Actually, it was filed on January 16th of 2013.

Q Look at the amended information. It's not filed.

A You're asking me about the original criminal

complaint that I filed, and the original charges in this case that I filed were both misdemeanor battery as well as intimidation of a witness to influence testimony, a category D felony, and exploitation of an elderly person as a gross misdemeanor.

Q Okay. Thank you. So please keep the spot. And we've allowed you to see, and it's on record, the amended information. There is not filed in the amended information an intimidation of a witness. Can you tell us why you did not file that charge?

MR. MOORE: Objection. It is argumentative. Let this witness testify what she knows and she did do instead of having Mr. Routsis characterize what happened.

MR. PINTAR: Well, in addition, it's irrelevant because the claim is that Ms. Pence increased the charges due to something that Miss Kinion said, and now he's asking her about why she reduced the charges.

THE COURT: I'll sustain the objection because --

MR. ROUTSIS: Can I explain why it's relevant? Can I explain why it's relevant? She filed an intimidation of a witness charge.

THE COURT: I agree.

MR. ROUTSIS: Okay. She did not file it in

the amended information.

THE COURT: For whatever reason. I agree.

MR. ROUTSIS: Right. She then filed an elderly abuse charge that she did not dismiss, and we support that Mary Ellen Kinion became a witness. And the timing of the complaint is not relevant to our case. Mary Ellen Kinion became a witness, which is the reason she did not dismiss that count because she was the -- and we'll establish to the Court -- she was the only eyewitness to a crime to an alleged assault that never happened, that the material issue of fact, it did not happen, we believe. And she later -- Judge, we have trial transcript deposition testimony.

She testified under oath that she saw my client with a big grin on his face put a berm in front of her house and then assault Mr. Egon Klementi with a snowplow. She then testified at the deposition she did not see who drove the snowplow. She committed perjury under oath to put a man potentially in prison on an elderly abuse charge. That is the record, and it is not controverted.

And so when you talk about malicious prosecution, this is about as malicious as a prosecution can get because she further testified in order to enhance

and ratchet up the charges that were not dismissed like the intimidation of a witness that my client put berms of snow in front of her house and it was my client -- she called his boss and she recanted on that as well.

We have opposition in the opposing papers. When they filed a motion for summary judgment, they stated, in the document, that she did not see who was driving the snowplow on that date, thereby trying to exclude her from what she testified to under oath. She said it was Jeff Spencer. He picked up debris. Now, we have an investigating officer come to testify at trial. He said he went out there. There was no evidence to indicate even a crime had occurred based on the debris. He filed no report.

Now it gets worse, Judge. How can she make a call to Egon or the police if it never happened? She testified that she called Egon Klementi. But Egon Klementi -- she waited an hour and a half before she called the police. Now we're supposed to believe she saw an 84-year-old man get assaulted with a speeding snowplow and she sits down and has lunch. She never called Egon for something she never saw, but Egon Klementi calls her. And this is the basis of our conspiracy because we have an hour and a half delay. Egon calls her. She then

calls the police.

Is this a material issue of fact for malicious prosecution, Judge? It is admitted, admitted perjury that she gave in her opposition motion that she isn't sure he was the driver. The allegations of an assault with a snowplow are unverified, and at trial, we spent a lot of time with it. It was a giant snowplow. She was down the street. You could not see the front of the plow. The jury implicitly agreed with us, although it's a different standard, we understand.

So when we come before the Court here and we file an opposition to a summary judgment motion and we lay out the transcripts, and the issue is really very simple. She indicates in her testimony that she gave a letter to the State unrequested. She provided a letter where she materially concludes she was a witness to multiple events that ratcheted up the energy for Ms. Pence.

Now, as an officer of the court, I can tell you that there came a time during this case that Ms. Pence thought the Spencers were the Antichrist because of people like Mary Ellen Kinion --

MS. CAPERS: I'd object, Your Honor.

MR. MOORE: Objection.

THE COURT: I'm letting it go. Honestly --

THE WITNESS: Your Honor, can I step down?

THE COURT: I totally recognize the passion, I totally understand he's arguing the motion.

MR. ROUTSIS: Thank you, Judge.

THE WITNESS: I can step down if we're done.

THE COURT: I don't know if he's done.

MR. ROUTSIS: I'm not done.

THE WITNESS: Because there's no question --

THE COURT: There certainly is not.

THE WITNESS: -- at this point, and I've got a ton of work to do.

MR. ROUTSIS: Are you running the -- are the judge?

THE COURT: Are you?

MR. ROUTSIS: No, but I --

THE WITNESS: No. I came. I want to be helpful, but I have work to do.

Q (BY MR. ROUTSIS:) You know, okay. So, Ms. Pence, you don't remember Mary Ellen Kinion testifying and being an eyewitness in the case?

A I remember her being an eyewitness in the case. And what I can tell you about this case is now we've seen two of the four, I think, or five charging

documents. Once all of the parties have all of the charging documents, I think it will really help because much of what you're referring to about things being reduced or enhanced, for example, the exploitation --

MR. ROUTSIS: Judge, there's no question pending. She keeps --

THE COURT: You weren't listening. She's answering. You were not listening. You were talking to the clerk. You were looking for something which creates horrible problems. Let her finish.

MR. ROUTSIS: Okay.

THE WITNESS: So the charges that you're asking about originally are set out as exploitation charges. And I think that's in the second amended or in the amended criminal complaint at the justice court level.

If you look at the to wit language in those, and this is all by memory, but if I can have that volume back, I could probably be more specific. But the allegations, the to wit language that supported those charges are all the same. And basically, it dealt with Mr. Spencer's actions towards the three different individuals, and there was a charge, from what I remember, as to each of the different individuals.

They went from being called exploitation to being called abuse charges after the prelim because we had to pick whether we wanted the exploitation or the abuse language. It's the same charge if you look at the NRS statute. It was never enhanced or changed. The only one that was actually elevated was the one involving the battery with Helmut because of the medical records. So that is correct.

But when Miss Kinion testified at the trial, I don't remember if she was an eyewitness. I remember she called to talk about the snowplow. I think that Elfride might have talked about the snowplow incident. I think the snowplow driver himself, your expert testified that, in fact, it was very possible that a snowplow could throw that much snow at that height. I think there were four or five different people that addressed that count. So I don't think she was the sole person. And again --

MR. ROUTSIS: Well, let's look at -- thank you. Are you done?

MR. PINTAR: Your Honor, he keeps on interrupting.

THE COURT: Yes, I agree. Are you done? And again --

THE WITNESS: The problem that I keep hearing

is that you said that we got this letter for prosecution purposes, that we got -- that she testified for prosecution. My recollection of this three years ago is that Miss Kinion was called as a prosecution or a State's witness in our case, but as a layperson, as someone outside of the district attorney's office and not the sheriff's department, she would not have had the ability or the capacity to elevate or decrease any of the charges.

Q (BY MR. ROUTSIS:) What are you talking about? You're a prosecutor. If you get a witness that comes in and says, "I saw somebody kill somebody," you're going to file a murder charge, right, based on the witness? Right? Yes or no?

A If the charge of murder has already been filed, no, I'm not going to do anything. And that's exactly the situation we have here. These charges were all filed well before this letter was received.

Q Well, let's --

A And the only change that came after this letter was the substantial bodily harm enhancement.

Q Well, as we have the misdemeanor complaint and the gross misdemeanor complaint, it's not alleged in that complaint that -- Count 3 in the amended information

-- that Jeff Spencer willfully and unlawfully abused an elderly person by inflicting pain, injury or mental anguish. He caused Elfride Klementi, a person who was 60 years of age or older, mental anguish by harming or threatening to harm her family or by yelling and/or threatening her husband, Egon Klementi, or by physically attacking her brother-in-law, Helmut. Okay?

Now, in the letter Mary Ellen Kinion wrote to you, it sure appears like she's a witness to this event. She states, "Jeff accosted Egon in the street and yelled at him about coming on his property and taking pictures. Marilyn and Janet Wells, a neighbor, joined. Jeff threatened to punch Egon in the face." Right?

A That is in that letter.

Q It is in that letter, right?

A But everything you've just discussed --

MR. ROUTSIS: There's not a question, Judge.

THE COURT: It's in the letter. Go ahead and ask the question.

Q (BY MR. ROUTSIS:) Okay. So you have her writing a letter. Doesn't it appear she's making herself a witness to that?

MR. MOORE: Objection. Mischaracterizes testimony. He says quote, "You have her writing a

letter." That's not her testimony.

THE COURT: I agree. Sustained.

MR. MOORE: Thank you.

Q (BY MR. ROUTSIS:) When you read the letter -- and I assume you read the letter?

A I did.

Q Did you believe that she was a witness to that event?

A Did I believe that she saw those things herself?

Q Yes.

A I think I took the letter for what it said, and I set it aside. But my point that I'm trying to make is that --

MR. ROUTSIS: Judge, there's not a question pending. She keeps trying to offer -- if I can conduct my examination.

THE COURT: Go ahead.

MR. ROUTSIS: Thank you.

MR. PINTAR: This is about malicious prosecution. I don't know where he's going.

THE COURT: I don't quite know myself. So be specific on which complaint, amended complaint, which charge.

Q (BY MR. ROUTSIS:) Right. In the amended information, you allege -- that was not charged in the complaint that we just looked at on January 16th, okay? In the amended information, you make allegations regarding my client threatening to punch Mr. Egon Klementi on -- you don't put the date down -- and Mary Ellen Kinion wrote you a letter, and she made -- she didn't say she -- Jeff accosted Egon in the street. Okay? Now, she became very interesting.

Can I approach, Your Honor?

THE COURT: I want you to ask the question.

Q (BY MR. ROUTSIS:) Yes. In your amended information, Mary Ellen Kinion is not on the original witness list. May I approach? Is that correct?

A That's correct.

Q So you obviously had some conversations with her prior -- after the filing of the amended information that made her a material witness; correct?

A No.

Q Well, she's not on the amended witness list; is that correct?

A She's not.

Q But she was --

A She's not on the original.

Q That's the amended information, ma'am.

A Yeah, and she wasn't.

Q There's not a question. That's the amended information. She is not on the witness list. Yes or no? Is that correct?

A She is not on the witness list on the amended information.

Q Okay. However, at some point in time, you had to put her on the witness list to call her at trial; correct?

A That's correct. I filed --

Q Yes or no, please?

MR. MOORE: Your Honor --

THE WITNESS: That's correct. I filed a second amended information and endorsed a multitude of new witnesses.

Q (BY MR. ROUTSIS:) So why did Mary Ellen Kinion become a witness after the filing of the amended information and before trial? What led you to put her on the witness list?

MS. CAPER: Objection, Your Honor. Compound. If you could just ask --

THE COURT: Well, no. I understand, so I'm going to sustain or overrule that objection.

MR. ROUTSIS: Thank you, Judge.

THE COURT: It's what we've been doing for an hour and a half. What led you to put her, Mary Ellen Kinion, on the witness stand?

Q (BY MR. ROUTSIS:) Why did you place her on the list before trial and not after the amended information?

MR. PINTAR: Your Honor, wait a second. That question made no sense. He said before trial but not after the amended information.

MR. ROUTSIS: I said and after the amended information.

MR. PINTAR: No. You said and not after the amended information.

THE COURT: Start over, Mr. Routsis.

Q (BY MR. ROUTSIS:) Ms. Pence, you filed an amended information with the witness list. Mary Ellen Kinion is not on it. We've established that.

A That's correct.

Q You then put her on the witness list and called her to trial. What discussions or what evidence did she present that led you to put her on the list?

A I don't remember what discussions we had. I would --

Q But that's an answer. If she doesn't remember, I'd ask --

A I'd most likely guess at some point --

MR. ROUTSIS: Objection to strike her guess, Your Honor.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) So your answer is you don't remember what led you to put her on the witness list; correct?

A That's correct.

Q But at trial when you're trying to prove a man's convicted or guilty, trying to prove he committed a crime, you can't put on perjured testimony; correct? Knowingly? Is that correct?

MR. PINTAR: Your Honor, where are we going with this letter?

MR. ROUTSIS: Let me have a little leeway. I'll get right to it.

MR. PINTAR: He's been at it for an hour. How much leeway does he need? This is a pretty simple motion.

THE COURT: I'd agree with Mr. Pintar.

Q (BY MR. ROUTSIS:) I'm almost done.

Ms. Pence, you wouldn't put her on the

witness list unless she had material evidence to one of the charges; correct?

A That's correct.

Q And as you sit here, you don't know if that evidence was true or false, do you?

A I would absolutely believe that the information she had was true, or I would never have called her as a witness. So as an officer of the court and in my prosecution of this case, I believe everything she said would have been the truth.

Q But you have no personal knowledge of that, do you?

A Other than what she swore to in the courtroom, no.

Q And the jury acquitted him of all counts; correct? Yes or no?

A He was acquited.

Q Of all counts?

A He was acquitted.

Q Of all counts; correct?

A That's my understanding.

Q What do you mean your understanding? You were there.

MR. MOORE: Objection, Your Honor.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) So at least we've established she had material information to support the charges. Can you tell us what charges she had material information about?

A Yes, and I would point you to the criminal complaint filed on January 16th, 2013, Count 2: exploitation of an elderly person as a gross misdemeanor wherein I charged Mr. Spencer with all of the things that I charged him with in the amended information, and that was filed well before this. That information came from a multitude of people. I would guess that in addition to Miss Kinion, I must have had some other information in order to --

MR. ROUTSIS: Objection. Move to strike as to what she must have had. Unless she has personal knowledge, I'd move to strike.

THE COURT: She can testify to it.

THE WITNESS: Because I wouldn't have filed this information, this complaint back in January of 2013 alleging that Mr. Spencer was yelling at Egon as he walked his dog, that he covered Mr. Egon Klementi with snow and debris with the snowplow he was driving, that he was piling up snow berms and trapping the residents

and/or physically attacking Mr. Klementi if I didn't have other information such as a police report or law enforcement reports.

Q Really?

A At the time.

Q Really? Because we called the police officer to the stand at trial, and he testified that he came out to the scene on December --

MR. PINTAR: Your Honor, this assumes facts not in evidence.

THE COURT: We're going too far astray. Sustained.

Q (BY MR. ROUTSIS:) Did you talk to the officer that went out on the call from Egon Klementi on December 12th prior to trial? Yes or no? Did you talk to him prior to trial?

A Yes.

Q Did he tell you he wrote no police report?

A He told me he went out and visited with him.

Q Did he find sufficient evidence to file the charge?

A That's not my recollection.

MR. ROUTSIS: Okay. Thank you. Nothing further.

THE COURT: Any questions, Mr. Zaniel?

MR. ZANIEL: No, Your Honor.

THE COURT: Any other questions?

MR. PINTAR: No, thank you, Your Honor.

MR. MOORE: No, Your Honor.

MS. CAPERS: No, Your Honor.

THE COURT: I just have a question in regards to -- and I think I understand where Mr. Routsis was going -- in regards to the snowplow. So I understand that the enhancement, if you will, from a gross misdemeanor to a felony was based on the medical records, substantial bodily injury; correct?

THE WITNESS: That's correct.

THE COURT: What made you -- tell me about this snowplow. And it's a different person. It's a different victim.

THE WITNESS: It is, Your Honor. The snowplow event was totally separate from the pushing of Helmut. The snowplow dealt with his brother, and it was a totally separate incident. It was reported about well before this letter. And, Your Honor, this would probably assist the Court as well. Originally, there was only one complaint presented to the Court, and that was the misdemeanor battery that involved Helmut.

The same day I filed that complaint, I also filed a separate complaint alleging a felony and a gross misdemeanor, and the felony was based on intimidation of a witness because at the time, it was my understanding that he had shoved Helmut down in an attempt to intimidate him because Helmut was going to testify about an unlawful fence or some issues they were having in the neighborhood, and it was to scare him.

THE COURT: So it wasn't a snowplow?

THE WITNESS: It was not the snowplow.

The second charge that I filed that same day well before this letter, again, was a gross misdemeanor, and that was about the snowplow. So the snowplow incident was never enhanced or changed at any point in time. It stayed a gross misdemeanor all the way through trial. It never changed its character. And it was charged originally before I ever even got this letter.

It was charged back in January of 2013, and it alleges the snowplow, him building up berms at the end of the residence. It was sort of a compilation of all of the issues that had been brought to my attention through the reports and investigation, and it stayed a gross misdemeanor and it was never enhanced, and that's what it ended up being at trial. So I think the confusion is

that there was never just a misdemeanor and then it grew and grew and grew.

Back in January, which is the original filing date, there was a misdemeanor battery against Helmut, there was a felony against Helmut for intimidation of a witness, and then there was a gross misdemeanor that involved both Egon, Helmut and Elfride, I believe. Those three charges then changed slightly in character. The intimidation of the witness is what actually became the abuse charge, and the gross misdemeanor remained identical.

The other exploitation of an elderly person was actually then changed to be against -- I think it was one on Helmut, one on Elfride, but they were all charged originally. The nature of those charges never changed, Your Honor. This is the Count 2, and it does have that same language. So the actual only enhancement that ever occurred after receiving this letter and after all of the investigation was the charge involving Helmut, which Miss Kinion was not a part of, and it was in part because of the medical records, and that did become a felony.

THE COURT: Thank you. I do understand. I do understand, based on your testimony, the reason why I called you. I do understand.

THE WITNESS: And I apologize because there were four charging documents.

EXAMINATION

BY MS. PIERCE:

Q I just have one question. You said that the charging document on the -- other than Helmut, that simple battery, the charging document and the other items, whether it was the criminal complaint or the informations or amended informations or whatever, those charges were based on police reports and information from individuals; is that correct?

A Investigation.

Q Can you --

A But I just want to -- I have a question. Helmut was actually listed in the felony as well.

Q Can you tell us who was spoken to in the process of investigation that led to these charges?

A At the time that I filed the original complaints, the only person that I would have spoken to was whatever officer wrote me the report that I was going from. And my guess is that officer spoke to a variety of people and that he wrote a report, and then based on that report, those are the charges that I filed.

Q Does that police report then list all of the individuals with whom he spoke?

A It should. It should have everything that he would have done before he actually presented what they called a final report to our office.

MR. PINTAR: Your Honor, I told the Court in my moving papers that the officer testified at his deposition that he never spoke with Ms. Kinion at the scene and before he filed the police report.

THE COURT: Offer of proof then.

MS. PIERCE: I'm a little confused here because there was the officer who came out to investigate the incident on December 18th which involved Helmut Klementi. Is that the same officer that then did an investigation of a variety of other things?

THE WITNESS: I don't remember. It would have been the original submission to our office, and it usually has, on the criminal complaint, there should actually be a sheriff's office number that ties to a specific report, and that's the report that that's connected to.

Q (BY MS. PIERCE:) And how would I identify that report in the production that we received?

A If I did my job right, it should have been on

the top of the complaint, so hold on. It would be -- it was also on -- this is the amended criminal complaint that was filed March 8th, 2013, but it's Douglas County Sheriff's Office 12, which is the year, SO for sheriff's office, 41608.

Q I'm asking about who you would have spoken to before that second criminal complaint we're talking about, which has the charges of elder abuse that have nothing -- that are separate and apart from the battery on the 18th -- December 18th against Helmut Klementi.

A I think that's part of the confusion. The two criminal complaints filed on January 16th are attached to 12-SO-41608. Those charges came right off of that report, so whichever officer authored that. I filed a second amended criminal complaint before prelim and also in the justice court on March 8th, 2013. That complaint has different charges in it based on that same report, 12-SO-41608.

Q And that was what date?

A March 8th, 2013. That's the time when the charge with Helmut is elevated from a gross misdemeanor to a felony, and it alleges a substantial bodily harm.

THE COURT: And did Miss Kinion's letter influence you in regards to charging the elder abuse?

That's --

MR. ROUTSIS: Thank you.

THE COURT: -- the question. Did it influence you to charge elder abuse vis-a-vis the law?

THE WITNESS: No. I had already charged that before her letter.

THE COURT: All right.

EXAMINATION

BY MR. PINTAR:

Q May I just approach real quick? Ms. Pence, I'm going to show you, just to refresh your memory, a copy of the preliminary hearing transcript. And if you look at 12, did you call Mr. Klementi to testify as to the incident with regard to the snowplow and the snow and ice being thrown on him?

A Sorry. I just want to make sure I can identify who is testifying. Yes. Egon Klementi was called at the preliminary hearing. He himself testified about the snowplow.

Q And Miss Kinion was not called as a witness at the preliminary hearing; correct?

A That's correct, as far as I recall. I don't believe she was.

THE COURT: Any more questions of Ms. Pence?

MS. PIERCE: Your Honor, I'm still confused because I cannot find any police report in the produced information from the DA's Office that is prior to the January -- was it 16th? Documents other than the one that addresses the incident with Helmut Klementi.

THE COURT: You're talking about something that addresses Egon?

MS. PIERCE: Yeah, Egon.

THE COURT: The snowplow.

MR. ROUTSIS: She's testifying, Judge, basically that she doesn't recall Miss Kinion having an effect on the filing of the charges, and she's saying she was relying on the police report, who -- it doesn't matter what the cop says, but who the are witnesses?

And we're having a real interesting debate here because we've got a letter on February 22nd, she had prior contact with Miss Kinion, and we think she was critical in this material issue of fact. Her recollection is huge on this. She doesn't remember a lot. The reality is, though, that the basic witness that identifies my client as committing a heinous crime, the only -- and I'll say this for the record. The only corroborating witness is Mary Ellen Kinion.

THE COURT: Okay. What did you mean, Ms. Pence, when you answered that saying when I asked you did this letter of February 22nd influence you in regards to the charges against Egon vis-a-vis the snowplow? You said to me, "No, I had already charged that based on the reports." So what's the confusion in regards to you don't have any records?

MR. ROUTSIS: No. The confusion is -- there's two-part confusion. She's saying that she based that filing -- the letter is not the do all and say all.

THE COURT: No. I understand that, but --

MR. ROUTSIS: She's saying she has contact with Mary Ellen Kinion, and there's a dispute as to whether she asked Mary Ellen Kinion to author a letter after that. She was a material witness in the case. She doesn't -- she won't -- her testimony is that she based the charges upon -- I mean, she's a prosecutor, upon the police report, okay? Now, no police officer was there. So he had to have talked to Mary Ellen Kinion or Egon Klementi.

THE COURT: Okay. All right. Hang on. What did you base the charges of elder abuse on Egon -- when I say "vis-a-vis," meaning the snowplow. Did Miss Kinion have any influence? Or, if not, what -- or if so, what

did you base the charges on?

THE WITNESS: Not having the file in front of me, I would have to say that -- and it kind of tells its own tale if you start at the beginning. The original charge that deals with the snowplow incident was filed back in January.

THE COURT: January 16th.

THE WITNESS: January 16th. And it's listed as part of a number of things. So at this time, the snowplow is not a huge issue. It's one of about six different factors. I included offensive language, violent conduct, yelling at Egon as he walked his dog, covering him with snow on the snowplow, piling berms at the end of the driveway, physically attacking Helmut.

So the snowplow itself, back in January, was one of probably eight other factors that constituted the gross misdemeanor of exploitation of an elderly person. It was not "This is it. This is the crux of the thing." It was a --

THE COURT: It's not --

THE WITNESS: No. And I do remember that there was a number of people that were concerned about Mr. Spencer and how he was snowplowing. I think there were complaints that had been filed. I think at some

point, I talked to -- I don't remember if it was KGID or I can't remember the acronym, but the people who do the snowplow business, and they had actually asked him not to go into a particular neighborhood anymore because of complaints, and so I was trying to get more information, I remember about the berms and whether this was a practice, but it wasn't like the snowplow incident was some pivotal point.

It was part of all of these actions that were reported in the to wit language. This letter does talk about the snowplow incident, but I also know that -- I think at the time, there had been a number of complaints about Mr. Spencer and snowplowing. It was not specifically the Klementies, and it was just one of those things.

I would guess -- and I don't have the file, but the district attorney file as part of work product, we have an investigator that goes out and will follow up on these things. I'm sure I talked to him. Usually between the original filing and when you actually have a jury trial, there is a lot of work that we do in order to narrow down what's going to be able to be proven at trial and what we won't be able to prove.

And I think by the time we go to trial -- and

I'm guessing based on Egon's preliminary hearing testimony where he talked about being sprayed and what it was like that that was how that ended up becoming a count in and of itself. But it's been alleged as part of the -- kind of a whole part of conduct since the beginning. So it probably had some impact, meaning it was supported by someone else, but it clearly wasn't part of the charge. And that charge was in no way ever enhanced because it stayed a gross misdemeanor.

MR. ROUTSIS: That's a fair statement. She said she filed those charges based on a police report. There was no police report taken on the snowplow incident, so you had to rely on witnesses.

THE WITNESS: I think what I said was I based it on the police report that was filed and investigation. If I had our district attorney file, I would be able to tell you at the point between December 18th to January 16th what sort of investigation was done.

MR. ROUTSIS: Ms. Pence, there was never a report filed on a snowplow incident, so you had to rely on witness information, and that's all I'm telling you. Maybe you talked to Ms. Kinion. Can you admit it's possible she's provided you with information and it may have led to the charge? Can you admit that? Is that

possible? Yes or no. Is that possible?

THE WITNESS: No.

MR. ROUTSIS: It's not possible?

THE WITNESS: That her information led me to a charge?

MR. ROUTSIS: No, no.

THE WITNESS: Absolutely impossible.

THE COURT: That was my question. Now you're splicing it down.

MR. ROUTSIS: No, I'm not, Judge.

THE COURT: Yes, you are. One counsel says she's confused. You don't want to be confused.

MR. ROUTSIS: Judge, I'm just saying she said she relied on a police report and there was none.

THE COURT: Right. There's no police report.

MR. ROUTSIS: That means she got it from a witness. Okay? Somebody told her that --

THE COURT: Got it from investigation, got it from neighbors, a whole bunch of things.

MR. ROUTSIS: Here's the concern that I have. She's got a very faulty memory. Miss Kinion spoke to her.

MR. MOORE: I'm going to have to object to this conversation.

THE COURT: He's arguing with me.

MR. ROUTSIS: And it's a fair question because you're under penalty of perjury here.

Is it possible that you discussed with Miss Kinion prior to the filing of the charges that she was a witness? She saw the snowplow incident?

THE WITNESS: No.

MR. ROUTSIS: Not possible? Okay.

EXAMINATION

BY MR. ZANIEL:

Q Could I ask one question?

As far as the witness interviews that are taken, do you have an investigator that goes out and talks to witnesses?

A Yes, we do.

Q Is that recorded somehow, either by notes, by handwritten notes or tape recording?

A They're supposed to take notes. If they do a formal interview, they do record those interviews and there's -- the way that the system works is that once you get a report for submission to file, there is no period of time where you go out and you do independent investigation and you would interview people and then you

would charge a case. That's absolutely forbidden in the district attorney's office as far as how we are allowed to file charges. We are to look at the reports. If there's been investigation done, if anything has been confirmed or corroborated, we file an initial report, and that's the original compliant that gets filed.

At that point, once there's been a complaint filed and the defendant has been brought into court and is apprised of what's happening, then there's additional investigation. Then we would talk to witnesses, more investigation is done, and that results generally in different filings. So between the time that I read the report and the initial filings, no one would have gone out and talked to people before filing the charges.

Q After the filing of the charges, though, that would have been the time frame to go interview the witnesses?

A Absolutely.

Q In this case, were other witnesses interviewed by the district attorney investigator?

A I think there was a number of witnesses that were interviewed, quite a few. And I remember doing a lot of work on this case. I would say there were probably 20 to 25 people that were talked to. There were

subpoenas that were sent out. There were a number of different -- other than the medical records, which was the big push, but there was also the minutes for some of the improvement meetings because I remember a lot of this issue had to do with neighborhood improvements and that sort of thing. Yeah.

Q This is your file?

A Okay. Yeah. There was a -- between the original filing which alleges this information and the felony, that's when all of that would have happened.

Q One of the things that I can't find in here, though, is any type of witness-type interviews. Granted, it would have been after the filing of the complaint. I understand that. But if your investigator went out and talked to somebody and wrote a note on it, that would become part of the file; correct?

A If he -- again, I would be speculating as to what his job is. There is attorney work product, but normally when they conduct a formal interview like in a domestic battery case, there's some sort of record of that interview.

Q And you're pretty positive there were a number of interviews that took place in this case?

A I know that a number of people were spoken

to. I don't know who did it, which investigator would have done it. I think at one point, there were three investigators in our office. Someone would have spoken with them.

Q All right. And then you mentioned the very beginning the video of the Shaws. I think that was part of the DA file. Is that kept in the file? We didn't get a copy of that either, so that's the only reason I'm asking that question.

A That was on a -- I want to say it was on a flash drive, and it would have been part of the State's file. It would also be part of the district court record because I think it was introduced during the trial. I don't remember if it was admitted or not, but --

MR. ZANIEL: Okay. So we'd need another source to get that. That's all, Your Honor.

THE COURT: Ms. Pierce, I interrupted you when you said you were confused and then Mr. Routsis took over. Do you have any other -- any more questions?

EXAMINATION

BY MS. PIERCE:

Q I just want to clarify if I understood this latest testimony. Before you filed your criminal

charges, you have not done investigation in the DA's office. You were relying on police reports; is that correct?

A That's the practice.

MS. PIERCE: Thank you.

MR. ROUTSIS: And I'd follow up that there was no report written on the snowplow incident by the arresting officer.

THE COURT: That's correct, right? No report written?

THE WITNESS: My understanding is that the officer that investigated the snowplow incident is not the officer that submitted the report for submission to the DA's office for filing of charges.

THE COURT: Any other questions?

MS. PIERCE: Where would we find a copy of that officer's report?

MR. ROUTSIS: The follow-up question would be if there's nothing mentioned in that report regarding the snowplow incident, you would have gotten that information from a witness; correct?

THE WITNESS: Either from the investigator or from the other report that was filed or from the Klementies themselves.

Q But you don't remember, do you?

A I do not have an independent recollection without seeing the file.

THE COURT: Ms. Capers, you looked like you were going to say something -- ask something.

EXAMINATION

BY MS. CAPERS:

Q Yes, I was contemplating. Just one last question. Do you remember all of the witnesses that testified at the prelim hearing?

A No.

THE COURT: Anything else, Ms. Pierce, of Ms. Pence?

MS. PIERCE: Not of this witness, Your Honor.

THE COURT: Thank you, Ms. Pence. You can go ahead and step down. I appreciate you coming, and I didn't realize it was going to be almost two hours, but thank you.

Let's take a short break and then we're going to argue the motion to amend and opposition, and we're going to argue the summary judgment, renew arguments on both of these issues. Let's take about ten minutes.

THE CLERK: Confirmation. I only have

Exhibit 4 as being admitted, and so I'm hoping we're on the same page.

MR. ROUTSIS: Okay. Yes.

(Recess.)

THE COURT: Thank you. Please be seated, everybody. Good afternoon again. We're back on the record in case number 14-CV-0260. Now what I'd like to do is close up on the arguments in regard to the summary judgment motion and in regards to the motion to amend, so I want to start. Let's start with the amendment.

We heard a lot from Ms. Pence, which helped, and I thank her for coming. But I didn't hear anything in regards to the Shaws from Ms. Pence's testimony. There is an allegation that they wrote a letter, and I did hear something about a video. But in regards to joining in on the motion -- the opposition to the motion to amend; correct?

MS. CAPERS: Yes, sir, we did.

THE COURT: Tell me your argument again.

MS. CAPERS: Again, the substance of my argument last time was number one, the delay. And I think the insufficiency of the explanation that Mr. Routsis wasn't well versed in civil litigation. And again, I made the argument that he doesn't have to be an

expert. He simply needs to be competent. So I don't think that's a sufficient issue.

And then the other issue I brought to your attention was the need for the DA to be here because if this case had gone to jurors, they would only be able to speculate or guess as to the elevation of the charges. And even though I think it was beat with a dead horse today, it was shown very clearly, even though the majority of the conversation was concerning Mrs. Kinion, but I did ask the question concerning the Shaws and whether or not the input, any information they gave was a factor in elevation of charges. And again, the answer was no as to both.

What was very clear in her testimony was that the elevation or increase of charges based upon the medical records, the one I guess from the exploitation to the elderly abuse was premised upon the medical records and not based upon the testimony of any of the witnesses. And so therefore, again, I think there's sufficient evidence to show that my clients should be dismissed, especially when you look at the specific elements of the malicious prosecution: initiating, procuring the institution of or actively participating in the continuation of a criminal proceeding.

There's no evidence whatsoever that my clients initiated, procured the institution of or actively pursued in the criminal proceeding because you had the DA testifying here that what evidence that prompted the increase in charges was in fact the medical records. And again, the reason I asked -- I was a little hesitant to ask the question in regards to all of the witnesses that were used at the preliminary hearing was to see if in fact that my clients testified at the preliminary hearing and so whether or not any argument could be made that their testimony resulted in some charges being continued or increased. But again, there's absolutely no evidence concerning that.

And what's also important to note is that even the plaintiffs stated themselves when you look at -- when you go to page 9 of the supplemental opposition to motion for summary judgment we just received five minutes prior to this proceeding is that the only way that the conspiracy claim could go forth is if in fact you find the malicious prosecution claim is valid, and from what we believe, the evidence that has been presented here, there's no basis whatsoever to hold my clients for malicious prosecution, and therefore, also the conspiracy charge is therefore moot.

And as such, I re-ask that my clients be dismissed, or in the alternative, specifically, that the amended complaint should not go forward because again, if it does go forward, we're going to be here again. I'm going to renew the same motions.

THE COURT: Thank you. Any reply to that in regards to the Shaws?

MS. PIERCE: Actually, Your Honor, this kind of overlaps the summary judgment motion.

THE COURT: Okay. I agree.

MS. PIERCE: And the summary judgment motion was made only listing the facts as they apply to Miss Kinion. So joining in the summary judgment motion without listing "Here are the undisputed material facts with respect to a particular party," there's no basis to go forward because that's required by the rules. You have to list all of the material facts that are undisputed. And based on those undisputed material facts, there's nothing to go forward on. That hasn't happened with respect to anybody except Miss Kinion. So saying to join in the motion for summary judgment is meaningless, and the law was properly cited.

The law says that malicious prosecution is not just initiating or procuring the institution of, but

actively participating in the continued criminal prosecution, and that is what we've alleged. We've alleged that there were actions taken by the Shaws which were instrumental in this criminal prosecution going forward.

Now, based on what the DA said, her position, as I understand it, is basically I put -- I institute criminal charges without talking to witnesses. I do it based on the police report and the investigation done in the police report. Well, the only police report in this matter that was actually in place at the time that the criminal charges were brought in January was the police report on the incident with Helmut Klementi on December 18th, and they were witnesses to that, and they were listed in there as witnesses.

So whatever the DA, deputy DA remembered sitting here today, that was part of the very first complaint that was made. And then it is our contention that there were other things that occurred as this went along and there were other claims made that came in part from the Shaws because, as Miss Pence testified, there were numerous people who talked to her about these issues, referring to the supposed assault on Egon Klementi and the claimed snowplow incident and the berms.

So as we sit here today, there's no basis to say that there is not a valid claim there.

And as far as the delay, the delay was due in part to a problem with a former counsel who couldn't get out, and I couldn't come in, and there's been numerous changes of counsel, and there have been subsequent proposed amendments to their complaint. So, you know, where we -- the argument of delay is not a good argument.

And I would submit that by participating in the continuation of those proceedings, according to the law, the Shaws -- an argument can be made to a jury that the actions taken by the Shaws were in fact actions for the purpose of continuing a criminal proceeding for which Mr. Spencer was acquitted of all charges. Thank you, Your Honor.

THE COURT: Mr. Moore, who -- okay. I want to hear from you, Mr. Moore, and then I want to hear from Mr. Pintar because you can still see how these are so intertwined in my mind these, the motion to amend, which is a much more liberal standard, versus the motion for summary judgment. I think Ms. Pence helped.

However, this argument right now is it's on my mind, and so, you know, I want to clear it up. Why didn't you allege a conspiracy against all of the

neighbors, that kind of thing? So am I parsing out some? Am I dismissing some? This is where I'm going.

MR. MOORE: I understand, Your Honor, and keeping in mind that I represent Helmut Klementi, who of course initiated this whole thing as a plaintiff, and then we have counterclaims that have resulted in this case, which is like a bad law school exam procedurally.

THE COURT: Yes, it is.

MR. MOORE: And, Your Honor, I respectfully suggest that when we have these things, we have to control what's happening by eating the elephant one bite at a time, and I believe that's exactly what the Court is doing, and that's what we're doing at the hearing.

I will note that procedurally, my client's motion to amend, the Court had already granted it. We're clean as far as my client is concerned, so that's history. We're here of course because we're interested in what the outcome is, but we have not opposed any of the motions that are currently pending. So I'm just procedurally letting you know where we are at.

Quite frankly, I think that Ms. Capers had a good observation. What we're trying to do here, hopefully, is be efficient and avoid unnecessary expense to all of the parties. I would think that -- I would

like to think that everyone has that same goal in mind.

Keeping that in mind, the Court is ferreting out what evidence is there of the so-called conspiracy of these acts by these specific individuals? And so when I look at the pending motions, I think that's what we want to know. What evidence is there? And that's what the Court is reasonably giving every opportunity, from what I've observed, to the Counter Claimant Spencer to present. And so that's my observation, Your Honor. And I think the evidence isn't there. And I harken back to Ms. Capers' observation, is if the motion for summary judgment is denied as to her clients right now, we know what's going to happen. She's just going to turn around and file a motion because it would be without prejudice at that point. And I think the Court is trying to be more efficient.

I'm -- at this point, Your Honor, I recognize what the Court said at the beginning of this hearing. The Court is trying to find out what the evidence is so the Court can make decisions to the extent the Court can, and at the same time, hopefully we get a trial date because this way, we're going to push this thing along because all good things have to come to an end.

THE COURT: Thank you. Okay.

Mr. Pintar, you filed a motion for summary judgment of Ms. Kinion. You've heard the testimony of Ms. Pence. Is there anything to add to your motion based on the testimony of Ms. Pence?

MR. PINTAR: Yeah, just a couple things, Your Honor. I just want to make clear on the timeline. So the incident with Helmut Klementi occurs in December of 2012. The charges are filed in January of 2013, so the following month.

Ms. Pence just testified that the exploitation charges were filed at that time. She also said that later on after those charges are filed is when she had the conversation with Ms. Kinion at the Tahoe Justice Court and explained to Miss Kinion that if you have something to offer, then put it in writing.

Now, Mr. Routsis has made a lot of supposition about what Miss Kinion did and what her role in this case was, but I would just direct Your Honor to Miss Kinion's letter because you'll see right at the top, this is the list of events that I saw and heard about.

She's not claiming to be a witness to all of this stuff. She's trying to help, exactly what Ms. Pence asked her to do. So she's not claiming that she witnessed this stuff, and she never has, and it says

right here. This is a list of events that I saw and heard about.

And, Your Honor, the problem why we're here is this was never produced. So plaintiff's filed this case, and they didn't have any evidence. They didn't have any facts to support this thing. I mean, it's all -- I don't know if it's a Rule 11 violation, but it's pretty darn close because they didn't have what was charged and then the amended charges, and so now we're scrambling here two years after the fact.

Now we're getting the facts, and the facts are clearly showing that Miss Kinion had nothing to do with these charges. She wasn't called to testify at the preliminary hearing in April. And then -- and you heard Ms. Pence testify that the only reason that one charge was changed was because of the medical and the injuries to Helmut Klementi, and that was changed from a gross misdemeanor to a felony.

They're claiming that Miss Kinion had something to do with either initiating or prosecuting the charges, and the person who brought the charges said that wasn't the case. They have no evidence at all to support malicious prosecution. So we would respectfully request that our motion for summary judgment be granted. Thank

you.

THE COURT: Thank you. I did not take it as a threat, Ms. Capers. However, tell me why, if I deny the summary judgment based on what I feel are triable issues, why is this coming back again on behalf of the Shaws?

MS. CAPERS: Well, number one because at that point, you're granting their motion for the amended complaint.

THE COURT: Really, no. Not in my mind.

MS. CAPERS: Oh, well for me, you would have to approve or grant the amended complaint to officially bring us in, and then of course then I would re -- I guess, bring these motions again for you to address that my client is actually officially in.

But what I've tried to do here, though, is show that the arguments by Mr. Pintar are really the same. It's the same, as I say, triable issues of fact. So to be more efficient, yeah, we joined the motion, but because this hasn't proceeded in the most procedurally correct way, you know, I've tried to be proactive and get in the case before we're actually in the case. Does that make sense? And so therefore --

THE COURT: That answered my question.

MS. CAPERS: Oh, okay.

THE COURT: That did. Because you know, that's exactly what I meant when I said what does Ms. Pence have to do -- she didn't say anything about the Shaws. Was there the video? Was it edited? Did they do anything? What about the conspiracy? What about the malicious prosecution charge? What about defamation?

MS. CAPERS: Right. And I get it. And so I can understand, I guess for you as a judge, there may be some questions still, but this is how I looked at it, is that the absence of information from her showed that the letters, or whatever you want to say from my client and other witnesses were not very -- I guess they weren't very influential in her decisions, and I think she said that time and time again, even though plaintiffs or Mr. Routsis' counsel would continually ask that question. Well, what -- and you at the end asked, "Okay. What was the decision and increase of charges based upon?" And that was why we originally came here. That was the singular question, right, Your Honor, from last time. So once we get here, she answered that question, did it expand you a little? So what went into your decision-making process?

She said originally, it was the police

reports. Then she said that okay, once the charges were filed, there would have been some type of investigation by the police officer. But what was very clear, if you will hear as a prosecutor, what she said, she said, "The witness statements alone would not have been influential" in her charging decision. So it may have had some -- it may have been a factor, but not the factor that we would need to show that they initiated, the they procured the institution of, or they actively participated in the continuation of a criminal proceeding.

And let me say this. You and I both know at the end of the day, actively participating does not mean that you're a witness in a trial, and that's the leap that they want you to make. Just because they wrote a letter, and I think I was going to bring this out, but I didn't which was very important by Mr. Pintar is that they said "I saw or heard about." So if they tell what they saw or heard about, that doesn't mean there's a malicious prosecution claim. At the end of the day, that's left to prosecutorial discretion. And for what we saw from Ms. Pence today, all of these witnesses were not that important.

THE COURT: Thanks. All right. Mr. --

MS. PIERCE: Not yet. Me.

THE COURT: I don't dare ask Mr. Routsis.

MS. PIERCE: Nope. I'm talking this time.

THE COURT: You're talking. No, that's good.

MS. PIERCE: Okay. From what Ms. Pence said, the initial charges were based on police reports. There was no police report about the May incident threat to punch Egon Klementi in the face. There was no police report regarding Mr. Spencer creating berms in front of elderly people's houses. There was no police report on the snowplow incident of December 12th. And on that one, police actually came out and investigated and found no evidence of a crime such that a report was not even written. So other information had to have been provided to the deputy DA for her to bring these charges. She had to get it from somewhere.

And what was interesting is she made a comment that, "A lot of people were very concerned about Mr. Spencer." And that's another concern because it doesn't show up in the DA produced files as prior to filing the charges. And even if it had not influenced her in filing the charges in the first place, we have heard about it, and apparently, it's standard practice in a criminal proceeding. You have the information, and in this case, you have an amended criminal complaint and you

have an amended information. From what I understand, at least initial information in two amended informations after investigation was done, so even before you ever get to the trial and a witness, there's investigation going on here.

And the question is, for malicious prosecution, did people insert themselves in this process in a way that was dishonest for the purpose of getting criminal charges against Mr. Spencer to go forward and in an attempt to get him convicted? We want to be efficient in court, but we also want to have justice. In this case, the accusations that Miss Kinion made -- because I have to speak just to Miss Kinion because there's no motion for summary judgment that alleges the facts necessary for the motion by any other party.

THE COURT: Except when Ms. Capers joined in the motion for summary judgment.

MS. PIERCE: Yes. But the basic rules of the NRCP 56 -- I'm sorry, I'll grab my numbers. Yes, it is 56 -- requires that a party put forward undisputed facts supported by affidavits, trial transcripts, whatever evidence is there. We don't have that from anybody. So I can't respond to that, and I don't see how the Court can rule on that without it.

With respect to the allegation that Miss Kinion made that included in her letter maybe that she just heard about threatening to punch Egon Klementi in the face, which made it into the charges, she wasn't a witness to it, and yet the only witness to that was Egon Klementi.

MR. PINTAR: Your Honor, may I approach? Because there's just continued misrepresentations. In the documents from the district attorney is the police report from May of 2012, and I don't know why they say that there wasn't one. And in that report, Egon Klementi clearly talks about how he was approached and assaulted by Mr. Spencer. So they're continuing to make these allegations that there's no support in the only documents that they produced.

MR. ROUTSIS: That's not true.

MR. PINTAR: It's right there.

MR. ZANIEL: What's the Bates stamp number on that, Your Honor?

MS. PIERCE: Is there a Bates number on that, Your Honor?

THE COURT: B1461. We just referred to it.

MR. ROUTSIS: Judge --

MS. PIERCE: 1461?

THE COURT: 9.

MR. ROUTSIS: Judge, while she's looking, what happened on that date --

THE COURT: Help her. I don't want to hear what happened on that date. Not from you. I respect what you're saying, but if this is a report, if this is a Douglas County Sheriff's report --

MR. ROUTSIS: It was Marilyn that --

MS. PIERCE: Yes, there is a report here. And the complaining witness was Marilyn Spencer.

MR. ROUTSIS: Thank you.

MS. PIERCE: There is no police report --

MR. ROUTSIS: Thank you.

MS. PIERCE: -- by Mr. Egon Klementi. Marilyn Spencer had called the police because he kept coming onto their property and taking pictures. And in response to her call, that police officer went out and spoke to Egon Klementi to tell him that this complaint had been made against him and to tell him that if he went on the Spencers' property again, he could be arrested for trespassing. And Egon Klementi said nothing about his supposed assault.

MR. ROUTSIS: That day.

MS. PIERCE: That's what this report was.

MR. PINTAR: Read the last two pages of the report. It's Egon who is responding.

MR. ROUTSIS: Judge, he interrupted her conversation, and I have the right to tell you what happened. Egon Klementi --

THE COURT: Wait. Please. We're looking at a document.

MR. ROUTSIS: I know. I was the only one at trial. Does anyone want to hear what happened?

THE COURT: She is your co-counsel.

MR. ROUTSIS: I know, but he got up and interrupted. If I could just tell you what happened.

THE COURT: Sit down.

MR. ROUTSIS: Okay.

THE COURT: You can tell Ms. Pierce. You can tell me after.

MS. PIERCE: There's nothing in here that says --

MR. ROUTSIS: She was interviewed on the 27th. He never mentioned a crime occurred, an assault occurred. He went down 30 days later and made his claim. Okay?

MS. PIERCE: It's not in here.

MR. ROUTSIS: That's what happened. It was

written on the 27th. They don't have any evidence because it never happened.

MS. PIERCE: This report was a complaint by Marilyn Spencer.

THE COURT: Well, Mr. Pintar, what do you mean the last two pages, please?

MR. PINTAR: Excuse me?

THE COURT: What do you mean by the last two pages of what you gave me?

MR. PINTAR: Well, they're claiming there's no other incident where Mr. Spencer got into Mr. Klementi's face. Mr. Klementi himself wrote to the police and told them about it.

THE COURT: And what do you mean by saying they never got the report? I don't understand.

MR. ROUTSIS: Judge, see, I'll be very simple. That's what happens when you don't read the trial transcripts. Here's what happened. On the 27th of May, Marilyn Spencer called the police to say, "Egon Klementi is coming around taking pictures. We have neighbors. He's bothering us."

The police came out. They walked over to the Klementies and said, "Mr. Klementi and Elfride," -- this was the testimony and it's uncontroverted. They're

making complaints. "Don't go." He gave them a warning. "Don't go take any more pictures." They said they wouldn't. Moments before that was allegedly the assault that occurred that Egon was supposed to have been assaulted and Jeff threatened to punch him. The cops are at his house, and he doesn't say a word. Doesn't say a word. The report is written. Marilyn is the complaining witness. Thirty days later, he writes a report saying, "Oh, my. He assaulted me that day." And I asked him on the stand, "Well, how could you not say that to the police just moments after you were assaulted and you had made a complaint about the Spencers when they build a fence when they look sideways? How could you not make a complaint? You were just assaulted moments before, and they accused you and gave you a warning about not going on their property and taking pictures."

I'll never forget the testimony. I looked at the two. "We don't know how to do those things." "Do what things, Ms. Elfie? You don't know how to make a complaint? The cops are at your house. You don't know how to make a phone call? Your husband was just assaulted." Judge, this is the most -- those are the facts, and they're uncontroverted.

MS. PIERCE: Your Honor, which goes very

directly to a matter of fact. The facts show that that complaint was made by Marilyn Spencer. A month later, he goes back in and says, "Oh, by the way, he assaulted me that day just before the police arrived."

Whether his argument is credible or not or whether it was done maliciously for the purpose of trying to procure charges against Mr. Spencer, and it was later added to charges against Mr. Spencer, it's a factual dispute. That's what a jury trial is all about. The jury gets to decide the facts. He was acquitted of that charge. Now I understand the standards are different, but still, this is a disputed issue of material fact.

MR. PINTAR: But they're claiming that Miss Kinion said this stuff, and there's proof right there that it was Mr. Klementi himself who wrote this. And it's not a month later. It's May 12th -- May 30th of 2012. I mean, this is the person who got assaulted and he told -- reported it to the police, and they're trying to claim that Miss Kinion made this up. I don't understand it.

MS. PIERCE: We're not trying to say Miss Kinion made it up. Her letter can be read a couple of different ways as to whether she was asserting knowledge or she was asserting hearsay. But the point is, she

raised this with the DA, and we're talking about later. We're not talking about back in May when this incident supposedly occurred and no charges were brought. Much later in January of the next year, charges were brought on this incident.

MR. PINTAR: Your Honor, ten minutes ago, she just said there was no police report. Now I've shown them the police report. Now they're changing their story.

MR. ROUTSIS: No, we're not, Judge. I don't know why he keeps saying that.

MS. PIERCE: This is a -- when I said police report, I was talking about a Douglas County Sheriff incident report, okay? This is a statement made by what follows it. In D1475 is the statement made by Egon Klementi, so he's making now a belated complaint about this incident. But, you know, I mean, this is a civil dispute that never went to charges at the time. There is a long delay from which an argument can and has been made before and can be made again to a jury that it never happened, and that's why there was a long delay.

And when nothing happened to file criminal charges then, it was brought up again over half a year later, and criminal charges were finally filed as a

supplement in addition to only after the incident with Helmut Klementi. Those are factual disputes. This is a matter where there is a real issue. And what role Ms. Kinion had in it is she brought it up again to the DA. And we don't know what date she actually brought it up to the DA, although Miss Pence testified she never -- her conversation with Miss Kinion was very short in her deposition. Mary Ellen Kinion said that she had spoken with Maria Pence and that it was -- that it was at a later date that she wrote her letter.

And Mrs. Spencer, during the break, advised me that there was another letter she wrote to Maria Pence that predated the one that's produced here. I don't have it. But that's why these are all factual disputes. And there was a big argument last time about this letter that somehow it wasn't a valid letter and that we hadn't properly identified it and there was no explanation for it. And as it turns out yeah, it was a letter that was received by the DA's office. What we represented at the last hearing was absolutely accurate. But that's not the only thing.

The supposed battery with the snowplow, she claims -- Miss Kinion claims that she saw Mr. Spencer drive by with a big grin on his face, her words, big

grin, picking up snow and road debris from the plow that he propelled on Egon Klementi in his driveway. And she claims she called Egon Klementi and 911 to report it. And she made the same allegations under oath at Mr. Spencer's criminal trial.

Now, in her motion, she claims another snowplow, which Kinion thinks was driven by Spencer, put the berm of snow back in front of Kinions' driveway. As the snowplow was driving away, Kinion went outside to try and identify the driver. At that time, she saw the snowplow proceed toward Egon Klementi's house. Egon Klementi was standing in his driveway shoveling snow. Kinion then observed the snowplow approach Mr. Klementi's residence, increased its speed and captured old snow from the side of the road and propelled old snow along with other road debris on Mr. Klementi. Having witnessed this event, Kinion immediately called and checked on Mr. Klementi.

Now, that's not what the evidence showed at trial, and this is another case. There was no police report. Sheriff's Officer Sanchez responded to the 911 call from Egon Klementi on December 12th. The officer investigated and found no evidence of a crime, so he didn't even write a report. And that was at the criminal

trial that testimony was given. And her description at the criminal trial of where she was supposedly standing and where Egon Klementi was supposedly standing, given the size of the snowplow, looking at it from behind as it approached Egon Klementi, there was evidence that she couldn't have even viewed what she claimed to have seen.

And the discrepancy between whether she actually saw Mr. Spencer with a big grin on his face or she ran out to see who the driver was because she couldn't tell, that's a material fact. She accused him in a criminal trial with a big grin, implying malice, of assaulting an elderly neighbor. And now she's saying she didn't see who the driver was.

Also, her sworn testimony directly conflicted with Egon Klementi's sworn testimony. He testified under oath that he called Mrs. Kinion or Miss Kinion, not the other way around. And she also testified that she didn't call 911 until after she had her lunch, over an hour after she supposedly witnessed this assault.

Now, from those facts, a jury could look at this and say, "Did she ever really even see an assault?" Because the police officer found no evidence of an assault. And the question is -- what circumstantial evidence shows here is Egon Klementi called her and this

is a fabricated event. This is a conspiracy to get charges against Mr. Spencer which were based on no facts, and he was acquitted of them.

In terms of the alleged battery of Helmut Klementi on the 18th of December, that's in her letter, but she admits she didn't see any assault and battery, she did not speak to the investigating officer, and yet she includes "facts," quote/unquote, in her letter that Helmut Klementi was punched in the chest, which is not what the evidence showed. What the evidence showed was that Mr. Spencer was pursuing Mr. Klementi, running on an icy street, and all of a sudden -- and he was going to make a citizen's arrest. He testified to that. Mr. Klementi turned around, started back toward him, and the two of them collided. There was no punch in the chest. So where is she getting these supposed facts for the DA? Especially since she wasn't a witness.

She inserted herself in this case. She became a witness in this case. She provided letters to the DA, deputy DA in this case, and she testified under oath that she did it for the specific purpose of getting Mr. Spencer convicted. That was her purpose. And she failed in that, but she was involved in it. And so the process of inserting herself here, making representations

which were not true and changing her story now from what she said under oath at trial, there are material issues of disputed fact here. This is not something that can go away with summary judgment.

If these elements of the supposed berms, which she admitted at trial she never saw what snowplow driver created the berms, but she thought it was Mr. Spencer, but she never saw him do it. So she has -- and that was one of the factors that went into adding these elderly abuse charges that involved Egon and Elfride Klementi. She inserted herself in here. She talked about things which were proven untrue or proven that she couldn't have observed, and she's changing her position now from what she said under oath. So did she purger herself? Well, these are factual issues. She went beyond that.

The deputy DA made a comment about she went to K -- what is it? I always transpose the letters -- KGID, who was a contract employer of Mr. Spencer. She tried to get him fired from his job. She made complaints there, which allegations were things she had never seen. She, in addition, was not a party to the Klementies' filing for a restraining order against Mr. Spencer. Miss Kinion wrote an ex parte letter to the justice of the

peace hearing the matter, trying to get more restricted orders against him. There are numerous examples, in addition to the criminal trial, of the actions she was taking to persecute this man.

Now, per NRCP 56, she has to set forth each material fact supported by evidence which must be undisputed. She hasn't done that. As a matter of fact, a number of the allegations she made in terms of the material facts are contrary to the actual evidence. For malicious prosecution, all we need to show to overcome a motion for summary judgment is that she had a role in either initiating, procuring the institution of, or actively participating in the continuation of the criminal proceeding. We have presented evidence that supports that. Malice, which is shown by making statements with knowledge they were false or making statements with reckless disregard for the truth, she was caught in lies under oath, and she's changing her story which she previously gave under oath. And she testified contrary to another party here, Egon Klementi. Their testimony is directly contradictory.

There was a determination in the prior criminal proceeding with not guilty verdicts on all counts, and the criminal conspiracy. The argument was if

the malicious prosecution claim goes away, the conspiracy claim goes away. But as I've articulated, there's plenty of disputed material facts to support malicious prosecution by Miss Kinion.

The question raised about why there were no claims of conspiracy against all of the neighbors? In filing a complaint, the elements of a claim simply need to be set out based on basic facts. You don't need to put everything in there. It is: Here's a recitation of the facts. Here's the legal conclusion for this charge. Here's the legal conclusion for this charge. Here's the legal conclusion for this charge. That's what the claims in a complaint do.

The amended complaint is designed to clean up the prior complaint which had some misstatements and clarify what is -- what actually occurred that each of these people did. And as Ms. Pence testified, she was hearing from a lot of people. There were a lot of people who no doubt made statements, based on what we have seen from the contract employer's file, accusing Mr. Spencer of various things. Whether it rises to the level of civil conspiracy is another question, but malicious prosecution is basic. And I am only going to address the malicious prosecution with respect to Miss Kinion because

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IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER, Appellant, v. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW, and PETER SHAW, Respondents.	Case No. 77086

APPELLANT'S APPENDIX

VOL. 2

Docket 77086 Document 2019-24087

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Answer and Counterclaim	2/3/2015	1	5
Complaint	12/17/2014	1	1
Docket as of April 4, 2019	4/4/2019	7	5
Egon and Elfriede Klementi's Answer to Counterclaim	2/26/2015	1	13
Egon and Elfriede Klementi's Joinder to Mary Ellen Kinion's Motion for Summary Judgment	5/9/2016	1	20
Egon and Elfrieide Klementi's Answer to Amended Counterclaim and Third Party Complaint	3/24/2017	2	23
Elfriede Klementi's Motion for Attorney's Fees and Costs	9/7/2018	7	38
Elfriede Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	65
Elfriede Klementi's Reply in support of Motion for Summary Judgment	6/13/2018	6	92
Helmut Amended Complaint	8/12/2016	1	107
Helmut Answer to Counterclaim	2/23/2015	1	16
Helmut Klementi's Motion for Attorneys' Fees	9/20/2018	7	24
Helmut Klementi's Motion for Summary Judgment	4/12/2018	4	95
Helmut Klementi's Motion for Summary Judgment (cont.)	4/12/2018	5	976
Helmut Klementi's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1102
Helmut Klementi's Verified Memorandum of Costs	9/10/2018	7	1120
Kinion and Elfriede Klementi Reply in support of Motion for Summary Judgment	4/10/2018	4	1174
Kinion Answer to 3rd Party Complaint	3/24/2017	2	1184
Kinion Memorandum of Costs and Disbursements	3/21/2017	2	1199
Kinion Motion for Attorney's Fees and Costs	9/7/2018	7	1202
Klementi's Answer to Amended Counterclaim and Third-Party Complaint	3/7/2018	4	751
Mary Ellen Kinion and Elfriede Klementi's Joinder to the Shaws' Motion for Summary Judgment	3/12/2018	4	771
Mary Ellen Kinion's Answer to Counterclaim	3/23/2015	1	31
Mary Ellen Kinion's Answer to Counterclaim	2/9/2016	1	38
Mary Ellen Kinion's Motion for Attorney's Fees and Costs	3/21/2017	2	45
Mary Ellen Kinion's Motion for Summary Judgment	4/22/2016	1	45

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Mary Ellen Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	93
Mary Ellen Kinion's Reply in Support of Motion for Summary Judgment	6/13/2018	6	120
Motion to Dismiss Egon Klementi	6/22/2018	6	135
Notice of Entry of Order Granting Elfriede Klementi's Motion for Summary Judgment	8/31/2018	7	140
Notice of Entry of Order Granting Helmut Klementi's Motion for Summary Judgment	8/31/2018	7	143
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/26/2017	3	147
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/31/2018	7	150
Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	3/27/2017	3	153
Opposition to Motion for Summary Judgment	5/18/2016	1	172
Opposition to Shaws' Motion for Summary Judgment	3/28/2018	4	231
Order Dismissing Egon Klementi	8/23/2018	6	258
Order Granting Elfriede Klementi's Motion for Summary Judgment	8/29/2018	7	260
Order Granting Helmut Klementi's Motion for Summary Judgment	8/23/2018	7	269
Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/19/2017	3	285
Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/23/2018	7	292
Order Granting Mary Ellen Kinion's Motion for Summary Judgment on Malicious Prosecution	4/3/2017	3	301
Order Granting Rowena and Peter Shaw's Motion for Summary Judgment	8/17/2018	6	306
Order Granting Three Motions for Attorney's Fees and Costs	11/5/2018	7	312
Order re Helmut Motion to Amend Complaint	12/15/2016	1	318
Order Upon Stipulation for Dismissal	10/17/2017	3	319
Reply in support of Mary Ellen Kinion's Motion for Summary Judgment	5/23/2016	1	322

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Reply in support of Motion for Attorney's Fees and Costs	4/5/2017	3	339
Response to Egon and Elfriede Klementi's Motion for Summary Judgment	6/5/2018	5	345
Response to Egon and Elfriede Klementi's Motion for Summary Judgment (cont.)	6/5/2018	6	404
Response to Helmut Klementi's Motion for Summary Judgment	6/5/2018	6	439
Response to Mary Ellen Kinion's Motion for Summary Judgment	6/5/2018	6	471
Rowena and Peter Shaw's Answer to Amended Counterclaim and Third Party Complaint	7/10/2017	3	531
Shaws' Motion for Summary Judgment	2/26/2018	3	538
Spencer's Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	3/3/2017	2	538
Stipulation for Dismissal with Prejudice	9/12/2017	3	558
Suggestion of Death on the Record	11/16/2017	3	561
Supplemental Opposition to Motion for Summary Judgment	1/30/2017	1	235
Supplemental Opposition to Motion for Summary Judgment (cont.)	1/30/2017	2	251
Transcript of December 15, 2016 Hearing	12/15/2016	1	283
Transcript of January 30, 2017 Hearing	1/30/2017	2	339
Transcript of July 12, 2018 Hearing	7/12/2018	6	479

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Complaint	12/17/2014	1	1
Answer and Counterclaim	2/3/2015	1	5
Helmut Answer to Counterclaim	2/23/2015	1	16
Egon and Elfriede Klementi's Answer to Counterclaim	2/26/2015	1	24
Mary Ellen Kinion's Answer to Counterclaim	3/23/2015	1	31
Mary Ellen Kinion's Answer to Counterclaim	2/9/2016	1	38
Mary Ellen Kinion's Motion for Summary Judgment	4/22/2016	1	45
Egon and Elfriede Klementi's Joinder to Mary Ellen Kinion's Motion for Summary Judgment	5/9/2016	1	93
Opposition to Motion for Summary Judgment	5/18/2016	1	96
Reply in support of Mary Ellen Kinion's Motion for Summary Judgment	5/23/2016	1	155
Helmut Amended Complaint	8/12/2016	1	172
Order re Helmut Motion to Amend Complaint	12/15/2016	1	178
Transcript of December 15, 2016 Hearing	12/15/2016	1	179
Supplemental Opposition to Motion for Summary Judgment	1/30/2017	1	235
Supplemental Opposition to Motion for Summary Judgment (cont.)	1/30/2017	2	251
Transcript of January 30, 2017 Hearing	1/30/2017	2	283
Spencer's Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	3/3/2017	2	423
Kinion Memorandum of Costs and Disbursements	3/21/2017	2	443
Mary Ellen Kinion's Motion for Attorney's Fees and Costs	3/21/2017	2	446
Egon and Elfrieide Klementi's Answer to Amended Counterclaim and Third Party Complaint	3/24/2017	2	471
Kinion Answer to 3rd Party Complaint	3/24/2017	2	486
Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	3/27/2017	3	501
Order Granting Mary Ellen Kinion's Motion for Summary Judgment on Malicious Prosecution	4/3/2017	3	520
Reply in support of Motion for Attorney's Fees and Costs	4/5/2017	3	525
Rowena and Peter Shaw's Answer to Amended Counterclaim and Third Party Complaint	7/10/2017	3	531
Stipulation for Dismissal with Prejudice	9/12/2017	3	538
Order Upon Stipulation for Dismissal	10/17/2017	3	541

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/19/2017	3	544
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/26/2017	3	551
Suggestion of Death on the Record	11/16/2017	3	554
Shaws' Motion for Summary Judgment	2/26/2018	3	557
Klementi's Answer to Amended Counterclaim and Third-Party Complaint	3/7/2018	4	751
Mary Ellen Kinion and Elfriede Klementi's Joinder to the Shaws' Motion for Summary Judgment	3/12/2018	4	771
Opposition to Shaws' Motion for Summary Judgment	3/28/2018	4	774
Kinion and Elfriede Klementi Reply in support of Motion for Summary Judgment	4/10/2018	4	801
Helmut Klementi's Motion for Summary Judgment	4/12/2018	4	811
Helmut Klementi's Motion for Summary Judgment (cont.)	4/12/2018	5	976
Elfriede Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	1102
Mary Ellen Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	1129
Response to Egon and Elfriede Klementi's Motion for Summary Judgment	6/5/2018	5	1156
Response to Egon and Elfriede Klementi's Motion for Summary Judgment (cont.)	6/5/2018	6	1215
Response to Helmut Klementi's Motion for Summary Judgment	6/5/2018	6	1250
Response to Mary Ellen Kinion's Motion for Summary Judgment	6/5/2018	6	1282
Elfriede Klementi's Reply in support of Motion for Summary Judgment	6/13/2018	6	1342
Helmut Klementi's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1357
Mary Ellen Kinion's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1375
Motion to Dismiss Egon Klementi	6/22/2018	6	1390
Transcript of July 12, 2018 Hearing	7/12/2018	6	1395

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Order Granting Rowena and Peter Shaw's Motion for Summary Judgment	8/17/2018	6	1457
Order Dismissing Egon Klementi	8/23/2018	6	1463
Order Granting Helmut Klementi's Motion for Summary Judgment	8/23/2018	7	1465
Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/23/2018	7	1481
Order Granting Elfriede Klementi's Motion for Summary Judgment	8/29/2018	7	1490
Notice of Entry of Order Granting Elfriede Klementi's Motion for Summary Judgment	8/31/2018	7	1499
Notice of Entry of Order Granting Helmut Klementi's Motion for Summary Judgment	8/31/2018	7	1502
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/31/2018	7	1506
Elfriede Klementi's Motion for Attorney's Fees and Costs	9/7/2018	7	1509
Kinion Motion for Attorney's Fees and Costs	9/7/2018	7	1536
Helmut Klementi's Verified Memorandum of Costs	9/10/2018	7	1572
Helmut Klementi's Motion for Attorneys' Fees	9/20/2018	7	1626
Order Granting Three Motions for Attorney's Fees and Costs	11/5/2018	7	1697
Docket as of April 4, 2019	4/4/2019	7	1703

Case No. 13-CR-0036
Department No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
THURSDAY, SEPTEMBER 19, 2013
MINDEN, NEVADA

APPEARANCES:

For the Plaintiff:	Maria Pence, Deputy District Attorney Douglas County
For the Defendant:	William J. Routsis, II Attorney at Law Reno, Nevada
The Defendant:	Jeffrey Dale Spencer
Reported by:	Nicole J. Alexander Nevada CCR #446

INDEX

THE WITNESS: EGON KLEMENTI	PAGE
Continued direct examination by Ms. Pence	3
Cross-examination by Mr. Routsis	43
Continued cross-examination by Mr. Routsis	132
Redirect examination by Ms. Pence	190
THE WITNESS: JANET WELLS	
Direct examination by Ms. Pence	124
(Outside the presence of the jury)	
Cross-examination by Mr. Routsis	129
(Outside the presence of the jury)	
Direct examination by Ms. Pence	210
Cross-examination by Mr. Routsis	227
THE WITNESS: MARY ELLEN KINION	
Direct examination by Ms. Pence	254
Cross-examination by Mr. Routsis	268

very much. You can step down.

THE WITNESS: Thank you.

MS. PENCE: Your Honor, may she be excused for today?

THE COURT: She's excused. Yes. She's done.

THE WITNESS: Thank you.

THE COURT: Do you have another witness available?

MS. PENCE: Do you want another witness available?

THE COURT: We have a lot of ground to cover.

MS. PENCE: Yes, Your Honor. We have another witness.

THE COURT: We're going to be recessing by 4:30 tomorrow, Friday, and you might have a longer lunch, too.

MARY ELLEN KINION,

having been first duly sworn by the court clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PENCE:

Q Can you state your name and then spell your name for the record.

first. So you said you've been at your address on Meadow Lane for 17 years?

A Uh-huh.

Q So you were living there last December of 2012?

A Yes.

Q Okay. Did something happen on December 12th of 2012 that causes you to be subpoenaed to court today?

A Yes.

Q And what was that?

A I saw Jeff Spencer assault Egon Klementi using a snowplow.

Q And do you remember about what time of day this happened?

A It was around -- It was before noon.

Q You said that you saw the defendant assault Mr. Klementi. Do you know more than one Mr. Klementi?

A Yes. I know two.

Q Which Klementi did you observe the defendant assault with a snowplow?

A Egon.

Q And at the time that you observed this, were you inside of your home or outside of your home?

A I was outside.

Q Approximately how far were you from the plow itself?

A Probably about -- I would say from about here to here.

Q Okay. And you're -- It's hard for the record. You --

A Maybe five feet.

Q About five feet?

A Yeah.

Q So were you able to clearly see the plow?

A Yes.

Q And could you clearly see the driver?

A Yes.

Q And who was the driver?

A It was Jeff Spencer.

Q So you see this plow coming, and you see Mr. Spencer. What did you do?

A I looked straight at him and noticed that he was not looking at me. He had a big grin on his face, and he was looking -- it looked like he was looking down the street.

Q So he didn't turn and look at you as you stood in the street?

A No. No, he did not.

Q What did he do next after you saw him looking straight ahead and smiling?

A He kept going up the street, and when he got here at the Klementi residence, he kind of -- It looked like he kind of swerved in. He started picking up snow, and then all of a sudden, Egon, who was in the middle of his driveway, was covered with a big giant mass of snow.

Q Now, at the time that you observed the snowplow heading down Meadow Lane, you said you had been at the end of the driveway?

A I moved out into the street when he was up here. I was behind him.

Q Okay. And so were you able to see Egon in his driveway?

A Yes.

Q And what, if anything, did you do when you saw the plow go by and then the debris go in the air?

A I screamed. I just -- I thought he was hurt. I just -- it was terrifying to watch. I mean, it was just like it wasn't real, you know. Like here all of a sudden, all of this snow is going on this old man, and I just --

Q What did you do?

A I watched. I saw Egon go into his house. At

first, I started down the street.

Q You can sit. I'm sorry.

A I can sit? I started to walk down the street to see if he was okay, and I saw him going into his house, so I went back to my house, and I called him and asked him if he was all right.

Q Do you see Mr. Spencer in the courtroom today?

A Yes.

Q Can you describe where he's seated and something he's wearing?

A He's sitting right over here. He's got on a gray suit with looks like a green tie.

MS. PENCE: Your Honor, could the record reflect that she did identify the defendant.

THE COURT: Yes.

Q (BY MS. PENCE:) Thank you. After you -- You said that you called and spoke to Mr. Klementi?

A Right.

Q And were you able to confirm his condition?

A Yes. He sounded really shaky, but he said he was okay.

Q Okay. After you called Egon, did you do anything else?

A I waited awhile, and then I called 911.

Q Why did you call 911?

A I thought about it, and I knew, you know, I told Egon to call. I knew he was going to call, but I was worried that there might be some kind of language barrier. I did not know if, you know, they would understand what he was trying to say, and I was also a witness, so I called to tell them that, you know, to volunteer, more or less. "Hey, I'm a witness. I saw this crime happen."

Q Ms. Kinion, showing you what was previously marked as State's Exhibit 18. Do you recognize that?

A Yes, I do, because I see my initials on it.

Q Okay. And what is it?

A It's the tape of the emergency call that I made.

MS. PENCE: Your Honor, I believe this exhibit was previously admitted.

THE COURT: Yes.

(WHEREUPON, a CD was played.)

Q (BY MS. PENCE:) Is that the call that you made to 911?

A Yes.

Q In that call, did you explain that you were a

witness?

A Yes.

Q In that call, you were told that Manchester had all of the information. Do you know who Manchester is?

A Yes.

Q Who is Manchester?

A He is part of a family that owns the snowplowing company that is used by KGID.

Q Okay. Did you speak with Mr. Manchester about this incident?

A Yes, I did.

Q Can you tell us about that.

A I called him and -- I believe the second time I called him that day. I called him up, and I said, "This is ridiculous, you know." I don't remember exactly what I said after that, but it was to the fact that this should not be happening, you know, and he should be doing something about it.

Q Ms. Kinion, you were also -- Were you present at a KGID meeting in December?

A Yes.

Q And why were you there?

A I believe it was because of the snowplowing.

We had complaints about it.

Q Had you personally had any issues?

A Not until that on the 12th.

Q At some point in the last three months, did you write anyone a letter about what you saw and observed on the 12th at the KGID meeting?

A I believe I wrote you a letter about it.

Q And what was the reason for your letter?

A I was trying to get all of the facts straight in what I perceived as happened leading up to the assault on him.

Q Okay. Did I ever ask you to write a letter?

A No.

Q Is everything that you wrote in the letter truthful?

A Yes.

MR. ROUTSIS: Objection, Your Honor. Is everything you wrote in the letter truthful? Okay. I'll withdraw the objection. I'll withdraw the objection.

MS. PENCE: May I have this marked as State's 28 for identification purposes.

(Whereupon, State's Exhibit No. 28 was marked for identification.)

Q (BY MS. PENCE:) Ms. Kinion, showing you

what's been marked as State's Exhibit 28. Do you recognize that?

A This is the letter that I wrote to you.

Q And how do you recognize it?

A Because I signed it, for one thing.

MS. PENCE: Your Honor, may State's Exhibit 28 be admitted?

MR. ROUTSIS: Your Honor, objection. This letter is loaded with -- it's loaded with hearsay comments from other people.

THE COURT: Out-of-court statement. What would be the hearsay exception?

MS. PENCE: No problem, Your Honor.

THE COURT: All right.

MR. ROUTSIS: I mean, if she wants to cover a particular area that's relevant and not hearsay, I have no problem with it, but the whole letter itself, she needs to --

MS. PENCE: No, Your Honor. That's fine. I have no further questions.

MR. ROUTSIS: Judge, can I just ask one question before we break, if we could?

THE COURT: Well, I don't know how many questions you have. I hope you can ask all of them and

STATE OF NEVADA)
)
COUNTY OF DOUGLAS)

I, Nicole Alexander, Certified Shorthand Reporter of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, do hereby certify:

That I was present in Department No. II of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

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

DATED: At Carson City, Nevada, this 17h day of February, 2014.

Nicole Alexander, CCR No. 446

Exhibit 10

Exhibit 10

Case No. 13-CR-0036
Department No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
FRIDAY, SEPTEMBER 20, 2013
MINDEN, NEVADA

APPEARANCES:

For the Plaintiff: Maria Pence,
Deputy District Attorney
Douglas County

For the Defendant: William J. Routsis, II
Attorney at Law
Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander
Nevada CCR #446

INDEX

THE WITNESS: MARY ELLEN KINION	PAGE
Continued cross-examination by Mr. Routsis	3
Redirect examination by Ms. Pence	29
Recross examination by Mr. Routsis	38
Further redirect examination by Ms. Pence	47
Further recross examination by Mr. Routsis	48
THE WITNESS: ELFRIDE KLEMENTI	
Direct examination by Ms. Pence	50

or down.

Q Okay. What did you mean by he -- I stand corrected then. What did you mean by, "He turned the blade on Egon"?

A That's how he was able to spray the snow at him.

Q Okay. So your ability to perceive what is the back of a giant snowplow, correct, or a big snowplow; right?

A It's more like a truck, and then the plow comes out.

Q It's more like a truck?

A Yeah. It wasn't like all snowplow. It's like a truck with something attached to it.

Q Like a regular pickup truck?

A I wouldn't call it a regular pickup. I'm not really good with automobiles, so I don't really know what you'd call a regular pickup truck.

Q What did you mean when you said, "It's like a truck"? Did you mean --

A It wasn't like the other snowplows. It looked like they had converted it into a snowplow.

Q Okay. In any event, ma'am, you're looking at a -- After Jeff smiled, do you know what he was smiling

at?

A I looked down the street in the direction he was looking and saw Egon in the driveway.

Q So he was smiling at Egon?

A I don't know what he was smiling at.

Q And as the plow goes down the street, you're looking at the back of the plow; correct?

A Partly the back of the plow and the other side of the street.

Q So when the plow gets up to where Mr. Klementi is, how do you see the blade?

A I'm not sure if I really saw it as much as I knew that he had to turn it because you have to turn it to be able to throw snow on somebody.

Q You didn't even see the snowplow blade, did you?

A I think I did. I don't remember. That was a long time ago.

Q Well, how could you see it, ma'am? You'd be looking at the back of the snowplow going in the opposite direction about, what did you say? How far do you think it was down the road?

A I didn't say.

Q But today, are you testifying that you didn't

see the blade?

A I think I saw the blade.

Q Did you see where Egon was?

A I saw where Egon was, yes.

Q So the snowplow would be going in this direction, right?

A Right.

Q Right in front of Egon. You're on this side of the street, so you'd have to be looking through the snowplow and the back of the snowplow to perceive Egon. Were you able to do that?

A Yes.

Q Do you have x-ray vision?

A No, but it's not the way that you say it is by that picture. I was able to see the snowplow, and I was able to see where Egon was, both at the same time.

Q Okay. So from this perspective, were you staying out on the street? You're looking at that angle, and you're going to be able to see Egon and the snowplow?

A Yes.

Q Because we've got to assume that as he's driving by, the snow is hitting Egon in the head, or we haven't got there yet; right? Is that correct?

A I'm sorry. What was your question?

Q Am I correct that at the time that you're claiming to have seen whatever it is you saw go onto Egon, the snowplow would have had to have been horizontal to him at that moment?

A That's correct.

Q So at that moment in time, you have a large snowplow, a blade, Egon somewhere in his driveway, and you're seeing Egon at the same time you're seeing the plow. You've testified that the blade was angled to blow snow on him. You saw all of that at that moment?

A Yes.

Q Okay. Now, you indicated that the street had been somewhat cleared earlier; correct?

A Right.

Q So where did the defendant get the snow to put onto Egon?

A There's a street, Charles, that goes across. When he went across Charles, he went into the side of the Klementies' property. That's where he got the snow.

Q Did you write that in your statement?

A I don't remember.

Q Okay. Let's take a look at it. Did I leave that up with you?

A Yeah.

Q So if I get you right, as you're visualizing looking through the -- seeing through the plow, seeing the plow angle up, put snow on Egon, you're saying right before that on Charles Avenue, the defendant, Mr. Spencer, who had a big smile on his face, then took a turn into Charles to gather snow from Charles?

MS. PENCE: Objection, Your Honor. Compound. Complex. Asked and answered.

THE COURT: Overruled.

Q (BY MR. ROUTSIS:) Is that what happened, ma'am, or not?

A I'm sorry. Will you repeat the question?

Q (BY MR. ROUTSIS:) Yes. This happened -- today, I believe, is the 20th of September, correct, 2013?

A Yes.

Q This occurred December 12th, 2012; right? You wrote a letter to the prosecutor to try to get them to prosecute, as you testified, Mr. Spencer, you signed a letter, and it shows it received February 22nd, okay?

A Correct.

Q Can you show us -- Would it refresh your memory as to whether or not Jeff Spencer somehow drove onto Charles Avenue, gathered up the snow, and then drove

back --

MS. PENCE: Objection, Your Honor. He's testifying, and it's compound and complex.

MR. ROUTSIS: I have the right to reiterate the facts she's laid. It's foundation.

THE COURT: Okay. The Court overruled the objection originally, and the witness asked to restate it, so he's restating the question.

MS. PENCE: Sorry. I didn't hear the question.

Q (BY MR. ROUTSIS:) Now, Ms. Kinion, you're saying that the defendant drove onto Charles and gathered snow, then came back onto Meadow and delivered that snow onto the victim, Mr. Klementi; correct?

A No.

Q What are you saying?

A I did not say that he drove onto Charles.

Q Okay. Tell me again.

A He drove into -- The Klementies are on a corner. He went into their property. Well, he didn't have to go into their property. He went into the side of the street where the berm was and picked it up there, and then --

Q And then he hit him with the berm?

A Yeah.

Q Now, did you ever write that down in your letter? Did you ever think that he drove into the berm of Mr. Klementies' property prior to spraying snow on him?

A I don't think I wrote that down.

Q Why wouldn't you write that down?

A Well, for one thing, I was trying to keep it short. And no, I just did not write that down.

Q Okay. And then -- and we'll be done very shortly -- the snow you're saying you saw, you then saw the back of the plow go onto his property and angle, and somehow the snow went up? Was it snow, or was it rocks and tar?

A It was snow and probably ice because I know that day there was a lot of ice along the side of the road.

Q Okay. And you saw that material fly into -- Tell us what you saw because I don't know.

A I saw the snow fly up and hit Egon.

Q Where did it hit him?

A It hit him like all over. There was a large amount. It flew up. It went -- Part of it went over his head. It went onto his body.

Q Right. Now, and at that moment in time, how close was Egon to Meadow? How many feet away from Meadow would you say he was?

A I don't know. He was still in the middle of the driveway.

Q Ma'am, can you see the middle of the driveway? Wouldn't that be behind the tree?

A I could definitely see the middle of the driveway.

MR. ROUTSIS: Okay. I'd like to mark what's defendant's next in order.

Q (BY MR. ROUTSIS:) Ms. Kinion, are you sure you're just not relaying what Mr. Klementi told you what happened?

A I am positive.

(Whereupon Defendant's Exhibit next in order was marked for identification.)

Q (BY MR. ROUTSIS:) This is just another -- maybe a better picture, ma'am. Is that an accurate depiction? You could go ahead and look at it. Is that an accurate depiction of the Klementies' driveway from your location?

A Sort of. In this picture, it looks so far back, it's hard to tell. In this picture, it's hard to

tell where it was taken from. You know what?

Q I'm just asking you. Is this an accurate depiction of the property? Are the trees --

A Yeah, it is a picture of the property.

Q Okay. I'd ask to admit.

A And you said something about the trees.

MR. ROUTSIS: Yes. We'll get to that. I'd ask to admit this into evidence, Your Honor.

MS. PENCE: No objection.

THE COURT: It's admitted.

Q (BY MR. ROUTSIS:) Okay. Ms. Klementi -- Ms. Kinion. My apologies. This is Charles Avenue; correct?

A Yes.

Q This would be the driveway to the Klementies; correct?

A Yes.

Q There's about one, two -- Those are pretty big trees, aren't they?

A Yes.

Q That's a tree, and that's a tree, right?

A Right.

Q Now, wouldn't the middle of the driveway be somewhere behind these trees?

A No.

Q Okay. Where would it be?

A It's before the trees. It's on -- it's more to the right.

Q To the right this way?

A Yeah.

Q So he'd be on --

A Not near the tree.

Q The other side of the trees to the right?

A Yeah.

Q So you're saying the snow went about 20 feet in the air?

A I don't know how many feet it went.

Q But if we have someone go out to the scene and walk it off, it's clearly to the right of these trees.

A Correct.

Q Okay. And at that point -- we're almost done -- you're seeing snow fly up and hit him in the head?

A It's hitting his whole body.

Q His whole body?

A Yeah.

Q Did you see what he did after that? Did he

Q Do you know what a berm is --

A Oh, yeah.

Q -- correct?

A Yes.

Q And when you called to make that complaint, did you watch the snowplow as it left the berm?

A I don't understand your question.

Q You called and made a complaint about a berm.

A Right.

Q Did you watch the snowplow as it left the berm?

A Did I see --

Q It leave the berm?

A Did I see him go by the berm?

Q Did you see --

A No, I did not.

Q There's many snowplow drivers, ma'am, isn't there?

A Yes.

Q Why did you say it was Jeff Spencer?

A I don't remember saying it was him until later.

MR. ROUTSIS: I'd like to mark next in order.

(Whereupon Defendant's Exhibit next in order was

marked for identification.

Q (BY MR. ROUTSIS:) Counsel, this is K.

Now, ma'am, do you recall writing a letter complaining that you witnessed Jeff Spencer leave the snow berm at the end of your driveway and you made a complaint about it?

A Did I write a letter?

Q Did you make a complaint to the Kingsbury Improvement District?

A Yes.

Q And did you not in that complaint say that you saw Jeff Spencer leave the berm in front of your driveway?

A I did not say that.

Q I'd like you to refer to this document that's been marked Defendant's Exhibit next in order. Would it refresh your recollection if you saw the comments that were noted from your mouth?

A Yes.

MS. PENCE: Objection, Your Honor.

MR. ROUTSIS: Please read it.

MS. PENCE: We haven't identified what that document is.

MR. ROUTSIS: Okay. She said it would

in order.

(Whereupon, Defendant's Exhibits U & V were marked for identification.)

RECROSS EXAMINATION

BY MR. ROUTSIS:

Q Ms. Kinion, I'd like to show you what's been marked Defense U and V. Is that a picture of your driveway?

A Yes.

Q I'm going to publish it. Maria, may I please have the photograph you just published?

Ms. Kinion, the prosecution just published Exhibit 30 and said was this your driveway, and you said yes; correct?

A Correct.

Q And there's a white fence right in front of it; correct?

A No. The white fence is down the street further.

Q Okay. Now, isn't it in fact true that your driveway is not -- we'll go back to the District Attorney's photograph. This driveway has pavers on it; correct? Can you see these rims here?

A Yes.

Q And you see the white fence there?

A Yes.

Q Now, we're going to now publish Defense Exhibit P, and that's your car, isn't it?

A Yes.

Q Your driveway has a wooden fence in front of it, doesn't it?

A No. The fence is on the side of if.

Q Right. And your driveway is asphalt, isn't it?

A No. It's paver stone.

Q Okay. So there's a wooden fence there; correct?

A Yes.

Q Next to your driveway? In this picture, there's no wooden fence. Isn't that in fact your neighbor's driveway?

A That could be my neighbor's driveway.

Q Yes, it is your neighbor's driveway; isn't that correct?

A Yes. I'm sorry.

MR. ROUTSIS: We seek to admit all of the exhibits at this time, Your Honor.

STATE OF NEVADA)
)
COUNTY OF DOUGLAS)

I, Nicole Alexander, Certified Shorthand Reporter of the Ninth Judicial District Court of the State of Nevada, in and for the County of Douglas, do hereby certify:

That I was present in Department No. II of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

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

DATED: At Carson City, Nevada, this 22nd day of February, 2014.

Nicole Alexander, CCR No. 446

Exhibit 11

Exhibit 11

DISK

NOT

SCANNED

ORIGINAL

Case No. 14-CV-0260

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

THE HONORABLE STEVEN KOSACH PRESIDING

-o0o-

EGON, HELMUT & ELFRIDE KLEMENTI,
Plaintiffs,
vs.

JEFF SPENCER,
Defendant.

JEFF SPENCER,
Counter-Plaintiff,
vs.

EGON, HELMUT & ELFRIDE KLEMENTI and MARY ELLEN KINION,
Counter-Defendants.

JAVS TRANSCRIPT OF PROCEEDINGS
MONDAY, JANUARY 30, 2017
MINDEN, NEVADA

For Jeff Spencer:	William Routsis, Esq. Lynn Pierce, Esq. David Zaniel, Esq.
For the Klementies:	Chris Moore, Esq.
For Mary Ellen Kinion:	Michael Pintar, Esq.
For Peter and Rowina Shaw:	Tanika Capers, Esq.
Transcribed by:	Capitol Reporters Nicole J. Hansen

I N D E X

THE WITNESS: MARIA ELIZABETH PENCE	PAGE:
Examination by the Court	13
Examination by Ms. Capers	17, 92
Examination by Mr. Moore	20
Examination by Mr. Pintar	24
Examination by Mr. Routsis	30
Examination by Ms. Pierce	77, 90
Examination by Mr. Zaniel	87

MINDEN, NEVADA; MONDAY, JANUARY 30, 2017; 1:38 P.M.

-oOo-

THE COURT: Thank you. Please be seated, everybody. Good afternoon to you all.

MR. ROUTSIS: Good afternoon, Judge.

THE COURT: All right. We're on the record in case number 14-CV-0260. The title is Klementi versus Spencer, Spencer versus Klementi and Kinion. Two Klementies. Excuse me.

We were here in December, and I asked and I heard arguments in regards to motion for summary judgment and in regards to motion to amend, and I thought it would be a good idea at the time to invite the district attorney that prosecuted the original case against Mr. Spencer to come and testify based on a letter that was presented to me during that hearing, and the letter was from Miss Kinion.

Do you have that in front of you, Counsel?

MR. ROUTSIS: Yes.

THE COURT: And so when I was glancing -- I didn't read the letter in detail -- but as I was glancing at it, it occurred to me that maybe we could talk to the district attorney to see what was going on in the

district attorney's mind at the time of charging the original matter as a felony, and so that's why we're here today. And also, I want to, when we're done with the summary judgment and when we're done with the amendment, I want to pick a trial date.

MR. ROUTSIS: Judge, we filed a supplemental opposition as the Court asked. We e-mailed this to the Court. Can we provide you with a physical copy now?

THE COURT: Please. Did you get it, Mr. Zaniel?

MR. ZANIEL: Yes, Your Honor. I think it was circulated by e-mail. I just file stamped it five minutes ago.

THE COURT: Okay. I didn't get it. I saw it this morning, and I'll identify everybody, but I didn't get it. I saw where Mr. Routsis sent something yesterday afternoon.

MR. ROUTSIS: Yes.

THE COURT: And I couldn't open it.

MR. PINTAR: It was in Word Perfect, and I couldn't either.

THE COURT: And then Mr. Zaniel wrote this this morning, so okay.

MS. PIERCE: I would like to apologize for

that, Your Honor. I was experiencing technical difficulties with the whole thing, and so I attempted to send it via Mr. Routsis's e-mail. And I'm sorry --

MR. ROUTSIS: I can take the blame.

THE COURT: So, Mr. Pintar, good afternoon. Mr. Moore, good afternoon, and Ms.?

MS. CAPERS: Capers.

THE COURT: Capers. Good afternoon to you. You're standing like maybe you didn't get it either? All three of you?

MR. PINTAR: No. This was just handed to us less than five minutes ago. Also, I wanted to apprise the Court we were not provided with the records that the Spencers received from the Douglas District Attorney's Office until late last week, so we haven't had a chance to go through them all.

MS. CAPERS: And I haven't received them at all.

MR. PINTAR: And I believe your order at the last hearing was that those were supposed to be produced so that we could review them and prepare a supplemental briefing. I just wanted to advise the Court that was not done.

MR. ZANIEL: I disclosed last Wednesday they

signed for them. It was late. My office had an issue with that. My paralegal wanted to review and summarize before disclosing. Since then, I've talked to my paralegal about disclosing records as soon as we get them, so I have to fix my internal issue, but it is true that they were not disclosed until last Wednesday.

And then with Ms. Capers, I'll put her on the mailing list. It's still my understanding -- I don't think that Ms. Capers has made a full appearance in the case.

MS. CAPERS: No, I did.

MR. ZANIEL: You did, okay. So we'll correct the certificate of service and make sure that she is on there.

THE COURT: Let's see what we can do. That's all I'm going to say right now. I know that Mr. Glogovac was here earlier for Mr. Pintar, and you know, we'll catch up. I was saying, and I'll say this to all of the parties that are present. You know, if this case were on my normal docket 20 years ago in Reno, you watch me and counsel knows me. Every counsel except for Ms. Capers knows me to the point, "Come on, come on, come on, come on, come on, come on." Well, senior judge now, "Hmm. Let me see what's going on here." Not that I was too

quick to make any judgments earlier, but I have many, many more cases. Now I'm a little bit more take my time. I'm older, I'm hopefully a little bit wiser. So that's why.

And so when I say to everybody today if you feel like you can't respond, remember I had the arguments before, and I wanted to talk to the district attorney. So I want you all to talk with the district attorney today. She's going to be under oath. I'm happy that she came, and I want to get a flavor for why she charged the felony. If you feel like you want to supplement, if you feel like you want to bring up anything else, we just got this late supplement. I just got it just now, haven't read it, so let's take advantage.

Let's go ahead and call the witness and go from there. I've identified Ms. Capers, I've identified Mr. Moore, I've identified Mr. Pintar, Mr. Zaniel, Ms. Pierce and Mr. Routsis, who didn't send me any e-mail yesterday. So you all are present. Let's go. Where is our witness?

(Whereupon, the witness was duly sworn.)

THE COURT: Good afternoon to you and thank you so much for coming. I sincerely, sincerely appreciate it.

THE WITNESS: You're welcome. It's not how I'd like to spend the afternoon, but --

THE COURT: I understand.

THE WITNESS: -- I understood you asked, and I'm here to comply.

THE COURT: Well, thank you. And could you please state your name for the record?

THE WITNESS: Maria Elizabeth Pence: P-E-N-C-E.

MR. PINTAR: Excuse me, Your Honor.

THE COURT: Yes?

MR. PINTAR: Do we have a court reporter here? Is this being recorded?

THE COURT: It's all recorded, right?

THE CLERK: Yes, on JAVS.

MR. PINTAR: It is?

THE COURT: Yes. Even though we're in one of a cow counties, we do have a recording.

MR. PINTAR: You said that. Not me.

THE COURT: I know it. I said it before you were going to say it. Forgive me. These are all Reno lawyers, and I have one Las Vegas lawyer, so I know, quote/unquote, "big cities."

Ms. Pence, thanks a lot for coming, and I

want you to be comfortable. I do not want, in any way, shape, or form to invade any attorney/client privilege, relationship, public relationship, anything like that. I -- where is that letter? Where is that letter for Ms. Kinion?

MR. ROUTSIS: Your Honor, you know we provided -- I just gave you the document, the supplemental, and that letter is actually an exhibit. And I'll tell you. It's on after the document, which is ten pages, it's the first exhibit.

THE COURT: Ms. Pence, I'm going to hand you what has not been admitted in evidence, but I'm going to hand you a letter authored by Mary Ellen Kinion. There's no date on it, but I want you to look at this. Go ahead and give it to her.

Thank you, Mr. Pintar.

I want you to look at this to see if you can refresh your memory as to whether or not you received a letter and whether or not it meant anything to you. Now I realize that that's an open-ended question, but I'm trying to make it open-ended so I can go on from there. So go ahead and take your time and see if you can identify and refresh your recollection about receiving that letter.

THE CLERK: Just to be clear, Mr. Pintar, you would like me to mark this as exhibit one?

MR. PINTAR: Can we do that, Your Honor?

THE COURT: I think we did last hearing for the purposes of the hearing.

THE CLERK: Okay.

MR. PINTAR: Your Honor, for the record, I just want to -- this was produced. We marked Exhibit 1 the first time last week, so I don't know where -- it couldn't have been at the last hearing.

THE COURT: I think it was at the last hearing.

MR. ROUTSIS: It was.

THE COURT: I didn't admit it into evidence. I marked it for the purposes of identifying it.

MS. PIERCE: If I can clarify that for the record, Your Honor. At the last hearing, we had found the letter very recently prior to the hearing in the files that the investigator for Mr. Routsis still had from the criminal matter, which he didn't even know he still had. It is identical to the letter that has now been produced by the DA's office, so I don't know which copy you're looking at, but it is the same letter.

THE COURT: All right. The letter I'm

looking at -- and I hope that Ms. Pence is looking at, has, in somebody's writing, 12-2555Q, and to the right of it, it's received February 22, 2013, Douglas County District Attorney. Is that what you have on the third page?

THE WITNESS: It is, Your Honor.

THE COURT: Okay. That's what I'm looking at, and that's what I think was marked at the last hearing.

THE CLERK: And it's lodged in the file, so I don't have it in front of me, but it would being lodged on the left of your case file.

THE COURT: Lodged?

THE CLERK: Yeah, so I'm not seeing an envelope, so I'm not --

THE COURT: All right. I don't see an envelope, and that's what lodged means.

THE CLERK: Right. It would have been in an envelope.

THE COURT: So let's go ahead and just mark this as Exhibit 1.

THE CLERK: Okay.

(Whereupon, Exhibit No. 1 was marked for identification.)

THE WITNESS: And, Your Honor, I apologize. Mine appears to have some sort of a Bates stamp at the bottom of it. Is that -- no. So this was a Bates stamped copy. So I don't have the same.

THE COURT: I don't have it Bates stamped.

THE WITNESS: But I have a similar.

MR. ZANIEL: Your Honor, that's my Bates stamp. That's how we just produced the record.

THE COURT: Let's have you, Ms. Pence, go off the marked letter. So same thing. 12-2555Q, received February 22, 2013. No Bates stamp?

THE WITNESS: It has the Bates stamp still, Your Honor. I apologize. I think you're the only one whose copy is not Bates stamped now.

MR. ZANIEL: Would you like a Bates stamped copy, Your Honor?

THE COURT: No.

MR. MOORE: I would like a Bates stamped copy, Your Honor.

THE COURT: Give it to him. But who's got the button? As long as we're on the same page. Are we? Signed by Mary Ellen Kinion, 775-588-6916, the second page. Okay.

EXAMINATION

BY THE COURT:

Q Have you familiarized yourself with the contents of this letter, Ms. Pence?

A I have, Your Honor. I just briefly read through it.

Q And do you remember receiving this letter?

A I remember seeing this letter before. I can tell the Court that the handwritten entry at the top was made by my legal secretary at the time, so it would have come to the Douglas County District Attorney's Office. She coded it to this particular criminal matter. That's a DA number. Q was my number at the time, and the time that it was received in our office was the February 22nd, 2013, time.

I'm not sure. I think that would be sometime several months after I had originally charged this case, and I remember meeting Miss Kinion at the Tahoe Township Justice Court and her expressing that she had some information. And I told her, "You know, if there's something that you think is relevant to the case to please feel free to write something and send it to the district attorney's office." And that's about the extent of what I remember without going back and checking file

notes as far as this letter.

Q And you met Miss Kinion at justice court. Was that the day of the preliminary hearing on this date? I shouldn't say "this date."

A I don't remember when it was. I think there were several court appearances at the justice court level before it went to prelim, and I don't know when -- if she was a ride for them, if she came -- I don't remember. I just remember that's where I met her, was at the Tahoe Township Justice Court.

Q Did she say anything to you that -- I'm going to use the word "unduly," unduly influenced you to charge a felony or not? Anything like that? Was there anything in reaction on your part from what Miss Kinion either wrote or said to you?

A No. And I would just be guessing, but my guess is that I think when I originally charged this case -- I don't remember if it was two or three counts, but she was not a part of the charging decision whatsoever at all. I received this. I received a lot of information before prelim. Specifically, I think the biggest thing was medical documents, and I remember there was voluminous records from doctors that Mr. Routsis wasn't able to find, that we kept losing, that there were

all of these reasons that they were disappearing, but there was actually a ton of medical records. And I think probably the biggest change -- and I apologize because it's been so long I don't remember exactly, but I don't think the charges actually changed substantially at all from what I charged the day I read the sheriff's office report until the day we went to trial.

I think the only enhancement was based on the medical records because once there was substantial bodily harm elevated, I think it was a gross misdemeanor to a felony.

Q And the medical records influenced you to the point of the felony because of substantial bodily harm?

A Well, exactly. At the time that I charged it, I did not have any medical records --

Q I see.

A -- at all. And then I think I was given his original medical records, and I talked to the victim himself in that count, and he was still seeing a doctor. And by the time I actually understood what had actually happened to him, I believe that he was pushed down by Mr. Spencer, it was much more severe than I had originally understood.

And the only reason it became a felony was

because the level of proof that I would need for prolonged physical pain or impairment was met by the medical records. But I actually think that all of the charges were the same the entire time, and I think there was at least -- a criminal complaint, I think it was amended at the lower court level. I think there was an information filed that alleged the substantial bodily harm. That's what elevated the one count to a felony from a gross, and I think there was one more amendment when I added -- I asked to endorse some witnesses because there were more medical personnel and more people that were involved.

Q Did age have anything to do with it as far as Mr. Klementi was over a certain age or anything like that?

A Absolutely. But that was done, I think, the day I received the case.

Q Because of the age?

A Because of the age. There's the DA's office, there's a checklist for these sort of things and you look at victim age, especially under exploitation or abuse of an elderly, and he met the age criteria. So I think that was charged just based off of the police report.

THE COURT: Okay. I don't have any other

questions. I want to invite the attorneys, and we can go in order from left to right.

Ms. Capers, start with Ms. Capers to see if you have any questions of Ms. Pence based on why she's here.

EXAMINATION

BY MS. CAPERS:

Q Right. I do, and I represent Peter and Rowina Shaw. I don't know if me saying those names jogs your memory at all, but again, the same type of questions I would ask as the judge concerning the factors that weighed into your charging the matter.

Did anything Mr. Shaw or Mrs. Shaw say or do influence your decision to charge a felony in this matter?

A And before I answer, can I just clarify?

Q Yes.

A That's Dr. Shaw?

Q Yes.

A They had video cameras, security outside of their home; is that right?

Q Yes.

A Okay. I just want to make sure. No. And if

it helps, just to sort of go back in time, when I was working as a deputy district attorney with the DA's office, we have a charging manual, and the way things work is that when sheriff's office reports are generated, they are randomly assigned, sometimes randomly, sometimes at the direction of the DA, to particular deputies in the office, so we constantly have a stack of reports. And when we have time, we go through these reports and we file certain guidelines that we're given, and we make a charging decision.

No one is involved in the charging decision except for myself. And then, for example, if I have a question of the deputy that writes the report, I'll call downstairs. I would try and find that out. But the charging decision is made solely by whichever deputy district attorney is assigned that case, and it's always been office policy. And I can't speak for today, but while I was employed there, victims and witnesses do not drive that process.

I mean, you can imagine in a domestic battery if you're relying on a victim for filing -- if you're -- it doesn't work that way. And while the manual is very specific, victims must be constantly apprised of what's happening in a case and what's going on. That's very

different than allowing them to participate in the actual charging. And I know that the Shaws are actually -- they were not victims, but they would not have a part in charging decisions.

And again, I don't have a copy of all of the complaints, but my understanding is that the only real change was from a gross misdemeanor for the abuse of Helmut Klementi up to a felony, and that was when the medical records showed that there were serious injuries and that he was in prolonged physical pain. So in a long roundabout way, the Shaws had nothing to do with my decision to upgrade the charge from a gross to a felony.

MS. CAPERS: All right. Thank you. I'll pass the witness.

THE COURT: Thank you. Mr. Moore?

MR. MOORE: Thank you, Your Honor.

THE COURT: Well, we might as well take it as far as any cross examination based on Ms. Capers' questions. We can go one at a time or we can go --

MR. ROUTSIS: Okay. We would be the opposing counsel. Can I proceed then, Judge?

THE COURT: Yes. Go ahead.

MR. ROUTSIS: And this is specifically just regarding the Shaws, right, for direct?

THE COURT: Well --

MR. ROUTSIS: Because that's all she --

THE COURT: Just hold your thoughts. Hold your notes because I'll go one side to another side, all right? So now, Mr. Moore.

EXAMINATION

BY MR. MOORE:

Q Thank you, Your Honor.

Hi, Ms. Pence. My name is Chris Moore, and I'm an attorney who represents Helmut Klementi in the civil litigation, to let you know what I'm doing here. Although my client is not directly involved in maybe a particular motion for summary judgment, one of the things you did say in response to the questioning here was that you knew the Shaws had a video camera.

To your recollection, did you ever look at anything on that video camera? And I'm asking that because I want to know if it had anything to do with the charging.

A It had nothing to do with charging because by the time I -- my understanding is -- and I would have to go back to the case file. All of these charging decisions were made well before I received the evidence

from these things, and that's generally how it works, is we make charges based on the reports, and we file a particular set of charges.

There's always, you know, investigation ongoing. And as we get new records, we get new reports, my understanding is we did not actually get the footage from the Shaws for some time, and there was an issue with how to play it because it was a very complicated system. And I want to say it was months after I charged this that we actually received that. I did in fact watch it, and I believe part of it may have even been played at the trial, but it had nothing to do with the charges.

Q And I understand many of this happened three, four years ago. You talked about the video footage. Were you aware that the Spencers had a video surveillance system?

A Yes, I was.

Q And was some of that video available to you as part of the process?

A It was a well-known fact that the Spencers had a video surveillance system. I was not provided with the actual surveillance footage, although it was requested multiple times up until, I think, almost immediately before trial. And I believe the first --

no, actually, I might not have even been provided with the footage until trial. It was a huge contention as far as discovery. At one point, I know it was turned over finally because it had been altered, and I did a motion in limine because it had been cut and spliced.

MR. ROUTSIS: Judge, I'd move to strike. Misstates the evidence.

THE COURT: This is her memory, so I'm not going to --

THE WITNESS: And I asked the Court to exclude it. My recollection is the Court did exclude some portions of it. At some point, I think the video actually was played in court, but I don't know if the actual final push was played in court, but what the footage did show was Mr. Klementi on the ground and Mr. Spencer over him, and then I don't remember if there was volume or not, but his body language and then him returning to the home.

MR. MOORE: And, Your Honor, this is probative really to much of the case because one of the things we'd like to address later on today is that video because we've been in the process. And as the Court may recall, we have been engaging forensic experts and what have you. And so Ms. Pence's enlightenment is helpful to

us. I'm not going to go too much farther, but I just want to let the Court know why I'm asking the questions.

THE COURT: Thank you.

Q (BY MR. MOORE:) And along those lines, the material that you say was a subject of contention and of dispute, when it was provided to the district attorney's office, do you recall if there was any raw or what we might call -- some people would call a native footage that was provided, or was it just the edited material?

A My recollection is that all we received was edited material. I was informed by Mr. Routsis that he had the entire incident on film and that he was going to play it at the trial and that, you know, we would see what really happened. I was never given any raw footage. I don't believe the district attorney's office received raw footage. The ultimate compilation that we received had been broken into pieces and cut down and actually edited with arrows and certain additions that were not part of the original.

MR. MOORE: That's what we thought. Thank you.

THE COURT: Thank you. Mr. Pintar?

EXAMINATION

BY MR. PINTAR:

Q Thank you. Ms. Pence, my name is Mike Pintar. I represent Ms. Kinion. I just want to ask you a couple of questions just about the timeline, if you will, as best as you can. So my understanding is that the altercation or incident between Mr. Spencer and Mr. Klementi occurred on December 18th of 2012; is that correct?

A I wouldn't -- I don't have a way to independently remember that. It would probably be alleged in the first original criminal complaint, but I have no independent memory of that.

Q Okay. Assuming -- I don't have a copy of the report. Assuming that that was the case, when would the initial charging document have been filed by the Douglas County District Attorney's Office?

A It would have depended on when the reports came in. Sometimes it's two weeks later. Sometimes it's two months later. I'm sure if somebody wanted to go and get the district court file, we could just look at it and know exactly when it was filed right now. I mean, it would be sometime after that.

Q You mentioned before during your questioning

with Judge Kosach that you had a conversation with Miss Kinion at the Tahoe Justice Court. Was that after the charging document had been filed?

A Yes.

Q And that conversation that you had with Miss Kinion at the Tahoe Justice Court, tell us again what you directed her to do.

A At the time that we spoke, she represented to me that she knew the Klementies and she had some information, and would I like to hear it, and I said, "You know, if you have any information you think that would be relevant or helpful, please write it down and send it to the district attorney's office."

We have people all the time in cases like this, witnesses, victims, who want to give us just a ton of information which isn't helpful. I don't have anything to report it or look at it with. I don't have any way to sort through it, so I ask people if they're serious and they have something they want to say or would be helpful to write it and send it to the office because then we do get this. We get something that gets logged and we get a record of it, and I can review and look at it. And if it's something that's helpful or that clarifies something, that's the most useful thing for me.

Q So looking at Exhibit 1 with the Bates stamp of February 22nd, 2013, does that mean that that's when that was received by your office?

A Yes.

Q Okay. And then so this was received on or about February 22nd of 2013?

A That's what the stamp shows.

Q Okay. And then after you had the initial charges, then you conducted the preliminary hearing, and I believe that was in April?

A That's correct.

Q And Ms. Kinion was not called as a witness at the preliminary hearing; is that correct?

A I don't believe that she was. I don't remember, but I don't think she was.

Q Okay. So is it fair to conclude that, as you said before, she had nothing to do with the charges brought against Mr. Spencer?

A No. By the time that she wrote this letter that was received in February, charges would have already been filed, and they would have been filed for at least -- I'm guessing they weren't probably filed for at least a month or so, so no. She did not have anything to do with the charges that I filed.

Q And would the same also be true for the amended charges that were filed after the preliminary hearing then? That's my understanding of the time sequence, that there was some amended charges after the preliminary hearing before the trial.

A And I could be wrong, and obviously the easiest thing would be to get the district court file, but I think the only amendments were that one of the -- a gross misdemeanor was enhanced to a felony, and that was based on medical records. That had nothing to do with Miss Kinion.

MR. MOORE: Okay. Thank you.

MR. ROUTSIS: Good afternoon, Ms. Pence.

THE COURT: I was going left to right. Maybe that's not the way the Greeks do it.

MR. ROUTSIS: Judge, it's our motion.

MR. ZANIEL: I was just going to ask a couple of questions about the DA file.

MR. ROUTSIS: I'd like to mark for the record the criminal complaint, if we can.

THE COURT: Okay. Mr. Zaniel is deferring.

MR. ZANIEL: I'm deferring. I'll reserve. I have just a few follow-up questions procedurally just about how the district attorneys office works, not about

the substantive nature.

THE COURT: Okay.

MR. ROUTSIS: Thank you, Judge. May I approach, Your Honor?

THE COURT: Yes.

MR. ROUTSIS: Counsel, here is a copy of the complaint in case you want to review it.

MR. PINTAR: Your Honor, for the record, this is the first time we've been presented this document.

MR. ROUTSIS: Your Honor, these are part of the discovery. They were provided last week because they went through it.

MR. MOORE: Great, Counsel. Can you provide a document control number?

MR. ROUTSIS: Strike that, Judge. This appears --

MS. PIERCE: If I may say, that was an attachment as the exhibit to the opposition for motion for summary judgment which was served on all parties.

MR. ROUTSIS: They've had this for a long time.

MR. MOORE: Do you have a document control number we should write down?

MS. PIERCE: A document control number?

MR. MOORE: Sure.

MR. ROUTSIS: Judge, if we can, we provided a motion.

THE COURT: All he's asking for is some kind of number so we can refer to it.

MR. MOORE: Thank you, Your Honor.

MR. ROUTSIS: We filed a motion.

MS. PIERCE: It was -- well, hang on just a second and I'll find it. It is --

MR. ROUTSIS: Judge, if I may, it was attached as exhibits to the motion opposing the summary judgment.

MS. PIERCE: It was Exhibit 1 to the motion.

MR. ROUTSIS: It was an exhibit to the motion.

MR. MOORE: I'm sorry. I couldn't hear you.

MS. PIERCE: It was Exhibit No. 1 in opposition to the motion for summary judgment.

MR. MOORE: Thank you.

MS. PIERCE: You're welcome.

THE COURT: Not the supplemental?

MS. PIERCE: No. The actual opposition that was originally filed.

MR. ROUTSIS: Judge, they've had this for a

long time. May I approach, Your Honor?

MS. PIERCE: That was back in May.

THE COURT: Hang on. Let me get this straight.

MS. PIERCE: Okay.

THE COURT: All right. Have you got that, Mr. Moore?

MR. MOORE: Yes. Thank you, Your Honor.

THE COURT: Now you can approach, Mr. Routsis.

EXAMINATION

BY MR. ROUTSIS:

Q Okay. Thank you.

Ms. Pence, I want to approach and provide you with what's been marked -- I guess we've already had exhibit -- it's Exhibit No. 2. Can you tell us what that is?

A It appears to be page 1 of a misdemeanor complaint filed against Mr. Spencer.

Q What do you mean it appears to be? Is it file stamped?

A Well, it's only -- it's only page 1 of what appears to be something that -- we had a two-page document. Any criminal complaint would have a sworn

declaration attached, and this is on a face page, so this is only page one of a criminal complaint.

(WHEREUPON, an off-the-record discussion ensued.)

Q (BY MR. ROUTSIS:) What is the front page? Is it a file stamped copy of a criminal complaint? Yes or no?

A This is page 1 of a file-stamped misdemeanor criminal complaint.

Q What date does it allege on the file-stamped copy?

A This alleged that it was filed on January 16th of 2013.

Q Can you tell the Court what charges were filed and against who?

MR. PINTAR: Your Honor, I'm going to object. It's an incomplete document. Mr. Routsis admits it.

MR. ROUTSIS: There's a page missing. It's a charging document, if she's alleging the second page is gone, it's a charging document on the front that alleges the crime. And I think we can find the other page later if there's a second page.

THE COURT: What's the question?

Q (BY MR. ROUTSIS:) Ms. Pence, can you tell us what the charging document -- who it charges with and

what crime? Who is the defendant and what crime is being charged in the complaint?

A This misdemeanor complaint is charging Jeffery Spencer with the crime of battery on a person over 60 years of age, and it alleges that that occurred on December 18th of 2012.

Q Did you say misdemeanor or a felony?

A The one page that you handed me is part of a misdemeanor complaint. I think there's also a felony and gross misdemeanor complaint on file on the same date, but this is only a part of the charging documents. From what I remember, there was also two gross misdemeanors filed at the same time that that document was filed, but again, that's just from memory.

Q Okay. So this complaint indicates it was filed on January 16th; correct? At that time, it was filed as a misdemeanor; correct?

A That particular count was filed as a misdemeanor, and I think there were two others that were filed as gross misdemeanors.

Q Okay. And a preliminary hearing occurred in this case sometime in February; correct?

A I don't know the date of the preliminary hearing, but it would have been after that was charged.

Q Miss Kinion provided you a letter that your office indicates it received on February 22nd; correct?

A That's correct.

Q And in regard to that letter, you indicated that you specifically asked her to write the letter?

A I think what I indicated was that I instructed her if she had information she thought would be relevant or important to the case, if she would write it down and send it to our office.

Q She didn't just offer you a letter in the mail and it came to you without any request by you?

A No, Your Honor. Or no, sir.

Q I'd like to refer counsel to the trial transcript, and I'm going to read you a question and answer, and I want to ask you if this refreshes your memory. Okay?

MR. MOORE: Counsel, can we know where that's coming from, please?

MR. ROUTSIS: Yes, please. Page 266 of the trial transcript of the testimony of your client, Mary Ellen Kinion.

MR. MOORE: No, Counsel, that's not my client, and I would just like a little courtesy here. I'd like to know where that's coming from more.

MR. ROUTSIS: Page 266 of the trial testimony. You've been provided that in the opposition motion. Reading this from your motion exhibits, Counsel. Okay? Please, can you refer to your motion so you don't keep interrupting me?

MR. PINTAR: Your Honor, we're going to object to this exhibit. It hasn't been produced in its entirety. I don't know exactly what he's referencing. Maybe a snippet of the trial testimony. We've asked many times for the trial testimony to be produced. It has not been, so I would object on that basis.

THE COURT: All right. Read the question and --

MR. ROUTSIS: I will.

THE COURT: Before the answer, ask if she remembers the question.

MR. ROUTSIS: Your Honor, if I may.

THE COURT: Please do what I say so we can get through.

Q (BY MR. ROUTSIS:) Ms. Pence, do you remember that Mary Ellen Kinion testified at trial against Mr. Spencer?

A I remember her being a witness, yes.

Q All right. And regarding this letter that

indicates your office received it on February 22nd, do you remember asking: "Okay. Did I ever ask you to write a letter?"

"Answer: No."

"Is everything that you wrote in the letter truthful?"

"Answer: Yes."

Now, did you ask her to write the letter?

A Well, your first question was do I remember that. I don't remember that. And the second part of that would be, as I told you, I never instructed her to write me a letter. What I told her is if she had some valuable information that she should write it down and send it to the district attorney's office. That's the policy of the office.

MR. ROUTSIS: I'd like to mark as next in order and ask the Court to take judicial notice of the trial testimony. There's a specific question asked by Ms. Pence: "Did I ever ask you to write a letter?"

"No."

"Is everything that you wrote in the letter truthful?"

"Yes."

And I'd like to move that into evidence now.

THE COURT: Was there any objection? There was an objection.

MR. PINTAR: Well, there is an objection because I don't know the context in which this testimony was made. I mean, that's just a snippet.

THE COURT: I realize it's just a snippet, and --

MR. ROUTSIS: It's part of the trial testimony. It was provided to them in their opposition.

THE COURT: Okay. I got that. So the objection is overruled. I'll go ahead and admit it.

Q (BY MR. ROUTSIS:) Thank you. Now, Ms. Pence, is it Miss or Mrs.? I'm sorry.

A Either is fine.

Q That doesn't refresh your recollection about how the letter came into your possession?

A You're asking me two different things. You asked me if I asked Ms. Kinion to write me a letter. I told you I did not ask her to write me a letter. That agrees exactly with the trial transcript. What I asked Ms. Kinion to do, if she had something relevant or important, was to write it down and to send it to the district attorney's office, which is what she did.

Q But the testimony specifically refers to you

telling her: "Did I ever ask you to write a letter"?

A She says, "No."

MR. PINTAR: Your Honor.

THE WITNESS: So we're in agreement. I didn't ask her to write a letter, and she agreed. Your point is well made.

Q (BY MR. ROUTSIS:) Okay. In any event, you received a letter on February 27th; correct?

A My office did, yes, at the time. The district attorney's office got this document, Exhibit 1.

Q And after that letter, it's been your testimony here today that the only thing you did in terms of enhancing the charges was filing a felony battery because of the medical records that established substantial bodily injury; is that correct?

A I think what I said was that the complaint was amended at least once or twice. There was an information filed, and then there was an amended information which I endorsed. But the only charge that was actually enhanced -- and I believe it was lifted from a gross misdemeanor to a felony -- and again, I would need to see the file.

MR. ROUTSIS: May I approach?

THE WITNESS: I think the easiest thing would

be to obtain the district court's file which has all of these filings in it, and then I can tell you exactly which one was enhanced based on the fact that it became substantial bodily harm rather than a minor injury.

Q (BY MR. ROUTSIS:) I think I could do one better. I can provide, if I can approach with Defense Exhibit Number 3, which is a copy of the amended information which has been provided to counsel in the motion.

And is it in fact true that after you received the letter from Mary Ellen Kinion which alleged that she was a witness to a snowplow assault and that she may have been a witness to an assault on May 27th, that you did not just enhance the charges to a felony? You filed two counts of felony elderly abuse regarding two other alleged victims, Egon Klementi and Elfride Klementi? Does that refresh your memory now? Yes or no? Yes or no?

THE WITNESS: Your Honor, he's asked me four different questions and --

THE COURT: I agree. One thing at a time.

Q (BY MR. ROUTSIS:) Does that document refresh your memory that you didn't just simply make an enhancement to a felony due to medical injuries that you

added --

THE COURT: Wait. Let her answer the question.

THE WITNESS: No, it does not.

Q (BY MR. ROUTSIS:) Can you tell us what charges are on the amended information, please?

A On the document that you've handed me, there is one, and this would be Exhibit 3, amended information, and I think this is not the first information that I filed, but the second. There are three charges. The first is a felony charge of abuse, and that is the one that now went from a gross misdemeanor to a felony based on substantial bodily harm.

There are two additional gross misdemeanors in this which were also filed, I believe, back in January at the same time that the misdemeanor complaint was filed. So no, it does not refresh my recollection as to anything additional.

Q Well you testified earlier that there was only one charge that was elevated to a felony battery, and now there's three charges before you?

A There is still only one charged as a felony battery in this information that you handed me. The other two are gross misdemeanors. They were charged at

the time of the misdemeanor battery back at the justice court level.

If someone would get the district court clerk's file and follow the exact filings, anyone can go across right now and get that -- just FYI -- it will show that there was an original criminal complaint that charged a misdemeanor and two gross misdemeanors. The only thing that's changed in all of this time is one gross misdemeanor to a felony.

Q Okay. Let's discuss that because on February 22nd, you received a letter from Mary Ellen Kinion.

A My office did receive this letter from Miss Kinion. You're right.

Q And at trial --

MR. ZANIEL: This is Exhibit 1 and 2.

THE WITNESS: It's in Volume I. You'll find the original filing.

Q (BY MR. ROUTSIS:) Okay. Now, when you filed the amended information, can I -- do you remember at trial that Judge Gibbons was our trial judge?

A I do remember that.

Q And do you remember that the two allegations of abuse of an elderly person -- let's read what you alleged. "Willfully and unlawfully abused an older

person by inflicting injury or mental anguish, to wit: not Helmut Klementi, Egon Klementi, a person over 60. Using a snowplow, he sprayed, covered or showered Egon Klementi with ice, snow and debris." Do you recall that?

A Is the question do I remember that that charge is in the amended information?

Q Yes. Do you recall filing that?

A Yes.

Q And do you remember who was your only corroborating witness in that charge? Mary Ellen Kinion was the only witness at trial that testified she was an eyewitness to that event. The only other witness in that regard was Egon Klementi, the alleged victim. Is that a fair comment, Mrs. Pence?

A Again, that's three or four different questions.

Q That's a fair comment?

A And no, it's not.

Q Did you have another witness that testified to the snowplow assault on Egon Klementi on December 12th?

A I think there were two other people that testified about that.

Q Ms. Pence, I'd be very careful. There was

Exhibit 3

Exhibit 3

Docket 77086 Document 2019-24087

Case No. 13-CR-0036

Dept. No. II

FILED

2013 SEP 27 PM 10: 22

TED THRAN
CLERK

BY [signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.

_____/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT ONE, ABUSE OF AN OLDER PERSON RESULTING IN SUBSTANTIAL BODILY HARM.

DATED this 27 day of September, 2013.

[signature]
FOREPERSON

Case No. 13-CR-0036

Dept. No. II

2013 SEP 27 PM 10:22

TED THRAN
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.

/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT TWO, ABUSE OF AN OLDER PERSON.

DATED this 27 day of September, 2013.

Kim Carr

FOREPERSON

Case No. 13-CR-0036

Dept. No. II

FILED

2013 SEP 27 PM 10:22

TED THRAN
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT THREE, ABUSE OF AN OLDER PERSON.

DATED this 27 day of September, 2013.

Ken Carr
FOREPERSON

Exhibit 4

Exhibit 4

Case No. 13-CR-0036
Department No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
FRIDAY, SEPTEMBER 20, 2013
MINDEN, NEVADA

APPEARANCES:

For the Plaintiff:	Maria Pence, Deputy District Attorney Douglas County
For the Defendant:	William J. Routsis, II Attorney at Law Reno, Nevada
The Defendant:	Jeffrey Dale Spencer
Reported by:	Nicole J. Alexander Nevada CCR #446

MINDEN, NEVADA, FRIDAY, SEPTEMBER 20, 2013

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MR. ROUTSIS: Good morning, Your Honor.

THE COURT: Good morning. The Court is back in session. Welcome back, everyone. This is Friday, and Ms. Kinion was on the witness stand. If you could step forward, please.

Mr. Routsis, you may continue with the cross-examination.

CONTINUED CROSS-EXAMINATION

BY MR. ROUTSIS:

Q Ms. Kinion, we left off yesterday, and I think I was a bit tired, but there was just a few foundational questions that I wanted to go over before I get to the photographs. You wrote a letter to Ms. Pence, and in the letter, didn't you indicate on May 27th that Jeff threatened to punch Egon in the face?

A Yes.

Q Where did yes get -- You were not a witness to that event, were you?

A No. I told you --

Q No, no. Just yes or no. You were not a

witness to that event?

A No.

Q And where did you get those statements from?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) After getting those statements, you then put those statements in a letter directed and addressed and sent to Maria Pence, the prosecutor; correct?

A Correct.

Q Okay. And did you not assert in the letter that that event happened to Ms. Pence?

A Yes.

Q But you weren't there; right?

A Right.

Q Okay. And moving ahead to January 12th, we just marked a couple of photographs. I'd like to, if we can, publish what would be defense next in order, Q.

Ms. Kinion, is it Mrs. or Miss?

A Miss.

Q Excuse me?

A Miss.

Q Miss. Thank you. Miss Kinion, you indicated

this is your driveway here, or no? Now I'm confused.

A No.

Q Let me put on the other exhibit. At this time, Judge, we'd be publishing Exhibit P.

And, Ms. Kinion, is this your residence here? I think we went over it yesterday, and that's your driveway?

A Yes.

Q And you were out on the 12th. You were out plowing or shoveling your driveway?

A Shoveling.

Q About what time did you begin?

A I don't remember.

Q You don't remember? Okay. And we indicated going down the street is Charles Avenue, and the Klementies is on the right side of the street looking down; correct?

A Yes.

Q Now, you testified that you called Egon Klementi after you saw what you said you saw, a snowplow assault; correct?

A Correct.

Q And you called him because you were concerned that --

A I was concerned that he was hurt.

Q He was hurt. And did you discuss what happened?

MS. PENCE: Objection, Your Honor. Asked and answered.

MR. ROUTSIS: It's foundational at this point.

THE COURT: Overruled.

Q (BY MR. ROUTSIS:) Did you discuss with him what happened?

A I don't remember exactly what we said.

Q Did he inform you that he had called the police already?

A No.

Q Did he tell you he hadn't called them?

A No.

Q Did any conversation regarding that occur?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I suggested to him to call the police.

Q (BY MR. ROUTSIS:) He was assaulted, and it was your suggestion that he call the police?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) In any event, after that, about an hour and ten minutes later, you called the police; correct?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) Okay. And what was the delay of the hour and ten minutes when you called the police?

A I don't remember. I remember eating lunch, thinking about it, deciding to do it. I don't know that I would call it a delay. That's when I decided to do it.

Q Okay. And now I'd like to go -- Those plows are pretty big, aren't they?

A Yeah, I guess.

Q Pretty big snowplow?

A I guess. I don't know.

Q Do you know the difference between a snowplow and a loader?

A No.

Q Okay. So at some point in time during that

morning, it's your testimony that a snowplow was coming down Meadow Avenue; right?

A It wasn't -- There's a couple of snowplows, and it was a white one.

Q And it was coming down Meadow Avenue?

A Yes, Meadow Lane.

Q Meadow Lane. And you -- Where were you when it came down Meadow Lane in this picture?

A I was right at the end of my driveway.

Q Right there in this area?

A In that area. I was actually in the street because when we get a lot of snow, you get berms, you have to shovel all the street too.

Q So you were shoveling out the street when the plow came by?

A Part of the street, yeah.

Q And you saw Jeff Spencer driving the plow --

A Yes.

Q -- correct?

A Yes.

Q And he had a big smile on his face?

A Yes.

Q Well, at that point, Egon Klementi was -- Did you see where Mr. Klementi was?

already been plowed. I know that. And it seemed like the plow was down, but he wasn't really picking up any snow. He was just kind of going along with it, you know. It was kind of like I was wondering why he was there also.

Q Okay. So you're on the edge of your driveway, and the snowplow is coming down the street, but your memory is that he had already plowed the street earlier? The street was already plowed?

A The street was plowed. That's why I was out here shoveling.

Q So when the defendant drove by, you saw a big smile on Mr. Spencer's face, and was the plow down or up?

A I think it was down, but I don't remember exactly.

Q Okay. And the reason I'm asking, ma'am, because you're saying that as the plow went all the way down the street towards the -- past Charles or at some point near Charles, it's your testimony that Mr. Spencer put the plow down at that point; correct?

A I don't remember.

Q Excuse me?

A I don't remember whether he put it down or not. I remember him going by me, and I think the plow

was down at that time, and then he swerved into their property, into the Klementies' property. That's how he picked up snow. And then all of a sudden, the snow was sent all over.

Q Okay. You wrote a letter to Miss Pence, and the purpose of what you wrote to Ms. Pence was to try to get her to prosecute Mr. Spencer; correct? Yes or no.

A Yes.

Q Okay. And in that letter, you put down in the letter that Mr. Spencer put his blade down, did you not, as he approached Mr. Egon's driveway?

A I don't remember.

Q Well, would it refresh your recollection if you read your letter? Would it refresh your recollection, ma'am, if you read your letter?

A Probably.

Q Okay. It would be, for counsel's edification, one, two, three, four, five, six paragraphs.

A That's not what I wrote.

Q That's not what you what?

A What I wrote was --

Q Excuse me. Ms. Kinion, I didn't ask you a question, in all due respect. We've got procedures. You read --

A I'm sorry.

Q You read that paragraph; correct?

A Yes.

Q Can you -- will you turn the page. Is that your signature?

A Yes.

Q You're saying that's not what you wrote?

A I'm saying this is what I wrote, but what you said is not what I wrote.

Q Oh. Tell us what you wrote.

A Can I read it?

Q Please.

THE COURT: The original question was, does it refresh her recollection. That's why she was looking at it.

Q (BY MR. ROUTSIS:) Okay. Very good. Ma'am, does that refresh your recollection as to what you saw on that day?

A Yes.

Q And is that letter, could you go ahead, if you feel comfortable reading exactly what you wrote.

A Yes. "When Jeff drove past him, he turned the blade on the snowplow to spray Egon with ice and snow." It doesn't say anything about the blade being up

Q So if I get you right, as you're visualizing looking through the -- seeing through the plow, seeing the plow angle up, put snow on Egon, you're saying right before that on Charles Avenue, the defendant, Mr. Spencer, who had a big smile on his face, then took a turn into Charles to gather snow from Charles?

MS. PENCE: Objection, Your Honor. Compound. Complex. Asked and answered.

THE COURT: Overruled.

Q (BY MR. ROUTSIS:) Is that what happened, ma'am, or not?

A I'm sorry. Will you repeat the question?

Q (BY MR. ROUTSIS:) Yes. This happened -- today, I believe, is the 20th of September, correct, 2013?

A Yes.

Q This occurred December 12th, 2012; right? You wrote a letter to the prosecutor to try to get them to prosecute, as you testified, Mr. Spencer, you signed a letter, and it shows it received February 22nd, okay?

A Correct.

Q Can you show us -- Would it refresh your memory as to whether or not Jeff Spencer somehow drove onto Charles Avenue, gathered up the snow, and then drove

A Yeah.

Q Now, did you ever write that down in your letter? Did you ever think that he drove into the berm of Mr. Klementies' property prior to spraying snow on him?

A I don't think I wrote that down.

Q Why wouldn't you write that down?

A Well, for one thing, I was trying to keep it short. And no, I just did not write that down.

Q Okay. And then -- and we'll be done very shortly -- the snow you're saying you saw, you then saw the back of the plow go onto his property and angle, and somehow the snow went up? Was it snow, or was it rocks and tar?

A It was snow and probably ice because I know that day there was a lot of ice along the side of the road.

Q Okay. And you saw that material fly into -- Tell us what you saw because I don't know.

A I saw the snow fly up and hit Egon.

Q Where did it hit him?

A It hit him like all over. There was a large amount. It flew up. It went -- Part of it went over his head. It went onto his body.

about the blade.

THE COURT: Hold on. Ms. Kinion, there's no question pending. The question was please look at this, see if it refreshes -- Ms. Kinion, please listen.

The question was, please read the letter to see if it refreshes your recollection whether you made a complaint about Jeff Spencer to KGID for allegedly putting a berm in front of your house. That's the question. And the answer is either yes, no, or I don't know or I don't remember.

THE WITNESS: I'll say yes.

Q (BY MR. ROUTSIS:) Okay. Now, I just asked you under oath if you saw, when you made a complaint, if you saw the snowplow leave the berm in front of your residence, and you said no, you did not.

A Correct.

Q And now you admit that you've made complaints, and you specifically identified Jeffery Spencer as the individual that left the berm in front of your property.

A I made a complaint. I did not say Jeff Spencer. I said my driveway. I talked about my driveway being bermed. I did not say Jeff Spencer.

Q You testified on direct examination as well.

And do you recall your testimony on direct examination at this trial that you called somebody out, you said it was Jeff Spencer that left the berm, and they told you it was intentional? Do you remember that testimony?

A I don't remember saying Jeff Spencer, but I may have inferred that because I may have said he was driving a white truck.

Q So what's the relevance of bringing it up at a trial for Jeff Spencer if you don't know who left that berm?

A I was pretty sure it was him.

Q Excuse me, ma'am?

A I was pretty sure it was him.

Q Do you have any pictures of the berm?

A No.

Q And you've also testified under oath that somebody told you that it was intentional. You've testified under oath to that; correct?

A Yes.

Q Tell me exactly who told you it was intentional.

A It was a guy -- It says here his name was James, but I don't really remember his name. He came in a truck from KGID.

Q Okay. And you made a complaint regarding Jeff Spencer to him as well; correct?

A I think he said something about Jeff. I don't remember.

Q Okay. So, Ms. Kinion, the extent of your observations in this case is that what you've testified to, and I'll ask you one last time. Did you ever see Jeff Spencer drive a snowplow and leave a berm in front of your home?

A No.

MR. ROUTSIS: Nothing further.

THE COURT: Thank you. Ms. Pence?

MS. PENCE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. PENCE:

Q Ms. Kinion, at the top of your letter in big bold print immediately after my name, what did you write?

A I don't remember.

Q Would it refresh your recollection to see a copy of that letter?

A Sure.

Q I think it is still up there. Do you have the letter still?

a problem.

THE COURT: Sustained.

Q (BY MS. PENCE:) Did you tell Egon Klementi you had taken care of the issue with the man driving the snowplow that sprayed snow in his face?

A Yes.

MS. PENCE: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. ROUTSIS:

Q Good morning, Detective, or Officer Sanchez.

A Morning, sir.

Q Officer, first of all, you were called out on December 12th, 2012. There had been a call in about a gentleman that may have gotten snow plowed into his face, for lack of a better term; correct?

A Yes.

Q And you drove out to the scene; correct?

A Yes.

Q *About how long after the call in do you* believe you drove out to the scene?

A I can't recall.

Q Now, you didn't write a report in this case, did you?

A I put notes in the computer.

Q You put notes in the computer. That's a log for the 911 call, but you did not write a report in this case, did you?

A No.

Q In fact, as a trained police officer, if you're called out to a crime, you can make an arrest if you feel there's probable cause or sufficient evidence to arrest; correct?

A Yes.

Q You did not do that in this case; correct?

A No.

Q You can also then write a police report and make a recommendation to the District Attorney that certain charges be filed; correct?

A Yes.

Q You did not do that in this case; correct?

A No.

Q In fact, in this case, you found there was insufficient evidence to even write a report; correct?

A Well, I put notes in the computer.

Q I know you did, and that's common. You have to do that on a 911 call. But you found there was insufficient evidence to write a report in this case,

right?

A At the time, yes.

Q Now, when you were called out to Mr. Klementi's property, he was in his driveway; correct?

A Yes.

Q Was there any evidence? I mean, if he says that he was assaulted by snow and debris, did you take any photographs?

A There was snow everywhere.

Q Okay. Well, let's talk about that. Did you take any photographs?

A No.

Q Did you go up the street to see if there had been driving into any berms or any misdriving and document any type of berms prior to the driveway that had been plowed into?

A Like I said, there was snow everywhere.

Q Okay. That's not the question. I'm asking you, did you go up Meadow Avenue before the defendant's driveway to see if a berm or any type of berm or any type of plowing had taken out a berm prior to the driveway?

A I checked --

MS. PENCE: Objection, Your Honor.

A -- the area.

Q (BY MR. ROUTSIS:) Did you take any photographs?

A No. I told you no.

Q Did you find any evidence of a crime?

A Like I said, there was snow everywhere.

Q Did you find any evidence of a crime?

A No.

Q Did you find any debris, rock, or excessive snow in the driveway, so much that you felt it was necessary to photograph?

A No.

Q Now, did you ask Mr. Klementi, "Do you have any evidence to support your claim?" Did you ask him that?

A Yeah, I did.

Q And apparently, he showed you no evidence sufficient to document or even write a report; correct?

A Correct.

Q And you ended up speaking to Jeffery Spencer at some point; correct?

A I actually don't even recall talking to Mr. Spencer.

Q Okay. And your position was, you know, I'll talk to the snowplow company and let them deal with this.

Exhibit 5

Exhibit 5

Case No. CR-13-0069

-oOo-

IN THE JUSTICE COURT OF TAHOE TOWNSHIP
IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA
BEFORE THE HONORABLE RICHARD GLASSON, JUDGE

-oOo-

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY DALE SPENCER,

Defendant.

_____/

PRELIMINARY HEARING

TRANSCRIPT OF PROCEEDINGS

APRIL 24, 2013

STATELINE, NEVADA

APPEARANCES:

For the Plaintiff: MARIA PENCE
District Attorney
Minden, Nevada

For the Defense: WILLIAM ROUTSIS
Attorney at Law
Reno, Nevada

REPORTED BY: SUZANNE KUES ROWE
Nevada CCR #127

THE COURT: That's me in two weeks. Mazel tov! Thank you.

MS. PENCE: And, Your Honor, the other section that was listed 200.5099 is the penalty statute. And, Counsel, one has been charged as a felony under subsection six, when there's Substantial Bodily Harm.

In this case that harm is going to be the prolonged physical pain that Mr. Klementi suffered in Count II. It's charged as a gross misdemeanor.

THE COURT: Thank you. That helps give me a focus.

And 200.5092 just says definitions, and that wouldn't be descriptive at all for purposes of the charge.

And the legislature hasn't otherwise titled these. It's in a chapter called Abuse, Neglect, Exploitation or Isolation.

MS. PENCE: That's correct.

THE COURT: So I'm clear and the Defendant's clear, that this is a case alleging abuse of an older person.

MS. PENCE: That's correct.

THE COURT: Okay. Go right ahead then.

MS. PENCE: Your Honor, the state would call Egon Klementi.

THE COURT: Mr. Egon Klementi.

EGON KLEMENTI,

called as a witness in the matter herein,

having been first duly sworn
was examined and testified as follows:

THE BAILIFF: Make yourself comfortable here, sir. And watch your step here.

THE WITNESS: Thank you.

THE COURT: Good afternoon, Mr. Klementi. Can you hear us okay?

THE WITNESS: Yes.

THE COURT: All right. There's a microphone on the table in front of you. Would you please state your name and spell your first and last name for our record?

A. My name is Egon Klementi. The first name is spelled. E G O N, last name spelled, K L E M E N T I.

THE COURT: Thank you. Mr. Klementi, our record in this Court's created audibly and visually. We have the microphone to catch what you're saying, so we can have a record of that. And we also have a camera. I think your camera is up there underneath. You don't have to look at the camera.

THE WITNESS: No, no. I'm used to it.

THE COURT: We're trying to capture this. And so there's a camera here that's looking at the attorneys and a camera back there that's looking at me, and that's how we are keeping our record.

THE WITNESS: Can I look at you?

Q. Were there any witnesses to that event?
A. Yes.
Q. Yes, there was?
A. Yeah.
Q. And you saw the witness?
A. Yes.
Q. And that would have been Maryellen?
A. Correct.
Q. And she was, was she shoveling snow with you?
A. Not with me.
Q. Okay.
A. I mean she was shoveling snow on her property.
Q. Okay. And you happened to see her?
A. Of course, I mean I see everybody that's coming and going.
Q. Okay. So?
A. Or standing.
Q. After you got the snow plowed on you, you called the police, correct?
A. The shovel -- Oh, covered me.
Q. You called law enforcement, correct?
A. Yes.
Q. And did you tell law enforcement there was a witness to this event?
A. Yes, because the witness was, there was another witness

right next, my next door neighbor.

Q. Okay.

A. Maryellen.

Q. Did you tell law enforcement that Maryellen saw the event?

A. No, I believe that Maryellen got in contact with somebody.

Q. So, the day you called --

A. But, I don't --

Q. The day you called the sheriff out, Mr. Klementi, they came to your house and you made an allegation that there was an intentional act of snow being plowed into you?

A. Yes.

Q. And you didn't tell the sheriff that your neighbor was a witness to this?

THE COURT: Mr. Routsis, you've asked that question four times now. You can ask it once, and then we move on. Otherwise it's wasting my time. Let's get a new question.

BY MR. ROUTSIS:

Q. Okay. Did you speak with Maryellen after that happened on that day?

A. Of course.

Q. Right after it happened?

A. No. Because I was finishing my job.

Q. You didn't go up and say, Maryellen, did you see that?

A. No. Why should I?
Q. Okay. Did you talk to her at all that day?
A. My neighbor?
Q. No.
A. Yes, okay. Of course.
Q. Did you speak with Maryellen that day?
A. Of course.
Q. And how did you contact her?
A. By phone.
Q. You called her? What's her phone number?
A. My phone number?
Q. What is her phone number?
MS. PENCE: Objection, Your Honor.
THE WITNESS: I don't know her phone number.
BY MR. ROUTSIS:
Q. You called her?
A. Yes.
Q. And what did you say to her?
MS. PENCE: Objection, Your Honor.
BY MR. ROUTSIS:
Q. You called her the day that you got the snow plowed on you?
THE COURT: Mr. Routsis, now six times. Are you doing this on purpose, just trying to blow off the afternoon for me?
MR. ROUTSIS: No.

something in my eye.

THE COURT: Would you like some water?

THE WITNESS: Thank you. I'm fine. I have an allergy, it's only my right eye. Thank you. I'm all right. I want to put that down in case somebody.

Q. Now, you have indicated, Mrs. Klementi, that your husband is afraid of Mr. Spencer?

A. Yes.

Q. And when did he become, start becoming afraid of Mr. Spencer?

A. Last summer.

Q. Was there an event that began the fear?

A. Yeah. I told you, when my husband tried to take a picture, Mr. Spencer came to him and asked him, told him if he takes another picture I punch him in the face. I would be scared as well.

Q. You never heard that though, correct?

A. No.

Q. Now, do you recall the police or law enforcement or the sheriff's department coming to your house and asking you not to take any more pictures or trespass on the Spencer property?

A. No one talked to me about that.

Q. Were you aware that they spoke to your husband about that?

A. Yes.

Q. And that was the very same day your husband alleged that he was threatened?

A. Yes. No, no. Say this again.

Q. Yes. Law enforcement came out?

A. Yes.

Q. And spoke to your husband?

A. Yes.

Q. And explained that you are not to be harassing the Spencers by taking pictures or trespassing?

A. Mm-hmm.

Q. Is that the very same day that your husband told you that he was yelled at and cussed at and intimidated by Mr. Spencer for walking on his property?

A. Correct.

Q. And did you call the police?

A. No, we did not call the police.

Q. So, the Spencers called law enforcement, alleging that your husband trespassed and was taking pictures on the Spencer property, correct?

A. Correct.

Q. They came out and gave you a warning not to do that, correct?

A. Yes.

Q. Your husband then is walking right up on the Spencer's property later that day?

Exhibit 6

Exhibit 6

Case No. 13-CR-0036
Department No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
WEDNESDAY, SEPTEMBER 18, 2013
MINDEN, NEVADA

APPEARANCES:

For the Plaintiff: Maria Pence,
Deputy District Attorney
Douglas County

For the Defendant: William J. Routsis, II
Attorney at Law
Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander
Nevada CCR #446

A I waited awhile, and then I called 911.

Q Why did you call 911?

A I thought about it, and I knew, you know, I told Egon to call. I knew he was going to call, but I was worried that there might be some kind of language barrier. I did not know if, you know, they would understand what he was trying to say, and I was also a witness, so I called to tell them that, you know, to volunteer, more or less. "Hey, I'm a witness. I saw this crime happen."

Q Ms. Kinion, showing you what was previously marked as State's Exhibit 18. Do you recognize that?

A Yes, I do, because I see my initials on it.

Q Okay. And what is it?

A It's the tape of the emergency call that I made.

MS. PENCE: Your Honor, I believe this exhibit was previously admitted.

THE COURT: Yes.

(WHEREUPON, a CD was played.)

Q (BY MS. PENCE:) Is that the call that you made to 911?

A Yes.

Q In that call, did you explain that you were a

witness?

A Yes.

Q In that call, you were told that Manchester had all of the information. Do you know who Manchester is?

A Yes.

Q Who is Manchester?

A He is part of a family that owns the snowplowing company that is used by KGID.

Q Okay. Did you speak with Mr. Manchester about this incident?

A Yes, I did.

Q Can you tell us about that.

A I called him and -- I believe the second time I called him that day. I called him up, and I said, "This is ridiculous, you know." I don't remember exactly what I said after that, but it was to the fact that this should not be happening, you know, and he should be doing something about it.

Q Ms. Kinion, you were also -- Were you present at a KGID meeting in December?

A Yes.

Q And why were you there?

A I believe it was because of the snowplowing.

We had complaints about it.

Q Had you personally had any issues?

A Not until that on the 12th.

Q At some point in the last three months, did you write anyone a letter about what you saw and observed on the 12th at the KGID meeting?

A I believe I wrote you a letter about it.

Q And what was the reason for your letter?

A I was trying to get all of the facts straight in what I perceived as happened leading up to the assault on him.

Q Okay. Did I ever ask you to write a letter?

A No.

Q Is everything that you wrote in the letter truthful?

A Yes.

MR. ROUTSIS: Objection, Your Honor. Is everything you wrote in the letter truthful? Okay. I'll withdraw the objection. I'll withdraw the objection.

MS. PENCE: May I have this marked as State's 28 for identification purposes.

(Whereupon, State's Exhibit No. 28 was marked for identification.)

Q (BY MS. PENCE:) Ms. Kinion, showing you

Exhibit 7

Exhibit 7

YAHOO! MAIL

Fw: Attempted Ex Parte Communication Monday, April 29, 2013 6:15 PM

From: "Todd Torvinen" <toddtorvinen@sbcglobal.net>
To: "Jessica McCurry``" <jessicamccurry@sbcglobal.net>

Print for file.
Todd L. Torvinen, Esq.
Law Office of Todd L. Torvinen Chtd.
232 Court St
Reno, NV 89501
Nevada Bar Number: 3175
(775) 825-6066
(775) 324-6063 Facsimile

This e-mail, and any attachments may contain privileged attorney-client communication and information. If you are not the intended recipient, please delete.

IRS CIRCULAR 230 NOTICE: Any US tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or any attachment).

--- On **Fri, 4/26/13, R. Glasson** [redacted]*om*> wrote:

> From: R. Glasson [redacted]com>
> Subject: Attempted Ex Parte Communication
> To: "Todd Torvinen" <toddtorvinen@sbcglobal.net>, "Johnson, Mike" <mike@tahoelawyer.com>
> Date: Friday, April 26, 2013, 10:24 AM
>
> Counsel;
>
> The last thing I need is for attorneys to either give out my email address to the public or forward my communications to their clients so that I can get spammed, threatened or worse. Please be advised that your respective email addresses have now been blocked from my account, along with **kinionm@aol.com**
>
> The court cannot receive or consider communications directed to it outside of court. The court considers attempts to communicate with it as contemptuous of the legal process and a threat to the safety and security of the judge and his family.
>
> Find a way to transmit a proposed copy of a mutually agreed-upon TPO to the court other than through my email account.
>
> Something old-fashioned? Courier? Maill? Pony Express? Carrier pigeon?

I don't care. But unless the court receives a mutually agreed upon stipulation by some means as of close of court business on Monday, May 6, the court will issue an order that counsel appear in court on a Saturday morning with their word processing equipment for an order drafting session.

Never attempt to communicate with the court through electronic mail again. This is why our fax machine does not accept incoming faxes and why our court does not maintain a public email account.

-------- Forwarded message --------
From: <kinionm@aol.com>
Date: Fri, Apr 26, 2013 at 9:53 AM
Subject: meadow lane neighbor
To: [redacted]com

Dear Judge Glasson, My name is Mary Ellen Kinion, I was sitting with the Klementi's in court last Wednesday afternoon. I am writing you because of the part of the new restraining order app. that allows Jeff to go to 162 Meadow Lane, to visit Ken Stead, which is 100 meters north of the 205 intersection. Please consider not allowing this. The Klementi's ' drive past Ken Stead's house to get to Kingsbury Grade. Jeff Spencer standing out in Ken Stead's driveway will be very stressful for them. Believe me, these people have had way too much stress already. I have known the Spencer's for the last 7 years and don't believe they deserve any special considerations that give them the chance to further intimidate and harass the Klementi's. Thank you, Mary Ellen Kinion

THIS EMAIL TRANSMISSION IS INTENDED FOR THE EXCLUSIVE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED, AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION THAT IS COVERED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT (18 USC §§ 2510-2521), AND ALSO MAY BE PROTECTED UNDER THE ATTORNEY CLIENT OR WORK PRODUCT PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT OR AGENT RESPONSIBLE TO DELIVER THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE ((775) 588-2540) AND/OR EMAIL AND DELETE THE ORIGINAL MESSAGE. THANK YOU.

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED
MAY 23 2016
Douglas County
District Court Clerk

FILED
2016 MAY 23 PM 4:27
[illegible] WILLIAMS
CLERK
BY [illegible] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

Third-Party Defendant, Mary Ellen Kinion ("Kinion"), by and through her undersigned counsel, Glogovac & Pintar, hereby submits this Reply in Support of Motion for Summary Judgment.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

Kinion is a neighbor of, and witness to, various bad acts that defendant Spencer has perpetrated on brothers, Helmut and Egon Klementi. All of them live in the Kingsbury Grade General Improvement District in Stateline, Nevada. Kinion has done

nothing but her civic duty to report Spencer's actions to the police and to the deputy district attorney. When subpoenaed, Kinion testified at Spencer's criminal trial.

The claims against Kinion in this case are nothing more than vexatious to claims designed to harass and intimidate her. Kinion has moved this Court for an order granting summary judgment in her favor. Kinion seeks summary judgment because, as a matter of law, Spencer cannot meet the required elements for a claim for malicious prosecution. In addition, Kinion seeks summary judgment because all of her communications with the police and/or district attorney's office, as well as her testimony at Spencer's criminal trial, are protected communications under the judicial proceeding privilege and/or are immune from civil liability under NRS 41.650.

Spencer's opposition brief contains no admissible evidence on the issues raised in Kinion's motion for summary judgment. Instead, the opposition attempts to create a factual dispute by challenging Kinion's credibility based on what the outcome of Spencer's criminal trial was. Spencer claims that because he was acquitted Kinion's testimony was untrue. As will be shown below, however, Kinion's credibility is not the issue. Rather, because all of the statements and actions that are attributed to Kinion occurred in the course of judicial proceedings, the issue is whether Kinion has absolute immunity.

A. Law and Discussion.

1. Summary Judgment Standard.

Nevada law long has held that only admissible evidence may be considered on a motion for summary judgment. NRCP 56(e). *See, Adamson v. Bowker*, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969) ("[E]vidence that would be inadmissible at the trial of the case is inadmissible on a motion for summary judgment."). Because authentication is a condition precedent to admissibility, all evidence presented on summary judgment must be authenticated. NRS § 52.015. *See Thomas v. BAC Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, *2 (Nev. Dec. 20, 2011) (Order of Affirmance) (unpublished) (documents offered in support of summary

judgment were properly authenticated and admissible when attached to an affidavit made on personal knowledge affirming that the documents were true and correct copies of the originals).

On summary judgment, documents authenticated through personal knowledge must be attached to an affidavit that meets the requirements of NRCP 56(e), and the affiant must be a person through whom the exhibits could be admitted into evidence. NRS § 52.025. Documents may also be authenticated in any another manner permitted under the Nevada rules. *See e.g.,* NRS § 52.085 (evidence that a public record "is from the public office where items of this nature are kept is sufficient to authenticate [it]"). Nevada courts consistently hold that unauthenticated documents cannot be considered in a motion for summary judgment. *See Employers Ins. Co. of Nevada v. Employco Servs., Ltd.*, 281 P.3d 1170, n.1 (Nev. 2009) (Table) (Order of Reversal) ("unauthenticated documents cannot be considered in a summary judgment motion"); *Whalen v. State*, 100 Nev. 192, 195-96, 679 P.2d 248, 250 (1984) (NRCP 56(e) requires documents offered in opposition to summary judgment be authenticated); *Buss v. Consol. Casinos Corp.*, 82 Nev. 355, 357, 418 P.2d 815, 816 (1966) (reversing grant of summary judgment where documents submitted in support were not authenticated).

Nevada law is equally clear and consistent that, even when a document is sworn and admissible, inadmissible hearsay statements within the document will not give rise to a material issue of fact. For example, in *Collins v. Union Fed. Savings & Loan*, the Nevada Supreme Court affirmed summary judgment in favor of defendants where plaintiff's opposition rested on inadmissible hearsay statements offered in an affidavit. 99 Nev. 284, 302 (1983) ("Evidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence."). The Court held that in offering only hearsay, plaintiff had "failed to show that he could produce the requisite quantum of evidence to enable him to reach the jury with his claims." *Id.* Nevada appellate rulings consistently instruct that hearsay statements are as inadmissible on

summary judgment as they are at trials. See e.g., White v. Mediati, No. 57710, 2012 WL 6588980, at *1-2 (Nev. Dec. 14, 2012) (Order of Affirmance) (unpublished) (affirming grant of summary judgment where opposing party offered only hearsay statements and speculation); Soebbing v. Carpet Barn, Inc., 109 Nev. 78, 81, 847 P.2d 731, 734 (1993) (affirming district court's finding that out-of-court statements of a non-party offered in opposition to summary judgment were inadmissible hearsay and could not create a material issue of fact).

In his opposition brief, Spencer attempts to create questions of fact based on speculation as to what he thinks caused the Douglas County Sheriff's Office to arrest Spencer in the first place and what he thinks later caused the Douglas County District Attorney's office to prosecute Spencer. The opposition brief also asserts – wrongly -- that Spencer's acquittal of those criminal charges means that the underlying acts did not occur. In truth, of course, all the acquittal means is that the state did not meet its burden of proof. The acquittal could be the result of over-charging the criminal acts, the product of poor police work, the product of poor prosecutorial work, or both. The acquittal certainly does not mean that the conduct at issue did not occur. In any event, because Spencer has failed to present, by way of affidavit, or other admissible evidence, specific facts demonstrating the existence of a triable issue, Kinion is entitled to summary judgment

B. Kinion Is Entitled to Judicial Immunity

In his opposition brief, Spencer claims that immunity for communications with the police and district attorney are limited to claims for defamation only. In addition, Spencer claims that Kinion is not entitled to immunity because her statements to the police and district attorney were false or made with reckless disregard for the truth. Spencer is wrong.

In Harrison v. Roitman, 131 Nev.Adv.Op. 92 (decided December 17, 2015), the Nevada Supreme Court addressed judicial immunity for a party-retained expert witness. In Harrison, the husband in divorce proceedings retained a psychiatrist to

conduct a psychiatric analysis of his then-wife. The psychiatrist prepared and submitted a report to the court which diagnosed the wife with a personality disorder. In response, the wife sued the psychiatrist alleging the statements in the report constituted medical malpractice, IIED, NIED, and civil conspiracy. The psychiatrist then filed a motion to dismiss claiming to be absolutely immune from liability. The psychiatrist's motion to dismiss was granted by the district court.

On appeal, the Nevada Supreme Court affirmed. Like Spencer in this case, the wife argued in Harrison that the district court improperly dismissed her complaint because judicial immunity was limited to claims for defamation. However, concluding that party-retained expert witnesses play an integral role in the judicial process, the supreme court concluded that the psychiatrist was entitled to absolute immunity for all claims arising from the report. In reaching its decision, the Harrison court adopted the "functional approach" to resolve the question of immunity.

According to Harrison, the functional approach is made up of three separate inquiries. First, whether the person seeking immunity performed functions sufficiently comparable to those who have traditionally been afforded absolute immunity at common law. Second, whether the likelihood of harassment or intimidation by way of personal liability is sufficiently great to interfere with the person's performance of her duties, and third, whether procedural safeguards exist in the system that would adequately protect against illegitimate conduct. Id.

Analyzing the functional approach adopted in Harrison to the facts in this matter compels the conclusion that absolute immunity should be given to Kinion. First, as a witness to the acts committed by Spencer against Klementi and who then reported what she saw to the police and district attorney, Kinion clearly falls within the category of persons afforded absolute immunity at common law. The immunity of witnesses from subsequent damages liability for their testimony in judicial proceedings is well established. See, Briscoe v LaHue, 460 U.S. 325, 330 (1983).

Secondly, as pointed in Harrison, harassment or intimidation by threat of personal liability may interfere with a party-retained expert's duties since it could deter their acceptance of court appointments or color their recommendations. Similarly, exposing independent witnesses like Kinion to personal liability would deter other witnesses from coming forward and making reports to the police and/or be willing to testify at trial. For example, no witnesses to a traffic accident would stop at the accident scene and report to the police what they saw if they felt that they could later be sued by a party to the traffic accident for not seeing the traffic accident occur in the exact same manner as that party did.

Thirdly, even assuming Kinion's recollection of the events surrounding Spencer's actions toward the Klementi brothers is wrong, various procedural safeguards are in place to protect against Kinion's recollection from being used improperly. In this regard, like the expert witnesses in Harrision, Kinion is, and was at Spencer's criminal trial, subject to cross-examination. It is up the finder of fact to determine Kinion's credibility. Spencer's acquittal at his criminal trial confirms the safeguards of cross-examination were adequate.

In addressing immunity under NRS 41.650, Spencer's opposition brief gives only lip service to Nevada's anti-SLAPP law. NRS 41.637 provides:

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
>
> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
>
> 2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
>
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or

4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

In this case, Spencer has provided no admissible evidence that Kinion's statements are not truthful. And since it is undisputed that Kinion's statements otherwise fall within NRS 41.637, Kinion must be extended absolute immunity as a judicial participant and summary judgment must be granted.

C. Summary Judgment is Appropriate on Spencer's Claim for Malicious Prosecution.

In addition being afforded absolute immunity for her statements to the police and district attorney, Kinion is also entitled to summary judgment because Spencer's opposition brief fails to set forth admissible evidence which raises a question of material fact. The elements of a claim of malicious prosecution are: "(1) want of probable cause to **initiate** the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev. 27, 38 P.3d 877, 879-80 (2002). (Emphasis added).

Implicitly acknowledging the futility of trying to tie Kinion in any manner to the Douglas County Sheriff's Department decision to arrest Spencer on December 18, 2012, Spencer's opposition brief instead focuses on the charges filed in the Amended Information to the Douglas County District Attorney's office on May 9, 2013. See, Exhibit 2 to Spencer's opposition brief. Nevertheless, amending criminal charges is not the same as "initiating" criminal charges. Moreover, the amended charges, i.e. those pertaining to elder abuse of Elfie and Egon Klementi, were filed by the district attorney after Spencer's preliminary hearing was held on April 24, 2013. Exactly what went into the district attorney's thought process in amending the charges is not known but Kinion did not testify at the preliminary hearing and she is not identified as a witness to the

amended information. Hence, there is no admissible evidence showing that Kinion was involved in procurement of additional criminal charges against Spencer.

In a futile, last ditch attempt to tie Kinion to Spencer's criminal prosecution, Spencer also makes reference to a letter that Kinion wrote to Maria Pence, the Deputy District attorney who prosecuted Spencer. Spencer claims that this letter from Kinion became the basis for the amended charges against Spencer.[1] Opposition brief, p. 2:15-20. Notably, however, Spencer has never produced the letter from Kinion in this case. At Kinion's deposition, attorney Routis admitted that he had the letter at Spencer's trial but that it has been lost. At Kinion's deposition, the following exchange took place:

> Q Do you remember that you provided her with a letter?
>
> A Yes.
>
> Q And in that letter --
>
> MR. PINTAR: Has that letter been produced, counsel?
>
> MR. ROUTSIS: I don't have it. Do you?
>
> MR. PINTAR: Well, you produced it. I mean --
>
> MR. ROUTSIS: It's your client.
>
> MR. PINTAR: -- you're asking about it.
>
> MR. ROUTSIS: I'm asking her.
>
> MR. PINTAR: You're not going to ask her any questions about any documents --
>
> MR. ROUTSIS: Whoa, whoa, whoa.
>
> MR. PINTAR: No, you are not going to ask her any questions about documents that you're under an obligation to produce in this case for her testimony.
>
> MR. ROUTSIS: So your objection is that your client wrote a letter and gave it to the DA --
>
> MR. PINTAR: No.

[1] As testified to by Kinion at Spencer's criminal trial, everything in her letter is truthful and it was written only to help her get all of the facts straight leading up to the assault. See, Exhibit 6 to opposition brief, p. 266:7-16.

MR. ROUTSIS: -- that she just admitted. Now, hold on.

MR. PINTAR: No, my objection is you haven't produced it.

MR. ROUTSIS: And you're objecting to me asking her questions regarding a letter that she wrote that none of us have in the evidence. What's your objection? I don't understand.

MR. PINTAR: You have it and you haven't produced it.

MR. ROUTSIS: I don't have it.

MR. PINTAR: Well, you're talking about it.

MR. ROUTSIS: I'm asking her a question.

MR. PINTAR: You obviously saw it at the criminal trial.

MR. ROUTSIS: Listen, I don't have the letter, so you should be aware of what you're talking about.

MR. PINTAR: You should be aware of what you're talking about.

MR. ROUTSIS: Again, I don't have the letter, so try to do your job and not make an objection that makes no sense. I don't have the letter.

MR. PINTAR: Well, why don't you ask an intelligible question?

MR. ROUTSIS: Well, I think it's very intelligible.

MR. PINTAR: Really?

BY MR. ROUTSIS:

Q I think it's very damaging, because you know, Miss Kinion, you're charged with conspiracy for malicious prosecution. That's the basis of our civil suit. Are you aware of that? Do you know why you're here?

MR. PINTAR: Counsel, we don't do charging in civil cases, okay? You made a complaint –

BY MR. ROUTSIS:

Q In the civil case you're aware –

THE REPORTER: I'm sorry. I'm not getting this verbatim again because you're talking at the same time.

MR. PINTAR: Use the right terms, counsel.

BY MR. ROUTSIS:

Q Miss Kinion, you're aware that a civil complaint has been filed against you; are you not?

A I can't hear you.

Q You're aware of a civil complaint being filed against you in this matter; are you not?

A Yes. Yes, I'm aware.

Q For conspiracy to get involved for malicious prosecution against a man who was acquitted of all counts. You're aware of that, right?

A Yes.

Q Okay. Now, after charges were filed in this case, you presented a letter to the prosecutor, Maria Pence; did you not?
A Yes.

Q And in that letter did you not state to Maria Pence that Jeffrey Spencer attempted to assault Egon Klementi on May 27th, 2012?

MR. PINTAR: Don't answer the question.

MR. ROUTSIS: It's the whole case. You don't want her to answer.

MR. PINTAR: No, no, no. I want you to produce your evidence.

MR. ROUTSIS: I don't have it. I told you that, counsel.

MR. PINTAR: Well, you obviously -- you're referencing it.

MR. ROUTSIS: The whole purpose we're here today to see if she acted --

MR. PINTAR: No. You have an obligation to produce it. She's not answering your questions about documents that you have an obligation --

MR. ROUTSIS: Counsel, listen --

THE REPORTER: All right.

MR. ZANIEL: You cannot talk over each other.

THE REPORTER: I cannot do this. This is like the fourth warning. I'm about ready to pack up my gear.

THE WITNESS: Me, too.

MR. ROUTSIS: For the record, we do not have the letter. I'm asking her questions from her personal knowledge.

Deposition of Mary Ellen Kinion, dated April 7, 2016, p.132:11 – 136:12, attached hereto as Exhibit 1.

Without the actual letter, neither the date that it was written, nor its contents can be evaluated for any evidentiary purpose. More importantly, the letter does not raise a

question of material fact sufficient to defeat summary judgment because any inferences concerning the evidentiary value of the letter must be construed against Spencer. As this court is aware, when the potential for litigation exists, a party has an affirmative duty to preserve evidence which it knows, or reasonably should know, is relevant to the subject matter of the action. Banks v. Sunrise Hospital, 120 Nev. 822 (2004).

D. Motion to Amend Should be Denied

As a final point, Spencer claims that he has filed a motion to amend his counter-claim. Opposition p. 8. However, to the extent Spencer has filed a motion to amend his claims, the motion has never been served on the undersigned so that a response to the motion can be filed.

Notwithstanding, it is within the court's discretion to deny a motion for leave to amend a complaint. Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). In that respect, after responsive pleadings have been filed, a party may only amend its pleadings after obtaining leave of the court and when justice so requires. NRCP 15(a). The requirement that the amending party acquire leave of the court indicates that there are instances where leave should not be granted. Brown v. Capanna, 105 Nev. 665, 668, 782 P.2d 1299, 1301 (1989). A motion for leave to amend may appropriately be denied "(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile. 4432 Individual Tobacco Plaintiffs v. Various Tobacco Cos. (In re Engle Cases) (11th Cir. 2014).

In this case, any amendment to the third-party claims made against Kinion would be futile because of judicial immunity and Nevada's anti-SLAPP laws. In finding that the expert witness was entitled to immunity, the court in Harrison v. Roitman, supra, specifically held the immunity applied to all claims in general which arose from the judicial proceedings, not just defamation. Id.

II.

CONCLUSION

The claims against Kinion (and the other third-party defendants) are nothing more than vexatious litigation. Because Kinion is absolutely immune from liability, Kinion respectfully requests that the claims asserted against her be dismissed by way of summary judgment.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 23 day of May, 2016.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
ROBERT R. HOWEY, ESQ.
Nevada bar No. 11608

Attorneys for Third-Party Defendant,
Mary Ellen Kinion

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 23 day of May, 2016, I served the foregoing document(s) described as follows:

REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501
Attorneys for Jeffrey Spencer

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 23 day of May, 2016.

Shirle J. Morrell
Employee of Glogovac & Pintar

EXHIBIT 1

EXHIBIT 1

IN THE NINTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

---o0o---

HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER,

Defendant.

Case No. 14-CV-0260

Dept. No. 1

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

DEPOSITION OF MARY ELLEN KINION

04/07/2016

Reno, Nevada

REPORTED BY: KRISTINE BOKELMANN
NV CCR #165, CA #5979

Job No: 297108B

Page 130

remember the exact words -- by Jeff Spencer and he was laying in the street.

Q And did you ask her where Egon was during this?

A No.

Q Since that time have you talked to Egon to find out where he was when his brother was laying on the street?

A I don't remember.

Q You discussed this with Egon, right? I mean, obviously you've discussed it. The trial's been had in this case.

A I don't remember.

Q You don't remember what Egon told you about where he was during the event?

A I don't remember.

Q And Jeff Spencer had a confrontation with Helmut?

A I don't remember.

Q You don't remember. Okay. In any event, after 12-18 you had contact with a prosecutor named Maria Pence, correct?

A Correct.

Q And Maria Pence and you had quite a few conversations together; did you not?

Page 131

A I don't understand the question.

Q You talked. You talked to each other?

A Yes.

Q On numerous occasions?

A No.

Q No? You didn't talk to her?

MR. PINTAR: Counsel, that's two different questions. You just asked her numerous occasions or talked to her. Which one do you want to ask? Ask the question.

MR. ROUTSIS: You should be ashamed of yourself.

BY MR. ROUTSIS:

Q Did you talk to her on numerous occasions, yes or no? It's a simple question. Yes or no?

MR. PINTAR: You can answer it.

THE WITNESS: What?

MR. PINTAR: You can answer.

THE WITNESS: I can answer?

MR. PINTAR: Yeah.

THE WITNESS: I talked to her -- I don't understand the question as far as when you're talking about.

BY MR. ROUTSIS:

Q Okay. After the event of 12-18, 2012, prior to trial, did you talk to Miss Pence, the prosecutor in the case that prosecuted Jeffrey Spencer for numerous felony crimes, did you talk to her about information that you had regarding the Spencers?

Page 132

A Yes.

Q Did you talk to her on numerous occasions, meaning more than one?

A Yes.

Q Did you talk to her on more than two times?

A I don't remember.

Q Do you remember that you provided her with a letter?

A Yes.

Q And in that letter --

MR. PINTAR: Has that letter been produced, counsel?

MR. ROUTSIS: I don't have it. Do you?

MR. PINTAR: Well, you produced it. I mean --

MR. ROUTSIS: It's your client.

MR. PINTAR: -- you're asking about it.

MR. ROUTSIS: I'm asking her.

MR. PINTAR: You're not going to ask her any questions about any documents --

MR. ROUTSIS: Whoa, whoa, whoa.

MR. PINTAR: No, you are not going to ask her any questions about documents that you're under an obligation to produce in this case for her testimony.

Page 133

MR. ROUTSIS: So your objection is that your client wrote a letter and gave it to the DA --

MR. PINTAR: No.

MR. ROUTSIS: -- that she just admitted. Now, hold on.

MR. PINTAR: No, my objection is you haven't produced it.

MR. ROUTSIS: And you're objecting to me asking her questions regarding a letter that she wrote that none of us have in the evidence. What's your objection? I don't understand.

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Page 134

so try to do your job and not make an objection that makes no sense. I don't have the letter.

MR. PINTAR: Well, why don't you ask an intelligible question?

MR. ROUTSIS: Well, I think it's very intelligible.

MR. PINTAR: Really?

BY MR. ROUTSIS:

Q I think it's very damaging, because you know, Miss Kinion, you're charged with conspiracy for malicious prosecution. That's the basis of our civil suit. Are you aware of that? Do you know why you're here?

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BY MR. ROUTSIS:

Q In the civil case you're aware --

THE REPORTER: I'm sorry. I'm not getting this verbatim again because you're talking at the same time.

MR. PINTAR: Use the right terms, counsel.

BY MR. ROUTSIS:

Q Miss Kinion, you're aware that a civil complaint has been filed against you; are you not?

A I can't hear you.

Page 135

Q You're aware of a civil complaint being filed against you in this matter; are you not?

A Yes. Yes, I'm aware.

Q For conspiracy to get involved for malicious prosecution against a man who was acquitted of all counts. You're aware of that, right?

A Yes.

Q Okay. Now, after charges were filed in this case, you presented a letter to the prosecutor, Maria Pence; did you not?

A Yes.

Q And in that letter did you not state to Maria Pence that Jeffrey Spencer attempted to assault Egon Klementi on May 27th, 2012?

MR. PINTAR: Don't answer the question.

MR. ROUTSIS: It's the whole case. You don't want her to answer.

MR. PINTAR: No, no, no. I want you to produce your evidence.

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MR. ROUTSIS: The whole purpose we're here today to see if she acted --

Page 136

MR. PINTAR: No. You have an obligation to produce it. She's not answering your questions about documents that you have an obligation --

MR. ROUTSIS: Counsel, listen --

THE REPORTER: All right.

MR. ZANIEL: You cannot talk over each other.

THE REPORTER: I cannot do this. This is like the fourth warning. I'm about ready to pack up my gear.

THE WITNESS: Me, too.

MR. ROUTSIS: For the record, we do not have the letter. I'm asking her questions from her personal knowledge.

BY MR. ROUTSIS:

Q Do you remember giving a letter to Maria Pence regarding conduct that Jeffrey Spencer may or may not have committed, yes or no?

MR. MOORE: Pause. Do you need to interpose?

MR. PINTAR: Don't answer the question.

MR. MOORE: Okay. Are we finished here? We need a break. We're going off the record for a few minutes. We'll reconvene.

(Recess 3:57 - 4:09 p.m.)

(The continuation of the Deposition of Mary Ellen Kinion was videotaped.)

THE VIDEOGRAPHER: This is the beginning of

Page 137

videotape one in the deposition of Mary Ellen Kinion taken in the matter of Spencers and civil case versus Klementi, Kinion, and Shaw, held at Sunshine Litigation Services on April 7, 2016. The time is approximately 4:09 p.m.

The court reporter is Kris Bokelmann. I am Stewart Campbell, the videographer and employee of Sunshine Litigation Services.

This deposition is being videotaped at all times unless specified to go off the video record.

Would all present please identify themselves, beginning with the witness.

THE WITNESS: Mary Ellen Kinion.

MR. PINTAR: Mike Pintar, Miss Kinion's attorney.

MR. ROUTSIS: Attorney William Routsis, attorney for Jeff and Marilyn Spencer.

MR. ZANIEL: Will the microphones pick us up from --

THE VIDEOGRAPHER: Yeah.

MR. ZANIEL: David Zaniel on behalf of Jeffrey Spencer as a defendant in a case filed by Helmut Klementi. Present, Jeff Spencer and Marilyn Spencer. Present --

DR. SHAW: Dr. Rowena Shaw.

Douglas R. Brown, Esq., SBN 7620
Christian L. Moore, Esq., SBN 3777
Lemons, Grundy & Eisenberg
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Reno, Nevada 89519
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CLERK
BY D. HECIMOVICH DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5

Counterdefendants.

Case No. 14-CV-0260

Dept. No. I

AMENDED COMPLAINT

Plaintiff HELMUT KLEMENTI by and through his attorneys, LEMONS, GRUNDY & EISENBERG, complains and alleges as follows:

JURISDICTION

1. At all times referred to herein, Plaintiff Helmut Klementi was and is a resident of Stateline, State of Nevada.

2. At times referred to herein, Defendant Jeffrey D. Spencer, was and is a resident of Stateline, State of Nevada.

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

3. Defendant Does 1-5 are other possible Defendants unknown to the Plaintiff at this time. The Plaintiff requests leave of this Court to amend the Complaint to insert the true names and capacities of the Does 1-5 when the same have been ascertained, to join such Defendants in this action, and to assert the appropriate charging allegations.

4. On or about December 18, 2012, Plaintiff, Helmut Klementi was standing in the street in front of his twin brother's house.

5. Defendant Jeffrey D. Spencer ran up to Plaintiff Helmut Klementi and collided with Plaintiff in such a manner as to cause Plaintiff to violently strike the ground and incur serious injury.

FIRST CLAIM FOR RELIEF

(Negligence)

6. Plaintiff realleges each and every allegation contained in paragraphs 1-5, inclusive, as if fully set forth herein.

7. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably prudent person and not collide or otherwise make physical contact with Plaintiff Helmut Klementi.

8. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably prudent person and not misidentify Plaintiff Helmut Klementi.

9. Defendant Jeffrey D. Spencer breached his above described duties.

10. As a direct and proximate result of Defendant Jeffrey D. Spencer's breach of one or more of the above described duties, and negligence, Plaintiff Helmut Klementi has incurred bodily injury as well as special and general damages in excess of Ten Thousand Dollars ($10,000.00).

SECOND CLAIM FOR RELIEF

(Assault & Battery)

11. Plaintiff realleges each and every allegation contained in paragraph 1-10 inclusive, as if fully set forth herein.

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12. On or about December 19, 2012 Defendant Jeffrey D. Spencer physically battered and assaulted Plaintiff Helmut Klementi in a harmful manner without his consent causing him damages in an amount of more than $10,000.00. Further, due to the intentional act of battery Plaintiff Helmut Klementi seeks punitive damages in an amount to be determined at trial.

13. Further, Plaintiff Helmut Klementi has suffered emotional distress due to the battery by Defendant Jeffrey D. Spencer.

14. As a direct result and proximate result of the battery and assault by the Defendant, Plaintiff has suffered, and will continue to suffer in the future, damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

THIRD CLAIM FOR RELIEF

(Pursuant to NRS 41.1395 Damages for Injury or loss suffered by older person)

15. Plaintiff realleges each and every allegation contained in paragraphs 1-14 inclusive, as if fully set forth herein.

16. Defendant Jeffrey D. Spencer intentionally or negligently collided with Plaintiff Helmut Klementi who was 78 years old at the time of this incident.

17. NRS 41.1395 applies to Plaintiff Helmut Klementi who is an older person and has suffered a personal injury caused by Defendant Jeffrey D. Spencer's conduct.

18. NRS 41.1395 provides for the doubling of actual damages and award attorney's fees and costs in favor of Plaintiff Helmut Klementi.

19. As a direct and proximate result of the injury inflicted upon him, Plaintiff has suffered damages and incurred attorneys' fees and costs in an amount in excess of Ten Thousand Dollars ($10,000.00).

FOURTH CLAIM FOR RELIEF

(Emotional Distress)

20. Plaintiff realleges each and every allegation contained in paragraphs 1-19 inclusive, as if fully set forth herein.

///

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21. Defendant Jeffrey D. Spencer's conduct was extreme and outrageous with either the intention of, or reckless disregard for, causing emotional distress to Plaintiff Helmut Klementi who in turn suffered severe, extreme emotional distress as the actual, proximate result of Defendant's conduct.

22. As a result of Defendant's extreme and outrageous conduct, Plaintiff has suffered general damages in the amount in excess of Ten Thousand Dollars ($10,000.00).

FIFTH CLAIM FOR RELIEF

(Punitive Damages Pursuant to NRS 42.005)

23. Plaintiff realleges each and every allegation contained in paragraph 1-22 inclusive, as if fully set forth herein.

24. Defendant has acted with extreme and outrageous conduct by colliding with Plaintiff Helmut Klementi.

25. As a result of Defendant Jeffrey D. Spencer's extreme and outrageous behavior Plaintiff Helmut Klementi has suffered damages in an amount greater than Ten Thousand Dollars ($10,000.00).

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

1. For general damages in an amount in excess of Ten Thousand Dollars ($10,000.00);

2. For leave of this Court to amend the complaint when the identities of the Doe Defendants are discovered;

3. For special damages, past and future, according to proof at the time of trial;

4. For punitive damages in an amount greater than Ten Thousand Dollars ($10,000.00);

5. For the costs of suit, including reasonable attorney's fees; and

///

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THIRD FLOOR
RENO, NV 89519
(775) 786-6868

6. For such other and further relief as the Court deems just and proper.

The undersigned affirm that this document does not contain the social security number of any person pursuant to NRS 239B.030.

Dated this 12th day of August, 2016.

LEMONS, GRUNDY & EISENBERG

By: _____

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Attorneys for Helmut Klementi

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on August 12, 2016, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **Amended Complaint**, addressed to the following:

William J. Routsis II, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501-1744
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, Nevada 89509
Attorney for Mary Ellen Kinion

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw

Rosie Marquez

EMONS, GRUNDY
& EISENBERG
)05 PLUMAS ST.
SUITE 300
ENO, NV 89519
'75) 786-6868

FILED

2016 DEC 15 PM 3:3.

WILLIAMS
CLERK
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

Case No. 14-CV-0260

Dept. No. II

RECEIVED
DEC 15 2016
Douglas County
District Court Clerk

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5

Counterdefendants.

ORDER GRANTING HELMUT KLEMENTI'S

MOTION FOR LEAVE TO AMEND A COMPLAINT

Plaintiff HELMUT KLEMENTI filed and served a Motion for Leave to Amend Complaint on April 11, 2016, in the above-captioned case. The time to file an opposition or otherwise object to Helmut Klementi's motion has passed, with no opposition or objection having been filed.

Good cause appearing, leave is hereby granted for Plaintiff to file the attached amended complaint.

Dated this 15 day of May, 2016.

DISTRICT COURT JUDGE

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

BEFORE THE HONORABLE STEVEN R. KOSACH, SENIOR DISTRICT JUDGE

HELMUT KLEMENTI, Plaintiff, -vs- JEFFREY D. SPENCER & DOES 1-5, Defendants.	Case No. 14-CV-0260 Dept. No. I
JEFFREY D. SPENCER & DOES 1-5, Counterclaimant, -vs- HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5, Counterdefendants.	

HEARING

December 15, 2016

Minden, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A_P_P_E_A_R_A_N_C_E_S

FOR THE PLAINTIFF/ COUNTERDEFENDANTS:	SCOTT A. GLOGOVAC, ESQ. GLOGOVAC & PINTAR 427 West Plumb Lane Reno, Nevada 89509
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MINDEN, NEVADA, THURSDAY, DECEMBER 15, 2016, 1:50 P.M.

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THE COURT: Let me call the case, and then I'm going to ask if I have, confirm the parties. So yea or nay.

This is Case Number 14-CV-0260 in the Ninth Judicial District Court in the State of Nevada in and for the County of Douglas. Helmut Klementi.

And Mr. Klementi, are you present? Mr. Helmut Klementi. Good afternoon to you, Mr. Klementi.

And Mr. Doug Brown is present on behalf of Mr. Klementi as plaintiff and as counterdefendant, correct?

MR. BROWN: Yes, Your Honor. Thank you.

THE COURT: Thank you. Good afternoon to you.

Versus Jeffrey Spencer. Is Mr. Spencer present?

MR. ZANIEL: He is, Your Honor.

THE COURT: Good afternoon to you, Mr. Spencer. I met you in Reno. And Mr. Spencer, you are the defendant, and you are also the counter plaintiff or counterclaimant in this case, correct?

MR. SPENCER: Yes, sir.

THE COURT: Now, Mr. Zaniel, David Zaniel, to you, good afternoon to you, represents Mr. Spencer as the defendant, and Mr. William Routsis and Miss Lynn Pierce represent Mr. Spencer as the counterclaimant, correct?

MR. ROUTSIS: That's correct.
MS. PIERCE: Yes, Your Honor.
THE COURT: And Miss Capers is present. Your first name is?
MS. CAPERS: Tanika.
THE COURT: How do you spell it?
MS. CAPERS: T-a-n-i-k-a.
THE COURT: Did you drive from Las Vegas?
MS. CAPERS: Yes, sir.
THE COURT: Last night or today?
MS. CAPERS: Today. I flew in from Las Vegas yesterday evening and drove to Minden today.
THE COURT: Were you ten two also?
MS. CAPERS: I actually was.
THE COURT: And you are representing the neighbors Shaw, correct?
MS. CAPERS: Both, yes, husband and wife the Shaws.
THE COURT: And we will talk with you when we have argument on the motions to amend.
MS. CAPERS: Correct.
THE COURT: Okay? And today what we have is motions to amend, a motion for summary judgment, and a trial date, because I continued the trial based on our August talk, if you will.
And Mr. Zaniel and the district attorney, Mr. Zach Wadle, met earlier informally. And Mr. Zaniel, I want you to put

on the record what you and Mr. Wadle talked about in regards to your motion to compel.

MR. GLOGOVAC: Excuse me, Your Honor. Your Honor, I just want in on the record that I am here as well. It would be okay if I was forgotten.

THE COURT: Forgive me.

MR. GLOGOVAC: Scott Glogovac, Your Honor, and I'm here on behalf of Egon Klementi, who is not in court, Your Honor. He's not capable of being here. He is elderly and infirm, and he could not be here. His wife Elfriede Klementi is here, and I represent her, and I also represent Mary Ellen Kinion. And all three of my clients are counterdefendants on the Spencer counterclaim.

THE COURT: Forgive me, Mr. Glogovac. Good afternoon to you.

MR. GLOGOVAC: Thank you, Your Honor.

THE COURT: And good afternoon to you, Miss Kinion and Miss Klementi.

And we will also take up, after these amendments that I was talking about, we will also take up this motion for summary judgment filed by Mr. Pintar, who is your partner, correct?

MR. GLOGOVAC: Yes, Your Honor.

THE COURT: Mr. Zaniel, please.

MR. ZANIEL: Yes, Your Honor. Thank you. In this particular case Mr. Spencer as a defendant prepared and served a

subpoena on the Douglas County District Attorney's Office for various documents associated with the criminal prosecution of Mr. Spencer. The Douglas County District Attorney's Office initially objected to complying with that subpoena. On July 5 of this year I filed a motion to compel with Your Honor before this Court and requesting that the subpoena be complied with. There was an opposition and reply filed. Today was the date for that motion to go forward.

Prior to entering court today, me and Zach Wadle, the district attorney, deputy district attorney for Douglas County, met in private, and we worked out and negotiated a resolution of that issue. The, Mr. Wadle is not here, but as Your Honor is aware, we did meet in chambers as well, and that, the agreement is that the Douglas County District Attorney's Office will comply with the subpoena and produce documents requested through that subpoena and all discoverable information within the criminal file.

As a result of that discussion, the defendant Jeffrey Spencer's motion to compel is withdrawn. I'll reserve that to do without prejudice to insure that they actually do provide that information, and I will notify the Court if in fact it becomes an issue at a later time. But for that issue today, that's been resolved.

THE COURT: Thank you for that. And I was present in that informal discussion. And Mr. Wadle, W-a-d-l-e, Douglas

County deputy district attorney, and Mr. Zaniel met. And thank you for that.

Do you need to be here for anything else?

MR. ZANIEL: I'm going to stay, Your Honor. But I don't, my time at the table I believe is probably done in terms of speaking. Although one more thing, Your Honor.

As far as there's been a request, I don't know if it was a request for documents, what the request was, how it was presented, but it was for the hard drive of the Spencers' video camera system, and there's been a request to have that hard drive produced in this case. And I have the hard drive here today. So just for the record, I'm going to hand the hard drive to Mr. Brown before I leave here today, and he will take care, custody, and control of that hard drive.

THE COURT: Okay. Is that okay, Mr. Brown?

MR. BROWN: That is fine, Your Honor. In fact, I proposed a protocol which we will follow. I think we have an agreement on the protocol that I proposed about handling this drive to make sure we protect it, any irrelevant information that is Mr. Spencer's that's on that.

THE COURT: Okay. Miss --

MS. PIERCE: That's all I was going to add. At our last meeting we talked about agreeing to a particular computer expert, with a protocol for any of the requested production of video records. And I believe we were all in agreement with that,

and that's all I was going to add. Thank you.

THE COURT: Thank you. Okay. Let's get to the first issue for the case. Now, remember we met in August in Reno, and at that time there was discussion, I don't even think there was discussion, whether, well, there was discussion about the motion compel. And that's been sorted out. There was also discussion about the trial date, and there was also discussion about amendments.

So let's take up the first amendment, counterclaimant Jeffrey Spencer's motion to amend counterclaim and third-party complaint. So in regards to that, let's go ahead and briefly summarize your reasoning and opposition, if there is one, and reply. And we will go from there.

So who brought the motion? Please.

MS. PIERCE: Your Honor, as was discussed at the last hearing, it was recognized fairly early on that the initial counterclaimant claim that was filed needed to be amended, and Mr. Spencer had at that time retained Mr. Swafford as co-counsel with --

THE COURT: Now, I remember.

MS. PIERCE: And he was supposed to have done the amendment. He did not do it. And considerable effort was made to contact him, have him do it. He was nonresponsive. I was approached to see if I would be willing to replace Mr. Swafford. I agreed that I would.

A proposed change of counsel form was signed by me and Mr. Spencer and was sent to Mr. Swafford. He failed to return it. Thereafter a motion was made to have Mr. Swafford withdrawn from the case and me instated as co-counsel for purposes of proceeding with that.

Mr. Routsis is not an expert in civil law, which is why he needed co-counsel in this, and so that motion was not pursued the way it should have been. Ultimately I did a notice of association of counsel, and then the whole issue and the fact that that motion had not been ruled upon, even though there was no opposition, was brought up, and Your Honor agreed that it would be, that order would be signed.

In the meantime, I had considerable documentation to look at to do a proper counterclaim. I was reviewing volumes of material going back to the time of the criminal complaint and forward since then, because the case had been progressing before I was brought into it. And I drafted a proposed counterclaim which ultimately was, an amended counterclaim which was presented with the motion. Although it is identified as a second amendment, the first amendment was never ruled upon by Your Honor because of the issues that had come about with Mr. Swafford's first amendment.

So this is really the first amendment of the complaint, or the counterclaim, I should say. And at the same time it is I think cleaning up what the issues are, clarifying what the issues

are. So it's all in the interest of judicial economy, among other things. And nobody's been compromised, because discovery went forward, the issues that are being raised in this amended complaint are all things that have been addressed in the discovery to date. And there was multiple changes of counsel. I think of the counsel here today, the only ones that were here from the beginning were Mr. Routsis and Mr. Zaniel. And there was also an amended complaint from the other side as well.

So there was no true undue delay. Nobody's been prejudiced by any delay. And there are good grounds for going forward with this as the appropriate counterclaim in this matter.

THE COURT: As soon as you mentioned Swafford, I remembered the discussion back in August.

So is there any opposition to an amended counterclaim?

MR. GLOGOVAC: Yes, Your Honor. We, my office has filed an opposition to the motion to amend the counterclaim.

By the way, just as a housekeeping matter, it shouldn't be an amended counterclaim and third-party complaint, because no new party is being brought into the case on the grounds of indemnity or contribution. The rules allow an additional nonparty to be added to a counterclaim. So it would be an amended counterclaim.

But whatever we call it, we have objected to the motion and opposed it on two grounds. One, a substantive ground, Your Honor, and that is that the claims that are added in the amended

counterclaim suffer the same fate that the two original claims in the original counterclaims suffer and that are the subject of our motion for summary judgment. So in a way the arguments go together.

The motion for summary judgment argues that the two original claims alleged in the counterclaim, which were malicious prosecution and civil conspiracy with malicious prosecution as the underlying tort, fails as a matter of law. And I was going to address that when Your Honor called for the motion for summary judgment.

The additional claims that are being added in this counterclaim, and I can tell you what they are, Your Honor. They had a claim for false light, invasion of privacy, a claim for defamation, and a claim for intentional infliction of emotional distress, and then civil conspiracy claims with those as the predicate or underlying torts. They all lump into the same basket that someone is attempting to impose liability on individuals who simply complied with criminal process, responded to subpoenas, spoke to law enforcement as they were entitled to do, and I'll get into it when we argue the motion, Your Honor, but that there's immunity, and the elements of the claim aren't met in this case and can't be met. So there's no point in allowing an amended complaint to be filed that suffers the same, amended counterclaim that suffers the same fate as the original counterclaim.

One of bases upon which a court can deny a motion to amend is it would be futile to do it. Why put all of these folks through another year of this when the claims are futile, when they don't get out of the box legally. So that's the basis on which I oppose the motion.

The second basis on which we oppose the motion is that it is in fact untimely. There is nothing that is alleged in the amended counterclaim that wasn't known by either Mr. Spencer or his attorneys at the time the original counterclaim was filed. All the predicate behavior that's discussed in the proposed amended counterclaim took place before Mr. Spencer was acquitted on the criminal charges in this district.

So everything was known. There's no reason why now a couple of years later to allow futile claims to be added to existing futile claims, when all of this could have been packed into this case originally back in 2015. For that additional reason, our contention is this motion to amend the counterclaim should be denied, we should move forward with a hearing on the motion for summary judgment on the two existing claims. And as I'll indicate then, that should be granted as well.

Thank you, Your Honor.

THE COURT: Thank you. Any comment, Miss Pierce?

MS. PIERCE: Well, Your Honor, in terms of the futility of it and the malicious prosecution, if the argument is accepted as made on the summary judgment, there would be no such thing as

a malicious prosecution claim in the state of Nevada because, the argument is, basically anything that is in any way connected with a criminal prosecution is privileged, and that's not the law. So I will argue that further on that motion.

But there was information that was learned later, some of it in the course of the discovery once this case was proceeding, which resulted in the conspiracy claim; that there were efforts made to, and that also will be argued as part of the motion for summary judgment; that there were efforts made between the counterdefendants or third-party defendants, however they are tagged, to cause a criminal prosecution to go forward that was a prosecution without foundation. And that these parties were working with each other to place Mr. Spencer in a position of having to go through an extensive criminal trial which ended in his favor. He was fully acquitted of all of the claims against him.

THE COURT: Okay. Let's go on to the -- well, hang on a second. We have another motion to amend. And then we will get to the motion for summary judgment.

MR. GLOGOVAC: Your Honor, could I speak to that, the other motion to amend?

THE COURT: Yes.

MR. GLOGOVAC: I think it wasn't our motion. It was a motion made on behalf of Mr. Klementi. That must have been granted, because that amended complaint was filed. Mr. Brown can

speak to that.

MR. BROWN: Your Honor, my recollection going back to that hearing in August was that our, that you allowed us to amend the complaint. If you recall, the case was originally brought by Laub and Laub, and once we got it, we found some things that we wanted to add, brought that up at the hearing, and we filed that complaint in August. And it's my understanding that there hasn't been any responsive pleadings or answers filed to that as of today.

MR. ZANIEL: Your Honor, I did not see that complaint being filed, so obviously --

THE COURT: The amended complaint.

MR. ZANIEL: The amended complaint. I have not seen a copy of that. I have a good feeling that there's a certificate of service that says it was sent to me, but I just didn't see that. So there's been no three-day notice of intent or anything like that. So with the Court's permission, I guess Mr. Brown's permission, as soon as I receive a copy of that, I'll have an answer on file on behalf of Mr. Spencer.

MR. BROWN: I'll make sure that's done as soon as I get back, Your Honor. And I have not taken any adverse action with respect to that complaint.

THE COURT: Forgive me. But I remember, it wasn't reported.

MR. BROWN: Was not, Your Honor.

THE COURT: And when I say I remember, I remember the discussion on the attorney that was not in compliance.

MR. ZANIEL: Swafford.

THE COURT: Swafford. I remember that. And then as soon as you told me Laub and Laub, I remember that.

But what does that do to the motion to amend in regards to Mr. Spencer's renewed motion to amend counterclaim? Am I throwing monkey wrenches into this?

MR. GLOGOVAC: I don't know if that's the type of wrench. Yeah. I looked at this file, Your Honor, and I saw that Mr. Brown's office filed an amended complaint in August. And one of the things that occurred to me is that's an amended complaint against Mr. Spencer, which entitles him to file a responsive pleading to the amended complaint. And I don't believe under the rules his hands are tied on when he can file his responsive pleading.

You may be correct, Your Honor. He could file what they are seeking leave to go back, and well, file in terms of their earlier filed motion, he could probably do that, Your Honor. That would be my feeling about it. That's how I interpret the rules.

But it doesn't mean this Court has to allow that. I think this Court could still put restrictions on what Mr. Spencer could plead in terms of a counterclaim. And if Your Honor decides the motion for summary judgment in our favor and agrees

that the same legal principles applied to the proffered amended counterclaims, then we can still get to the same position we are advocating here today. But definitely that's a procedural detour, Your Honor, that the amended complaint causes.

THE COURT: All right. Let's hear this motion for summary judgment.

MS. PIERCE: Your Honor, before I go to that, can I add one thing? Just in the interest of judicial economy, I hate to keep arguing things and having to file new pleadings to do the same thing, and, you know, if it was added as a counterclaim with the answer to the amended complaint, we could very well end up back here arguing the same thing.

In the opposition to my motion to amend, the defense cited to Jackson v. Bank of Hawaii, 902 Fed 2nd 1385, from 1990. And that case stands for the proposition that the rule regarding amendments should be interpreted with extreme liberality, and it cites to the United States v. Webb case.

There's no prejudice here, there's not bad faith involved. Let's cut to the chase and go forward with the two, the amended complaint, the amended counterclaim, and hear the case on the merits.

THE COURT: Okay. And thank you for that. But again, what -- okay. Let's hear the summary judgment. I think they are connected, but I want to hear arguments. Because we got the Shaws' lawyer here, and they are not even named and a party, so

what's the connection? But Miss Pierce is alluding to a conspiracy that she wants me to liberally amend because of the Shaws. But if I'm wrong, I'll find out. So help me out here.

MR. GLOGOVAC: You're right, Your Honor. I think there is an interconnection. I don't disagree with that. I also agree with Miss Pierce that cutting to the chase makes sense. If this case is disposable now, knowing what we know, there's no reason not to do it just because we have taken a little bit of a procedural side road with the amended complaint filed by Mr. Spencer.

I would say on Miss Capers' behalf, her clients will become parties to this case if an amended pleading is filed, an amended counterclaim is filed. But they are not right now. However, she did on their behalf enter an appearance, and she did join in this, join in the motion, the opposition to the motion to amendment. So if Your Honor wants to hear from her and she has something to add, I would think she should have that opportunity.

THE COURT: Oh, absolutely. Absolutely. Even though the Shaws aren't there, I do want to hear from you, Miss Capers.

So please, Mr. Glogovac.

MR. GLOGOVAC: The motion for summary judgment was filed, Your Honor, initially on behalf of Mary Ellen Kinion by my office on the two claims that were alleged in the original counterclaim filed by the Spencers. And those two claims were malicious prosecution and conspiracy with malicious prosecution

as the underlying tort. They are treated the same, because under Nevada law you can't have a legally sustainable conspiracy claim unless the underlying tort survives. So if there's no malicious prosecution claim that's justiciable here, then the claim goes forward and summary judgment is appropriate.

The arguments that we have made in support of the summary judgment motion of the malicious prosecution claim are two, Your Honor. The first is if you look at the elements of the malicious prosecution claim as explained by the Nevada Supreme Court, as a matter of law the burden that Mr. Spencer has on that claim can't be met here. The Nevada Supreme Court, and it's cited in our papers, Your Honor, has said that a defendant in a malicious prosecution claim must have initiated, caused, or actively participated in a criminal proceeding against the plaintiff.

So just taking Mary Ellen Kinion here, Your Honor, the question would be is there any evidence that Mary Ellen Kinion participated, caused, or actively participated in a criminal proceeding. And the answer is emphatically no. There's no evidence of that. The criminal proceeding itself started with an incident that happened on December 18, 2012, I believe. Pardon me, Your Honor. I'm the newest lawyer to this case. Yeah, December 18, 2012. Helmut Klementi, who is in the courtroom here today, claims that he was physically assaulted and battered by Mr. Spencer while standing in the street out in front of

Mr. Spencer's home, but turned towards his relative's home taking photographs. The Douglas County Sheriff's Office responded to the scene of that incident on December 18, 2012. A Douglas County sheriff's deputy investigated the incident, talked to witnesses, not including Mary Ellen Kinion, talked to witnesses, gathered evidence, and made the decision that he thought a battery had been committed.

And Mr. Klementi at the time was, I want to say 79 years old, maybe 78 years old, Your Honor.

The deputy, in his deposition in this case, said he didn't buy what Mr. Spencer was telling him. Mr. Spencer told the deputy, this is my understanding of what he said, told the deputy that he thought he saw a younger person in a hoodie trying to break into his vehicle in his driveway, and came down in response to that, and then shoved that individual that he said was in a hoodie trying to break into his vehicle, shoved that person down in the street, and it happened to be this elderly gentleman that he shoved down, his neighbor. Sheriff's deputy said he wasn't buying that, after listening to witnesses' statements, after talking to Mr. Spencer and hearing inconsistencies in Mr. Spencer's statements.

So the sheriff's deputy, as he testified to in his deposition, made his own subjective determination that a crime had been committed, and also admitted in his deposition that he never spoke to Mary Ellen Kinion before he reached that

conclusion. He then turned the matter over to Douglas County D.A.'s office, which, without prodding from Mary Ellen Kinion, caused criminal charges to be filed, three of them to be filed against Mr. Spencer.

Now, Mr. Spencer had able criminal defense counsel who obtained an acquittal. But that doesn't mean that somehow, some way, just because there was an acquittal in the criminal case, that anyone who happened to be a witness was contacted by police, was interviewed by the D.A.'s office, somehow got together to pursue a malicious prosecution against Mr. Spencer.

Mary Ellen Kinion again didn't talk to the police officer who responded and made the recommendations to the D.A.'s office. She did talk to the D.A., but that was with the D.A.'s office request. The D.A. actually contacted Miss Kinion at one point. Miss Kinion had information about the incident and let the D.A.'s office know that. The D.A.'s office then reached out to her and was asking her questions.

The actual assistant D.A. that prosecuted the case, Miss Pence, as I understand it, in the process of that conversation it was stated by Miss Kinion, well, maybe I should write all of this down so I don't forget. She provided a document that stated the information she knew, and that was provided to the D.A.'s office. That went to trial, but before it did, there was a preliminary hearing. Miss Kinion testified at that, the Klementis testified. These folks just simply went

along with the process that was initiated by events in their neighborhood.

And anybody that's subjected, whether Mr. Spencer was in the right or not and ultimately was acquitted, isn't the question. The question is was there some sort of criminal investigation that was instituted, and did these folks participate as any citizen should. And that's what they did. And to turn around and have them be subjected to a civil tort action for malicious prosecution, when that's what their involvement is, Your Honor, is not the law in this state. And because you can't have a malicious prosecution, you can't have a conspiracy to commit that act. So the summary judgment was based on that in the first instance.

It was also then based, and this is a little more restrictive, on an immunity claim. And that is someone who speaks with the District Attorney's office, testifies at a preliminary hearing, testifies in court, speaks with cops, is immune from liability. If, feature this, that if we have a system where if you decide to do what you should as a citizen, and that's talk to cops, the D.A.'s office, show up in response to a subpoena for court proceedings, you are going to get sued for malicious prosecution if the defendant gets acquitted, that's the exact opposite policy that we want to promote here, Your Honor.

And so for that reason, there is case authority out

there which establishes one who participates in the judicial process in good faith is immune from liability, civil liability. Not just malicious prosecution, but defamation and the whole array of claims that have been alleged here.

There is no evidence that Mary Ellen Kinion or my other clients in this case acted in bad faith. Neighbors sometimes don't get along, and maybe that's what happened here. I don't really know what was underlying all this. But what we do know is an elderly gentleman got shoved to the ground, neighbors of his were witnesses to some extent to some of these events, and they participated with law enforcement.

The case, fortunately for Mr. Spencer, was ultimately in his favor, revolved in his favor. But that doesn't mean we now should have a civil outshoot where these people in the courtroom are sued for malicious prosecution, false light, invasion of privacy, and on and on.

So our position is some cases just come along where you can cut them off, and this is one of them. And to allow a further amended pleading to be filed under these circumstances, subject to the same problems that the original pleading is subject to, really is a waste of this Court's time and the resources of this district. And so our position, bottom line, Your Honor, would be that the motion for summary judgment should be granted, the motion to amend should be denied, and directive should come from this Court that to the extent Mr. Spencer files

an amended pleading in response to the amended complaint filed by Helmut Klementi, that it not include these claims that we are disposing of here today.

That would be our position, Your Honor.

THE COURT: Thank you. Now, Miss Shaw --

MS. CAPERS: Capers.

THE COURT: Miss Capers. I was going to ask you about the Shaws.

MS. CAPERS: Yes, sir.

THE COURT: Miss Capers. Are the Shaws neighbors? Are they witnesses to this incident? What's the Shaw -- tell me.

MS. CAPERS: Primarily --

THE COURT: You have joined in the motion for summary judgment, correct?

MS. CAPERS: No, I did not. I joined in the opposition to amended complaint.

THE COURT: Okay.

MS. CAPERS: Counsel was quite thorough. The only thing I could add -- well, to directly answer your question, all of them live in the neighboring neighborhood. Okay? And the Shaws are in fact associates of the Kinions and the Klementis, but my clients did not observe the incident at all. Again, their participation was brought about by a request from the D.A. as well. So the testimony that was elicited from them was strictly for the criminal lawsuit initiated by the district attorney.

And so for efficiency, even if you allow this claim to proceed, rest assured that the Shaws will be bringing another motion for summary judgment based upon the same premises that counsel has alleged here, because the facts are the same. The facts that he's espoused to support the granting of the motion for summary judgment applies to my client.

Miss Pierce states that Mr. Routsis isn't an expert, specifically she said in civil law. However, the law doesn't require him to be an expert. He just needs to be competent. And these facts that we have here regarding my clients have been known for over a year. Over a year. So there is no legitimate reason why my clients have not been brought in.

Number two, she says there is no prejudice to my clients. Well, it depends on how you define prejudice. My clients have been living with this specter over their head for over a year trying to wait and see what is going to happen to them. So we do allege that they have been prejudiced.

And again, at the end of the day, there's no legitimate reason for the delay, even if you give them a few months of dealing with the issues with Mr. Swafford, Swaifford -- I apologize. I don't know how to pronounce his name. But at the end of the day, the information concerning my clients was well known over a year ago. And Mr. Routsis may not have been versed in civil law, but if he's going to take on this lawsuit, then it's up to him to find the personnel to assist him or go forward

with the knowledge himself. And just because he didn't know what he was doing should not be held against my clients.

THE COURT: Thank you. Miss Pierce or, Mr. Routsis or Miss Pierce.

MS. PIERCE: Thank you, Your Honor. It's alleged that Miss Kinion was simply responding to things. The reality is the charge that was made, the criminal charge that was brought against Mr. Spencer was a misdemeanor battery. It then got amended and changed to felony charges, including allegations of elder abuse, and those charges were procured as a direct result of Miss Kinion, among others, contacting the D.A.'s office. She was not a witness. She was not questioned by the police. She on her own reached out to the D.A. and said oh, I have all this information. And a lot of things she claimed were things that she was not a witness to. So she made allegations without facts.

The additional charges are different than the initial. That is procuring -- procuring charges, procuring criminal charges. The fact that there was one misdemeanor doesn't excuse the change that resulted as a result of her actions.

The immunity that's talked about here is a qualified privilege. It's not absolute immunity. NRS 41.637 defines immunity as a good faith communication, truthful, or made without knowledge of its falsehood. The facts show that there were multiple false representations by Miss Kinion in an attempt to get additional charges against Mr. Spencer. And those therefore

are not privileged.

The qualified or conditional privilege which we are talking about, which is cited in the motion on Circus Circus and Sahara Gaming, are cases of defamation. And again, those are cases where defamatory statements made in good faith on a subject matter in which the person communicating has an interest or in which he has a right or a duty.

Now, Miss Kinion had no interest in this case. She had no right or a duty to say the things that she did, and the statements were not made in good faith, because they were not true. The malice comes in, malice by definition is a statement made with the knowledge that it's false or there's reckless disregard for the truth. And the record will show that Miss Kinion was originally scheduled to be a witness in the criminal case, but because the D.A. found out that she had misrepresented things, she wasn't called as a witness at the time of trial.

THE COURT: You know this?

MS. PIERCE: I apologize, Your Honor. There's so many people in this case, that mixed that. And I apologize, and I will retract that statement.

But in the statements that she made in trial there were dishonest statements made. And that's not privilege.

In addition, there were statements made to Mr. Spencer's employer with an attempt to damage him in his business. And those were dishonest statements.

THE COURT: By Kinion?

MS. PIERCE: Among others, yes, Your Honor. And those are not privileged, and those were defamatory, they were done with the specific intent to cause him to lose his job.

The other thing I would say, Your Honor, is that there are parties who have joined in the motion for summary judgment, but NRCP 56C requires that each party set forward each fact material to the disposition of the motion which the party claims is or is not genuinely an issue. And citing to particular portions of pleadings, affidavits, depositions, interrogatories, answers, admissions, or other evidence. There are a number of allegations made in the motion for summary judgment for which there is no evidence provided in support. And the additional parties that joined in did not address their participation. The motion simply addresses Miss Kinion. So they have no basis to go forward on the motion.

MR. ROUTSIS: Your Honor, if I may. Your Honor, I was the trial attorney. And the representations made by counsel, certainly if he could prove that to a jury, he should win a jury trial. But when counsel articulates to this Court what happened, what I had said at one of the depositions, what I will get into now, is I don't think anybody has taken the time to read the jury trial transcripts.

Here's what happened, Judge. They arrested my client for a misdemeanor battery originally that evening.

THE COURT: They, Douglas County.

MR. ROUTSIS: Douglas County Sheriff. Maria Pence was the prosecutor at the time. She's the one that prosecuted the case. Pending the original filing of a misdemeanor battery, that was escalated to substantial bodily injury, which would have been a felony on its own, they filed significant charges of elderly abuse, a pattern of behavior. And these two separate, the elderly abuse charges was a direct result of Mary Ellen Kinion making allegations that she had been an eyewitness, and I believe, I forget, I think it was in December, that she was an eyewitness to Jeff Spencer taking a giant snowplow, of which he was employed, driving down the street, committing a battery, assault with a snowplow on Mr. Egon Klementi, who was in his driveway. Now, this by definition is malicious prosecution.

Here's what the evidence showed at trial, Judge. We an investigator take pictures from her driveway, presented evidence that it was factually impossible on that day to see what she claims to have saw. The police officer testified under oath that he was called out, there was a telephone call made, here is the conspiracy, Egon Klementi claims that he was assaulted by Jeff Spencer on a snowplow that day. The police officer came out and said there was no debris consistent with his claim, there was insufficient evidence to file a police report. I didn't file a police report, I did not write a police report. That incident, the evidence established at trial, never occurred.

Now, Mary Ellen Kinion said she called the police prior to having any conversation with Egon Klementi. The evidence establishes, and I guess this would be one of the foundations of conspiracy and malicious prosecution, the evidence established that Egon Klementi had contact with Mary Ellen Kinion. And it's our belief, and I forget how it was laid out now, he had called her, and then she made a call claiming to be an eyewitness.

Now, how can I be simple here? The evidence on that date established that there was a battery according to Egon Klementi. Mary Ellen Kinion, the evidence I think is unequivocal, was not a witness. She interjected herself that she was an eyewitness when it was impossible to be a witness.

There is another allegation of an alleged battery that occurred in the month of May where the police were called out by the Spencers. The police contacted the Klementis. The Klementis were told to stop harassing the Spencers and taking photographs of the Spencers. Later on after that date the Klementis claim that Jeff threatened a battery on them that date. When the police went out there and spoke to them, they never mentioned any evidence of a battery. These were two separate incidents that ended up causing an elderly abuse enhancement in the case.

Mary Ellen Kinion wrote a letter and interjected herself in the case with Maria Pence, claiming that she was a witness to numerous events that she was not a witness to. Mary Ellen Kinion, regarding the one significant snowplow incident,

and it's very hard to articulate this to the Court, was a central piece of our trial, in that they were alleging that my client drove a snowplow on a day where there was very little snow. We had video of it. Mr. Klementi said that he sped up as he was coming down the street.

Now, Mary Ellen Kinion's house is about 300 yards on the same street. The plow is giant. We took pictures of the plow from the back end. If Mary Ellen Kinion was located where she said she was located, there's virtually impossible that she would be able to see snow any coming off the blade in Mr. Klementi's driveway. She testified she saw it.

We put up the video pictures, big, giant pictures, at trial. I asked her how possibly could you see that Jeff assaulted this man with snow, ice, and debris if you can't see the snowplow? And I asked her a question at trial, do you have X-ray vision? And --

THE COURT: What was her answer?

MR. ROUTSIS: I forget her exact answer to that. But here's what happened, Judge, is this allegation, she could not have called the sheriff and been a witness to something she never saw. She waited over an hour before she made the call. She called the police an hour later and said I witnessed Mr. Spencer assault my neighbor with a snowplow, I believe it was an hour and 45 minutes later, hour and 20 minutes later. During that period, it is our, and I believe we have the evidence by the admission of

Egon Klementi that he had contacted her and conspired with her to make her a witness to something she could not have seen.

And the jury clearly understood that. Because if they felt Jeff battered this man with a snowplow, they would have convicted him in a second.

She could not have seen it. She calls an hour and 20 minutes later and says to the police my, Jeff Spencer is a snowplow driver, and he assaulted a man with a snowplow with ice and debris.

I asked the police officer was there any evidence Egon said snow came flying at him, he was in his driveway. There was no evidence of snow, debris, there was very little snow on the road. With the video evidence we established, the officer admitted, I said officer, you have a duty to write a report in the case if there's any evidence. That's correct. If you believe there's, if you believe there's a crime, you forward it to the D.A. or make an arrest. That's correct. You went out there. Was there any physical evidence consistent with a battery of debris and snow in Egon's driveway? No, there was not. Was there any evidence even sufficient to write a report in this case? No, there was not.

Now, this was clearly critical, critical evidence at this trial. This made this case, and this was one of the counts that made this case an elderly abuse pattern of behavior.

Miss Kinion, we submit to the Court, that's a question

for the jury. If counsel feels confident that they can win the case, then win your case. But I'll tell this Court right now I feel very confident that if we go to a civil trial, just like they believed me in the criminal trial, they will find Miss Kinion wrote a letter, she injected herself into the case on multiple counts, she was not a witness, she fabricated evidence, she lied under oath, and she testified to acts that never occurred, were impossible, by the police officer who will testify that it was, I had no evidence, not even enough to write a report. And that's just one act.

She also wrote letters to Jeff's bosses trying to get him fired from his job, defaming his name. She wrote a letter to the D.A. that we provided, that the other side has. The letter to the D.A. was critical, because when I started the negotiations with Maria Pence, she started hitting me with these arguments, well, the neighbors in this case say your clients are monsters. And I put on 15 character witnesses in the case. I knew when I started talking to all the other neighbors about these people that the Spencers were loved in that neighborhood. They won the case on good character evidence.

And why that's important is the attorney today never read, I don't believe he's ever read a transcript. So when he says that Miss Klementi did not initiate, cause, or participate in getting charges enhanced, that's completely untrue. This was originally a misdemeanor. And without reservation or hesitation

Maria Pence escalated these charges based on statements in the neighborhood from people that were not witnesses.

Now, we provided a letter, and I think you cited that letter. Miss Kinion, did you cite the letter to the Court?

MS. PIERCE: Yes.

MR. ROUTSIS: That letter, she inserts herself into situations. She was not a witness to any of these prior incidents.

And then, Judge, the other incident is in May. And I want to be simple and clear on this. My client was building a fence. He had been, in his feelings, constantly harassed from Egon Klementi, would come by and take pictures, take pictures. They had young men, friends working on their property. Egon Klementi had been on his property in the past taking pictures. They got tired of it. Egon Klementi walked down the street that day. Mr. Spencer said why do you keep invading our privacy? You keep taking pictures. Why do you do, please stop doing that. They called the police. Mrs. Spencer was so upset she called the police. The police came over. They said these people keep taking pictures, invading our privacy.

Judge, it is eerie, if you watch the videotape, what these people were doing. They drive home, the Klementis are out there taking pictures. I have talked to friends of the Spencers. Unnerving. I mean making their life miserable, complaint after complaint for de minimis violations to ruin these people's lives.

But one of the counts that the D.A. felt was compelling and was a basis for elderly abuse is on that date, and she was unaware of the facts, Maria Pence said well, your client assaulted Mr. Klementi and threatened to batter him that day. Well, at trial here's what the facts were. The police officer testified the Spencers call the police, they said he keeps coming on our property, we have video, he's taking picture, they are invading our privacy. The police officer went and knocked on the Klementis' door, said look, the Spencers have made complaints, are you taking pictures? If you do it again, you can't do it anymore. Okay, we won't do it. The police officer leaves.

Trial begins. All of a sudden the testimony is that Jeff Spencer assaulted him that day. Egon Klementi testifies under oath, Elfriede Klementi corroborates it, that when the police came over that day, I asked her why did she tell the police, if your husband was assaulted that day, the police knocked on the door, they accused you of taking pictures, you are saying your husband was assaulted 30 minutes prior. But you never told the police. Why? Well, we don't do things like that. What do you mean you don't do things like that? We don't complain. This is the examination, the testimony. And I told the jury in opening argument, when you hear the testimony of these people, it is eerie.

I said Miss Klementi, and Egon, you make a complaint if they start their car in the morning. Actually he was originally

furious because he smelled diesel fuel. You complain if their fencepost is two inches too high. You expect us to believe, you know, ladies and gentlemen, you know, at the closing, they are now saying elderly abuse, that he assaulted this man on a May day, when they called the police, and the Klementis never mentioned it.

In the letter from Miss Kinion, and I may be incorrect, but I believe she said, quote, there was an assault on that May day. And it certainly implies she was a witness to that assault. And it had an effect on the prosecution that filed elderly abuse charges.

Can you corroborate that?

But she wrote a letter listing counts that elevated this case from what was a battery, a simple battery.

Now, the underlying crime in this case was -- Jeff threatened to punch Egon in the face. This is a letter that by definition, I submit to counsel, is an admission of malicious prosecution. She has intervened to escalate charges against these people. Can you imagine being accused of elderly abuse when everybody in the neighborhood loves you? She's writing a letter, you read the letter, she wasn't a witness to anything that she alleges. The jury found that. Now, I believe that. Impossible.

But she was certainly not a witness to this event. Jeff threatened to punch, Jeff accosted Egon in the street and

yelled at him about coming on his property and taking pictures. Marilyn and Janet Wells, a neighbor, joined him. Jeff threatened to punch Egon in the face. The same day Marilyn and Jeff made a complaint that Egon was harassing him.

I can tell you that these charges were escalated when Maria Pence turned, when I thought I could get the case dismissed, because this is one of the most bizarre cases you'll have run across, Judge. The Klementis were taking pictures, they come all the time taking pictures, even after the Spencers asked them not to. The night in question there had been, we put on evidence of tremendous amounts of vehicular burglaries in the neighborhood. Mr. Spencer was on his deck that night. It was very, very dark. We have video. Mr. Klementi is out on the street right next to his car, Jeff is on the upper deck. Helmut Klementi admits Jeff asked him who are you, what are you doing next to my car, and he didn't answer. He said what are you doing? Jeff ran down on the street.

The reason, the jury instruction that won the case was, I got Judge Gibbons to grant a jury instruction on a civil arrest. And I asked Mr. Klementi, why didn't you identify yourself when Mr. Klementi asked you who are you, what are you doing. You are right next to his property, you are next to his truck. And then he started walking away, and Jeff ran out and ran into him, and he fell down. And Jeff was like in shock. And that was the event.

But a lot went into that. A lot of, a lot went into this man having to go to trial for two weeks on aggravated charges where, and I'll briefly address the Shaws. She's here, she wants to talk about a summary judgment motion. This is a jury trial issue. And I feel very comfortable that we will win the jury trial, because the conduct of Miss Kinion in her letter interjecting herself, I can tell the Court, did have an effect, was responsible for charges being filed. I was there. I saw the evidence, I saw the testimony. It aggravated this case to elderly abuse. It made this case a very, very serious case. She was not a witness.

I submit that if counsel is good trial counsel, which I'm sure he is, then you could prove she was an eyewitness on December 18 when Jeff Spencer was accused of felony assault with a snowplow that factually was impossible. The cop corroborates that.

Judge, I can tell you from being part of the trial that these neighbors were involved in conduct that, if the jury believes, they will get a very big judgment. And I believe they should, and I'll tell you why. This man had to go to trial. He's gotten ill, he doesn't sleep. They painted a picture of this man that is entirely untrue. And they interjected facts into the case as though they were witnesses. They were not. That's the definition of malicious.

There's no good faith in this case. We submit that she

did not call the police because she saw. She called the police, and we will establish by clear and convincing evidence, because she was in conversations with the Klementis, and we believe that he clearly asked her to be a witness in the case. That explains the hour and 20 minute delay.

And clearly on an issue for summary judgment I think the simplicity is what's just, what's right, and what is fair. We have a case, and I think we will win the case, and I think we can prove the case. All the arguments he made were very eloquent, but the problem is the foundation for them is not true. They did initiate, they did cause, they did participate. There was no good faith.

I'll submit it on that.

THE COURT: Any comment?

MR. GLOGOVAC: I'll try to be brief, Your Honor, and try to refrain from being overly glib.

The first thing I want to say is I'm glad my clients were here today so that Your Honor could see this is a real rogues gallery of malicious prosecuting folks here out to harm Mr. Spencer and his life and subject him to criminal proceedings. That's number one.

Secondly, Mr. Routsis is a capable criminal defense attorney, so he well knows that his closing arguments and his opening statements, as he just delivered here, are not only not evidence in the criminal case he defended, they are certainly not

evidence here, Your Honor. Also, he should well know that vouching for the credibility and the merit of his case has no weight and should in no way influence this Court as to what should be done on the motion for summary judgment.

Finally, more directly to the merits, Your Honor, all of the things that Mr. Routsis said are his factual allegations. As you notice, many times he said there were allegations of, and we believe, and I contend, and I can tell you for certain. That's just all Mr. Routsis saying that. But what isn't in front of this Court is the one critical thing that he needs, and that is something from the D.A.'s office that says the reason that we charged Jeff Spencer with these additional things is because what Mary Ellen Klementi told us. And they don't have that.

This isn't getting past a motion to dismiss now where because they alleged it, they get to go forward. This was a motion for summary judgment on the malicious prosecution claim. And if they wanted to establish that the D.A.'s office prosecuted the case the way it did because of what Mary Ellen Klementi said, then they should have provided evidence, admissible evidence of that.

The letter that he was reading from was just handed to me for the first time today. I don't believe it's in the Court's file. There have been some problems on their side in reconstructing Mr. Routsis' file, and they are trying to do that. But even if you can say there's in here that Mary Ellen Kinion

said that was proven or not believed by the jury in the criminal trial, this letter was still prepared and provided to the D.A. by a person who is a witness to a criminal case.

So the fact of the matter is that Mary Ellen Kinion and these individuals aren't the ones that initiated the criminal prosecution against Mr. Spencer, and there's no credible evidence that they are the ones that enlarged it, accelerated it, added depth to it. There's no evidence of that. There's just Mr. Routsis' arguments and allegations that that's what happened.

Now, the one thing that I heard from Miss Pierce that I think should give all of a little bit of pause is, she mentioned that there were statements to the employer that were made by my clients, and that the allegation is that those statements were made to the employer to try to harm him economically and cause him to lose his job. Those things weren't alleged in the original counterclaim. The original counterclaim focused in on the criminal proceedings. It didn't focus on, nor alleges malicious prosecution and conspiracy to commit malicious prosecution. That's all the original counterclaim alleged.

Now, in the amended counterclaim that's been proffered, there are allegations that communications were made by my clients to KGID, the employer -- well, my understanding is Mr. Spencer worked for a contractor who provided snow clearance or snow clearing services to KGID up at the lake. That's my understanding. To the extent that there were any communications

with the employer, that is new stuff, and it could be possible for this Court, in fashioning a remedy here today, to say that any counterclaim that is permitted to be filed by Mr. Spencer can address those private types of concerns, but anything that goes to this allegation that somehow some way Mr. Spencer was subjected to the criminal prosecution that he was subjected to because of what my clients did should be resolved today.

A motion for summary judgment, again, was filed on that. And there is not admissible evidence in the record that establishes, there's nothing in the record that establishes that the D.A.'s office charged the case the way it did or amended charges based upon what my clients did. And beyond that, there is no evidence of malice.

Now, I understand that Mr. Spencer believes, and his counsel believes, that things were said by my clients that weren't accepted by the jury in the criminal court case, and he's upset about that. I can understand that. But that doesn't mean in any sense that my clients acted in a frame of mind of malice. There is no evidence of bad faith. Cross-examination by Mr. Routsis that gets a jury to believe a witness was not credible, and therefore they don't buy that person's testimony doesn't equate to bad faith. And that's essentially what he's arguing. He's reliving a nice result for himself in which he convinced a jury certain witnesses aren't to be believed. That's fine. We congratulate him for that, Mr. Spencer thanks him for

that. But that doesn't mean my clients somehow some way now have to face claims that they acted in bad faith. There's no evidence of that.

Again, this is a summary judgment proceeding. The fact that they have made allegations that they believe they will win, it doesn't matter. They haven't properly opposed, and they haven't substantively opposed the motion.

So I believe the motion for summary judgment on the original counterclaim should be granted.

This Court has pointed out that there's an amended complaint by Helmut Klementi pending that gets to be answered by Mr. Spencer. If he wants to add counterclaims in that, it should be limited to private communications only. Anything that ties into the process, the criminal process, however that claim is going to be characterized, whether it's characterized as malicious prosecution, intentional infliction of emotional distress, anything else relative to communications by my clients with the government, law enforcement, the prosecutor's office, those claims should be dismissed -- well, not allowed under the amended counterclaim, Your Honor.

That would be our submission.

THE COURT: Miss Capers, any comment?

MS. CAPERS: I don't have anything to add.

MS. PIERCE: Your Honor, may I have a minute in response?

The opposition to the motion for summary judgment, Exhibit 1 was the criminal complaint that was originally filed for a misdemeanor count of battery. Exhibit 2 was an amended information filed May 9 with a felony count of abuse and two misdemeanor, gross misdemeanor counts of abuse of Egon and Elfriede Klementi. In between those two times is this letter which was the subject of the subpoena and the motion that was made to compel the D.A.'s office to produce documents in the record, or documents that they had in the course of the criminal proceeding.

It was recently, before we arrived here today, it was discovered that Mr. Routsis' investigator in the criminal matter had kept a file of some documents which we are going through now to produce in this matter. And some of them were D.A. documents which I provided today. I'd be happy to provide a copy to Your Honor.

THE COURT: Go ahead and mark it for the purposes of this hearing.

MS. PIERCE: And this shows as received by the D.A.'s office on February 22, 2013, in between the time of the original simple misdemeanor battery and the increase of charges to felony and gross misdemeanors. And that is a letter from, that Mr. Routsis was talking about, from Mary Ellen Kinion to the D.A. representing things that she was not a witness to.

And the definition of malice, legal definition of

malice is saying something that either you know to be untrue or without a reasonable belief that it's true. To assert yourself in a criminal proceeding where she was not a witness, claimed to be a witness, and say things that were not true is the definition of malice and malicious prosecution. She instigated charges because of her letter.

MR. ROUTSIS: I just want to read one thing, Judge. Here's your case. "When Jeff drove past him," this is the date that she alleged an assault and battery that never happened, and we believe that this is by definition malicious prosecution. "When Jeff drove past him, he turned the blade on the snowplow to spray Egon with ice and snow. Egon was fortunately not hurt."

This was reported, and she's saying she was a witness to that. We submit that this is a jury question, because we submit this is malicious prosecution, it elevated the charges.

And very briefly, Judge. When, I don't know if he's ever been a criminal defense or prosecutor, but to say that our standard is to show that we need a district attorney to give a statement admitting the conduct of Mary Ellen Kinion caused this specific charge to be filed, you'd never have malicious prosecution. But if we come forward and say this man was prosecuted, and we can show that it was malicious, and the facts that were interjected by Mary Ellen Kinion, among others, was untruthful and elevated the charges, I don't need the D.A. The D.A. may not know exactly why they amended. They may have

amended because of that, they didn't like somebody else. But our duty was to show it was malicious and it was untrue and the charges were escalated as a result of that, and I think we have met all three.

MS. PIERCE: Numerous exhibits that were attached to my opposition, Your Honor, were quotes from sections from the trial transcript. And my Exhibit 4 shows that Miss Kinion wrote the deputy D.A. And the purpose, her stated purpose was, quote, to try and get her to prosecute Mr. Spencer. And she admitted that she, the D.A. had not asked her to write the letter.

So by her own testimony in the trial, she admitted she inserted herself into this legal proceeding for the specific purpose of procuring charges against Mr. Spencer. And other places in the transcript which were quoted in here show that she was stating as facts in that letter things that were not facts, which by definition is malice and grounds for malicious prosecution.

MR. GLOGOVAC: Your Honor, you are rubbing your hands, so I hesitate to stand up and talk further. But since it is our burden here, I just wanted to point one thing out.

If you look at the Exhibit 1 that Miss Pierce pointed out, the original criminal complaint was filed January 16, 2013. The amended information with more serious charges was filed May 19, 2013. And the amended information contains a witness list, and Mary Ellen Kinion's name is not on the witness list. This is

funny business about how they are timing the letter and the amended information. If Mary Ellen Kinion was the polestar of this amended information, why isn't she on the witness list?

I mean there's a sense of desperation on this side. I get that. There's just no evidence that actually establishes in response to a motion for summary judgment that my clients prompted the criminal prosecution to move forward in the way it did.

I believe Miss Capers did want to add one thing.

MS. CAPERS: I just wanted to add one thing. I was in the situation not too long ago in a trial, and I pose the question to the judge: So if you allow this to go forward based upon their premise that there was an original complaint, then the letter from Miss Kinion, and then the charges were elevated, what in essence is going to happen is that you are asking the jurors to speculate as to why there was a change in the complaint.

Now, they want you to believe it's because of her letter. But do you have any evidence with one hundred percent assurance as to why they changed those charges? And because we do not, if you allow it to go to the jurors, again, the only way they can find in their favor is to actually speculate.

So even if we get to trial, they finish their case, guess what, we are going to be asking for a judgment as a matter of law, because there's no evidence presented. We want inferences, inferences based upon a letter that was received by

her and then changed by the D.A.

If my co-counsel has an answer to Mr. Routsis' question, I have been a prosecutor, I have been a criminal defense attorney, but at the end of the day the decision whether or not to go forward, as you know, Your Honor, all rests with the state and that prosecutor.

THE COURT: You know, I really -- I'm going to ask, submitted?

MR. GLOGOVAC: Yes, Your Honor.

THE COURT: Well, you are not involved.

MS. CAPERS: I'm just here.

THE COURT: You are just here. I have seen you sit at the table. I'm pointing to you, Miss Capers.

It's really interesting. If I would have had what Mr. Zaniel got from the D.A. today, this would have been a little bit easier call. I'm not trying to get out of anything, because look at exactly what I'm doing. And by the way, ending my 26th year, this ain't my first rodeo. Okay? So I want to make sure that I'm correct with the decision.

So I'm going to withhold making a call on the motion to amend. I'm going to withhold making a call on the motion for summary judgment until Mr. Zaniel turns the -- well, you got a hard drive, and you got evidence coming from the D.A.

MR. ZANIEL: Yes, Your Honor.

THE COURT: And I will say this. You know, I might

even want to talk to the D.A. Is she still here?

MR. ROUTSIS: She's a defense attorney now. A public defender, I think.

THE COURT: It doesn't matter. I still might want to talk to her. Do you follow me? Because it's important, if you talk about Rule 15, liberal pleading, you know, I should allow the amendment. If you talk about ending this thing, and by the way, I got to say this, this isn't Ferguson, Missouri. Hello. This is Douglas County, Nevada. Gardnerville, Minden, nice, wonderful, wonderful people. I almost ask why are you taking pictures? I don't even want to know. Do you see what I mean? But it's not Ferguson.

And so if I had a tendency to enter anything, I would grant the motion for summary judgment and disallow the motion to amend. But I want to find out if Miss, is it Kinion? Yes. If Miss Kinion was involved. If she's involved, you stuck your nose into something that you shouldn't have if you didn't see it.

So anyway, with that said, I wish everybody happy holidays, Merry Christmas. I'll be politically incorrect and say Merry Christmas, because I want to say Merry Christmas.

And as soon as, you know, follow the protocol.

Mr. Brown, by the same token, I would like to myself, in camera, take a look at the hard drive. What's the difference between the hard drive and the physical evidence, I'll call it.

MR. ZANIEL: Your Honor, the district attorney's office

is going to send over all discoverable material from the trial that we don't know, we don't have a copy of any that. That's the reason for the subpoena. Recently there was some information found, but in the next two weeks, according to the deputy D.A., we should have that entire file. As soon as I get that file, I will disseminate it to all parties. If you would like, I will disseminate it and file it with the Court.

THE COURT: Please. Give it to me.

MR. ZANIEL: In terms of the drive, this is the drive. I believe that there was a request for time prior to and after the event, and I believe that this is the drive that may or may not have that information on it. They have requested the information. We are going to comply with that request.

THE COURT: Well, I'll curl up with it some winter evening.

MR. ZANIEL: Your Honor, as a matter of housekeeping, I don't think anybody's answered the amended complaint. I don't think there's ever been an order granting Helmet Klementi's amended complaint. I don't know if that was a discussion that we had that we would wait for the order to be signed before answering it or not.

But just as a matter of housekeeping, here's an order that grants that amended complaint. I think that probably should be filed, just to keep the record straight, because somehow this case may not end. So as a matter of housekeeping, I think the

order allowing Helmut Klementi to amend his complaint be signed today. The complaint is already on file, so I don't think Mr. Brown would need to file anything again. We will have the defendant, and counterclaimants will have 20 days to file a responsive pleading to that answer.

THE COURT: There's no objection to Mr. Klementi's amended complaint.

MR. BROWN: Your Honor, you granted it at that last hearing we had, and I think this order probably followed that. I think you said go ahead and file it at the time.

THE COURT: Right. And then either re-serve it, and --

MR. ZANIEL: I remember that. I don't need to be re-served.

MR. GLOGOVAC: In light of this, though, Your Honor, I would propose that no party file a responsive pleading to the amended complaint until you have ruled on these motions and you table it for the time being, because it may affect what they get to file. Does that make sense?

THE COURT: I'm not going to do it within 20 days from today, because I won't have it.

MR. GLOGOVAC: That's okay. Your rulings are a cornerstone at this point, and I think the parties should wait.

THE COURT: Let's wait until everybody sees this information from the district attorney before you file responses.

MR. BROWN: Your Honor, one of the things I'd just like

to address, and I completely agree with the rulings, but this case has been around for a while. I want to get this case going. Is there some kind of timeline that we can put on disclosing this information, this new information that's come out? And I don't know if there's, I don't think we talked about any supplemental pleadings or anything, but if there's, or do you just want to see this evidence? I'm just worried about timing. I know my client wants to get this case --

THE COURT: When was it filed? When was the first complaint filed?

MR. ZANIEL: First compliant was filed 12/17/14.

THE COURT: Well, I feel, you know, I feel bad for the parties. But we are not running up against any five-year rule or anything like that.

MR. ZANIEL: Your Honor, the deputy district attorney said he would have what we have requested within two weeks. So I don't know if that helps with timing.

THE COURT: It does.

MR. BROWN: What's the procedure after that, Your Honor?

THE COURT: I want to take a look at it. Because frankly, I will be waiting to supplement the motion to amend or supplement the motion for summary judgment. Do you see what I mean?

MR. BROWN: Understood.

THE COURT: I could set a hearing here six weeks from now. Do you think that would give us enough time if you get it out?

MR. ZANIEL: I think that's a good idea, Your Honor. At that hearing then you will direct either the parties to file a response -- well, I'm going to be filing responsive pleadings either way, but whether their counterclaim can be filed or not.

THE COURT: Yeah, I can make a call. Especially if you get it in two weeks, three weeks, go ahead and supplement. If you don't supplement, go ahead and submit. After you take a look at this information from the D.A, both parties, then submit it. And I will give, I think six weeks, I'll give you two months. But I think six weeks is enough time. But you tell me if it's not.

MR. ROUTSIS: Your Honor, would that be an amended supplemental motion to dismiss the summary judgment motion, from our perspective?

THE COURT: Yes.

MR. ROUTSIS: Very good.

THE COURT: There might be supplements on this side. Because frankly, if there's nothing in there about Kinion, that's district attorney discretion as far as I'm concerned.

MR. ZANIEL: Your Honor, may I approach with the order granting Helmut Klementi's motion to amend complaint?

THE COURT: Yes. I'm going to my calendar, 2017. I'm

going to assign -- this is May of '16. Wow.

Did you understand what I'm saying? This order granting Helmut Klementi's motion for leave to amend complaint is this blank day of May.

MR. ZANIEL: So if you just cross out and put December, Your Honor, based on your rulings today, there will be no responsive pleadings to that until after we meet again on a next hearing date which you are about to announce.

THE COURT: Yes. And Miss Pierce, just so you know, I signed an order today, the 15th of December, to get you in as co-counsel.

MS. PIERCE: Thank you, Your Honor. I received a copy of that today.

THE COURT: All right. Friday, January 27, that's about, yeah, that's about six weeks. Is that all right?

MS. CAPERS: I'm just checking very quickly, Your Honor.

THE COURT: Have the clerk check, too.

MR. BROWN: I'm available, Your Honor.

MR. ZANIEL: Your Honor, I have depositions in Carson City at eleven and at one. Can we have it at three o'clock? Would that be enough time for the Court? Or nine o'clock in the morning, Your Honor. Because I can go here, and then I can go to my depositions.

THE COURT: How about the 30th, Monday the 30th? We

are checking with the court first, John, and then with you. That week?

MR. BROWN: What day, Your Honor? The 30th?

MS. CAPERS: I'm good all day.

MR. GLOGOVAC: That's the week before I coach the Raiders to the Superbowl championship.

MR. ZANIEL: I have a court call, Your Honor, at 10:00 a.m., and that's the only thing on my calendar that day.

THE COURT: Let's do it at 1:30.

MR. GLOGOVAC: On January 30.

THE COURT: Yes.

MR. GLOGOVAC: We had talked about setting the trial. Will we wait to do that?

THE COURT: I want to wait. That's kind of what I meant when I said we are not approaching the five-year rule. So 1:30, January 30. Everybody have pleasant holidays. And I'll see you, weather permitting and God willing, on the 30th.

Thank you very much for the presentation. Both the parties. And Mr. Glogovac, you can pinch hit for me any time. I will say that.

MR. GLOGOVAC: Thank you, Your Honor.

THE COURT: How many times have any of you at these tables go hey, I can't make it, here's the case, would you go in? I bet you it's a little bit more.

(Off the record.)

THE COURT: By the way -- let's go back on the record. Does anybody have any objections for me to call the D.A. that --

MS. CAPERS: I would prefer it.

THE COURT: The then D.A. Anybody?

MR. BROWN: Your Honor, I would prefer it. I spoke to the former prosecutor that was on this case, and I think what you have heard from Miss Capers you will, I think you will be able to confirm that.

MR. ROUTSIS: Yeah, I think.

THE COURT: You can't say no.

MR. ROUTSIS: It can't hurt.

THE COURT: I put you in a position that you can't say no.

Right. I'd want to do it. In other words, I have been a D.A. myself, and I totally understand prosecution discretion. And I just want know for the purpose of the motion and the amendment and the motion. Okay. What's her name?

MR. ROUTSIS: Maria Pence. And can we each propose just one question to ask her?

MR. ZANIEL: Why don't we just have an evidentiary on the issue? Because if it's going to become part of the record, and your decisions will be based on what she says, doesn't that have to be part of the record for appellate issues?

THE COURT: That's probably why I asked you does anybody object. So we might be sooner than the end of January.

Because I'm going to call her and see available dates for her with the law clerk.

MR. BROWN: She's a private defense attorney now, Your Honor.

THE COURT: She's here in Douglas County?

MR. ROUTSIS: She's on the alternates public defender's list here in Minden.

THE COURT: Okay. Thanks.

(3:15 p.m., proceedings concluded.)

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RECEIVED
JAN 30 2017
Douglas County
District Court Clerk

FILED
2017 JAN 30 PM 1:38
BOBBIE R. WILLIAMS
CLERK
BY DEPUTY

CASE NO. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER

Defendant.

_____/

SUPPLEMENTAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIEDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

_____/

Defendant/Counterclaimant JEFFREY D. SPENCER supplements his Opposition to Counter-defendant MARY ELLEN KINION's Motion for Summary Judgment. This supplement incorporates pleadings and papers on file herein, and Points and Authorities, Declarations and Exhibits following hereto. This Supplemental Opposition is to address the letter MARY ELLEN KINION wrote to Deputy DA Pence, admitted in the prior hearing and confirmed by the response to subpoena on the Douglas County District Attorney's Office, and to address in part oral argument by counsel for the various Counterdefendants at the prior hearing on the Motion for Summary Judgment. The Exhibits are identified as "Supplemental Exhibits" following in number the Exhibits of the original Opposition, with a new Exhibit List incorporating both for convenience of the Court.

POINTS AND AUTHORITIES

A. DATES RELEVANT TO CRIMINAL PROSECUTION

01/16/2013	Criminal Complaint, Count 1, misdemeanor battery on a person over 60 years of age, that December 18, 2012, JEFFERY SPENCER struck HELMUT KLEMENTI "in the back and knocked him to the ice covered road". Opposition Exhibit 1.
02/21/2013	Unsolicited letter from MARY ELLEN KINION to Deputy DA Maria Pence. Supplemental Exhibit 8.
02/22/2013	Preliminary Hearing.
05/09/2013	Amended Information: Count 1, felony abuse of an older person by JEFFERY SPENCER resulting in substantial bodily harm of HELMUT KLEMENTI; Count 2, gross misdemeanor abuse of an older person by JEFFERY SPENCER of EGON KLEMENTI by yelling and/or threatening him, and/or using a snowplow to attack him; and, Count 3, gross misdemeanor abuse of an older person by JEFFERY SPENCER of ELFRIEDE KLEMENTI by causing her mental anguish related to actions against EGON KLEMENTI and/or HELMUT KLEMENTI. Opposition Exhibit 2.
09/27/2013	JEFFREY SPENCER was acquitted of all charges with Jury Verdicts of Not Guilty on Counts 1, 2, and 3 after a two week trial. Opposition Exhibit 3.

B. MARY ELLEN KINION'S LETTER TO DEPUTY DA MARIA PENCE

MARY ELLEN KINION admits in her Motion for Summary Judgment that she was not a witness to the December 18, 2012, event which resulted in Mr. SPENCER being originally charged with misdemeanor battery of HELMET KLEMENTI. In February 2013, after Mr. SPENCER was charged with misdemeanor battery, Ms. KINION wrote a letter to Deputy DA Maria Pence, with numerous accusations against Mr. SPENCER going back to May 2012. Supplemental Exhibit 8.

Ms. KINION was not a witness to the December 18, 2012 incident. Ms. KINION testified at trial that **the Deputy DA did not ask her to write the letter**, and she testified **the purpose of her letter was "to try and get her to prosecute Mr. Spencer."** Opposition Exhibits 4 & 6; Supplemental Exhibit 9, Trial Transcript of September 19, 2013, pgs 266-267.

Ms. KINION's allegations against Mr. SPENCER in her unsolicited letter to the Deputy DA included **1)** an alleged threat of physical violence by Mr. SPENCER to EGON KLEMENTI on May 27, 2012; **2)** an alleged assault and battery by "snowplow" of EGON KLEMENTI on December 12, 2012; and, **3)** an alleged assault and battery of HELMET KLEMENTI on December 18, 2012. Supplemental Exhibit 8. The evidence supports that she did witness any of these alleged events.

Following are the three false allegations of Ms. KINION

1. 05/27/2012 - Alleged assault of EGON KLEMENTI

Ms. KINION's Accusation

In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of threatening to punch EGON KLEMENTI in the face on May 27, 2012. This was several months after this alleged May 27, 2012 incident. Supplemental Exhibit 8.

Material Facts

Ms. KINION was not a witness to that alleged assault on May 27, 2012. Supplemental Exhibit 10, Trial Transcript of September 20, 2013, pgs 3-4. The only supposed eyewitness who testified at trial and made this claim was the alleged victim EGON KLEMENTI.

In regard to the alleged assault on May 27, 2012, Mrs. Spencer called 911 to complain about EGON KLEMENTI coming on their property and taking photographs. In response to the 911 call, responding Officer Flagg spoke to EGON KLEMENTI to advise him of the complaint and warn him that if he went on the Spencers' property he would be subject to arrest for trespassing. EGON KLEMENTI made no statement to the Officer about any alleged assault by Mr. SPENCER that day. Opposition, Exhibit 4.

This allegation was one basis of the amended and additional charges of elderly abuse against Mr. SPENCER of which he was acquitted.

Conclusion

Mr. SPENCER asserts this alleged crime never occurred, as evidenced by EGON KLEMENTI making no statement of any such assault to the Officer who responded to the call by Mrs. Spencer that day. This is a material issue of disputed fact for a jury as to malicious prosecution.

Mr. SPENCER also asserts that the timing of the letter to the Deputy DA including this accusation, and the totality of the circumstances, support a conspiracy to fabricate this crime between EGON KLEMENTI and MARY ELLEN KINION. These are material issues of disputed facts for a jury as to conspiracy.

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2. 12/12/2012 - Alleged assault and battery of EGON KLEMENTI with a snow plow

Ms. KINION's Accusation

In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of assaulting and battering EGON KLEMENTI with a snowplow on December 12, 2012. She alleged Mr. SPENCER drove by her with a "big grin" on his face, picking up old snow and road debris with the plow which he then propelled onto EGON KLEMENTI in his driveway. She claimed she called EGON KLEMENTI and then 911 to report this. Supplemental Exhibit 8.

Ms. KINION made the same allegations under oath at Mr. SPENCER's criminal trial, that on December 12, 2012, she saw Mr. SPENCER use his snowplow to assault and batter EGON KLEMENTI. Opposition Exhibit 4; Supplemental Exhibit 9, Trial Transcript of September 19, 2013, pgs 256, 261-264.

In Ms. KINION's Motion, she claims under penalty of perjury: 1) she "immediately called" EGON KLEMENTI, and then "later" called 911 to advise she was a witness to the assault and battery with a snowplow; 2) she "thinks" she saw Mr. SPENCER driving that snowplow; and 3) she did not make a written statement of this accusation.

Facts

Contrary to her statement under penalty of perjury in her Motion, Ms. KINION did make a written statement of this accusation by her unsolicited letter to Deputy DA Pence. Supplemental Exhibit 8.

December 12, 2012, Sheriff Officer Sanchez responded to a 911 call from EGON KLEMENTI. The Officer investigated and found no evidence of a crime, so he did not even write a report. Opposition Exhibit 4.

The cross-examination of Ms. KINION at trial cast great doubt on whether Ms. KINION could have seen the alleged snowplow attack on EGON KLEMENTI as she described it, based on the positions where she was standing at her house and where EGON KLEMENTI was standing in his driveway. The cross-examination of Ms. KINION at trial established that the size and the shape of the snowplow would have blocked any view of the snowplow blade. Opposition Exhibit 4; Supplemental Exhibit 10, Trial Transcript of September 20, 2013, pgs 13-22, 38-39.

Ms. KINION's letter under penalty of perjury and sworn trial testimony that she saw Mr. SPENCER driving the snowplow with a "big grin" on his face suggests an intentional malicious act by Mr. SPENCER against EGON KLEMENTI. This is in direct conflict with her Motion, also made under penalty of perjury, that she "thinks" it was Mr. SPENCER driving the snowplow. Ms. KINION's sworn statements are contradictory.

Ms. KINION's sworn testimony was also in direct conflict with EGON KLEMENTI, who testified under oath he called Ms. KINION, not the other way around. Opposition Exhibit 5. Further, Ms. KINION testified she did not call 911 until after she had her lunch, over an hour after she claimed to have witnessed this assault and battery on her elderly neighbor. Opposition Exhibit 4. It is only reasonable to conclude that EGON KLEMENTI called Ms. KINION to create a "witness" for him of this alleged assault and battery, and she complied.

This allegation was one basis of the amended and additional charges of elderly abuse against Mr. SPENCER of which he was acquitted.

Conclusion

The evidence supports this alleged assault and battery with a snowplow never occurred, as found by the investigating Officer on the date of the alleged crime. Ms. KINION was the only corroborating witness to the alleged snowplow assault and battery. The evidence shows Ms. KINION's own sworn statements in trial, to support the added and enhanced charges of elderly abuse, are shockingly amended in her Motion when she now says she does not even know if it was Mr. SPENCER driving the snowplow! The facts of Ms. KINION's false testimony at trial are facts to be heard by a jury as to malicious prosecution.

The evidence shows Ms. KINION's sworn statement that she called EGON KLEMENTI immediately, are in direct conflict with EGON KLEMENTI's sworn statement that he called her. The evidence shows that her delay of over an hour in calling 911 is not reasonable in the face of her allegations, but rather supports she was not a witness at all to a crime which never occurred. Further this is all evidence of her lack of credibility. In addition, evidence of the timing of the letter to the Deputy DA which included this accusation, and the totality of the circumstances support a conspiracy to fabricate this crime between EGON KLEMENTI and MARY ELLEN KINION. These

are material issues of fact for a jury as to conspiracy.

3. 12/18/2012 - Alleged battery of HELMET KLEMENTI

Ms. KINION's Accusation

In her unsolicited letter to Deputy DA Pence, referring to the misdemeanor battery charge of December 18, 2012, Ms. KINION accused Mr. SPENCER of punching HELMET KLEMENTI "in the chest so hard that he landed on his back and couldn't get up." Supplemental Exhibit 8.

Facts

Ms. KINION in her Motion under penalty of perjury admits she did not see any alleged assault and battery of HELMET KLEMENTI on December 18, 2012, and she did not speak to the investigating Officer.

HELMET KLEMENTI was not "punched" in the chest. Mr. SPENCER and HELMET KLEMENTI collided with each other on an icy street when HELMET KLEMENTI suddenly turned and walked toward Mr. SPENCER who had been pursuing him to make a citizen's arrest. Supplemental Exhibit 11, CD video of the collision.

This allegation was one basis of the amended and additional charges of elderly abuse against Mr. SPENCER of which he was acquitted.

Conclusion

Mr. SPENCER asserts that this alleged assault and battery of HELMET KLEMENTI never occurred; what happened was not a civil wrong. The evidence shows Ms. KINION was not a witness to any such alleged crime, and that she inserted herself into this misdemeanor criminal matter for the specific purpose of getting Mr. SPENCER convicted, as she admitted in her trial testimony. By inserting herself into this matter to which she was neither a witness nor party, Ms. KINION's multiple allegations against Mr. SPENCER contributed to additional and amended charges against him, which were false. These are material issues of fact for a jury as to malicious prosecution.

C. MARY ELLEN KINION INSERTED HERSELF WITH MALICE

The evidence shows that Ms. KINION **did not witness** two of the three crimes she alleged, and that, based on the evidence, a jury could reasonably find that the third crime she alleged never even occurred. The evidence shows Ms. KINION **lied under oath at trial**, about what she

supposedly witnessed. The evidence shows she testified under oath **about things that did not happen** as well.

In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of various actions supporting elderly abuse, including deliberately creating berms at her home. Supplemental Exhibit 8. At trial, Ms. KINION testified under oath and admitted she NEVER saw Mr. SPENCER deliberately create a berm in her driveway or in any other driveway. Opposition Exhibit 4. In her Motion she claims under penalty of perjury that on December 12, 2012, she complained to Mr. SPENCER's contract employer about the berm and, as result of her complaint, her driveway was then cleared. Ms. KINION then claims in her Motion that another snowplow, which she "thinks was driven" by Mr. SPENCER put the berm of snow back. Again, Ms. KINION never saw Mr. SPENCER deliberately create a berm in her driveway or in any other driveway. Opposition Exhibit 4.

The alleged May 27, 2012, assault of EGON KLEMENTI, the alleged deliberate berms in selected driveways during the Winter of 2012 which allegedly trapped EGON and ELFRIEDE KLEMENTI in their home, and the alleged December 12, 2012, snowplow assault and battery of EGON KLEMENTI were **only** admissible at trial based on the added elderly abuse charges, otherwise they would have been "prior bad acts" and inadmissable. Ms. KINION did not witness the alleged assault of May 27, 2012. Ms. KINION was the only **non-victim witness** to testify to the alleged snowplow assault and battery of EGON KLEMENTI, and her testimony at trial is an admitted false identification of Mr. SPENCER as the driver of the snowplow, for she has now in her Motion admitted she did not even see Mr. SPENCER as the driver.

In addition to Ms. KINION trying to get Mr. SPENCER falsely convicted of criminal charges, she tried to get him fired from his job, and to destroy his reputation.

Ms. KINION called Mr. SPENCER's employer trying **to get him fired** from his job. Opposition Exhibit 6. Ms. KINION admits in her Motion that on December 18, 2012, she attended a KGID meeting and claimed she had seen the alleged attack on EGON KLEMENTI of December 12, 2012, which is disputed for reasons set forth above. Further, at that December 18, 2012, KGID meeting, Ms. KINION claimed that Mr. SPENCER was deliberately creating high berms, which was

directly contradicted by her trial testimony and her Motion statement under penalty of perjury, in which she admits she never actually saw Mr. SPENCER create any berms. Mr. SPENCER assets that both accusations were lies.

After criminal charges were filed, HELMUT, EGON and ELFRIEDE KLEMENTI filed for a restraining order against Mr. SPENCER. Ms. KINION, who was **not a party** to that proceeding, wrote an ex-parte letter to Justice of the Peace Judge Glasson who was hearing that matter, trying to get more restrictive orders against Mr. SPENCER. Opposition Exhibit 7.

These other acts are further evidence of Ms. KINION's malice, which is factual matter for a jury.

D. MARY ELLEN KINION HAS NOT MET HER BURDEN OF PROOF

Per NRCP 56(c), a party must set forth each material fact, supported by evidence, which must be undisputed. Yet many material facts set forth by Ms. KINION are disputed, some shown to be unsupported by and contrary to the actual evidence, including conflicting sworn statements, some as testimony in court proceedings, and some in her Motion under penalty of perjury.

1. The Malicious Prosecution Claim Should Go to a Jury

Per *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), the elements of malicious prosecution are:

1) initiating, procuring the institution of, or actively participating in the continuation of a criminal proceeding. In this case Ms. KINION wrote an unsolicited letter to Deputy DA Pence and then testified to the amended and additional charges against Mr. SPENCER for elder abuse.

2) malice, shown by statements made with the knowledge they were false and/or making such statements with a reckless disregard for the truth. In this case, as demonstrated above, Ms. KINION made allegations under oath which were conflicting with other sworn statements made by her and/or by the supposed victim.

Ms. KINION's arguments that communications with the Deputy DA and testimony at trial "would be protected" and that her statements to the police or district attorney are immune from civil liability, are contrary to law. Her cited cases of *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983) and *Sahara Gaming v. Culinary Workers Union*, 115 Nev. 212, 984 P.2d

164 (1999), are cases of defamation, not malicious prosecution. Further, in *Circus Circus* the Supreme Court ruled that:

> A **qualified or conditional privilege** exists where a defamatory statement is made in **good faith** on any subject matter **in which the person communicating has an interest**, or in reference to which he has a **right or a duty**, if it is made to a person with a corresponding interest or duty.

Id. at 62. In this matter, Ms. KINION had no interest, right nor duty, and her dishonesty shows a lack of good faith. She cited to NRS §41.650, but the statute provides immunity **only** for:

> **A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern** is immune from any civil action for claims based upon the communication.

This had nothing to do with the "right to petition" or "free speech". She also cited to NRS §41.637, which defines "good faith communication" as that which is "**truthful or is made without knowledge of its falsehood.**" The evidence shows repeated false representations by Ms. KINION in an effort to get Mr. SPENCER criminally convicted, which failed.

3) termination of the prior criminal proceeding. The criminal proceeding against Mr. SPENCER was terminated by jury verdicts of **Not Guilty** on all charges.

4) damage, which Mr. SPENCER has suffered and will prove in detail at trial.

Ms. KINION has not met her burden of proof for Summary Judgment. Mr. SPENCER has evidence of a factual basis for this claim to be decided by a jury.

2. The Conspiracy Claim Should Go to a Jury

Ms. KINION's Motion argues that a conspiracy claim requires an underlying tort, and if the malicious prosecution claim is struck, the conspiracy claim cannot stand. But, as described above, the malicious prosecution claim has plenty of evidence in support.

Ms. KINION's other argument is that "the idea is outrageous and completely unsupported by the facts." The facts of Ms. KINION inserting herself into a criminal proceeding to which she was neither a party nor a witness, and the conflicting testimony about whether she called EGON KLEMENTI or he called her, are facts from which a jury could conclude that Ms. KINION and EGON KLEMENTI were working in concert to get Mr. SPENCER criminally convicted.

Ms. KINION has not met her burden of proof for Summary Judgment. Mr. SPENCER has

evidence of a factual basis for the conspiracy claim to be decided by a jury.

Conclusion

JEFFERY SPENCER has provided evidence of his claims and demonstrated numerous genuine material issues of fact to support his claims. NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). MARY ELLEN KINION stuck her nose in where it did not belong, falsely testified and accused a man of heinous crimes. She has not met her burden of proof under the law to show no disputed material facts. The Motion for Summary Judgment must be denied.

The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 27th day of January, 2017.

Lynn G. Pierce, Esq., NV State Bar 3567
LYNN G. PIERCE, Attorney at Law, Ltd.
515 Court Street, Ste. 2f
Reno, NV 89501
775-785-9100

Declaration of Lynn G. Pierce, Esq.

Pursuant to NRS §53.045(1), I, Lynn G. Pierce, declare under penalty of perjury, that:

1. I am an attorney licensed to practice law in the states of Nevada and California.
2. I am a attorney for Jeffrey Spencer in the above entitled matter.
3. Supplemental Exhibit 8 is a true and correct copy of a letter from Mary Ellen Kinion to Deputy DA Maria Pence stamped received by the District Attorney on February 22, 2013.
4. Supplemental Exhibits 9 & 10 attached hereto are true and correct copies of transcripts of legal proceedings related to this matter.

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

Executed on the 27th day of January, 2017, in Reno, Nevada.

Lynn G. Pierce, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that I served a true and correct copy of the foregoing pleading by email on January 29, 2017, to be hand-delivered on January 30, 2017, addressed to:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
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Attorneys for Helmut Klementi

Michael A. Pintar, Esq.
Glogovac & Pintar
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Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501
Attorney for Jeffrey D. Spencer

DATED this 29 day of January, 2017.

EXHIBIT LIST

Opposition to Summary Judgment Motion

Exhibit 1	January 16, 2013, Criminal Complaint, Count 1, misdemeanor elderly battery of HELMUT KLEMENTI	2 pages
Exhibit 2	May 9, 2013, Amended Information, Count 1, felony elderly battery of HELMUT KLEMENTI, Counts 2 & 3, gross misdemeanor elderly abuse of EGON & ELFRIEDE KLEMENTI	3 pages
Exhibit 3	September 27, 2013, Executed Jury Verdicts, Not Guilty on Counts 1, 2, and 3	3 pages
Exhibit 4	Portions of Trial Transcript of September 20, 2013, testimony of MARY ELLEN KINION	19 pages
Exhibit 5	Portions of Transcript of Preliminary Hearing of February 22, 2013	8 pages
Exhibit 6	Portions of Trial Transcript of September 18, 2013, testimony of MARY ELLEN KINION	4 pages
Exhibit 7	April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq., TPO attorney for Mr. SPENCER, with forwarded email from MARY ELLEN KINION to the Judge	2 pages

Supplemental Opposition to Summary Judgment Motion

Exhibit 8	February 22, 2013 (stamped date of receipt), letter from MARY ELLEN KINION to Deputy DA Maria Pence	2 pages
Exhibit 9	Portions of Trial Transcript of September 19, 2013, testimony of MARY ELLEN KINION	12 pages
Exhibit 10	Portions of Trial Transcript of September 20, 2013, testimony of MARY ELLEN KINION	17 pages
Exhibit 11	CD video of incident of December 18, 2012	

Exhibit 8

Exhibit 8

D. KLEMENTI

12-25550

RECEIVED
FEB 22 2013
DOUGLAS COUNTY
DISTRICT ATTORNEY

Dear Maria Pence, This is a list of events that I saw and heard about.

Last May Marilyn Spencer told me she won her restraining order against Bruce Taylor but she was mad that Elfie and Egon did not sit on her side of the court room for the event. She sent her lawyer over to ask which side they were on. The Klementis told him they were just spectators. They did not move to the other side where Marilyn had a group of people sitting.

Marilyn and Jeff parked a huge neon painted 18 wheeler truck on to their property. Marilyn came to my house to tell me they had a film of Egon standing at the edge of their property taking pictures of the truck. She said she was going to do something about it. I told her to leave him alone. She also told me they were going to put up a 6 ft fence and didn't want any neighbors complaining.

They were forced to remove the truck. The fence went up and there were complaints issued because the fence created a dangerous intersection.

Jeff accosted Egon in the street and yelled at him about coming on his property and taking pictures. Marilyn and Janet Wells , a neighbor, joined him. Jeff threatened to punch Egon in the face. The same day Marilyn and Jeff made a complaint that Egon was harassing them and insinuated that he was a pervert who took pictures of high school boys with their shirts off on their property. The fence builder had his sons helping him put up the fence. The same week they also tried to get TRPA involved saying the Klementi's did not have permits for work done on their property. They had permits.

Pete and Rowena Shaw made complaints about the fence. Pete was working at the edge of his property when Jeff backed his truck up to him and sat there revving up the engine to cause a cloud of exhaust to cover Pete. He didn't stop until Pete went into his house to get away.

I woke up one morning after it snowed to find a huge ice filled snow berm in front of my driveway. No other neighbor had one, I called KGID . They came and cleared it away and said it was a deliberate act. Later when I was outside I saw Jeff driving the plow truck fast past me with a big grin on his face. Egon was shoveling snow in his driveway. When Jeff drove past him he turned the blade on the snow plow to spray Egon with ice and snow. Egon was fortunately not hurt. This was reported and a KGID manager told us Jeff would not be allowed to snowplow on our street any more.

Jeff was also not allowed to snowplow on Juniper St because he was caught putting huge berms in front of the Taylor's house the year before. Janet Wells said Marilyn bragged to her about how Jeff was going to plow huge berms in front of the Shaw's and Klementi's houses this winter

A few days later Jeff plowed snow from his property and jammed it up against the Klementi's fence and driveway. At a KGID meeting the next night we were told to take pictures of the berms. This is what Helmut was doing later that night when Jeff came up and punched him in the chest so hard that

he landed on his back and couldn't get up. Jeff left him lying in the street in front of the Klementi's house.

Two days later I came home from work to a nasty phone message from Debbie Tilley, someone I had known for twenty years. I found out from Debbie that Marilyn had told her that I was spreading rumors around town about her two teenage sons involvement in car break ins. Marilyn also told her that the klementi's and I wrote a threatening unsigned letter to the Poet's, who live in our neighborhood. It said something bad was going to happen to their son for breaking into cars. I was truly amazed that Marilyn would go this far. It is too crazy.

The day Jeff was charged in court, Dave Bashline and Michelle Grant, friends of the Spencer's, tried to get restraining orders against the Klementi's and myself. I am sure Marilyn was behind this also. I don't think she will ever quit.

I don't care about all the lies as much as I do Helmut getting hurt so badly. I see him a couple of times a week and he is still in a lot of pain and may have lifelong pain issues from his injuries. He is a kind and gentle person.

Thank you,

Mary Ellen Hynion

775-588-6916

Exhibit 9

Exhibit 9

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

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American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 3rd day of June, 2019.

/s Kerry S. Doyle
Kerry S. Doyle

Kerry S. Doyle, Esq.
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Electronically Filed
Jun 03 2019 11:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER,
Appellant,

v.

HELMUT KLEMENTI, EGON KLEMENTI, ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW, and PETER SHAW,

Respondents.

Case No. 77086

APPELLANT'S APPENDIX

VOL. 1

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Answer and Counterclaim	2/3/2015	1	5
Complaint	12/17/2014	1	1
Docket as of April 4, 2019	4/4/2019	7	5
Egon and Elfriede Klementi's Answer to Counterclaim	2/26/2015	1	13
Egon and Elfriede Klementi's Joinder to Mary Ellen Kinion's Motion for Summary Judgment	5/9/2016	1	20
Egon and Elfrieide Klementi's Answer to Amended Counterclaim and Third Party Complaint	3/24/2017	2	23
Elfriede Klementi's Motion for Attorney's Fees and Costs	9/7/2018	7	38
Elfriede Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	65
Elfriede Klementi's Reply in support of Motion for Summary Judgment	6/13/2018	6	92
Helmut Amended Complaint	8/12/2016	1	107
Helmut Answer to Counterclaim	2/23/2015	1	16
Helmut Klementi's Motion for Attorneys' Fees	9/20/2018	7	24
Helmut Klementi's Motion for Summary Judgment	4/12/2018	4	95
Helmut Klementi's Motion for Summary Judgment (cont.)	4/12/2018	5	976
Helmut Klementi's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1102
Helmut Klementi's Verified Memorandum of Costs	9/10/2018	7	1120
Kinion and Elfriede Klementi Reply in support of Motion for Summary Judgment	4/10/2018	4	1174
Kinion Answer to 3rd Party Complaint	3/24/2017	2	1184
Kinion Memorandum of Costs and Disbursements	3/21/2017	2	1199
Kinion Motion for Attorney's Fees and Costs	9/7/2018	7	1202
Klementi's Answer to Amended Counterclaim and Third-Party Complaint	3/7/2018	4	751
Mary Ellen Kinion and Elfriede Klementi's Joinder to the Shaws' Motion for Summary Judgment	3/12/2018	4	771
Mary Ellen Kinion's Answer to Counterclaim	3/23/2015	1	31
Mary Ellen Kinion's Answer to Counterclaim	2/9/2016	1	38
Mary Ellen Kinion's Motion for Attorney's Fees and Costs	3/21/2017	2	45
Mary Ellen Kinion's Motion for Summary Judgment	4/22/2016	1	45

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Mary Ellen Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	93
Mary Ellen Kinion's Reply in Support of Motion for Summary Judgment	6/13/2018	6	120
Motion to Dismiss Egon Klementi	6/22/2018	6	135
Notice of Entry of Order Granting Elfriede Klementi's Motion for Summary Judgment	8/31/2018	7	140
Notice of Entry of Order Granting Helmut Klementi's Motion for Summary Judgment	8/31/2018	7	143
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/26/2017	3	147
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/31/2018	7	150
Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	3/27/2017	3	153
Opposition to Motion for Summary Judgment	5/18/2016	1	172
Opposition to Shaws' Motion for Summary Judgment	3/28/2018	4	231
Order Dismissing Egon Klementi	8/23/2018	6	258
Order Granting Elfriede Klementi's Motion for Summary Judgment	8/29/2018	7	260
Order Granting Helmut Klementi's Motion for Summary Judgment	8/23/2018	7	269
Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/19/2017	3	285
Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/23/2018	7	292
Order Granting Mary Ellen Kinion's Motion for Summary Judgment on Malicious Prosecution	4/3/2017	3	301
Order Granting Rowena and Peter Shaw's Motion for Summary Judgment	8/17/2018	6	306
Order Granting Three Motions for Attorney's Fees and Costs	11/5/2018	7	312
Order re Helmut Motion to Amend Complaint	12/15/2016	1	318
Order Upon Stipulation for Dismissal	10/17/2017	3	319
Reply in support of Mary Ellen Kinion's Motion for Summary Judgment	5/23/2016	1	322

ALPHABETICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Reply in support of Motion for Attorney's Fees and Costs	4/5/2017	3	339
Response to Egon and Elfriede Klementi's Motion for Summary Judgment	6/5/2018	5	345
Response to Egon and Elfriede Klementi's Motion for Summary Judgment (cont.)	6/5/2018	6	404
Response to Helmut Klementi's Motion for Summary Judgment	6/5/2018	6	439
Response to Mary Ellen Kinion's Motion for Summary Judgment	6/5/2018	6	471
Rowena and Peter Shaw's Answer to Amended Counterclaim and Third Party Complaint	7/10/2017	3	531
Shaws' Motion for Summary Judgment	2/26/2018	3	538
Spencer's Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	3/3/2017	2	538
Stipulation for Dismissal with Prejudice	9/12/2017	3	558
Suggestion of Death on the Record	11/16/2017	3	561
Supplemental Opposition to Motion for Summary Judgment	1/30/2017	1	235
Supplemental Opposition to Motion for Summary Judgment (cont.)	1/30/2017	2	251
Transcript of December 15, 2016 Hearing	12/15/2016	1	283
Transcript of January 30, 2017 Hearing	1/30/2017	2	339
Transcript of July 12, 2018 Hearing	7/12/2018	6	479

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Complaint	12/17/2014	1	1
Answer and Counterclaim	2/3/2015	1	5
Helmut Answer to Counterclaim	2/23/2015	1	16
Egon and Elfriede Klementi's Answer to Counterclaim	2/26/2015	1	24
Mary Ellen Kinion's Answer to Counterclaim	3/23/2015	1	31
Mary Ellen Kinion's Answer to Counterclaim	2/9/2016	1	38
Mary Ellen Kinion's Motion for Summary Judgment	4/22/2016	1	45
Egon and Elfriede Klementi's Joinder to Mary Ellen Kinion's Motion for Summary Judgment	5/9/2016	1	93
Opposition to Motion for Summary Judgment	5/18/2016	1	96
Reply in support of Mary Ellen Kinion's Motion for Summary Judgment	5/23/2016	1	155
Helmut Amended Complaint	8/12/2016	1	172
Order re Helmut Motion to Amend Complaint	12/15/2016	1	178
Transcript of December 15, 2016 Hearing	12/15/2016	1	179
Supplemental Opposition to Motion for Summary Judgment	1/30/2017	1	235
Supplemental Opposition to Motion for Summary Judgment (cont.)	1/30/2017	2	251
Transcript of January 30, 2017 Hearing	1/30/2017	2	283
Spencer's Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	3/3/2017	2	423
Kinion Memorandum of Costs and Disbursements	3/21/2017	2	443
Mary Ellen Kinion's Motion for Attorney's Fees and Costs	3/21/2017	2	446
Egon and Elfrieide Klementi's Answer to Amended Counterclaim and Third Party Complaint	3/24/2017	2	471
Kinion Answer to 3rd Party Complaint	3/24/2017	2	486
Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	3/27/2017	3	501
Order Granting Mary Ellen Kinion's Motion for Summary Judgment on Malicious Prosecution	4/3/2017	3	520
Reply in support of Motion for Attorney's Fees and Costs	4/5/2017	3	525
Rowena and Peter Shaw's Answer to Amended Counterclaim and Third Party Complaint	7/10/2017	3	531
Stipulation for Dismissal with Prejudice	9/12/2017	3	538
Order Upon Stipulation for Dismissal	10/17/2017	3	541

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/19/2017	3	544
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Attorney's Fees and Costs	10/26/2017	3	551
Suggestion of Death on the Record	11/16/2017	3	554
Shaws' Motion for Summary Judgment	2/26/2018	3	557
Klementi's Answer to Amended Counterclaim and Third-Party Complaint	3/7/2018	4	751
Mary Ellen Kinion and Elfriede Klementi's Joinder to the Shaws' Motion for Summary Judgment	3/12/2018	4	771
Opposition to Shaws' Motion for Summary Judgment	3/28/2018	4	774
Kinion and Elfriede Klementi Reply in support of Motion for Summary Judgment	4/10/2018	4	801
Helmut Klementi's Motion for Summary Judgment	4/12/2018	4	811
Helmut Klementi's Motion for Summary Judgment (cont.)	4/12/2018	5	976
Elfriede Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	1102
Mary Ellen Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	4/24/2018	5	1129
Response to Egon and Elfriede Klementi's Motion for Summary Judgment	6/5/2018	5	1156
Response to Egon and Elfriede Klementi's Motion for Summary Judgment (cont.)	6/5/2018	6	1215
Response to Helmut Klementi's Motion for Summary Judgment	6/5/2018	6	1250
Response to Mary Ellen Kinion's Motion for Summary Judgment	6/5/2018	6	1282
Elfriede Klementi's Reply in support of Motion for Summary Judgment	6/13/2018	6	1342
Helmut Klementi's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1357
Mary Ellen Kinion's Reply in Support of Motion for Summary Judgment	6/13/2018	6	1375
Motion to Dismiss Egon Klementi	6/22/2018	6	1390
Transcript of July 12, 2018 Hearing	7/12/2018	6	1395

CHRONOLOGICAL INDEX OF APPELLANT'S APPENDIX

Title	Date	Vol.	Page
Order Granting Rowena and Peter Shaw's Motion for Summary Judgment	8/17/2018	6	1457
Order Dismissing Egon Klementi	8/23/2018	6	1463
Order Granting Helmut Klementi's Motion for Summary Judgment	8/23/2018	7	1465
Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/23/2018	7	1481
Order Granting Elfriede Klementi's Motion for Summary Judgment	8/29/2018	7	1490
Notice of Entry of Order Granting Elfriede Klementi's Motion for Summary Judgment	8/31/2018	7	1499
Notice of Entry of Order Granting Helmut Klementi's Motion for Summary Judgment	8/31/2018	7	1502
Notice of Entry of Order Granting Mary Ellen Kinion's Motion for Summary Judgment	8/31/2018	7	1506
Elfriede Klementi's Motion for Attorney's Fees and Costs	9/7/2018	7	1509
Kinion Motion for Attorney's Fees and Costs	9/7/2018	7	1536
Helmut Klementi's Verified Memorandum of Costs	9/10/2018	7	1572
Helmut Klementi's Motion for Attorneys' Fees	9/20/2018	7	1626
Order Granting Three Motions for Attorney's Fees and Costs	11/5/2018	7	1697
Docket as of April 4, 2019	4/4/2019	7	1703

Case No. 14-CV-0268

Dept. No. II

ORIGINAL

DEC 17 2014

Douglas County
District Court Dept. 2

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DOBBY R. WILLIAMS
CLERK
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI, Plaintiff,	Case No.
vs.	Dept. No.
JEFFREY D. SPENCER & DOES 1-5, Defendant	

COMPLAINT

COMES NOW, Plaintiff Helmut Klementi by and through his attorney, Joe M. Laub, Esq. of the Law Firm of Laub & Laub, for his claims against the Defendant, and hereby allege as follows:

JURISDICTION

1. At all times referred to herein, Plaintiff was and is a resident of Stateline, State of Nevada.

2. At all times referred to herein, Defendant Jeffrey D. Spencer, was and is a resident of Stateline, State of Nevada.

3. Defendant Does 1-5 are other possible Defendants unknown to the Plaintiff at this time. The Plaintiff requests leave of this Court to amend the Complaint to insert the true names and capacities of the Does 1-5 when the same have been ascertained, to join such Defendants in this action, and to assert the appropriate charging allegations.

Law Firm of
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
Tel (775) 323-5282
Fax (775) 323-3699

FACTS

4. On or about December 18, 2012, Plaintiff, Helmut Klementi was standing in the street in front of his twin brother's house taking a picture of a large berm of snow.

5. Defendant Jeff Spencer ran up to him, punched him in the chest and sent him flying to the ground where he landed hard on his back.

FIRST CLAIM FOR RELIEF

(Assault and Battery)

6. The Plaintiff realleges each and every allegation contained in paragraphs 1-5, inclusive, as if fully set forth herein.

7. That on or about December 19, 2012 Defendant Jeffrey Spencer physically battered and assaulted Plaintiff Helmut Klementi in a harmful manner without his consent causing him damages in an amount of more than $10,000.00. Further, due to the intentional act of battery Plaintiff Helmut Klementi seeks punitive damages in an amount to be determined at trial.

8. Further, Plaintiff Helmut Klementi has suffered emotional distress due to the battery by Defendant Jeffrey Spencer.

7. As a direct and proximate result of the battery and assault by the Defendant, the Plaintiff has suffered, and will continue to suffer in the future, damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

SECOND CLAIM FOR RELIEF

(Pursuant to NRS41.1395 Damages for Injury or loss suffered by older person)

8. The Plaintiff realleges each and every allegation contained in paragraphs 1-7, inclusive, as if fully set forth herein.

9. Defendant Jeffrey Spencer intentionally or negligently punched Plaintiff Helmut Klementi who was 78 years old at the time of this incident.

10. As a direct and proximate result of the injury inflicted upon him, the Plaintiff has suffered damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

Law Firm of
Lamb & Lamb
630 E. Plumb Lane
Reno, NV 89502
Tel (775)323-5282
Fax (775)323-3699

THIRD CLAIM FOR RELIEF

(Emotional Distress)

11. The Plaintiff realleges each and every allegation contained in paragraphs 1-10, inclusive, as if fully set forth herein.

12. Defendants' conduct was extreme and outrageous with either the intention of, or reckless disregard for, causing emotional distress to the Plaintiff. The Plaintiff suffered severe, extreme emotional distress as the actual, proximate result of defendants' conduct

13. As a result of defendant's extreme and outrageous conduct, the Plaintiff has suffered general damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

FOURTH CLAIM FOR RELIEF

(Punitive Damages Pursuant to NRS 42.005)

14. The Plaintiff realleges each and every allegation contained in paragraphs 1-13, inclusive, as if fully set forth herein.

15. The Defendant has acted with extreme and outrageous conduct by punching Plaintiff Helmut Klementi in the chest. Defendant Jeffrey Spencer has intended to cause harm and injury to the Plaintiff by punching him and therefore has acted with actual malice.

16. As a result of Defendant Jeffrey Spencer's extreme and outrageous behavior the Plaintiff has suffered damages in an amount greater Ten Thousand Dollars ($10,000.00).

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Law Firm of
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
Tel (775) 323-5282
Fax (775) 323-3699

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

1. For general damages in an amount in excess of Ten Thousand Dollars ($10,000.00);
2. For leave of this Court to amend the complaint when the identities of the Does are discovered;
3. For special damages, past and future, according to proof at the time of trial;
4. For Punitive damages in an amount greater than Ten Thousand Dollars ($10,000.00);
5. For the costs of suit, including reasonable attorney's fees; and
6. For such other and further relief as the Court deems just and proper.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 17 day of December, 2014.

The Law Firm of Laub & Laub
Joe M. Laub
Nevada State Bar #3664
Nik C. Palmer
Nevada State Bar #9888
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Attorneys for Defendant

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ORIGINAL

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER & DOES 1-5,

Defendant(s).

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5.

Counterdefendants.

CASE NO. 14-CV-0260

DEPT. NO. II

ANSWER AND COUNTERCLAIMS

ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, JEFFEREY D. SPENCER ("Spencer"), by and through his attorneys, William R. Routsis II. Esq., and Law Offices of William Swafford LLC, submits the following answer to Plaintiff's Complaint:

JURISDICTION

1. The allegation contained in paragraph 1 of Plaintiff's Complaint is admitted.

2. The allegation contained in paragraph 2 of Plaintiff's Complaint is admitted.

3. In response to Paragraph 3 of Plaintiff's Complaint. Defendant states that he is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and therefore denies the same.

FACTS

4. The allegations contained in paragraph 4 of Plaintiff's Complaint are denied.

5. The allegations in paragraph 5 are denied to the extent that they suggest Defendant approached Plaintiff while standing in the road in front of his brother's house, and that Defendant punched Plaintiff in the chest causing Plaintiff to be sent flying to the ground.

FIRST CLAIM FOR RELIEF (ASSAULT AND BATTERY)

6. Answering paragraph 6 of Plaintiff's Complaint, Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.

7. In response to the allegations in paragraph 7 of Plaintiff's Complaint, Defendant states that the allegations contained therein constitute conclusions of law and this require no answer. However, to the extent they are allegations of fact with respect to damages, Defendant denies having caused the complained of damages.

8. The allegations contained in paragraph 8 of Plaintiff's Complaint are denied.

9. The allegations contained in paragraph 9 of Plaintiff's Complaint (incorrectly labeled as paragraph 7) are denied.

SECOND CLAIM FOR RELIEF (DAMAGES UNDER NRS 41.1395)

10. Answering paragraph 10 of Plaintiff's Complaint (incorrectly labeled as paragraph 8) Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.

11. In response to the allegations in paragraph 11 of Plaintiff's Complaint (incorrectly labeled as paragraph 9) to the extent it is alleges that Plaintiff was "negligent" this allegation is a conclusion of law that requires no answer. To the extent that the allegations constitute assertions of fact that Plaintiff punched Defendant, the allegations are denied. To the extent that the allegations assert the age of Plaintiff at the time of the incident complained of. Defendant states that he is without sufficient knowledge or information necessary to for a belief as to the truth or falsity of said allegation.

12. Answering paragraph 12 (incorrectly labeled as paragraph10). Plaintiff's allegations are denied.

THIRD CLAIM FOR RELIEF (EMOTIONAL DISTRESS)

13. Answering paragraph 13 of Plaintiff's Complaint (incorrectly labeled as paragraph 11) Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.

14. The allegations contained in paragraph 14 of Plaintiff's Complaint (incorrectly labeled as paragraph 12) are denied.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint (incorrectly labeled as paragraph 13) are denied.

FOURTH CLAIM FOR RELIEF (PUNITIVE DAMAGES)

16. Answering paragraph 16 of Plaintiff's Complaint (incorrectly labeled as paragraph 14) Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.

17. Answering paragraph 17 of Plaintiff's Complaint (incorrectly labeled as paragraph 15) the allegations contained therein constitute conclusions of law and this require no answer. However, to the extent they are allegations of fact with respect to the intent or motive of Defendant, the allegations are denied.

18. Answering paragraph 18 of Plaintiff's Complaint (incorrectly labeled as paragraph 116) the allegations contained therein constitute conclusions of law and this require no answer. However, to the extent they are allegations of fact with respect to the cause of Plaintiff's alleged damages, the allegations are denied.

PRAYERS FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint, and each purported cause of action contained therein fail to state a claim upon which relief may be granted, and Defendant is entitled to judgment as a matter of law.

2. Plaintiff is not entitled to any damages, and any claim for punitive damages is not warranted and would violate due process.

3. Plaintiff has failed, in whole or in part, to mitigate his alleged damages, if any.

4. Plaintiff's claims are barred because he assumed the risk of his injuries.

5. Plaintiff's claims are barred because Defendant acted, at all times relevant, in good faith, in self-defense, in defense of property or otherwise in the defense of others.

6. Any injuries, loss or damages suffered by Plaintiff were proximately caused by Plaintiff's own carelessness and or negligence, or the carelessness and or negligence of others for which Defendant is not responsible.

7. Plaintiff's claims are barred because no causal relationship exists between any injuries, loss or damages, if any, suffered by Plaintiff and the alleged negligent or wrongful actions, if any, of Defendant.

8. If there was any negligence or other fault proximately causing Plaintiff's alleged injuries, loss or damages, if any, Plaintiff's alleged injuries, losses or damages were proximately caused, in whole or in part, by the acts or omissions of Plaintiff and/or others for which Defendant is not responsible.

9. All affirmative defenses may not have been fully set forth herein. Defendant reserves the right to amend his answer to allege additional affirmative defenses as subsequent investigation warrants pursuant to NRCP 8 and 15.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by virtue of this action and that the same be dismissed with prejudice:

2. That Defendant be awarded attorney fees and costs incurred in the defense of this action: and

3. Such other further relief as the Court may deem just and proper.

COUNTERCLAIMS

Counterclaimant JEFFREY D. SPENCER ("Spencer") brings the following counterclaims against Counterdefendants HELMUT KLEMENTI ("H. Klementi"), EGON KLEMENTI ("E. Klementi") an individual, Elfriede Klementi ("El. Klementi") an individual, MARY ELLEN KINION ("Kinion"), an individual, and unknown individuals hereinafter referred to as DOES 1-10, and allege as follows:

JURISDICTIONAL ALLEGATIONS

1. The District Courts of Nevada have subject matter jurisdiction over this matter because this action concerns issues of Nevada law and all parties are Nevada residents.

2. Counterclaimant Spencer is and was at all times relevant to this Complaint a resident of Stateline, Douglas County, Nevada.

3. Each of the above named Counterdefendants is and was at all times relevant to this Complaint, residents of Stateline, Douglas County, Nevada.

4. Spencer is unaware of the true names and capacities of Counterdefendants sued herein as Does 1-10 and will seek leave to amend this complaint when their true names and capacities are ascertained.

5. Spencer is informed, believes and alleges that that each of the named Counterdefendants, as well as those Counterdefendants fictitiously named as DOE Defendants, were at all times relevant the agent, employee, representative, joint venturer, partner, and co-conspirator of each other Counterdefendant, and was acting in the course and scope of such agency, employment, representation, joint venture, partnership and conspiracy, and with the knowledge, approval and ratification of each other Counterdefendant, in causing the plaintiffs' injuries, losses, and damages as alleged herein.

6. Spencer is informed, believes and alleges that that each of the named Counterdefendants, as well as those Counterdefendants fictitiously named as DOE Defendants negligently, willfully, maliciously, contractually, vicariously or otherwise are legally responsible for the events and happenings herein referred to and likewise proximately caused injury and damages to Counterclaimant.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Counterclaimant Spencer incorporates the foregoing paragraphs of his Counterclaims as if fully set forth at this point.

8. That at all times relevant, Spencer was an independent contractor, and agent of the Kingsbury General Improvement District ("KGUD") who had been retained by the KGID Board of Trustees for the purpose of snow plow removal from various roads located in the township of Stateline, within the district.

9. On December 12, 2012, E. Klementi called 911 and stated that Spencer had intentionally assaulted and battered him with ice, snow and debris with his snow plow as he shoveled snow in his driveway. While speaking to the 911 operator, E. Klementi stated that an eyewitness named Mary Ellen Kinion observed the battery and could corroborate his story.

10. On December 12, 2012, Kinion called 911 and stated that she observed Spencer intentionally use his snow plow to batter E. Klementi with ice, snow and debris.

11. On December 12, 2012, Kinion stated to a Douglas County Sheriff's Officer ("DCSO") that she witnessed Spencer drive his snow plow past her home with a big grin on his face and observed him intentionally batter E. Klementi with snow, ice and debris with the blade of his snow plow.

12. On or about December 17, 2012, El. Klementi submitted a type written report to the DCSO in connection with case #12S041608 in which she stated that Spencer intentionally caused her husband to be battered with snow and street debris by using the blade of his snow plow to propel debris at him while he shoveled snow in his driveway.

13. That upon information and belief, on or about December 13, 2012, E. Klementi told the Mr. McKay, the director of the KGID, that Spencer intentionally battered him with snow and debris using his snow plow.

14. On December 18, 2012, Kinion attended a KGID board meeting and stated that she witnessed Spencer use his snow plow to intentially batter E. Klementi with snow, ice and debris.

15. On December 18, 2012, E. Klementi attended a KGID board meeting and stated that Spencer had intentionally used his snow plow to place large berms of snow at the edge of his driveway, causing him to be sealed in. E. Klementi additionally stated to those present at the board meeting that Spencer intentionally put the blade of his snowplow down and caused him to be battered with snow, ice and debris.

16. On December 18, 2012, Spencer reported to DCSO that at about 8:00 pm, he heard someone in his driveway by his vehicle and believed that it was a burglar. He yelled from his upper deck "who are you?" and asked the man why he was breaking into his truck as the unidentified individual walked away. Spencer pushed the man down to the ground without realizing it was his neighbor H. Klementi, the twin brother of E. Klementi.

17. E. Klementi reported to DCSO officers that he witnessed Spencer hit his brother in the back and push him to the ground.

18. On December 18, 2012, Spencer was arrested for battery for pushing H. Klementi to the ground.

19. On March 8, 2013, an Amended Criminal Complaint was filed in case 13-0069 whereby the State charged Spencer with three counts of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599. The three counts were predicated upon the acts of (i) using a snow plow to berm E. Klementi and his wife El. Klementi into their driveways with snow, (ii) using a snow plow to intentionally cause E. Klementi to be battered with snow, ice and debris, and (iii) battering H. Klementi and causing him to incur substantial bodily injuries.

COUNT I
MALICIOUS PROSECUTION

20. Counterclaimant Spencer incorporates the foregoing paragraphs of his Counterclaims as if fully set forth at this point.

21. That the statements of Counterdefendants E. Klementi, El. Klementi and Kinion concerning Spencer's use of the snow plow to (i) berm in the Klementi's driveway and (i) intentionally cause E. Klementi to be battered with snow, ice and/or debris from the road were false.

22. E. Klementi, El. Klementi and Kinion made these statements with both express and implied malice, that is they had knowledge that they were false, or otherwise acted with reckless disregard for the truth. These Counterdefendants caused these statements to be made to agents of the Douglas County Sheriff's Office, and to agents of the Douglas County District Attorney's Office for the sole purpose of causing injury to Spencer's reputation, and to cause him to suffer humiliation, embarrassment, mental suffering and inconvenience.

23. Upon information and belief, H. Klementi made false statements to the prosecution concerning the source and nature of his injuries, and presented false testimony to the jury at Spencer's trial concerning severity and resulting limitations of his injuries. H. Klementi made these statements with actual malice in that he knew that they were false, and he made these

statements for the purpose of causing injury to Spencer's reputation, and to cause him to suffer humiliation, embarrassment, mental suffering and inconvenience.

24. The above-mentioned false statements were made by the Counterdefendants for the purpose of persuading and inducing the State to prosecute Spencer for Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.

25. Counterdefendants testified falsely regarding Spencer's supposedly improper and criminal behavior in connection with the underlying proceedings without probable cause in law or fact to do so.

26. The false statements outlined above actually caused the State to institute criminal proceedings and charge Spencer with three counts of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599 predicated entirely upon the false and malicious statements of the Counterdefendants.

27. Following institution of criminal proceedings, Counterdefendant's presented false testimony during Spencer's preliminary hearing and his subsequent jury trial for the purpose of causing him to be wrongfully prosecuted and convicted, and to suffer injuries to his reputation and to incur humiliation, embarrassment, mental suffering and inconvenience.

28. On September 27, 2013, the State's case against Spencer terminated in his favor when he was acquitted on all three charged counts of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.

29. In inducing the commencement of criminal proceedings against Spencer, and causing them to be continued, the Codefendants acted maliciously and engaged in wrongful acts and conduct without just cause or excuse in pursing and taking affirmative steps to have Spencer wrongfully prosecuted and convicted, without any probable cause to do so and for improper, ulterior purposes.

30. As a direct and proximate result of Counterdefendant's actions, Spencer suffered harm in his business and/or profession, to his reputation and good name, his standing in the local community and third parties were deterred from associating with him.

31. As a direct and proximate result of Counterdefendant's actions, Spencer suffered personal humiliation, mental anguish and suffering.

32. As a direct and proximate result of Counterdefendant's malicious prosecution, Spencer suffered special and general damages in an amount in excess of $10,000 and to be shown according to proof.

33. Counterdefendants malicious prosecution, as set forth above, was carried out intentionally, and with an evil motive and/or with a reckless indifference and conscious disregard to the rights of Spencer, thereby entitling Spencer to punitive damages in an amount sufficient to punish and deter Counterdefendants and those similarly situated from like conduct in the future.

COUNT II
CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

34. Counterclaimant Spencer incorporates the foregoing paragraphs of his Counterclaims as if fully set forth at this point.

35. That between December 12, 2012 and December 18, 2012, and at all relevant times, above named Counterdefendants formed an agreement to act in concert against Spencer for the purpose of causing him to be wrongfully convicted of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599, and causing him to suffer damages to his reputation and to incur personal humiliation, mental anguish and suffering.

36. Counterdefendants acted pursuant to their conspiracy to cause harm to Spencer by providing false statements to agents of the Douglas County Sheriff's Office as well as to the Douglas County District Attorney's Office, and by presenting false testimony during Spencer's preliminary hearing and trial.

37. Counterdefendant's respectively knew that these statements were false and acted with express malice in intentionally, wrongfully and tortuously persuading and inducing the State to institute and prosecute criminal charges against Spencer.

38. As a direct and proximate result of the conspiracy, Spencer has been specially and generally damaged in a sum of at least $10,000 and to be shown according to proof at trial.

39. Counterdefendant's actions were intended to cause injury, malicious and oppressive, justifying an award of punitive damages.

40. Spencer has been required to retain the services of two attorneys to prosecute the claims for malicious prosecution and conspiracy and he is entitled to an award of attorney's fees.

WHEREFORE, Counterclaimant requests:

1. Special damages in a sum in excess of $10,000:

2. General damages in a sum in excess of $10,000:

3. Punitive damages:

4. Prejudgment interest:

5. Reasonable attorneys fees:

6. Costs of suit: and

7. All other appropriate relief.

PURSUANT TO NRS 239B.030, THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEEDING DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

DATED: February 3, 2015.

WILLIAM J. ROUTSIS II., ESQ.
Attorney for Defendant Counterclaimant
JEFFREY D. SPENCER

WILLIAM A. SWAFFORD., ESQ.
Attorney for Defendant Counterclaimant
JEFFREY D. SPENCER

ORIGINAL

The Law Firm of Laub & Laub
Joe M. Laub, Esq.
State Bar of Nevada No. 3664
Nicholus C. Palmer, Esq.
State Bar of Nevada No. 9888
630 E. Plumb Lane
Reno, Nevada 89502
Attorneys for Plaintiff

RECEIVED
FEB 23 2015
Douglas County
District Court Clerk

FILED
2015 FEB 23 PM 4:02
BOBBIE R. WILLIAMS
CLERK
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff/Counterdefendant,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants/Counterclaimant

Case No. 14-CV-0260

Dept. No. II

JEFFREY D. SPENCER & DOES 1-5,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants

ANSWER TO COUNTERCLAIM

COMES NOW, Plaintiff/Counterdefendant Helmut Klementi by and through his attorneys, Joe M. Laub, Esq. and Nicholus C. Palmer of the Law Firm of Laub & Laub, for his claims against the Defendant, and hereby allege as follows:

Law Firm of
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
Tel: (775) 323-5282
Fax: (775) 323-3699

JURISDICTIONAL ALLEGATIONS

1. Plaintiff/Counterdefendant admits the allegations contained in paragraph 1 of the Counterclaim.

2. Plaintiff/Counterdefendant admits the allegations contained in paragraph 2 of the Counterclaim.

3. Plaintiff/Counterdefendant admits the allegations contained in paragraph 3 of the Counterclaim.

4. Plaintiff/Counterdefendant admits the allegations contained in paragraph 4 of the Counterclaim.

5. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 5 of Counterclaimant's Counterclaim, and therefore denies same;

6. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 6 of Counterclaimant's Counterclaim, and therefore denies same;

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Plaintiff/Counterdefendant admits the allegations contained in paragraph 7 of the Counterclaim.

8. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 8 of Counterclaimant's Counterclaim, and therefore denies same;

Plaintiff/Counterdefendant denies the allegations contained in paragraph 8 of the Counterclaim.

9. Plaintiff/Counterdefendant denies the allegations contained in paragraph 9 of the Counterclaim.

10. Plaintiff/Counterdefendant admits the allegations contained in paragraph 10 of the Counterclaim.

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630 E. Plumb Lane
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11. Plaintiff/Counterdefendant admits the allegations contained in paragraph 11 of the Counterclaim.

12. Plaintiff/Counterdefendant denies the allegations contained in paragraph 12 of the Counterclaim.

13. Plaintiff/Counterdefendant admits the allegations contained in paragraph 13 of the Counterclaim.

14. Plaintiff/Counterdefendant admits the allegations contained in paragraph 14 of the Counterclaim.

15. Plaintiff/Counterdefendant admits the allegations contained in paragraph 15 of the Counterclaim.

16. Plaintiff/Counterdefendant denies the allegations contained in paragraph 16 of the Counterclaim.

17. Plaintiff/Counterdefendant denies the allegations contained in paragraph 17 of the Counterclaim.

18. Plaintiff/Counterdefendant denies the allegations contained in paragraph 18 of the Counterclaim.

19. Plaintiff/Counterdefendant admits the allegations contained in paragraph 19 of the Counterclaim.

COUNT 1
MALICIOUS PRESECUTION

20. Plaintiff/Counterdefendant denies the allegations contained in paragraph 20 of the Counterclaim.

21. Plaintiff/Counterdefendant denies the allegations contained in paragraph 21 of the Counterclaim.

22. Plaintiff/Counterdefendant denies the allegations contained in paragraph 22 of the Counterclaim.

23. Plaintiff/Counterdefendant denies the allegations contained in paragraph 23 of the Counterclaim.

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24. Plaintiff/Counterdefendant denies the allegations contained in paragraph 24 of the Counterclaim.

25. Plaintiff/Counterdefendant denies the allegations contained in paragraph 25 of the Counterclaim.

26. Plaintiff/Counterdefendant denies the allegations contained in paragraph 26 of the Counterclaim.

27. Plaintiff/Counterdefendant denies the allegations contained in paragraph 27 of the Counterclaim.

28. Plaintiff/Counterdefendant denies the allegations contained in paragraph 28 of the Counterclaim.

29. Plaintiff/Counterdefendant denies the allegations contained in paragraph 29 of the Counterclaim.

30. Plaintiff/Counterdefendant denies the allegations contained in paragraph 30 of the Counterclaim.

31. Plaintiff/Counterdefendant denies the allegations contained in paragraph 31 of the Counterclaim.

32. Plaintiff/Counterdefendant denies the allegations contained in paragraph 32 of the Counterclaim.

33. Plaintiff/Counterdefendant denies the allegations contained in paragraph 33 of the Counterclaim.

COUNT II
CIVIL CONSPIRACY (MALICIOUS PROSECUTION

34. Plaintiff/Counterdefendant denies the allegations contained in paragraph 34 of the Counterclaim.

35. Plaintiff/Counterdefendant denies the allegations contained in paragraph 35 of the Counterclaim.

36. Plaintiff/Counterdefendant denies the allegations contained in paragraph 36 of the Counterclaim.

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37. Plaintiff/Counterdefendant denies the allegations contained in paragraph 37 of the Counterclaim.

38. Plaintiff/Counterdefendant denies the allegations contained in paragraph 38 of the Counterclaim.

39. Plaintiff/Counterdefendant denies the allegations contained in paragraph 39 of the Counterclaim.

40. Plaintiff/Counterdefendant denies the allegations contained in paragraph 39 of the Counterclaim.

FIRST AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff Counterclaim fails to state upon which relief can be granted in favor of Defendant/Counterplaintiff against Plaintiff/Counterdefendant.

SECOND AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff is chargeable with negligence on his own part in and about the premises set forth in the Complaint; the alleged resulting damage Defendant/Counterplaintiff, if any, was directly and proximately caused and contributed to by Defendant/Counterplaintiff is of greater proportion and degree than that of Plaintiff/Counterdefendant, if any.

THIRD AFFIRMATIVE DEFENSE

The negligence of Defendant/Counterplaintiff caused or contributed to any injuries or damages Defendant/Counterplaintiff may have sustained, said injuries and damages being expressly denied herein; and the negligence of Defendant/Counterplaintiff, in comparison with the alleged negligence of Plaintiff/Counterdefendant, requires that the alleged damage of Defendant/Counterplaintiff be diminished in proportion to the amount of negligence attributable to him.

FOURTH AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff has exaggerated and otherwise increased his alleged damages by failing to mitigate his damages as required by law or otherwise avoid incurring additional unnecessary damages.

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FIFTH AFFIRMATIVE DEFENSE

The incident referred to in the Counterclaim, and any damages allegedly resulting therefrom, were proximately caused by the conduct of persons and/or entities other than this Plaintiff/ Counterdefendant, and further in this regard, Plaintiff/ Counterdefendant states that he had no supervision, duty of supervision, control, nor duty of control exercisable as to said persons and/or entities.

SIXTH AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff's alleged injuries and damages existed prior to any conduct of the Plaintiff/Counterdefendant and this answering Plaintiff/Counterdefendant bears no liability for pre-existing injuries or damages.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time of filing of Plaintiff/Counterdefendant's Answer to Counterclaim. All possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information may not have been available after reasonable inquiry, and therefore, Defendant reserves the right to amend this Answer to Counterclaim to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, the Plaintiff/Counterdefendant prays for judgment against the Defendant/Counterplaintiff as follows:

1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the same be dismissed with prejudice;
2. That Plaintiff/Counterdefendant be awarded his costs and attorney's fees incurred to defend this action as provided by law; and

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3. For such other and further relief as the Court may deem just and proper.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of February, 2015.

The Law Firm of Laub & Laub
Joe M. Laub
Nevada State Bar #3664
Nik C. Palmer
Nevada State Bar #9888
630 E. Plumb Lane
Reno, Nevada 89502

Law Firm of
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
Tel: (775) 323-5282
Fax: (775) 323-3699

CERTIFICATE OF SERVICE

I, MARIA MORENO, certify that I am an employee of the LAW FIRM OF LAUB & LAUB., and a citizen of the United States, over twenty-one years of age, not a party to, nor interested in, the within action.

On the 23rd day of February, 2015, I caused to be delivered by U.S. MAIL, a true and correct copy of the within document: ANSWER TO COUNTERCLAIM, Case No. 14-CV-0260, addressed as follows:

William Routsis
1070 Monroe Street
Reno, Nevada 89509

William A. Swafford, Esq.
570 Monroe Street
Reno, Nevada 89509

M Moreno
MARIA MORENO

Law Firm of
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
Tel: (775) 323-5282
Fax: (775) 323-3699

ORIGINAL

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2015 FEB 26 PM 4:03
BOBBIE R. WILLIAMS
CLERK
BY [signature] DEPUTY

The Law Firm of Laub & Laub
Joe M. Laub, Esq.
State Bar of Nevada No. 3664
Nicholus C. Palmer, Esq.
State Bar of Nevada No. 9888
630 E. Plumb Lane
Reno, Nevada 89502
Attorneys for Plaintiff

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff/Counterdefendant,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants/Counterclaimant

Case No. 14-CV-0260

Dept. No. II

JEFFREY D. SPENCER & DOES 1-5,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants

ANSWER TO COUNTERCLAIM

COMES NOW, Counterdefendants Egon Klementi and Elfriede Klementi by and through his attorneys, Joe M. Laub, Esq. and Nicholus C. Palmer of the Law Firm of Laub & Laub, for his claims against the Defendant, and hereby allege as follows:

JURISDICTIONAL ALLEGATIONS

1. Counterdefendants admit the allegations contained in paragraph 1 of the Counterclaim.

2. Counterdefendants admit the allegations contained in paragraph 2 of the Counterclaim.

3. Counterdefendants admit the allegations contained in paragraph 3 of the Counterclaim.

4. Counterdefendants admit the allegations contained in paragraph 4 of the Counterclaim.

5. Counterdefendants are without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 5 of Counterclaimant's Counterclaim, and therefore denies same;

6. Counterdefendants are without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 6 of Counterclaimant's Counterclaim, and therefore denies same;

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Counterdefendants admit the allegations contained in paragraph 7 of the Counterclaim.

8. Counterdefendants are without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 8 of Counterclaimant's Counterclaim, and therefore denies same;

9. Counterdefendants deny the allegations contained in paragraph 9 of the Counterclaim.

10. Counterdefendants admit the allegations contained in paragraph 10 of the Counterclaim.

11. Counterdefendants admit the allegations contained in paragraph 11 of the Counterclaim.

12. Counterdefendants deny the allegations contained in paragraph 12 of the Counterclaim.

13. Counterdefendants admit the allegations contained in paragraph 13 of the Counterclaim.

14. Counterdefendants admit the allegations contained in paragraph 14 of the Counterclaim.

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Tel: (775) 323-5282
Fax: (775) 323-3699

15. Counterdefendants admit the allegations contained in paragraph 15 of the Counterclaim.

16. Counterdefendants deny the allegations contained in paragraph 16 of the Counterclaim.

17. Counterdefendants deny the allegations contained in paragraph 17 of the Counterclaim.

18. Counterdefendants deny the allegations contained in paragraph 18 of the Counterclaim.

19. Counterdefendants admit the allegations contained in paragraph 19 of the Counterclaim.

COUNT 1
MALICIOUS PROSECUTION

20. Counterdefendants deny the allegations contained in paragraph 20 of the Counterclaim.

21. Counterdefendants deny the allegations contained in paragraph 21 of the Counterclaim.

22. Counterdefendants deny the allegations contained in paragraph 22 of the Counterclaim.

23. Counterdefendants deny the allegations contained in paragraph 23 of the Counterclaim.

24. Counterdefendants deny the allegations contained in paragraph 24 of the Counterclaim.

25. Counterdefendants deny the allegations contained in paragraph 25 of the Counterclaim.

26. Counterdefendants deny the allegations contained in paragraph 26 of the Counterclaim.

27. Counterdefendants deny the allegations contained in paragraph 27 of the Counterclaim.

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Reno, NV 89502
Tel (775) 323-5282
Fax (775) 323-3699

28. Counterdefendants deny the allegations contained in paragraph 28 of the Counterclaim.

29. Counterdefendants deny the allegations contained in paragraph 29 of the Counterclaim.

30. Counterdefendants deny the allegations contained in paragraph 30 of the Counterclaim.

31. Counterdefendants deny the allegations contained in paragraph 31 of the Counterclaim.

32. Counterdefendants deny the allegations contained in paragraph 32 of the Counterclaim.

33. Counterdefendants deny the allegations contained in paragraph 33 of the Counterclaim.

COUNT II
CIVIL CONSPIRACY (MALICIOUS PROSECUTION

34. Counterdefendants deny the allegations contained in paragraph 34 of the Counterclaim.

35. Counterdefendants deny the allegations contained in paragraph 35 of the Counterclaim.

36. Counterdefendants deny the allegations contained in paragraph 36 of the Counterclaim.

37. Counterdefendants deny the allegations contained in paragraph 37 of the Counterclaim.

38. Counterdefendants deny the allegations contained in paragraph 38 of the Counterclaim.

39. Counterdefendants deny the allegations contained in paragraph 39 of the Counterclaim.

40. Counterdefendants deny the allegations contained in paragraph 39 of the Counterclaim.

Law Firm of
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Tel (775) 323-5282
Fax. (775) 323-3699

FIRST AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff Counterclaim fails to state upon which relief can be granted in favor of Defendant/Counterplaintiff against Plaintiff/Counterdefendant.

SECOND AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff is chargeable with negligence on his own part in and about the premises set forth in the Complaint; the alleged resulting damage Defendant/Counterplaintiff, if any, was directly and proximately caused and contributed to by Defendant/Counterplaintiff is of greater proportion and degree than that of Plaintiff/Counterdefendant, if any.

THIRD AFFIRMATIVE DEFENSE

The negligence of Defendant/Counterplaintiff caused or contributed to any injuries or damages Defendant/Counterplaintiff may have sustained, said injuries and damages being expressly denied herein; and the negligence of Defendant/Counterplaintiff, in comparison with the alleged negligence of Plaintiff/Counterdefendant, requires that the alleged damage of Defendant/Counterplaintiff be diminished in proportion to the amount of negligence attributable to him.

FOURTH AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff has exaggerated and otherwise increased his alleged damages by failing to mitigate his damages as required by law or otherwise avoid incurring additional unnecessary damages.

FIFTH AFFIRMATIVE DEFENSE

The incident referred to in the Counterclaim, and any damages allegedly resulting therefrom, were proximately caused by the conduct of persons and/or entities other than this Plaintiff/ Counterdefendant, and further in this regard, Plaintiff/ Counterdefendant states that he had no supervision, duty of supervision, control, nor duty of control exercisable as to said persons and/or entities.

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SIXTH AFFIRMATIVE DEFENSE

Defendant/Counterplaintiff's alleged injuries and damages existed prior to any conduct of the Plaintiff/Counterdefendant and this answering Plaintiff/Counterdefendant bears no liability for pre-existing injuries or damages.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time of filing of Plaintiff/Counterdefendant's Answer to Counterclaim. All possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information may not have been available after reasonable inquiry, and therefore, Defendant reserves the right to amend this Answer to Counterclaim to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, the Counterdefendants pray for judgment against the Defendant/Counterplaintiff as follows:

1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the same be dismissed with prejudice;
2. That Counterdefendants be awarded their costs and attorney's fees incurred to defend this action as provided by law; and
3. For such other and further relief as the Court may deem just and proper.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of February, 2015.

The Law Firm of Laub & Laub
Joe M. Laub
Nevada State Bar #3664
Nik C. Palmer
Nevada State Bar #9888
630 E. Plumb Lane
Reno, Nevada 89502

Law Firm of
Laub & Laub
630 E Plumb Lane
Reno, NV 89502
Tel: (775) 323-5282
Fax: (775) 323-3699

CERTIFICATE OF SERVICE

I, MARIA MORENO, certify that I am an employee of the LAW FIRM OF LAUB & LAUB., and a citizen of the United States, over twenty-one years of age, not a party to, nor interested in, the within action.

On the 26th day of February, 2015, I caused to be delivered by U.S. MAIL, a true and correct copy of the within document: ANSWER TO COUNTERCLAIM, Case No. 14-CV-0260, addressed as follows:

William Routsis
1070 Monroe Street
Reno, Nevada 89509

William A. Swafford, Esq.
570 Monroe Street
Reno, Nevada 89509

M Moreno
MARIA MORENO

Law Firm of
Laub & Laub
630 E. Plumb Lane
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Tel (775) 323-5282
Fax (775) 323-3699

Mary Ellen Kinion
P.O. Box 10868
Zephyr Cove, Nevada 89448

FILED
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MAR 19 2015
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2015 MAR 23 PM 2:33
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CLERK
BY WILEER DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI, Plaintiff/Counterdefendant VS. JEFFREY D. SPENCER & DOES 1-5, Defendants/Counterclaimant	Case No. 14-CV-0260 Dept. No II
jEFFREY D. SPENCER & DOES 1-5 Counterclaimant, vs. HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5 Counterdefendants	

ANSWER TO COUNTERCLAIM

Counterdefendant , Mary Ellen Kinion, **Pro Se,** hereby submits this answer to Complaint on file herein, and alleges and avers as follows:

1

JURISDICTIONAL ALLEGATIONS

1. Counterdefendant admits the allegations contained in paragraph 1 of the Counterclaim.

2. Counterdefendant admits the allegations contained in paragraph 2 of the Counterclaim.

3. Counterdefendant admits the allegations contained in paragraph 3 of the Counterclaim.

4. Counterdefendant admits the allegations contained in paragraph 4 of the Counterclaim.

5. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 5 of Counterclaimant's Counterclaim, and therefore denies same;

6. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 6 of Counterclaimant's Counterclaim, and therefore denies same;

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Counterdefendant admits the allegations contained in paragraph 7 of the Counterclaim.

8. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 8 of Counterclaimant's Counterclaim, and therefore denies same;

9. Counterdefendant denies the allegations contained in paragraph 9 of the Counterclaim.

10. Counterdefendant admits the allegations contained in paragraph 10 of the Counterclaim.

11. Counterdefendant admits the allegations contained in paragraph 11 of the Counterclaim.

12. Counterdefendant denies the allegations contained in paragraph 12 of the Counterclaim.

13. Counterdefendant admits the allegations contained in paragraph 13 of the Counterclaim.

14. Counterdefendant admits the allegations contained in paragraph 14 of the Counterclaim.

15. Counterdefendant admits the allegations contained in paragraph 15 of the Counterclaim.

16. Counterdefendant denies the allegations contained in paragraph 16 of the Counterclaim.

17. Counterdefendant denies the allegations contained in paragraph 17 of the Counterclaim.

18. Counterdefendant denies the allegations contained in paragraph 18 of the Counterclaim.

19. Counterdefendant admits the allegations contained in paragraph 19 of the Counterclaim.

COUNT 1
MALICIOUS PRESECUTION

20. Counterdefendant denies the allegations contained in paragraph 20 of the counterclaim.

21. Counterdefendant denies the allegations contained in paragraph 21 of the Counterclaim.

22. Counterdefendant denies the allegations contained in paragraph 22 of the Counterclaim.

23. Counterdefendant denies the allegations contained in paragraph 23 of the Counterclaim.

24. Counterdefendant denies the allegations contained in paragraph 24 of the Counterclaim.

25. Counterdefendant denies the allegations contained in paragraph 25 of the Counterclaim.

26. Counterdefendant denies the allegations contained in paragraph 26 of the Counterclaim.

27. Counterdefendant denies the allegations contained in paragraph 27 of the Counterclaim.

28. Counterdefendant denies the allegations contained in paragraph 28 of the Counterclaim.

29. Counterdefendant denies the allegations contained in paragraph 29 of the Counterclaim.

30. Counterdefendant denies the allegations contained in paragraph 30 of the Counterclaim.

31. Counterdefendant denies the allegations contained in paragraph 31 of the Counterclaim.

32. Counterdefendant denies the allegations contained in paragraph 32 of the Counterclaim.

33. Counterdefendant denies the allegations contained in paragraph 33 of the Counterclaim.

COUNT 11
CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

34. Counterdefendant denies the allegations contained in paragraph 34 of the Counterclaim.

35. Counterdefendant denies the allegations contained in paragraph 35 of the Counterclaim.

36. Counterdefendant denies the allegations contained in paragraph 36 of the Counterclaim.

37. Counterdefendant denies the allegations contained in paragraph 37 of the Counterclaim.

38. Counterdefendant denies the allegations contained in paragraph 38 of the Counterclaim.

39. Counterdefendant denies the allegations contained in paragraph 39 of the Counterclaim.

40. Counterdefendant denies the allegations contained in paragraph 40 of the Counterclaim.

FURTHER, as a separative affirmative defense to each and every claim for relief of the Counterclaimant , this answering Counterdefendant is informed and believes, and on such information and belief alleges as follows: this counterdefendant was called as a witness and testified under oath at the jury trial of the Defendant/ Counterclaimant on September 19, 2013.

FIRST AFFIRMATIVE DEFENSE

As a first and separate affirmative defense, this answering Counterdefendant alleges that the cross-complaint and each claim for relief contained therein fails to state facts sufficient to state a claim against this answering Counterdefendant .

SECOND AFFIRMATIVE DEFENSE

As a second and separate affirmative defense, this answering Counterdefendant alleges that the countercomplaint and each claim for relief contained therin fails to establish a valid lawsuit against this answering Counterdefendant.

THIRD AFFIRMATIVE DEFENSE

As a third and separate affirmative defense, this answering Counterdefendant alleges that Defendant/Counterplaintiff lacks standing to assert any of the claims and causes of action alleged in the Counterclaim.

FORTH AFFIRMATIVE DEFENSE

As a forth and separate affirmative defense. This answering Counterdefendant alleges that the Counterclaim fails to allege facts to support a claim for punitive or exemplary damages.

FIFTH AFFIRMATIVE DEFENSE

As a fifth and separate affirmative defense, Defendant/Counterplaintiff fails to state upon which relief can be granted in favor of Defendant/Counterplaintiff

SIXTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herin insofar as sufficient facts were not available after reasonable inquiry upon filing this answer. Therefore counterdefendant reserves the right to amend this Answer to allege additional affirmative defenses and claims, counter-claims or third-party claims , as applicable upon further investigation and discovery.

WHEREFORE, this answering counterdefendant prays for judgement against the Defendant/Counterplaintiff as follows:

1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the same be dismissed with prejudice;

2. That Counterdefendant be awarded her costs and court fees incurred to defend this action as provided by law and

3. Award Counterdefendant such other and further relief as the court deems just and equitable.

DATED this 19 **day of March, 2015.**

Mary Ellen Kinion

Mary Ellen Kinion
Box 10868
Zephyr Cove, Nevada 89448

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24 day of March, 2015, I placed a true and correct copy of the foregoing ANSWER TO COUNTERCLAIM, Case No. 14-CV-0260 in the United States Mail at Stateline, Nevada, with first-class postage prepaid, addressed to the following:

William Routsis
1070 Monroe Street
Reno, Nevada 89509

Mary Ellen Hynion

Counterdefendant Pro Se

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED
FEB - 9 2016
Douglas County
District Court Clerk

FILED
2016 FEB -9 PM 2:20
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

ANSWER TO COUNTERCLAIM

Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys, Glogovac & Pintar, and in response to the Counterclaims filed in the above-captioned matter by Defendant/Counter-claimaint, Jeffrey Spencer ("Spencer"), admits, denies and avers as follows:

BURTON, BARTLETT & GLOGOVAC
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

JURISDICTIONAL ALLEGATIONS

1. Kinion admits the allegations contained in Paragraph 1.

2. Kinion admits the allegations contained in Paragraph 2.

3. Kinion admits the allegations contained in Paragraph 3.

4. Kinion avers that the allegations contained in Paragraph 4 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

5. Kinion denies the allegations contained in Paragraph 5.

6. Kinion denies the allegations contained in Paragraph 6.

FACTUAL ALLEGATIONS

7. In response to the allegations of Paragraph 7, Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 6 of the Counterclaim as if fully set forth herein.

8. In response to the allegations contained in Paragraph 8, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

9. In response to the allegations of Paragraph 9, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

10. Kinion admits the allegations contained in Paragraph 10.

11. Kinion admits the allegations contained in Paragraph 11.

12. In response to the allegations of Paragraph 12, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

13. In response to the allegations of Paragraph 13, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

14. Kinion admits the allegations contained in Paragraph 14.

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15. In response to the allegations of Paragraph 15, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

16. In response to the allegations of Paragraph 16, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

17. In response to the allegations of Paragraph 17, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

18. In response to the allegations of Paragraph 18, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

19. In response to the allegations of Paragraph 19, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

FIRST CAUSE OF ACTION

20. In response to the allegations of Paragraph 20, Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 19 of the Counterclaim as if fully set forth herein.

21. Kinion denies the allegations contained in Paragraph 21.

22. Kinion denies the allegations contained in Paragraph 22.

23. Kinion denies the allegations contained in Paragraph 23.

24. Kinion denies the allegations contained in Paragraph 24.

25. Kinion denies the allegations contained in Paragraph 25.

26. Kinion denies the allegations contained in Paragraph 26.

27. Kinion denies the allegations contained in Paragraph 27.

28. Kinion denies the allegations contained in Paragraph 28.

29. Kinion denies the allegations contained in Paragraph 29.

30. Kinion denies the allegations contained in Paragraph 30.

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& GLOGOVAC
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31. Kinion denies the allegations contained in Paragraph 31.

32. Kinion denies the allegations contained in Paragraph 32.

33. Kinion denies the allegations contained in Paragraph 33.

SECOND CAUSE OF ACTION

34. In response to the allegations of Paragraph 34, Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 33 of the Counterclaim as if fully set forth herein.

35. Kinion denies the allegations contained in Paragraph 35.

36. Kinion denies the allegations contained in Paragraph 36.

37. Kinion denies the allegations contained in Paragraph 37.

38. Kinion denies the allegations contained in Paragraph 38.

39. Kinion denies the allegations contained in Paragraph 39.

40. Kinion denies the allegations contained in Paragraph 40.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaim and each and every allegation contained therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

That Kinion is afforded privilege and immunity for all statements made in the course of legal proceedings.

THIRD AFFIRMATIVE DEFENSE

That the statements made by Kinion are statements of opinion protected under the First Amendment.

FOURTH AFFIRMATIVE DEFENSE

That Kinion is afforded immunity by reason of her statements being absolutely true or substantially true and in good faith.

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FIFTH AFFIRMATIVE DEFENSE

To the extent Spencer sustained any damages as a result of the allegations out of which this matter arises, those damages were caused by the acts or omissions of Third-parties over which Kinion has no control.

SIXTH AFFIRMATIVE DEFENSE

Kinion is informed and believes and thereupon avers that at all times relevant hereto, Spencer was negligent, at fault, and otherwise responsible for the allegations which are the subject of this litigation.

SEVENTH AFFIRMATIVE DEFENSE

Spencer's damages, if any, were caused in whole or in part, or were contributed to by reason of the negligence or wrongful conduct of Spencer himself.

EIGHTH AFFIRMATIVE DEFENSE

Spencer's action is frivolous, unreasonable, vexatious, and devoid of any legal or factual foundation. The Counterclaim is not well grounded in fact, nor warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Consequently, sanctions against Spencer are warranted and Kinion is entitled to attorney's fees and costs.

PRAYER FOR RELIEF

Based upon the foregoing, Mary Ellen Kinion respectfully requests relief as follows:

1. That Spencer take nothing by virtue of this action, and that his Counterclaim be dismissed with prejudice;

2. For costs of suit and attorney's fees to the extent allowed by law; and

3. For such other and further relief as the Court deems just and proper.

///

BURTON, BARTLETT
& GLOGOVAC
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 9th day of February, 2016.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Mary Ellen Kinion

BURTON, BARTLETT
& GLOGOVAC
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 9 day of February, 2016, I served the foregoing document(s) described as follows:

ANSWER TO COUNTERCLAIM

On the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

Nicholus Palmer, Esq.
Laub & Laub
630 East Plumb Lane
Reno, NV 89502
Attorneys for Helmut Klementi

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Dated this 9 day of February, 2016.

Sherie L. Morris
Employee of Glogovac & Pintar

BURTON, BARTLETT
& GLOGOVAC
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED
APR 22 2016
Douglas County
District Court Clerk

FILED
2016 APR 22 PM 4:28
BOBBIE R. WILLIAMS
CLERK
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, Third-Party Defendant, Mary Kinion ("Kinion"), hereby moves this Court for summary judgment on the claims asserted against her by Defendant, Jeffrey Spencer ("Spencer").[1]

This motion is based upon the memorandum of points and authorities submitted herewith, and upon all other papers, pleadings and documents on file herein.

///

[1] Kinion has been misidentified in the caption as being a Counter-defendant.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Case Summary.

This is an action stemming from disputes between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on an elderly neighbor, Helmut Klementi. Following trial in the criminal action, Helmut Klementi filed a civil action against Spencer seeking recovery for personal injuries arising from the assault. In response, Spencer asserted a counterclaim against Mr. Klementi as well as third-party claims against Mr. Klementi's brother and sister-in-law, Egon and Elfie Klementi, and Kinion. Spencer's third-party claims consist of claims for malicious prosecution and civil conspiracy.

As will be shown below, the elements necessary to prevail on a claim for malicious prosecution and/or civil conspiracy have not been satisfied as they pertain to Kinion. Therefore, as a matter of law, Kinion is entitled to summary judgment and the claims against her should be dismissed.

B. Background.

Ms. Kinion is a sixty-eight year-old (68) retired nurse. She has lived in the KGID neighborhood for approximately twenty-seven (27) years. Helmut Klementi and his twin brother, Egon Klementi, are eighty-two (82) years old and also live in the neighborhood. Jeff Spencer is fifty-two (52) years old. Spencer and his wife, Marilyn, live across the street from Egon and Elfie Klementi. Spencer is employed during the winter months as a snowplow operator for a company that contracts to provide plowing services for KGID.

In the summer of 2012, a dispute between various neighbors and Spencer developed. In that year, the Spencers unilaterally decided to build a six (6) foot tall fence around their property. The height of that fence was out-of-compliance with

standards developed by Douglas County. As a result, the Spencers were ultimately required to take the fence down.

In retaliation, later that year, as snow began to fall in the area and the snowplows were clearing the streets, excessively high berms of snow and ice would appear in front of driveways belonging to the neighbors who objected to the Spencers' fence. On December 12, 2012, Kinion went outside and discovered that an excessively high berm of snow and ice was blocking her driveway, but that all other driveways on the street were clear. Exhibit 1, Deposition of Mary Ellen Kinon dated April 7, 2016, pp. 47-49. In response, Kinion called KGID. Id. Soon thereafter, workers from KGID appeared and cleared the snow berm from her driveway entrance.

A short time later, Marilyn Spencer stopped her car in the road in front of Kinion's house, called someone with her phone, and drove away. Fifteen (15) minutes later, another snowplow which Kinion thinks was driven by Spencer, put the berm of snow back in front of Kinion's driveway. Exhibit 1, p. 50:11-25.

As the snowplow was driving away, Kinion went outside to try to identify the driver. At that time, she saw the snowplow proceed toward Egon Klementi's house. Egon Klementi was standing in his driveway shoveling snow. Kinion then observed the snowplow approach Mr. Klementi's residence, increased its speed and capture "old" snow from the side of the road, and then propel the "old" snow along with other road debris onto Mr. Klementi. Having witnessed this event, Kinion immediately called and checked on Mr. Klementi who advised her that he was going to call 911 and report the incident. Kinion later called 911 herself to advise them that she was a witness. Exhibit 1, p. 77:24 – p. 80:12.

Several days later, on December 18, 2012, Kinion attended a KGID meeting. At that meeting, Kinion advised the KGID members of what she had witnessed days earlier regarding the snowplow spraying snow over Egon Klementi. In addition, she and other neighbors complained about the excessively high berms left by Spencer in

their driveways. Exhibit 1, p. 89:10 – 92:18. KGID representatives informed the neighbors to photograph the berms.

Later that same evening, Helmut Klementi went into the street to take pictures of the snow berm piled up in front of his brother's property. While doing so, Helmut Klementi was assaulted and knocked over by Spencer. Video evidence confirms that when he was assaulted by Spencer, Helmut's back was to the Spencers' property and he was facing his brother's residence taking pictures.

Following the assault, the Douglas County Sheriff's Office was called out and Deputy McKone arrived on the scene. See, Douglas County Sheriff Deputy Report, attached as Exhibit 2. Deputy McKone called for medical assistance from the local paramedics who attended to Helmut Klementi. Meanwhile, Deputy McKone with the assistance of Deputy Almeida undertook a criminal investigation. As part of their investigation, the DCSO deputies spoke with Helmut Klementi, his brother Egon, Egon's wife Elfie, and neighbor, Janet Wells. Deputy McKone also interviewed Spencer and his wife.

According to the Sheriff's Report, Spencer informed Deputy McKone that he attacked Helmut because he believed Helmut was breaking into his truck. Claiming to believe Helmut was a teenager in a hoodie, Spencer admitted to Deputy McKone that he grabbed Helmut and threw him to the ground. Ultimately, Deputy McKone did not find Spencer's account to be credible. In particular, Deputy McKone did not believe that Spencer could mistake his 82 year old elderly neighbor for a teenager and he found other inconsistencies with Spencer's account as well. As a result, Deputy McKone arrested Spencer for battery and abuse of an elder. See, Exhibit 2.

Through the course of his criminal investigation, Deputy McKone never spoke with or obtained a statement from Kinion. In fact, he never had any interaction with Kinion whatsoever and did not base his decision to arrest Spencer that evening on any information originating from Kinion.

At his deposition of April 7, 2016, Deputy McKone testified as follows:

Q So then after you went to the hospital, spoke to Mr. Klementi, what did you do then?
A I believe I returned back to the area and collected the written statements from the Klementis.

Q And then what did you do once you obtained all these written statements?
A I went back to the station -- I mean, I finished my shift with the other calls not related to this.
Q Right.
A And then I went back to the station and wrote my report.
Q So this report we've marked Exhibit 1?
A Yes.
Q When was this report completed?
A I believe it was -- the narrative was written on the same shift before I left for the night.
Q Okay. In this report it says that it is your opinion that Jeffrey Spencer was upset with Klementi, saw Helmut taking photographs of the snow berm, and used the excuse of someone breaking into his truck to confront and to commit a battery on Helmut Klementi.
A Yes.
Q And that conclusion was formed by you on the evening of December 18th?
A Yes.
MR. ROUTSIS: I'm going to object and move to strike his opinion, which is not relevant.

BY MR. PINTAR:
Q Have we --
MR. ROUTSIS: It's a relevance objection.
BY MR. PINTAR:
Q Have we talked about all the investigation that you performed in forming that opinion and conclusion?
A Yes.
Q Okay. At any point in time prior to forming this opinion and conclusion in this report did you speak with Mary Ellen Kinion?
A I did not.
Q And based on your report, it was forwarded to the Douglas County Sheriff's Department or the district attorney for prosecution, correct?
A Yes.

Deposition of Deputy Jesse McKone, pp. 35:22 – 37:16 attached as Exhibit 3.

Following Spencer's arrest, the Douglas County Deputy District Attorney's office pursued criminal charges. In preparation for the trial, the Deputy District Attorney, Maria Pence, reached out to Kinion and asked her to provide whatever information she had in regards to the ongoing events. Kinion complied with that request. Kinion was later subpoenaed to testify at Spencer's trial and gave testimony in response to questions posed to her at trial. Exhibit 1, p. 141:15-18. Spencer was eventually acquitted of the criminal charges.

Following his acquittal, Spencer asserted the instant third-party claims against Kinion for malicious prosecution and civil conspiracy. However, based on the undisputed facts, Spencer cannot prevail against Kinion, as a matter of law. The required elements for a claim for malicious prosecution are not satisfied, and thus, summary judgment is appropriate.

C. Statement of Relevant Facts

1. Spencer is employed seasonally as a snowplow operator for a company contracted with KGID. Spencer's Answer and Counterclaims, attached hereto as Exhibit 4, ¶ 8.

2. Spencer resides in a neighborhood with Helmut Klementi, Egon Klementi and Kinion on the south end of Lake Tahoe. Deposition Transcript of Mary Kinion attached as Exhibit 1, at pp.12:17 – 15:10.

3. Spencer and his wife were involved in disputes or issues with neighbors since at least the summer of 2012. Exhibit 1, at pp. 34:4 – 39:12; pp.67:5 – 74:3.

4. On December 12, 2012 Spencer caused snow and debris to spray over Egon Klementi. In response, Egon Klementi and Kinion called 911 to report the incident. A brief investigation into the matter was conducted by the Douglas County Sheriff's Office, however, Kinion did not file any report or make any written statement. Exhibit 1, at 77:24 – 85:24.

5. On December 18, 2012, Kinion attended a neighborhood KGID meeting wherein she informed KGID of the events that took place several days earlier regarding the snowplow incident and Egon Klementi. Exhibit 1, at 89:22 – 92:18.

6. Later that evening, Spencer assaulted Helmut Klementi in the street while Helmut Klementi was been taking pictures of the snow berm in front of his brother's house. Exhibit 2, Douglas County Sheriff's Report dated December 18, 2012.

7. The Douglas County Sheriff's Office responded to the scene and conducted an investigation of the incident. As part of that investigation, Deputy McKone interviewed Helmut Klementi, Egon Klementi, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. From that investigation, Deputy McKone states that Spencer's version of the incident was not credible and, in his opinion, Spencer "was upset with the Klementis, saw Helmut taking photographs of the snowburm [sic] and used the excuse of someone breaking into his truck to confront and commit a battery on Helmut Klementi." Deputy McKone forwarded his investigation report to the District Attorney's Office for a decision regarding prosecution. Deposition Transcript of Deputy Jesse McKone, attached as Exhibit 3, pp. 36:11 – 37:16.

8. Ms. Kinion had no involvement in Deputy McKone's decision to arrest Spencer on December 18, 2012. Deputy McKone confirmed that he never spoke with Kinion and never obtained a written statement from Kinion prior to arresting Spencer. Exhibit 3, at p. 37:9-16.

9. Ms. Kinion was not involved in the criminal prosecution against Spencer until the Deputy District Attorney contacted her and requested that Kinion provide any information that she may have regarding the incident and events relevant to the neighborhood. Exhibit 1, at pp. 147:9 – 148:15.

10. As part of Spencer's trial, Kinion received a subpoena and was required to provide testimony in response to the questions posed to her. Exhibit 1, at p. 141:13-23.

///

A. **Law and Discussion.**

1. **Legal Standard.**

Nevada Rule of Civil Procedure 56(b) provides that "[a] party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor." Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). When reviewing a motion for summary judgment, the court must view the evidence in a light most favorable to the nonmoving party. Wood, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party may not defeat a motion for summary judgment by relying "on the gossamer threads of whimsy, speculation and conjecture," or on "general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." Id. at 731, 121 P.3d at 1030.

Summary judgment is available as a matter of law when the facts of the case do not satisfy the required elements of the claims asserted. See LaMantia v. Redisi, 38 P.3d 877, 879-80 (2002) (holding that a claim for malicious prosecution is subject to summary judgment when facts do satisfy the elements of that claim); Land Baron Investments, Inc. v. Bonnie Springs Family Limited Partnership, 131 Nev. Adv. Op. 69 (2015) (affirming summary judgment because the evidence did not satisfy the elements of the claim).

2. **Summary Judgment is Appropriate on Spencer's Claim for Malicious Prosecution.**

The elements for a claim of malicious prosecution are: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior

criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev. 27, 38 P.3d 877, 879-80 (2002). The Nevada Supreme Court has further explained that "[a] malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." Id. In this case, there is no evidence that supports a finding that Kinion initiated or actively participated in the continuation of Spencer's criminal action. Furthermore, there is no evidence that there was a lack of probable cause created by Kinion, much less malice on her part in respect to Spencer's arrest and prosecution.

Deputy McKone testified that he had no contact or communication with Kinion prior to arresting Spencer on the evening of December 18, 2012. Deputy McKone responded to the scene and found 82-year old Helmut Klementi lying in the street, in the snow, after being attacked. From that, he conducted his own investigation into the matter and, without ever speaking with Kinion or obtaining a statement from her, Deputy McKone came to his own conclusions regarding the events that transpired that evening and placed Spencer under arrest. In his own words, Deputy McKone states:

> *It is my own opinion*, Jeffrey Spencer, was upset with the Klementi's [sic], saw Helmut taking photographs of the snowburm [sic] and used the excuse of someone breaking into his truck to confront and commit a battery on Helmut Klementi.

See Exhibit 2 (emphasis added). Deputy Klementi then forwarded his report to the Douglas County District Attorney's Office and the decision to prosecute was made by that Office. From these facts, it is clear that Kinion played no role in the initiation of the criminal charges against Spencer.

Furthermore, there is no evidence that Kinion "actively participated in the continuation of a criminal proceeding" or that she acted with any level of malice. Once the decision to prosecute was made by the Douglas County District Attorney's Office,

Kinion's involvement was limited to responding to solicitations from the appropriate authorities. Certainly, responding to requests for information from the Douglas County District Attorney's Office and testifying at trial pursuant to a subpoena does not amount to "active[ ] participat[ion] in a criminal proceeding." Kinion did not push information onto the authorities nor did she insist that prosecution continue. Instead, her role was limited to that of a citizen responding to requests made to her from government officials through the proper channels. These same facts fail to demonstrate any malice on the part of Kinion.

Based on the foregoing, Spencer has failed to provide any evidence that would support a claim for malicious prosecution against Kinion. Frankly, Spencer has no one to blame but himself for having to endure the criminal prosecution. Certainly, he cannot look to blame Kinion or others for his actions or the resulting consequences. For these reasons, the claim for malicious prosecution against Kinion should be dismissed.

3. The Claim for Civil Conspiracy Cannot Continue.

Based on many of the same facts outline above, the claim for civil conspiracy must fail as a matter of law. Importantly, "to establish a claim for civil conspiracy, a plaintiff must establish . . . *the commission of an underlying tort.*" Peterson v. Miranda, 991 F.Supp.2d 1109, 1120 (D. Nev. 2014) *citing* GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11, 15 (2001) (emphasis added). In addition to establishing an underlying tort, a claim for civil conspiracy must establish the following elements: (1) defendants acted in concert; (2) defendants intended to accomplish an unlawful objective for the purpose of harming the plaintiff; and (3) plaintiff sustained damages resulting from the

defendants' acts. Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1999). None of these elements are satisfied.

Initially defeating the conspiracy claim is the fact that the underlying claim for malicious prosecution cannot stand. Without a valid and actionable tort, Spencer's claim for civil conspiracy must also fail. Nevertheless, considering the remaining elements of the claim for civil conspiracy, there is no evidence to support that Kinion, or the other defendants, somehow concocted an agreement amongst each other to harm Spencer. The idea itself is unimaginable and would require that all of events that took place on the evening of December 18, 2012 were scripted; i.e., that Helmut Klementi, a 82-year-old man, would act as bait to prod Spencer into assaulting him; that the neighbors would act together in concert and influence the Sheriff's investigation; and that the neighbors would work together and give false or inaccurate trial testimony against Spencer. The idea is outrageous and completely unsupported by the facts.

4. Privilege Precludes the Claims Asserted Against Kinion.

Lastly, Kinion's communications with the District Attorney's Office and testimony at trial would be protected under the testimonial or judicial proceeding privilege. "[There] is [a] long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of controversy." Circus-Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). "The policy underlying the privilege is that certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege. . . ." Id. at 61,

657 P.2d at 104. In addition, of course, statements made by Kinion to the police or district attorney are immune from civil liability under NRS 41.650.

In this instance, Kinion's involvement in this matter was limited to responding to requests from the District Attorney's Office as well as testifying at trial pursuant to a subpoena. However, Kinion's trial testimony and communications with the District Attorney's Office in preparation to a judicial proceeding are privileged and cannot subject her to a claim for malicious prosecution. See Sahara Gaming v. Culinary Workers Union, 115 Nev. 212, 984 P.2d 164, 167 (1999) ("This court has also held that the absolute privilege rule applies to letters written in anticipation of litigation.")

II.

CONCLUSION

Based on the foregoing, Kinion respectfully requests that the claims asserted against her in this matter for malicious prosecution and civil conspiracy be dismissed by way of summary judgment.

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 22 day of April, 2016.

GLOGOVAC & PINTAR

By: _____

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
ROBERT R. HOWEY, ESQ.
Nevada bar No. 11608
Attorneys for Third-Party Defendant,
Mary Ellen Kinion

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 22 day of April, 2016, I served the foregoing document(s) described as follows:

THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

Nicholus Palmer, Esq.
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Dated this 22 day of April, 2016.

Sherri L. Morrell
Employee of Glogovac & Pintar

EXHIBIT 1

EXHIBIT 1

IN THE NINTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER,

Defendant.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

_____/

Case No. 14-CV-0260

Dept. No. 1

DEPOSITION OF MARY ELLEN KINION

04/07/2016

Reno, Nevada

REPORTED BY: KRISTINE BOKELMANN
NV CCR #165, CA #5979

Job No: 297108B

Page 10

A Correct.
Q You're not precisely sure which one, but it's one of those two boxes?
A Correct.
MR. ZANIEL: Okay. I don't know if anybody else needs to see that.
MR. PINTAR: Are you going to mark that, Dave?
MR. ZANIEL: Yeah, I think we'll mark it.
(Marked Defendant's Exhibit 7.)
BY MR. ZANIEL:
Q Okay. So you've lived in this residence for approximately 16 to 17 years?
A Yes.
Q Do you currently live with anybody?
A No.
Q Have you ever lived with anybody at that location?
A My son has been there on and off.
Q Was your son there relative to the time of the incident that we're here to discuss today?
A Which incident are you here to discuss?
Q The alleged assault of Mr. Klementi.
MR. PINTAR: So December of 2012.
BY MR. ZANIEL:
Q December 2012.

Page 11

A 2012. Nobody was there.
Q You were living there by yourself?
A I was by myself.
Q Okay. Does your son have any information about this event in December of 2012?
A I don't know.
Q What's your son's name?
A Zachary.
Q And is it Zachary Kinion?
A Yes.
Q And how old is Zachary?
A He's 34.
Q And when he's not living with you part time, where does he live?
A He's been living in Thailand.
Q And what does Zachary do for work?
A He's a computer expert.
Q Okay. So Zachary may have information, it sounds like, about the incident in December of 2012? When you said "I don't know," I don't know what that means.
MR. PINTAR: Could you maybe clarify for Miss Kinion, I mean, did she say something to him? Is that what you're asking?

Page 12

BY MR. ZANIEL:
Q Yeah. I mean, I guess does he have any independent information other than what you have told him about the incident?
A Oh, no.
Q Okay. So he hasn't looked at any computer video or anything like that?
A No.
Q Any information that he knows about the incident of December 2012 has come from you?
A Correct.
Q Okay. Does Zachary know anything else about any disputes that have occurred either before or after December 2012 involving the Spencers and the Klementis, firsthand knowledge?
A No.
Q Okay. When you moved into the residence approximately 16 to 17 years ago on Meadow Lane, was the Klementi residence built at that time?
A Yes.
MR. PINTAR: I'm sorry. Which one?
BY MR. ZANIEL:
Q Egon's house on Charles Street.
A Yes.
Q Was that house built?

Page 13

A Yes.
Q Okay. Who was living in it at that time?
A The Klementis.
Q Okay. So they were there before you?
A Yes.
Q Was the residence of the Spencers present when you moved into your home 16 to 17 years ago?
A Yes.
Q And who was living there at that time, if you know?
A Nobody.
Q Okay. It was just a home?
A Yes.
Q Okay. Approximately, to the best of your recollection, who was the first person that moved into that residence and when did that occur?
A I don't know.
MR. PINTAR: You're speaking at this --
BY MR. ZANIEL:
Q Of the Spencer residence. The question is, did somebody live in the Spencer residence before the Spencers did?
A I don't know.
Q Okay. Do you know when the Spencers moved into that residence?

Page 14

A No.
Q Within a couple years? You wouldn't have an estimate of that?
A No.
Q A little more background, I guess. What is your date of birth, ma'am?
A 1-15-48.
Q Okay. And before you lived on Meadow Lane, where were you living? Was it northern Nevada area or did you move from a different state?
A I lived nextdoor to the house that I have now.
Q Okay. And how long did you live nextdoor to that home?
A 11 years.
Q And would it have been -- if we go back to this Exhibit No. 7 there, would it have been farther away from Charles Street or closer to Charles Street?
A Closer.
Q Okay. So when you moved in that residence -- well, if your residence is 176, do you know what the street number is for the house you lived in for 11 years before 176?
A 178.
Q Okay. When you lived on 178 Meadow Lane, was the Klementi residence on Charles Street built at that

Page 15

time?
A Yes.
Q And when you moved into that house approximately 27 years ago, the 178 Meadow Lane, were the Klementis living there at that time?
A Yes.
Q Okay. Where did you live before 178 Meadow Lane? If you don't know the numbers, that's fine.
A It was a little bit higher up on Kingsbury Grade. I don't remember the name of the street.
Q And how long did you live there for?
A About a year.
Q And then before that?
A I lived on top of Kingsbury. I lived up there for maybe a year or two.
Q Okay. And before that?
A I lived in Round Hill.
Q Which is how far from Kingsbury Grade?
A About -- do you mean -- I don't understand your question.
Q Geographically, was it a couple miles away?
A Yes.
Q Okay. How long did you live in Round Hill for?
A For I believe two years.

Page 16

Q Okay. And then before that?
A I lived on the California side.
Q Okay. Still in the Lake Tahoe area?
A Yes.
Q And how long were you on the California side?
A About six years, I believe.
Q Okay. I think that's probably far enough back.
Tell me about your educational background. High school? College?
A I have some college. I have a degree in nursing.
Q Okay. So I guess to go backward, you graduated high school and then from there you went on to college?
A No.
Q Okay. So there was some time off and then you returned to go to college?
A Right.
Q Which college did you attend?
A Western Nevada Community College.
Q And what time frame are we talking, generally? '70s, '80s, '90s?
A I'm trying to think. Well, I was about 49 when I graduated.

Page 17

Q Okay. So you were 49 when you graduated, and forgive me for asking, how old are you today?
A 68.
Q All right. So you were 49 when you graduated, that was from Western Nevada Community College?
A Correct.
Q And what was your degree in?
A Nursing.
Q Okay. And was that an associate's degree or a bachelor's degree?
A Associate's.
Q Okay. So before, I guess, you graduated from Western Nevada Community College, had you worked in the nursing field?
A No.
Q So this was kind of a late change of careers for you?
A Yes.
Q Okay. Do you have any further education besides an associate's degree from Western Nevada Community College?
A No.
Q All right. Let's do employment. Are you currently employed?
A Yes.

Page 34

the Spencers. And by "dispute" I mean you guys don't get along; is that a fair comment?
A Yes.
Q I'm trying to find out approximately when that started. And when I say it's years, I'm going to try to ask you to be as specific as you can. I mean, 10 years, 15 years?
A I would say it would be the summer of 2012.
Q Okay. Do you know approximately -- and if I asked you this, forgive me. Do you know approximately when the Spencers moved into their home?
A No.
Q I asked you that and you said you didn't remember. Okay. So in the summer of 2012 you remember that there was some -- some kind of dispute or that's when the problems started between you and the Spencers?
A Yes.
Q Do you remember if there was one precipitating event that started the turmoil between you and the Spencers?
A Yes.
Q Tell me about that specific event. What was it?
A Marilyn Spencer came to my house. She brought this dog that she had. It was a puppy. We went out.

Page 35

She wanted to talk to me. She said she wanted to show me the puppy. I'd just seen it a couple days before.
She -- we sat down on my deck and she told me that she had film of Egon Klementi at the edge of their property taking pictures of the truck, and she was upset about it and she said they were going to do something about it. And I told her, you leave him alone.
And then the dogs were playing, and there's an old shoe that was in my yard, and they were playing tug of war, and while we were talking they are playing tug of war. And then her dog got the shoe and it came up and it was all excited, and she took the shoe and just slammed it into the dog's head as hard as she could.
And then she told me, we are going to build a fence and we don't want any of the neighbors complaining.
Q Okay. So there was a lot of information there. First of all, have you ever told the Spencers any of what you're saying now?
A No.
Q This is the first time that they've heard what started this whole dispute?
A I don't know.
Q Okay. But you have never told them this?
A No.

Page 36

Q Okay. All right. So let's go back. In the summer of 2012 Miss Spencer came to your house with a brand new puppy. Had either Mr. or Mrs. Spencer come to your house before that date for any reason?
A Yes.
Q Give me some examples of how long have they been coming to your house and what would they come to your house for.
A Not Jeff especially, but Marilyn would come mostly to tell me about Bruce Taylor.
Q And who is Bruce Taylor?
A It's a guy that she was -- had a restraining order against.
Q One of the residents around that area?
A Yes.
Q Okay. So she would tell you about Bruce Taylor. Any other reasons that you remember, get-togethers or her coming to your house for?
A On and off for years, but I don't remember exact incidents.
Q Did they ever, like, bring you food or -- that was a bad question. Before the summer of 2012, were you ever social with the Spencers?
A Yes.
Q Did you ever have lunch together or --

Page 37

A Yes.
Q -- dinner together?
A Yes.
Q Was it at their house?
A Was what at their house?
Q The social get-togethers.
A I've been to their house.
Q Okay. And have they been inside your house?
A Yes.
Q So you've socialized before with both Mr. and Mrs. Spencer?
A Mainly Mrs. Spencer.
Q Okay. How about outside of the neighborhood, have you and Mrs. Spencer ever gone out to lunch together?
A Yes.
Q Okay. All right. So up until summer of 2012, would you have -- so if we were in spring of 2012 sitting here right now and I asked you would you consider Miss Spencer a friend, what would you say?
A I would say not a real close friend.
Q Okay. Would you say an acquaintance?
A Kind of somewhere in between.
Q Okay. Fair enough. Before summer of 2012, did they ever ask you to borrow things or vice versa,

Page 38

like other neighbors do?
A I don't remember.
Q Okay. So there was certainly no turmoil or problems prior to the summer of 2012 then between you and the Spencers?
A Right, yes.
Q When Mrs. Spencer would tell you about Bruce Taylor, the restraining order, you didn't have an opinion about that or a feeling about that?
A No.
Q Okay. So then the summer of 2012 happens and it's one day that kind of changes everything, and it's the day Miss Spencer comes over with her puppy, and three things happened on that particular day, which we're going to go over here in a second, but from that day forward, there was discourse between you and Mrs. Spencer?
A I think it was actually before that.
Q Okay. Was it one event? Because you gave me that one day. So that's what I'm keeping in my mind now from going forward. What happened before that?
A She had come to my house and told me how they were driving somewhere and somebody had cut her off, some old man had cut her off, and Jeff got out of the car and slugged the guy in the face, and she was all

Page 39

excited about it.
Q Okay. So she told you that story, and then what did you do at that point? Did you say to yourself, I don't want to be friends with these people any longer?
A I looked at -- I went online. I tried to look at police reports. I tried to see -- not police reports, but newspapers to see if anything had been reported about it.
Q All right. Approximately when was that conversation relative to the summer of 2012?
A I think that was approximately months before, a few months. I don't remember.
Q And in between that conversation up until the time when Miss Spencer came over with the dog, did anything happen during that time frame?
A I don't remember.
Q Okay. All right. So then we get to the summer of 2012 and Miss Spencer comes over with her dog, and we're going to talk about that in a second, but just a little more foundation with regard to the Klementis.
When you moved in years and years ago, the Klementis were occupying that residence on Meadow Lane?
A I don't know how long they occupied it.
Q But when you moved in, they were there?
A Yes.

Page 40

Q And who was living there at that time at the Klementis' home when you first move in 20 something years ago?
A Elfi and Egon.
Q And they are husband and wife?
A Yes.
Q Okay. And when you first moved in 20 something years ago, did you introduce yourself to Elfi and Egon within the first few months of moving in?
A I think it was years. Maybe a year or two.
Q Okay.
A I don't remember.
Q That's fine. From that point when you introduce yourself up until the summer of 2012 -- so that's quite a long span now -- can you describe your overall relationship between you and the Klementis, Egon and Elfi.
A I was friends with them.
Q Okay. So there's no question or hesitation about that. It was not the same relationship as with Miss Spencer. You were friends with the Klementis?
A Right.
Q Did you ever go to the Klementis' house and eat dinner?
A Yes.

Page 41

Q Did they ever come over to your house and eat dinner?
A Occasionally.
Q Did you ever go out to dinner with the Klementis?
A Yes.
Q Okay. From the entire time that you lived on Meadow Lane up until now, has anybody lived at the Klementi residence other than Egon and Elfi?
A No.
Q Okay. And then I guess just for foundational purposes, in the summer of 2012, if we look at Exhibit 7 on this map here, the red mark is where the Spencers live. You can tell where the Klementis live here on Meadow Lane, right? Is that clear to you that that's their residence there?
A Yes.
Q Okay. And then you live in one of these two down here?
A Yes.
Q Who lives at this first house right here? So if you keep going down Charles and don't turn on Meadow, who would you run into?
A I don't know their names.
Q How long has that person been there? Do you

Page 46

A No.
Q Do you know who you talked to?
A I know I talked to a guy named Joel.
Q On at least one of the occasions?
A Yeah.
Q How about the other one?
A I'm not sure on the other one.
Q Fair enough. And just so I'm clear, these were two phone calls that were made to KGID; you never did any written forms to KGID, wrote any letters, filled out a specific form or anything like that?
A No.
Q Could you tell me approximately when these two phone calls were made. We know it's after the summer of 2012 until we sit here today, so sometime in between that. Do we know approximately when they were?
A One was 2012 on the 12th of December.
Q On 12-12-12?
A Yeah.
Q Okay. So 12-12-12 you made a phone call to the KGID. And did you speak to Joel on that one or the other person?
A Other person.
Q Okay. And then when was the other time?
A It was about -- I think it was in January, but

Page 47

I'm not sure.
Q January of 2013?
A Yeah, I am not sure. No, recently.
Q Of '16?
A Yes.
Q Okay. But you're not positive about that?
A I'm not positive whether it was January or February.
Q Okay. But this winter?
A Yes.
Q And that's the time you talked to Joel?
A Yes.
Q Okay. On the 12-12-12 telephone call, could you tell me generally what you told KGID.
A I told them I had a huge berm in front of my driveway. And I went out and looked, and nobody had anything in front of their driveways.
Q Okay. So when you say you went out and looked, you walked down Meadow Lane?
A Yes.
Q And on everybody else's driveway that you walked in front of there was no snow?
A Yes.
Q And approximately how many driveways did you go past?

Page 48

A Maybe 12.
Q Okay. So 12 other driveways had no snow blocking their driveway, but your residence had snow blocking your driveway?
A Yes.
Q And the snow that was blocking your driveway, when you say a berm, how high was the snow?
A It was different levels because it was full of ice, big ice chunks.
Q Okay. All right. So you told somebody at KGID on 12-12-12 that a snowplow had driven down Meadow Lane and all 12 -- or 12 other driveways were clear but yours was blocked?
A That's not what I said.
Q Okay. Then let's go over that again. On 12-12-12 you made a phone call to KGID?
A Correct.
Q And you said that your driveway had a snow berm blocking it -- excuse me -- blocking it?
A Snow and ice.
Q Snow and ice. And no other driveways did?
A Yes.
Q Okay. Did you know -- did you see the snowplow come down the street that day?
A No.

Page 49

Q When you called on 12-12-12, did you specifically report that Jeff Spencer had --
A No.
Q Okay. You just said a snowplow did this?
A Right.
Q Did that person tell you any information once you told them what had occurred?
A No, they just said they would do something about it.
Q Okay. And then did you ever hear anything else about that incident?
A They came with a small plow truck.
Q Who is "they"?
A The KGID men. A guy named James and another man -- I don't know his name -- they came and plowed it out.
Q Within a day?
A That morning right after I called.
Q Okay. So James and another man came with a small type plow.
A Yeah, the front of a truck.
Q Okay. And just moved the snow and ice out of the driveway?
A Right.
Q Okay. As we sit here today, do you know if

Page 50

Jeff was driving a snowplow anywhere near 12-12-12?
A I suspected it.
Q What leads -- what led you to suspect that Jeff -- well, from what you're telling me, it sounds like you believe somebody intentionally created a berm in front of your driveway.
A Yes.
Q Okay. You believe that that was Mr. Spencer? You suspect that that was Mr. Spencer?
A I suspected, yes.
Q I'm trying to find out why did you suspect that? You didn't see it, but why did you suspect that?
A I suspected it because after it was done, after it was plowed away, Marilyn came by in her sports car, which I could hear. I looked out the window. She had stopped the car in front of my driveway. She was looking at it, and then she got on the phone. I could tell she was on her phone, and then she drove away.
And then 15 minutes later about, a snowplow came by again and took what was put into that pile of snow and put it, part of it, back into my driveway.
Q Okay. And did you see the person that was operating the snowplow when they came back and put it back in front of your driveway?
A No.

Page 51

Q Okay. Did you call KGID after that?
A No.
Q Do you have any photographs of the 12-12-12 incident either the first time that there was snow and ice in your driveway or after they cleared it and somebody came back and put it back again?
A No.
Q Did anybody -- do you know anybody else that witnessed this? Like did you go knock on somebody else's doors, like the Klementis or anybody else, and say, hey, look at my driveway compared to everybody else's?
A Just the KGID guys, the comments they made.
Q What comments did they make?
A They said your house was real easy to find because yours was the only one that had a big, you know, had this big berm mess in front of it.
Q Okay. What about when somebody else deposited the snow and ice back again after they cleared it, did anybody else see that?
A No.
Q All right. And then the other time would have been in January or February of 2013 where you called KGID and talked to Joel?
A Yes.

Page 52

MR. PINTAR: '16.
MR. ZANIEL: '16. This year. Thanks for listening.
BY MR. ZANIEL:
Q All right. So this year you called KGID and made a complaint and you talked to Joel. First tell me why you called KGID. What was the complaint about?
A It was a complaint about that Jeff was in the area snowplowing.
Q Okay. Did you see Jeff operating a snowplow?
A No.
Q How do you know it was Jeff that was operating the snowplow?
A He was going to his house and stopping at his house.
Q When you say "stopping at his house," you mean getting out of the snowplow and going inside?
A Yes.
Q Okay. So you saw a snowplow in the neighborhood operating and you watched the snowplow stop in front of the Spencers' residence and you watched the driver of that snowplow get out and go into the Spencer residence?
A No.
Q Okay. Tell me then -- we've got to go over

Page 53

that again.
A I did not see him go in the residence. I was told he went into the residence.
Q By whom?
A By the Klementis.
Q Okay. So did you, yourself, see a snowplow on whatever date that was? We're not sure of the date, but it was either January, February 2016. Did you, yourself, see a snowplow in the area?
A Yes.
Q And was it on Meadow Lane or Charles Lane when you saw it?
A I saw it on Meadow.
Q And was it plowing?
A Yes.
Q And at the time you saw it, could you tell who was operating the snowplow?
A No.
Q Okay. And then were you inside or outside at this time when you saw it?
A I was inside.
Q Do you have windows that you can see out into your street?
A Yes. My bedroom is on the street.
Q So you saw a snowplow. You're not sure who

Page 66

Q Okay. All right. So we'll get up to that point in a second. But at that meeting, was that the first meeting in which you heard anybody say that Jeff Spencer was not supposed to plow in the neighborhood?
A No.
Q It was before that?
A Yes.
Q Okay. When was the first time you heard that Jeff Spencer was not supposed to plow in the neighborhood?
A I don't remember.
Q Was it you think a year before or more than a year before? And I don't want you to guess. I'm just trying to see.
A I can't guess, so I'm going to say I don't know.
Q Okay. Do you know where it was that you heard that Jeff Spencer should not plow in the neighborhood the first time?
A No.
Q Was it at a meeting, or just have no idea?
A I have no idea.
Q Is it possible you were just told by somebody else and that you didn't actually hear it from KGID, somebody just may have told you that?

Page 67

A I don't remember.
Q Okay. All right. So I want to go back to the summer of 2012. So do you want to take a break?
A No, I'm fine.
Q All right. So summer of 2012 Miss Spencer comes over. Up until this point, one thing had happened with the -- she came over one time and said that Jeff had punched somebody.
But summer of 2012 when she came over with her dog, that was kind of the last time you would have considered yourself an acquaintance of Miss Spencer. From that point forward, you were not even acquaintances; is that a fair statement?
A No.
Q That's not a fair statement?
A No.
Q Okay. Were you acquaintances after that?
A I talked to her one time after that.
Q Okay. When did you talk to her after that?
A I was walking down the street with my dog.
Q Which street? Meadow or Charles?
A Meadow, going towards the woods. She pulled up in her sports car behind me and she asked me, she said, are you mad at me?
And I said, Marilyn, you have a rotten soul.

Page 68

Wait. I take that back. She didn't ask me if I was mad at her. She goes, what's wrong? Why aren't you talking to me?
Q And you said?
A I said, Marilyn, you have a rotten soul.
Q And what else happened?
A I walked away.
Q Okay. And is that the last time you had a conversation with Miss Spencer?
A Yes.
Q And that was after the summer of 2012? That was after the dog incident where she brought the dog over?
A Yes.
Q Was that in 2012 still but before December of 2012?
A Yes.
Q Okay. All right. Let's go to that one time she brings the dog over. So she brings the puppy over to your house. She knocks on the door and wants to show you her new puppy. You open the front door and you both go out to the front yard?
A No.
Q I thought this took place in the front yard, so let me get the details then. Did you invite her in

Page 69

on that day?
A Yeah, she came to the door with the puppy. I'd seen the puppy before. She'd had it -- I guess it was eight weeks old, something like that. I don't remember.
Q Do you know what kind of dog it was?
A Some kind of wolf mix.
Q All right. So she brings the puppy over and knocks on your door. What happens?
A She's standing there. I don't remember exactly what we said after that. She's showing me the puppy. I invited her in. She didn't look like she was going anywhere. And my dog was out back, so we went out to the deck so the dogs could play.
Q So this was in the backyard, not the front yard?
A Right.
Q Okay. What kind of dog do you have?
A At the time I had a mix that you really can't tell what it is.
Q Okay. All right.
A A medium size dog.
Q All right. Medium size dog. You go out to the back deck, and that's when these three things kind of happen. One is that the dogs got into some tussling

Page 70

match. Marilyn --
A They were playing.
Q They were playing and Marilyn's dog got ahold of a shoe and brought it to Marilyn. Marilyn took the shoe out of the dog's mouth and hit the dog over the head with the shoe?
A Just whacked it right across its snout.
Q Did you find that to be problematic?
A I thought it was barbaric.
Q Okay. Did you say anything to her at that time about just that issue, the dog issue?
A No.
Q But in your mind, you thought at that time it was barbaric?
A Yes.
Q Okay. Anything else with the dog on that day that you saw that was inappropriate other than the hitting the dog in the jaw?
A No.
Q Okay. The second thing on that day was a discussion with Egon Klementi?
A His name is pronounced "a gone".
Q Egon. Forgive me. I'll get the hang of it after a while. Egon Klementi. She said something about Egon Klementi taking photographs at that time?

Page 71

A Yes.
Q Can you tell me a little bit more about that.
A No, I've told you pretty much.
Q So she made one comment?
A She told me, yeah, just what I just said earlier.
Q That Egon Klementi had taken photographs of people on the property, on the Spencer property?
A No.
Q Where?
A She said that he was at the edge of the property and was taking pictures of the truck, this 18-wheeler semi, whatever, giant truck, and that was it, that she was -- that they were going to do something about it.
Q Okay. And then at that point you said leave Egon alone?
A Right.
Q Okay. You were friends with Egon and Elfi?
A Yes.
Q So you kind of felt the need to stand up for Egon and say leave him alone?
A Yes.
Q When she said they were going to do something about it, did she say specifically anything?

Page 72

A No, but after hearing about other things that Jeff had done, I was afraid for Egon.
Q Okay. What other things did you hear?
A From Marilyn about how at work he just walked up to some guy, the guy was whining about something, and he punched him out.
Q Okay. Do you know -- when you say "work," do you mean Mr. Spencer's work?
A Yeah. Marilyn told me he was working and some guy he was working with he beat up.
Q Okay.
A Or didn't beat up. He just punched him and he was knocked out.
Q And when did Marilyn tell you that, approximately?
A I don't know how long. I think it was maybe the summer before. I don't remember.
Q So that comment, and then what other comments did you hear about Mr. Spencer that you felt afraid for Egon?
A The one I already stated.
Q About the driving where somebody cut Mr. Spencer off?
A Right.
Q All right. So you told Miss Spencer at that

Page 73

time to leave Egon alone?
A Right.
Q And then the fence issue. So Miss Spencer told you on that day that they were going to build a fence --
A Correct.
Q -- on their property?
A Yes.
Q And she told you that nobody better complain?
A She said none of the neighbors better complain about it.
Q Okay. Before that date -- so that was the fence thing. Or before that date did you know anything about the fence?
A Before it was built? No.
Q Before that one day that Marilyn came over and said we're going to build a fence, had you heard anything about a fence before that date?
A I don't think so. I don't remember.
Q Okay. And then Marilyn left that day. And then the only other time you would have had a conversation with her is when she came by in her sports car and asked what was wrong, and you said you have a rotten soul, and that was the end of the relationship with Miss Spencer?

Page 74

A Right.
MR. ZANIEL: Okay. All right. So let's take a break there.
(Recess 2:41 - 2:54 p.m.)
BY MR. ZANIEL:
Q All right, everybody. We'll go back on the record.
Okay. So we just took a break, and we've now realized that we're going to do two more depositions. It's 3:00 o'clock. So I'm going to try to speed things up a little bit quicker.
So the summer of 2012 and -- is when the first time that -- from that date is when you kind of had that conversation with Miss Spencer when she came over, and that's kind of when the friendship, acquaintances stopped.
A Yes.
Q Okay. Was there anything that happened from that point up until December 18th of 2012 between you and Mrs. Spencer or you and Mr. Spencer in which there was any conversations that took place or you saw something that was objectionable or any disputes?
Other than when Miss Spencer pulled up in the car -- I know about that one -- other than that, were there any issues that you had with the Spencers from the

Page 75

summer of 2012 up until the night of December 2012?
MR. PINTAR: Well, I'm going to object. I mean, that question is vague, it's compound.
MR. ZANIEL: I'm just trying to speed it up.
MR. PINTAR: I know, but do you have a specific event you want to talk about?
BY MR. ZANIEL:
Q Well, I don't know. That's what I'm trying to find out. Are there any events other -- Miss Spencer pulled up when you were walking your dog and asked you what's wrong, and then you said you had a rotten soul.
Did you ever speak to Miss Spencer after that up until December 18th of 2012?
A No.
Q Did you ever observe Miss Spencer drive by your home slowly or do anything inappropriate in a vehicle between that time frame?
A Yes.
Q Okay. Tell me about that. What did you see that was inappropriate?
A What I already told you.
Q What was that?
A When they drive by and --
Q Make angry faces. Okay. Is there anything else?

Page 76

A Yes.
Q What else did you see that was inappropriate?
A One night I was walking my dog, and I was up on Pine Street, which is a few streets up, and a car was coming up towards me with its lights out, and then right when it got to me, it turned its lights on, its bright lights on me. And I got my dog off the road, but I could see that it was a Camaro, which was the car that I'd seen in their driveway when I went -- started on my walk.
Q Okay.
A And that was it.
Q So you saw a Camaro without lights on?
A Yeah, and then they shined their brights on when they got to me.
Q Could you positively identify that as Mrs. Spencer's vehicle?
A No.
Q Okay. Could you identify the driver of that vehicle?
A No.
Q So you assume it was Mr. or Mrs. Spencer?
A Well, I called Elfi up and I said I'm out walking and a car passed me. I told her what had happened, and I had called her a few minutes after, and

Page 77

I said, is the Camaro in their drive? And she said no. And then during the conversation she goes, oh, here it comes now. And it was coming back down into their driveway.
Q Okay.
A That was the --
Q So the conversation you had with Elfi was right after you saw them, the Camaro drive by you?
A No, it was a few minutes after.
Q Okay. Anything else? Any other inappropriate behavior by the Spencers in between the summer of 2012 and December of 2012, the date of the incident, other than what we've talked about?
A This happened recently. This was not --
Q Oh, the Camaro was recently?
A Yeah, it was last summer.
Q Last summer. Okay. Anything in between December 2012 and December -- the summer of 2012 and December 2012, other than what we've talked about?
A I can't remember.
Q Okay. Have you ever filed any type of police report with regard to the Spencers?
A No.
Q Have you ever called 911 and reported any instances involving the Spencers?

Page 78

A When he assaulted Egon with the snowplow.
Q Okay. What date was that?
A That was on the 12th.
Q 12-12?
A '12.
Q '12. Okay. So you called 911 on 12-12-12, and what made you call 911?
A What I just said.
Q What did you see?
A I saw Jeff go down the street in his -- in the snowplow and put snow all over Egon.
Q Okay. What street was it?
A On Meadow.
Q Where was Egon at the time?
A He was in his driveway.
Q Could you clearly identify the operator of the snowplow at that time?
A Yes.
Q You looked in the snowplow?
A He went right past me.
Q Okay. Was it day or night?
A Daytime.
Q So you were able to identify the operator of the snowplow as Mr. Spencer?
A Yes.

Page 79

Q As he passed you?
A Yes.
Q Okay. And you observed the snowplow at that point continue down Meadow Lane plowing snow, and snow left the front loader of the plow and struck Mr. Klementi, Egon?
A No.
Q Okay. So how did Egon get hit with snow?
A He wasn't plowing until he got to Egon's property, and then he went into the snow and picked it up off the side, because there's no snow on the road, and picked up the snow from the old snow and put that onto Egon.
Q Did the plow have to go in reverse at any time?
A I don't know anything about plows.
Q Did the plow come to a stop and pick up snow?
A No.
Q Okay. So it continued to move, the plow continued to move?
A He speeded up.
Q Okay. So he sped up on Meadow Lane. Did you see the plow pick up the snow?
A Yes.
Q Okay. And then you saw the plow -- snow come out of the plow towards Egon?

Page 80

A Yes.
Q Where were you standing at this point?
A I was out in the road, in the street.
Q Were you -- which street were you on?
A Meadow.
Q And where were you -- if we look at Exhibit 7 here, approximately where were you standing? Can you see it on this map?
A I was standing -- well, my house is one of these.
Q Right.
A But I was standing right over here in the street.
Q In front of your house?
A Yes.
Q Okay. So you were standing in front of your house in the middle of the road and you observed this in front of you up at the Klementis' driveway?
A Yes.
Q Okay. Did you see snow actually touch Egon?
A Yes.
Q Did Egon try to move away from the snow?
A He didn't have a chance. It came at him so fast.

Page 81

Q Okay. Did Egon fall down on the ground?
A No.
Q Okay. All right. So you saw that happen, and then how soon after that did you dial 911?
A It was an hour later.
Q Why did you wait an hour?
A Because Egon called 911.
Q Okay. How did you find out Egon called 911?
A I called him to see if he was okay, and he was going to call 911.
Q Okay. So when you saw this, you didn't walk up to see how Egon was doing at that time?
A No, I ran in the house and immediately -- because I saw him go towards his house, so I ran into my house and called them.
Q You saw who go towards the house?
A Egon.
Q So you saw Egon go into his house. You go into your house.
A Right.
Q Okay. You call 911 at that time or you call Egon at that time?
A I called Egon.
Q Okay. And did you make contact with Egon?
A Yes.

Page 82

Q Tell me about the conversation you and Egon had.
A I don't remember the conversation. Just that I remember -- the one thing I remember is asking him are you okay.
Q Okay. And what did he say?
A He was flustered. I don't remember what he said.
Q Okay. Did the Klementis have cameras on their -- well, strike that. Do the Klementis have cameras on their house?
A Yes.
Q Did they on 12-12-12?
A No, they were told to put them up after the trial by the DA.
Q Okay. All right. So you run in the house. You call Egon. You make contact. He said he's calling 911?
A Right.
Q He told you that?
A Right.
Q Why did you call 911 if he said he's going to call 911?
A Because Egon has a bit of a language barrier and I thought about it, and I thought, you know, I

Page 83

wanted him to do it himself, because he's a man, you know, and he should be able to handle that. But then I thought about him not -- maybe not getting across what had happened to him, because he says things sometimes a little different.
Q Well, in that hour period of time that elapsed, did you go back outside at all?
A No, I think I was getting ready to go somewhere or something. I don't remember.
Q Did you call Egon back again during that hour span?
A No.
Q Okay. So you called 911, and what did you report?
A I reported that I was a witness to seeing an assault.
Q Okay. And you defined "assault" as what we talked about, right? That's -- I just want to make sure there was nothing else other than the snow being ejected from the plow towards Egon.
A Right.
Q Okay. Did the snow physically touch Egon?
A Yes.
Q You could see that from your vantage point?
A Yes.

Page 84

Q Where on his body did the snow hit?
A It just like covered him. It just like went over his body. It just covered his body.
Q Okay.
A It was higher than he was.
Q So I'm trying to get this in my mind now. So one minute Egon was standing on his driveway without any snow near him, this event happens and Egon is completely covered in snow?
A I don't know about completely. I could still see him.
Q Okay. But there was snow higher than him around him?
A It was coming at him. It was higher.
Q Okay. So you call 911, you say you're a witness to an assault. What did the dispatcher tell you?
A I don't remember.
Q Okay. Were you ever contacted by the police regarding that event?
A Yes.
Q When and what happened?
A I don't remember what time. And an officer called me -- I don't remember his name -- and just asked me about, you know, if I was a witness to it, if I had

Page 85

seen something.
Q Was it that day or a different day?
A It was that day.
Q Okay. And that officer called you, and did you say yes, I'm a witness to that?
A Yes.
Q Did the officer ask you to fill out a statement?
A No.
Q Have you ever filled out a statement regarding that event?
A No, I don't think so.
Q Okay. Do you know what came about of that event? Did the police contact Egon?
A Yes.
Q And what happened as a result of that 911 call?
A Nothing.
Q Do you know if the police talked to the Spencers about it?
A I don't know.
Q Do you know if there was any citations or arrests at that time?
A I don't know.
Q Okay. And that was on 12-12-12 you said?

Page 86

A Yes.
Q Okay. Any other times that you've called 911 other than on 12-12-12 regarding the Spencers?
A I don't remember.
Q Okay. Before we talk about the night of the incident, you installed the four security cameras after this event, in the fall of 2013?
A I'm not sure when that was.
Q It was in 2013, though?
A Yeah, I've had them for over a year. So maybe later than that. '13.
Q Okay. So 2013, 2014. Where are the four security cameras located on your residence?
MR. PINTAR: Wait. What does it matter? I mean, let's --
MR. ZANIEL: I want to see what vantage point, because I'm going to ask for the security -- I'm going to ask for the video.
MR. PINTAR: She said they weren't there at the time of the event.
MR. ZANIEL: No, but they were there after the event.
MR. PINTAR: Yeah, years after.
MR. ZANIEL: Yes.
MR. PINTAR: So what's the point?

Page 87

MR. ZANIEL: Well, in case people were driving by or walking by. I don't know what discovery is going to come out yet. There could be potentially issues of ongoing harassment since this event. I don't think this event stopped the ongoing harassment. The question of where the cameras are located I think is certainly discoverable. I don't think it's anything privileged.
MR. PINTAR: Well, okay. Go ahead.
THE WITNESS: I have one in the front of my house.
BY MR. ZANIEL:
Q Okay.
A One is over my garage, one is by my front door, so if anybody comes to my front door.
Q Okay.
A One is on a side of my house by my gate that goes into my backyard.
Q Okay.
A And then one is in my backyard looking down at my back door. I have a sliding door, looking down at that and into my backyard.
Q All right. And then we'll just have a running objection about the camera issue.
How are these -- are these put onto a hard drive?

Page 88

A No.
Q Are they continually rewrote over?
A I don't know. I don't know that much about it. I got them more as a --
Q Deterrent?
A Deterrent, yeah.
Q Have you ever looked at any video from these cameras in your -- that your cameras have taken?
A Yes.
Q Have you ever seen the Spencers on any of your video cameras since you've installed them?
A I haven't looked.
Q You've looked at some footage of your cameras.
A Yes.
Q And the footage you've looked at, did you see the Spencers?
A I don't remember.
Q Okay. And you're not sure how long things are stored for or have no knowledge about that?
A I have no -- I have a limited knowledge. I know that it's continuous and there has to be motion for me to see it.
Q Okay. And how about at night, can they pick up information at night, if you know?
A Not very much.

Page 89

Q Okay. All right. So let's move along.
December 18th, 2012. I guess let's talk about that week between 12-12 and 12-18, that approximate week period of time when you saw the plow that Jeff was operating to throw snow on Egon. Any events or incidents happen during that week between 12-12 and 12-18 that you thought were inappropriate by Mr. Spencer or Mrs. Spencer?
A I don't remember.
Q Okay. On 12-18, 2012, on that day -- do you remember what day of the week it was?
A No.
Q Okay. On that day, do you remember what you did that day? The incident, according to the police report, was about 8:40 at night. Is that your understanding?
A Right.
Q Okay.
A Yes.
Q What did you do that day?
A I don't remember what I did all day long.
Q What's the first thing you do remember?
A I do remember going to a KGID meeting.
Q And who -- how did you get to the KGID meeting?

Page 90

A I drove myself.
Q Okay. Was anybody with you?
A No.
Q Where is the KGID meeting held at?
A It was held right down the street on Pine Ridge Street.
Q Okay. That wasn't the first meeting you had been to?
A No.
Q Do you normally go to the KGID meetings?
A No.
Q What made you go on that day?
A I felt that it was the right thing to do.
Q Why?
A Because of what had happened to Egon as far as him getting covered with snow.
Q Okay. Did you want to make a complaint to the KGID people about that incident?
A I don't know. That never -- I never thought about that.
Q Did you want to voice a concern to the KGID people about that incident?
A Yes, yes, because I was a witness to it.
Q So you go there. What time does the meeting start?

Page 91

A I don't know. Maybe 6:00 o'clock. I don't know.
Q Okay. Could you tell me who was present at the meeting besides yourself?
A No.
Q Were the Klementis there?
A Yes.
Q When we say the Klementis, was Elfi there?
A Yes.
Q Egon?
A I'm not sure.
Q Helmut?
A I'm not sure.
Q You know Elfi was?
A Yes.
Q Okay. Were the Spencers there?
A No.
Q Okay. Were the Shaws there?
A Yes.
Q Okay. Anybody else you remember being present at that meeting?
A I don't remember.
Q Approximately how long did the meeting last?
A I don't remember.
Q Can you just tell me basically how these meetings run. Is there like a leader that gets up and calls the session to order or is it a formal meeting?
A I think it is a formal meeting because they allow people to say whatever they want in the beginning and then we leave and then they do their actual meeting.
Q Okay. So they have like a public comment section?
A Yeah, pretty much.
Q Okay. Did you speak at that meeting?
A I did.
Q Okay. And can you tell us basically what you said at that meeting.
A I don't remember very much of what I said. I remember saying that I was a witness to what Jeff had done.
Q Did you basically tell them what you just told me?
A As far as I remember.
Q Okay. Anything else other than that incident? Did you report anything to KGID other than the incident of 12-12?
A I don't remember.
Q Okay. Who else spoke at that meeting, if you remember?
A I don't remember.

Page 92

Page 93

Q Okay. And if I asked you this, I'm sorry. How long did the meeting last?
A Don't remember. Sorry.
Q That's okay. And how did you leave the meeting? You get back in your car and you drove home?
A Yes.
Q Did you make any stops after that?
A No.
Q When you got home, was it dark out?
A Yes, I think it was.
Q Okay. And if we look at this map here, from the meeting place to your home, did you pass through Charles Street?
A No.
Q Okay. Did you try to avoid Charles Street at that time in the --
A No.
Q Okay. But you just don't use that as an egress, in and out of the neighborhood?
A Right.
Q All right. So you got to your home that day, and at that time nobody was living with you, correct?
A Correct.
Q Okay. What did you do when you got home?
A I don't remember.

Page 138

MR. ZANIEL: And Mr. Shaw.
MS. CAPERS: And Tanika Capers representing the Shaws.
MR. PALMER: Nick Palmer representing Helmut Klementi.
MR. MOORE: Chris Moore of Lemons, Grundy & Eisenberg. We represent Helmut Klementi in the counterclaim that's been filed against him in this action.
I'll note further that because of the events transpiring in the immediate preceding portion of this deposition, counsel found it prudent to start videotaping this deposition.
I will note for the court reporter's benefit that people should not speak at the same time. Please speak at different times. Please be patient, even if you're upset. Thank you.
MR. ROUTSIS: Very good. I'd like to lay a foundation. We've had some issues regarding pending legal evidentiary issues. This case formally went to a criminal trial for two weeks in which the Spencers were acquitted of all charges.
During that trial, evidence came in where Miss Kinion, who is here for this deposition, testified to writing a letter to the district attorney that's

Page 139

material, critical, and relevant to our filing of a civil suit of a conspiracy for malicious prosecution.
I do not have that letter. I'm not in possession of that letter, and I am simply asking her questions regarding her personal recollection of that letter. And I'd like to proceed.
Miss Kinion --
MR. MOORE: For the record, I'm objecting to any line of questioning on a document that should have been produced, especially if, in the words of counsel, it is crucial to counsel's case, which there is an affirmative obligation under NRCP 16.1 to do so. Thank you.
MR. ROUTSIS: Okay.
MR. PINTAR: And in response to that, let me note my objection. It's my position that any of the testimony or evidence that was produced at the criminal trial which Mr. Routsis wants to use in this case, he has an affirmative obligation to produce, and therefore, I'm objecting to Miss Kinion testifying about that evidence.
MR. ROUTSIS: Okay. And I think here's the misunderstanding, and this should be presented to the trial judge. I am not testifying or asking her to testify or moving into evidence an exhibit. I'm asking

Page 140

her to testify simply to her personal knowledge of what she did or not, did or not -- did or did not do relevant to the civil suit against her.
They're pertinent questions, and whether she put it in a letter or not in a letter, I'm asking her questions that are relevant to a document that we're not -- we are not discussing whether counsel improperly has the document. I do not have the document. I am asking her what she did that is quite critical to getting information to this deposition. And please feel free to object on every question, okay?
MR. PINTAR: Let me just stop. You acknowledge you have seen the letter and that you used it at the criminal trial, correct?
MR. ROUTSIS: That is a correct statement, that at the criminal trial the letter that she authored, she present -- never presented it to me. She presented it to the prosecution. The prosecution I believe discovered it to me and it was marked as an exhibit.
We lost all our exhibits in this case. We lost our whole case files and we're trying to piece it together. So we do not have that exhibit.
So I want to question her regarding her conduct. Now, whether or not -- the letter is not relevant. What's relevant is the information she

Page 141

provided to the DA. So I'll go down that road.
BY MR. ROUTSIS:
Q Miss Kinion, you testified at the criminal trial in this case with the Spencers, correct? Where the Spencers were -- Jeff Spencer was accused of a criminal act and you were a witness in that case, correct?
MR. PINTAR: You can answer that.
THE WITNESS: No.
BY MR. ROUTSIS:
Q You didn't testify at that trial?
A Not that he was a criminal in as far as --
Q Did you testify at the criminal trial?
A Yes.
Q Okay. Now, were you subpoenaed by Maria Pence or were you subpoenaed by the District Attorney's Office to testify at that trial?
A Yes.
Q Prior to your testimony at that trial, did you give evidence or statements or material or information to Maria Pence regarding alleged conduct that Jeffrey Spencer may or may not have committed against Egon or Helmut Klementi?
MR. PINTAR: Just for the record, I'm going to object because it may be testimonial privileged, but go

Page 146

A I don't remember.
MR. MOORE: Counsel, just -- I forget whether or not you were in the room when we had a discussion. I do know it's getting later in the day, and there are additional deponents that we noticed in this matter, who I don't know how long their deposition --
MR. ROUTSIS: I'm almost done. If you let me go, I'm almost done.
MR. MOORE: Can I finish myself, please?
MR. ROUTSIS: Certainly. Go ahead.
MR. MOORE: I'm letting you know so that we do have to stop the proceedings at 5:00 today.
MR. ROUTSIS: What time is it?
MR. MOORE: I have around 20 after 4:00.
MR. ROUTSIS: Okay. Why do we have to stop at 5:00?
MR. MOORE: We've got a scheduling conflict.
MR. ROUTSIS: Who does?
MR. MOORE: I do.
MR. ROUTSIS: Where do you got to be?
MR. MOORE: None of your business.
MR. ROUTSIS: Well, maybe you need to stay then. You know what, if we go a few minutes over. We've got people from Las Vegas.
MR. MOORE: I'm saying no, counsel.

Page 147

MR. ROUTSIS: Well, then you can leave.
MR. MOORE: At the peril that the whole video gets stricken and you have to pay for it.
BY MR. ROUTSIS:
Q Okay. Miss Kinion, so you don't remember if you presented evidence about Jeffrey Spencer berming you in?
A I don't remember.
Q Okay. How is it that you got in touch with Maria Pence, the prosecutor that prosecuted Jeff Spencer for these serious crimes? How is it that you came to meet her?
A Through her secretary.
Q Who prompted you to contact her? Did the Klementis ask you to please contact her to give them information?
A She contacted me.
Q Okay. And Maria Pence contacted you?
A Her secretary.
Q Okay. And you spoke with Maria Pence, correct?
A Yes.
Q And did she inform you that she was informed by the Klementis that you may have information regarding conduct, repeated conduct by Mr. Spencer against the

Page 148

Klementis?
A She didn't say who.
Q Okay. She never told you how she came to get your number?
A No. I never asked.
Q Okay. So you got a call from her, her secretary?
A Yes.
Q And the letter that -- did you present a letter to her, without getting into what was in the letter? Did you present a letter to her?
A At a later date, yes.
Q And is that at her request or did you do that on your own volition?
A It was at her request.
Q Okay. And do you know if -- okay. I have nothing further. Oh, strike that. A couple more questions.
A I knew he was going to.
MR. PINTAR: All attorneys do.
MR. MOORE: Not all.
BY MR. ROUTSIS:
Q Did you ever have discussions with any of the Klementis, prior to the criminal trial, that the Klementis were going to keep taking pictures near or at

Page 149

the Spencers' property in order to antagonize and to get Mr. Spencer angry because they knew that they were getting to him?
A No.
Q Any conversations in that regard?
A No.
Q Did they ever talk to you about why they were taking photographs consistently on the Spencers' street?
A No.
Q Do you know why on the evening in question that Mr. Klementi was taking -- that Mr. Helmut Klementi was taking pictures near the defendant's property? Were you ever informed why he was doing that after the KGID meeting?
A I don't know that he was.
Q Okay. Do you have any information as to whether or not this was a preplanned situation that they were trying to antagonize Mr. Spencer that evening?
A I would say a definite no.
MR. ROUTSIS: Okay. Nothing further.
MR. ZANIEL: I have no questions.
MR. PINTAR: I have no questions.
MR. MOORE: I have no questions.
MR. PALMER: I have nothing.
MS. CAPERS: No, I don't have any.

EXHIBIT 2

EXHIBIT 2

12-2555

Douglas County Sheriff Minden, Nevada

Deputy Report for Incident 12SO41608

Nature: Assault
Location: LUK68

Address: 321 CHARLES AV; LRKG
Stateline NV 89449

Offense Codes: ELDB
Received By: Spellberg D How Received: 9 Agency: DCSO
Responding Officers: McKone J, Almeida N
Responsible Officer: McKone J Disposition: CAA 12/18/12
When Reported: 20:44:41 12/18/12 Occurred Between: 20:44:21 12/18/12 and 20:44:40 12/18/12

Assigned To: Detail: Date Assigned: **/**/**
Status: Status Date: **/**/** Due Date: **/**/**

Complainant:
Last: First: Mid:
DOB: **/**/** Dr Lic: Address:
Race: Sex: Phone: City: ,

Offense Codes

Reported: Observed: AOWP Assault, Othr Weap
Additional Offense: ELDB Elder Abuse Battery

Circumstances

LT13 Highway, Road, Alley

Responding Officers:	Unit :
McKone J	303
Almeida N	301

Responsible Officer: McKone J Agency: DCSO
Received By: Spellberg D Last Radio Log: 22:40:43 12/18/12 CMPLT
How Received: 9 911 Line Clearance: ARR Arrest
When Reported: 20:44:41 12/18/12 Disposition: CAA Date: 12/18/12
Judicial Status: Occurred between: 20:44:21 12/18/12
Misc Entry: and: 20:44:40 12/18/12

Modus Operandi: Description : Method :

Involvements

Date	Type	Description	
12/18/12	Arrest	Booking#: 12SOJ3277	Arrest/Offense
12/19/12	Name	SPENCER, MARILYN ANN	Involved
12/19/12	Name	SPENCER, JEFFREY DALE	Arrested
12/19/12	Name	Wells, Janet	Contacted
12/18/12	Name	KLEMENTI, EGON alois	witness
12/18/12	Name	Klementi, Elfie	contacted
12/18/12	Name	KLEMENTI, HELMUT	Victim

Narrative

Douglas County Sheriff's Department
Investigation Narrative

Case#12SO41608

CLASSIFICATION:

Abuse of the Elderly/Battery.

ATTACHED:

03 Statements.

DETAILS:

On Tuesday, December 18 2012 at 2044 hours, I was dispatched to 321 Charles Avenue, Stateline, Nevada for a report of someone breaking into the reporting person, Jeffrey Spencer's truck. During my response, I was told by the 911 dispatcher, Jeffrey had the burglary suspect on the ground momentarily.

Deputy N. Almeida responded to the address. As I turned onto Charles Avenue from Juniper Drive, I could see an elderly male subject lying supine on the ice covered road of Charles Avenue and Meadow Drive. I could see a second elderly male standing near the downed subject. The male that was standing, was waving his arms in attempt to get my attention. I positioned my patrol vehicle in the center of Charles Avenue, near the two males blocking the travel lane to keep the downed male from being struck from traffic.

I made contact with the two males and could see the downed male was conscious and moving his arms. The standing male, said, "help my brother, please." I requested dispatch to respond Tahoe Douglas Paramedics to the location."

The male on the ground, identified himself as Helmut Klementi. Helmut said, his back and knee were in a lot of pain and was attempting to sit up. I instructed Helmut to remain lying down, and told him paramedic would be on scene shortly.

Deputy Almeida arrived and went to 321 Charles to meet with the 911 caller, Marilyn and Jeffrey Spencer.

The male standing with Helmut, identified himself as, Egon Klementi, Helmut's twin brother. I asked Egon if he lived nearby and he pointed to the residence next to our location and said he lived right here. I instructed Egon to retrieve a blanket from his residence for his brother who was laying on ice. Egon went to his home to retrieve a blanket.

I asked Helmut what occurred. Helmut said he was at his brother, Egon's home, went out to the road to take pictures of the snowburm along his brothers fence. While he was taking the pictures with his camera, he could hear Jeff yelling at him from the back, upper deck of 321 Charles Avenue. Helmut began walking back towards Charles Avenue and Meadow Lane.

Helmut said he could hear Jeff come out of his house and coming towards him as he walked away. Helmut heard Jeff yelling at him from behind as he continued to walk. According to Helmut, Jeff ran up to him, struck him on his back then knocked him to the ground. Helmut began yelling for help and Jeff ran back to his residence at 321 Charles Lane. Helmut said, Egon came to his aid, tried to help him stand up , however he was in pain and could not stand. Egon stood next to Helmut to stop any cars from hitting him as he lay in the roadway.

I asked Helmut, if he was taking pictures of his brothers fence, could I see his camera and if I had permission to look at the photographs he took. Helmut said his camera was in the right pocket of his pants and I could retrieve it and look at the pictures. I pulled a camera from Helmut's pants pocket, turned it on and could see the last picture on the camera were those of his brothers fence and snowburm in front of his brothers house. the pictures appear to be taken from the area of the street closer to the intersection of Meadow Lane, Than the driveway of 321 Charles Avenue.

I told Egon to return to his home and wait for a deputy to come take his statement. While waiting for the ambulance to arrive, Egon's wife, Elfie Klementi came from the house and said she had more information about this incident. I told her a deputy would come speak with her shortly.

A second person walked to the scene and said she did not see this specific incident, however could provide a history of the ongoing harassment by Jeff towards Helmut and Egon Klementi. I identified her as Janet Wells and told her I would contact her for a statement.

Tahoe Douglas Paramedics arrived, placed Helmut on a backboard, loaded him into the ambulance and transported him to Barton Memorial Hospital.

After Helmut was transported to the hospital, I walked to 321 Charles Avenue and met with Deputy Almeida, Marilyn and Jeffrey
Spencer in the the front entry room. Jeffrey was holding a paper towel over a bleeding abrasion on his arm. He was explaining to Deputy Almeida his accounts of the events that occurred.

Jeffrey was telling Deputy Almeida he could hear someone in his driveway and thought it was a burglar. He said he yelled from his upper deck "Who are you, identify yourself." Jeffrey said, he could see someone at the edge of his driveway. I asked him if he actually saw someone in his driveway and he said, "Someone was on the edge of my driveway, I went out front and saw a man walking away from my house." "I kept saying, who are you, why are you breaking into my truck."

Jeffrey went on to say, "I ran down the street, then pushed him down. I would have tackled him, but then we both would have gotten hurt." Jeffrey said, he thought the subject he chased down the street was a teenager, because of the hood he was wearing. He said he didn't know it was Egon and If Egon would have identified himself, he would not have pushed him down. Jeffrey also said, "what would you do if someone wouldn't identify themselves to you?"

I asked Jeffrey how he got the cut on his arm and he said, "I don't know, maybe that guys fingernail."

I asked Jeffrey to put his shoes on, come outside and show me where the male subject he thought was breaking into his vehicle was standing/walking on his property.

Jeffrey, Marilyn, Deputy Almeida and I went to the driveway that was covered in approximately 3" to 4" of snow. I could see two patterns of shoe prints in the driveway, neither of matched the pattern of Helmut's shoe prints I observed on his feet while he was lying in the street.

Marilyn pointed to a set of footprints and said, "there, those were not in the snow before." Deputy Almeida said he made the footprints when he walk to the

the house. I compared the prints to Deputy Almeida's boots and they appear to be the same.

I asked Jeffrey how he could see the subject in his driveway from his rear second floor deck and he said, "I heard them in my driveway." I also asked Jeffrey how he could mistake his 78 year old neighbor, Egon or his brother Helmut as a teenager. Jeffrey said he was wearing a hood. I told Jeffrey, the subject he confronted in the street was Helmut, not Egon and neither were wearing a hood.

I placed Jeffrey under arrest, secured him into handcuffs, checked for proper fit and double locked. As I secured Jeffrey into handcuffs and searched his person for weapons, he said, "Come on, you're really arresting me?"

I told Jeffrey he was being arrested for battery/abuse of an elderly person. Jeffrey said, "well is he okay? he wasn't bleeding or anything."

Deputy Almeida met with Elfie and Egon Klementi and had them complete written statement.

I transported Jeffrey to the Douglas County Jail for booking. At the jail, I advised Jeffrey of his Miranda Rights and asked him if he was willing to write a statement to his accounts of this incident.

I left the jail and responded to Barton Memorial Hospital to speak with Helmut and check on his condition. I met with Helmut in the emergency room along with hospital staff. The treating staff told me no major injuries were noted upon their initial exam, and Helmut would be further observed and evaluated due to his age.

Helmut told me, he still had pain in his lower back and could not understand why Jeff would hit him. Helmut said, Jeff and his wife Marilyn have been involved with hostile confrontations with his brother, Egon. Jeff likes to harass all the neighbors and Kingsbury General Improvement District regarding, snowburms and a large fence Jeff built. Helmut said there is some type of restraining order against Jeff due to those civil issues about snow removal and fence issues. Helmut said he was in fear of Jeffrey and said he may have heard a single gunshot from Jeffrey's balcony prior to this battery.

I told Helmut, no other reports of gunshot were heard during that time and I had no evidence or other information to cause me to believe a firearm was involved.

I asked Helmut if he was in Jeff's driveway and he said he was not in the driveway and only took the pictures of his brothers fence from the street. I double checked and photographed Helmut's boots and confirmed they were not similar to any of the boot prints in Jeff's driveway.

I confirmed with Helmut he was not wearing a hood prior to my arrival, and his face was not covered during his altercation with Jeff.

I responded back to the jail to pick up Jeffrey Spencer's written statement. I asked Jeffrey if he wanted to add any information to his statement or make any additional verbal statements. Jeffrey said it was all written in his statement. I asked Jeffrey how he could not recognize his long term neighbor Egon or Helmut. Jeffrey said, "it was dark and my flashlight was small."

I told him, I did not realize he had a flashlight with him during this incident.

Jeffrey said, "I grabbed it on my way out, but it does not work well."
I asked Jeffrey if any of tonights confrontation stemmed from the ongoing dispute with the Klementi's or repercussions regarding an alleged restraining order? Jeffrey said, "I wont comment on that, that's in my lawyer's hands."

Wednesday, December 19 2012, I responded to 183 Juniper and contacted Janet Wells. Janet told me, she has been a witness to prior altercations between Jeffrey Spencer and the Klementi brothers. She recalls one specific incident, where Jeffrey came out from his house and was yelling a Egon Klementi as Egon walked his dog on Charles Avenue. Janet said, Jeffrey was hostile and she went to the street and stood between Egon and Jeffrey because she was afraid Jeffrey might hit Egon.

According to Janet, Jeffrey seems to have a dislike for the Klementi's, all of the senior citizens in the area and a dispute with Kingsbury General Improvement District. Janet said the dispute stems from Jeffrey's empowerment with F&B Trucking, where he is employed to plow the Kingsbury streets under a contract between K.G.I.D and F&B. Janet said, Jeffrey has a tendency to plow the street and block the driveways of those neighbors he is not fond of with snowburms. Janet believes it is Jeffrey's way of harassing and bullying anyone he does not like. This issue has been addressed at K.G.I.D meetings. Janet said, Marilyn Spencer has made comments after these meetings, that she has a concealed weapons permit. Janet said she was not ready to write a written statement.

I completed a locals check and discovered, Marilyn and Jeffrey Spencer are both CCW holders. Due to Jeffrey's arrest, I am forwarding a copy of this report to Undersheriff P. Howell for request of temporary suspension of Jeffrey Spencer's CCW permit pending adjudication.

I did not locate a Temporary Restraining Order involving Jeffrey Spencer, However, it is possible, some type of civil court order would not be listed in the local database maintained for Domestic Violence Protection Orders.

CONCLUSION:

This is my first encounter with Jeffrey Spencer or the Klementi Brothers. It is obvious there is a longstanding dispute between these homes. The Klementi's are 78 years old and do not resemble a teenager as described by Jeffrey Spencer. I found Jeffrey's statement to be not credible, regarding being able to see a dark figure in his driveway from the back of his house, then go outside with a flashlight, confront a male walking down the street and not recognize one of the Klementi twins, who he has confronted in the past, knock him to the ground, see that its a elderly male that he mistook for a teenager, then walk away, leaving Helmut Klementi lying on the street.

It is my opinion, Jeffrey Spencer, was upset with the Klementi's saw Helmut taking photographs of the snowburm and used the excuse of someone breaking into his truck to confront and commit a battery on Helmut Klementi.

DISPOSITION:

Forward to the Douglas County District Attorney's Office for prosecution.
Forward to the Tahoe Township Justice Court for possible restraining order violation if order exists.
Forward to Undersheriff Howell for CCW review.

Wed Dec 19 21:21:48 PST 2012

Supplement

Douglas County Sheriff's Department
Supplemental Narrative

Case#12SO41608

DETAILS:

On Thursday, 12/20/12, I requested and received a copy of the 911 call placed by Marilyn Spencer. I booked the CD copy of the 911 call into the Douglas County Sheriff's evidence system, for review by the Douglas County District Attorney's Office.

DISPOSITION:

Attach to original report.

Thu Dec 20 22:17:22 PST 2012

Deputy J. McKone 301.

Booking Information:

Booking Number: 12SOJ3277 **Name Number:** 13672

Name: SPENCER, JEFFREY DALE **Address:** 321 CHARLES AV; LRKG
Phone: (775)588-0801 Stateline, NV 89449
DOB: 02/21/63 **Dr Lic:** 370662860363
Location: - - - - **Tmp Location:** - - - -
Booking Date: 12/18/12

Arrest Number: 1 **Time/Date:** 21:14:00 12/18/12 **Agency:** DCSO
Age at Arrest: 49 **Location:** 321 Charles **Officer:** McKone J
Arrest Type: VIEW **Area:** DCS3 **Reference:**
Disposition:

Offense Number: 31653 **BFfRO:** B **Sentenced:** No
Statute: 50152 **NCIC:**
Offense: ELDB Elder Abuse Battery **Crime Class:** G
Offense Reference: **Offense Type:** S **Offense Area:** DCS3

Related Incident: 12SO41608 **Law Jurisdiction:** NRS
Entry Code: CRIM **Offense Location:** 321 Charles
Court Code: TTJC **Offense Time/Date:** 21:14:00 12/18/12
Off Judicial Status: ARR **Billing Agency:** DCSO

12/21/12

Offense Disposition:

Disposition Date: **:**:** **/**/**
Sentencing Judge:
Sent. Time/Date: **:**:** **/**/**
Comments:

Billing Beg Tm/Dt: 21:14:00 12/18/12

End Time/Date: **:**:** **/**/**
Alcohol/Drug Invl: Been Drinking
Sent. Components:

Name Involvements:

contacted : 82410
Last: Klementi **First:** Elfie **Mid:**
DOB: 08/14/41 **Dr Lic:** **Address:** 187 MEADOW LN; LRKG
Race: W **Sex:** F **Phone:** (775)588-8895 **City:** Stateline, NV 89449

Involved : 13671
Last: SPENCER **First:** MARILYN **Mid:** ANN
DOB: 05/31/63 **Dr Lic:** 3601282693 **Address:** 321 CHARLES AV; LRKG
Race: W **Sex:** F **Phone:** (775)588-0801 **City:** Stateline, NV 89449

witness : 75504
Last: KLEMENTI **First:** EGON **Mid:** alois
DOB: 04/11/34 **Dr Lic:** 0202344863 **Address:** 187 MEADOW LN; LRKG
Race: W **Sex:** M **Phone:** (775)588-8895 **City:** STATELINE, NV 89449

Contacted : 82443
Last: Wells **First:** Janet **Mid:**
DOB: 05/01/46 **Dr Lic:** **Address:** 183 JUNIPER DR; LRKG
Race: W **Sex:** F **Phone:** (775)588-6049 **City:** Stateline, NV 89449

Arrested : 13672
Last: SPENCER **First:** JEFFREY **Mid:** DALE
DOB: 02/21/63 **Dr Lic:** 370662860363 **Address:** 321 CHARLES AV; LRKG
Race: W **Sex:** M **Phone:** (775)588-0801 **City:** Stateline, NV 89449

Victim : 82411
Last: KLEMENTI **First:** HELMUT **Mid:**
DOB: 04/11/34 **Dr Lic:** **Address:** 164 PINE RIDGE DR; LRKG
Race: W **Sex:** **Phone:** (775)588-0556 **City:** Stateline, NV 89449

SHERIFF-CORONER'S DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM
WITNESS
DRIVER
PASSENGER

CASE # 1290 41608

LAST NAME - FIRST - MIDDLE	D.O.B.	RACE - SEX	AGE	HT.	WT.	HAIR	EYES
KLEMENTI EGON ALOIS		WHITE, M	78	5'10	165	BROWN/GREY	

PHYSICAL ADDRESS	MAILING ADDRESS	HOME PHONE #
187 MEADOW LN	PO BOX 3155 STATELINE	775 588 8895

SS #	EMPLOYMENT/LOCATION	WORK PHONE #

VEHICLE INFORMATION

YEAR	MAKE	MODEL	COLOR

LICENSE PLATE/STATE	DRIVER'S LIC NO.	STATE

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

I was in the house arranging my artwork in my STUDIO east side of the house for a meeting with a TAHOE TRIBUNE JOURNALIST tomorrow afternoon.
I HEARD MY TWIN BROTHER SCREAM FOR HELP!
I SAW MY TWIN BROTHER LAYING ON THE STREET and run out to help him.
I saw Jeff SPENCER hitting Helmut from the back and pushing him to the FLOOR/STREET.
I tried to help Helmut to get up but he had to much pain so I was just saving him from being run over in the middle of the street!

Egon Klementi

SIGNATURE OF PERSON MAKING STATEMENT:

DATE/TIME: 12-18-12

SHERIFF-CORONER'S DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM
WITNESS
DRIVER
PASSENGER

CASE # 12S041608

LAST NAME - FIRST - MIDDLE	D.O.B.	RACE - SEX	AGE	HT.	WT.	HAIR	EYES
KLEMENTI, ELFIE	8,14,41	F	71				

PHYSICAL ADDRESS	MAILING ADDRESS	HOME PHONE #
187 MEADOW LANE	P.O.BOX 3155	775-588 8895

SS #	EMPLOYMENT/LOCATION	WORK PHONE #
	HARRAH'S	775-588 6611

VEHICLE INFORMATION	YEAR	MAKE	MODEL	COLOR
	LICENSE PLATE/STATE		DRIVER'S LIC NO.	STATE

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

AFTER DINNER AROUND 8"15PM MY BROTHER IN LAW LEFT OUR HOUSE AND TO TAKE A PICTURE AT THE END OF OUR FENCE ON CHARLES AVE. WE CAME BACK FROM A BOARDMEETING WITH KIDS ABOUT BERMS WHICH WE GOT BY MR. SPENCER.
ALL OVER SUDDEN I HEARD MY BROTHER IN LAW YELLING, ~~AND I SAW H~~ I RUN OUT TO OUR DOOR AND I SAW HIM LAYING ON THE FLOOR AND MR. SPENCER RUNNING TO HIS HOUSE,
I CALLED 911 RIGHT AWAY AND MADE A REPORT THAT HELMUT IS ON THE FLOOR,
I STAYED IN THE HOUSE WHEN THE SHERIFF AND AMBULANCE CAME.

SIGNATURE OF PERSON MAKING STATEMENT: Elfie Klementi

DATE/TIME: 12,18,2012

My name is Elfie Klementi. My husband, Egon, and I live on 187 Meadow Lane.
In the early winter season of 2011, while Egon was shoveling the berm away in front of our 2 gates by our fence on Charles Avenue, Mrs. Spencer, wife of the snow plow diver, came over to Egon and offered that her husband, Jeff Spencer, would take care of the snow if we like, since he was driving a big snow plow. My husband declined.
Later in 2011, and earlier this year, we found out that Mr. Spencer had been completely clearing certain driveways on Meadow Lane.
The neighborhood problem started in April, 2012, when the Spencers parked an 18 wheeler on Charles. The large vehicle blocked the view for drivers turning from Meadow Lane to Charles and from Charles to Meadow. After several police reports, the 18 wheeler was parked next to their house. It took several weeks for the vehicle to be removed.
Around the same time of the 18 wheeler problem, the Spencers built a six foot, solid wood fence. The six foot fence goes around their corner property on Charles and Juniper and behind their house. The fence violated the three foot height allowed in the county code. TRPA's standard is also three feet high. We know this policy because we checked with the county when we built a solid wooden fence around our corner property on Meadow and Charles. Our fence height wasthree feet. Later, we changed to an iron fence.
While the Spencers were building their fence last Memorial Day weekend, my husband walked by their house with our dog. Mr. Spencer and his wife aggressively confronted my husband, which made him fear for his safety.
During the 2012 winter season, Mr. Spencer was hired again to do the snow removal in our neighborhood. First snow of the season, we got the biggest berm in front of our driveway. No one else on Meadow Lane had piles of snow on their driveway. We reported the problem to KGID.
With previous snow plow removers, if the snow piled up on the intersection of Charles and Meadow or coming down from Charles to Meadow, the snow was plowed toward the empty corner lot which belongs to Douglas County, not pushed to our driveway.

On December 12th, while my husband was clearing our driveway, Mr. Spencer drove by with the snow truck with the blade down which caused my husband to be covered with snow and street debris. Egon called the Sherriff's department and filed a report with an officer. Egon also went to Mr. McKay and reported the incident. Mr. McKay told Egon that the situation would be addressed. Apparently it was not!
Yesterday, December 17th, Mr. Spencer came back again with the snow plow and pushed a large amount of snow, ice blocks and street debris from Charles, against our fence, across the road from Mr. Spencer's house. Mr. Spencer then went into his house for a break.
Since Mr. Spencer became a snow plow operator, whenever Mr. Spencer took a break, day or night time, he parked the large vehicle on Charles, across our property, blocking traffic, and went in his house for breaks. The entire period he went on his breaks, Mr. Spencer left the vehicle's motor running, every single time.

At this time, the Spencer's are now trying to get an approval from the KGID board to put a stop sign at the intersection in case they do not get the variance to keep their over 6 foot high fence. The stop sign is not going to solve the dangerous intersection problem at all.
My husband and I do not trust Mr. Spencer. We are afraid that Mr. Spencer uses his influence with other snow plow drivers in our neighborhood to create problems with our snow removal. We want him removed from his position. My husband and I cannot understand why this problem had been tolerated all this time by those who hired him, even after many complaints from different people in the neighborhood.

SHERIFF-CORONER'S DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM
WITNESS
DRIVER
PASSENGER

CASE # 12S041608

LAST NAME - FIRST - MIDDLE		D.O.B.	RACE - SEX	AGE	HT.	WT.	HAIR	EYES
Spencer Jeff D	#13672	2-21-63	W M	49	5'10	185	bln	HZ

PHYSICAL ADDRESS	MAILING ADDRESS	HOME PHONE #
321 Charles	PO Box 2326	775 588-0801
S #	EMPLOYMENT/LOCATION	WORK PHONE #
	Stateline	530 318-1876

VEHICLE INFORMATION	YEAR	MAKE	MODEL	COLOR
	LICENSE PLATE/STATE		DRIVER'S LIC NO.	STATE

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

On December 18th I arrived home from work at approximately 7:45pm. My wife was extremely upset and crying. She had just got home and saw someone in our driveway. I calmed her down and tried together to relax. After about 45 minutes, she let the dog out. I then went upstairs to clean up the top deck. At this time, I heard someone in my driveway. I shined a small flash light down there and saw someone dress in black with a hood on. I yelled out who are you and what are you doing on my property. There was no response. I yelled multiple times with no response. I thought they were breaking into my vehicles in the driveway. I ran down stairs to the front door. at this time I yelled to my wife Someone IS breaking in to the truck. I ran down the stairs and saw a figure now in the street heading westbound on Charles ave. I yelled again multiple times who are you and what where you doing breaking in to my truck. The person refused to respond. I ran after them and gave them a push to stop them. They fell down. I then saw that it was one of the Clemenses. I could not tell in the dark if it was

SIGNATURE OF PERSON MAKING STATEMENT: Jeff Spencer

DATE/TIME: 12-18-12 10:15pm

SHERIFF-CORONER'S DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM
WITNESS
DRIVER
PASSENGER

CASE # 12S041608

LAST NAME - FIRST - MIDDLE	D.O.B.	RACE - SEX	AGE	HT.	WT.	HAIR	EYES
SPENCER, JEFF #13672							

PHYSICAL ADDRESS	MAILING ADDRESS	HOME PHONE #

SS #	EMPLOYMENT:LOCATION	WORK PHONE #

VEHICLE INFORMATION	YEAR	MAKE	MODEL	COLOR	
	LICENSE PLATE/STATE		DRIVER'S LIC NO.		STATE

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

Egon or his brother. I asked him what he was doing in my driveway. He would not tell me and just yelled at the over to call the Police. I told him they had already been called. His wife (Tegan) and brother were there by now. He wasn't bleeding that I could see, just yelling so I went in to my house. The 911 operater told my wife for us to stay inside. I stayed inside until a Sheriffs Deputy knocked on the door.

We have had someone all summer try to break into are vehicles. A neighbor's car was broke into over Thanksgiving. I don't understand why he never identified himself.

SIGNATURE OF PERSON MAKING STATEMENT: [signature]

DATE/TIME: 12-18-12

EXHIBIT 3

EXHIBIT 3

IN THE NINTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

---o0o---

HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER,

Defendant.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

_____/

Case No. 14-CV-0260

Dept. No. 1

DEPOSITION OF JESSE McKONE

04/07/2016

Reno, Nevada

REPORTED BY: KRISTINE BOKELMANN
NV CCR #165, CA #5979

JOB NO: 297108A

Page 34

BY MR. PINTAR:
Q Attached -- just for the record, attached to your report is Exhibit No. 1. There's a written statement from Egon Klementi, correct?
A Yes.
Q When did you speak with Egon Klementi?
A I believe it was after -- no, I think he came out to the scene. My initial contact, he came out to the scene where his -- when his brother was still there before the ambulance took him.
Q Okay. And you also have a statement here from Elfi Klementi?
A Yes.
Q When did you speak with Mrs. Klementi?
A There at the scene.
Q And then there's Mr. Spencer's statement. I don't see a statement from Miss Wells. Is there one?
A No. It may have just been Egon's and Elfi Klementi.
Q Okay. Is there anything else that you did in terms of your investigation at the scene on the evening of December 18, 2012?
A At the scene?
Q Yes.
A Other than what I -- meeting with the

Page 35

Spencers --
Q Yes.
A -- and the Klementis and Miss Wells, no.
Q Okay. And then you indicated you went to the hospital?
A Yes.
Q And what did you do at the hospital?
A I got a briefing from the ER staff on Mr. Klementi's injuries and then they allowed me to speak to him briefly.
Q And what did Mr. Klementi tell you occurred?
MR. ROUTSIS: We're getting into hearsay, so I'm going to object to hearsay.
BY MR. PINTAR:
Q It's okay. We're in a civil matter.
Go ahead.
A He told me that he had been out in the street and that Jeff Spencer had attacked him.
Q Okay. What were Mr. Klementi's injuries?
A I don't recall. I'd have to speculate.
Q Okay. We don't want you to speculate.
So then after you went to the hospital, spoke to Mr. Klementi, what did you do then?
A I believe I returned back to the area and collected the written statements from the Klementis.

Page 36

Q And then what did you do once you obtained all these written statements?
A I went back to the station -- I mean, I finished my shift with the other calls not related to this.
Q Right.
A And then I went back to the station and wrote my report.
Q So this report we've marked Exhibit 1?
A Yes.
Q When was this report completed?
A I believe it was -- the narrative was written on the same shift before I left for the night.
Q Okay. In this report it says that it is your opinion that Jeffrey Spencer was upset with Klementi, saw Helmut taking photographs of the snow berm, and used the excuse of someone breaking into his truck to confront and to commit a battery on Helmut Klementi.
A Yes.
Q And that conclusion was formed by you on the evening of December 18th?
A Yes.
MR. ROUTSIS: I'm going to object and move to strike his opinion, which is not relevant.

Page 37

BY MR. PINTAR:
Q Have we --
MR. ROUTSIS: It's a relevance objection.
BY MR. PINTAR:
Q Have we talked about all the investigation that you performed in forming that opinion and conclusion?
A Yes.
Q Okay. At any point in time prior to forming this opinion and conclusion in this report did you speak with Mary Ellen Kinion?
A I did not.
Q And based on your report, it was forwarded to the Douglas County Sheriff's Department or the district attorney for prosecution, correct?
A Yes.
MR. PINTAR: Thank you. That's all I have.
MR. PALMER: I just have a couple questions.
EXAMINATION
BY MR. PALMER:
Q To follow up on what Mr. Pintar asked you regarding alcohol, I noticed in your report on page nine and 10 -- do you want to turn to that? -- that there's -- been drinking was listed in the top right-hand corner. I just wanted to clarify what that

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED
MAY - 9 2016
Douglas County
District Court Clerk

FILED
2016 MAY -9 PM 4:32
BARBARA WILLIAMS
CLERK
BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

JOINDER TO THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

Third-Party Defendants Egon Klementi and Elfriede Lementi ("Defendants"), by and through their attorneys of record, Glogovac & Pintar, hereby join in with Third-Party Defendant, Mary Kinion's Motion for Summary Judgment filed on April 22, 2016.

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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 6 day of May, 2016.

GLOGOVAC & PINTAR

By: _____

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendants,
Egon Klementi and Elfriede Klementi

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 6 day of May, 2016, I served the foregoing document(s) described as follows:

JOINDER TO THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

Nicholus Palmer, Esq.
Laub & Laub
630 East Plumb Lane
Reno, NV 89502
Attorneys for Helmut Klementi

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 6 day of May, 2016.

Employee of Glogovac & Pintar

CASE NO. 14-CV-0260

Dept. No. II

RECEIVED
MAY 18 2016
Douglas County
District Court Clerk

FILED
2016 MAY 18 PM 1:4
SUSAN R. WILLIAMS
CLERK
BY [illegible] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER

Defendant.
_____/

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIEDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.
_____/

Defendant/Counterclaimant JEFFREY D. SPENCER opposes Counterdefendant MARY ELLEN KINION's Motion for Summary Judgment. This Opposition is made and based upon the pleadings and papers on file herein, and the Points and Authorities, Declarations and Exhibits following hereto.

POINTS AND AUTHORITIES

1. Case Summary

MARY ELLEN KINION's Motion is replete with partial truths, implicit misrepresentations, and outright misrepresentations. The Case Summary begins with the undisputed fact that JEFFREY SPENCER was criminally prosecuted. Motion pg 1, lns 6-7; Exhibit 1, Criminal Complaint filed

January 16, 2013 for one misdemeanor count of battery against HELMUT KLEMENTI, & Exhibit 2, Amended Information filed May 9, 2013, with one felony count of abuse of HELMUT KLEMENTI, and two gross misdemeanor counts of abuse of EGON and ELFRIEDE KLEMENTI. The Case Summary leaves out the undisputed fact that after a two week trial the jury quickly acquitted JEFFREY SPENCER of all charges. *See* Declaration of Jeffery Spencer & Exhibit 3, Verdicts of Not Guilty on Counts One, Two and Three, filed September 27, 2013.

2. Background

Ms. KINION asserts that in the summer of 2012 there was a neighborhood dispute over Mrs. and Mrs. SPENCER putting up a fence around their property. Motion pg 2, lns 25-27. A few neighbors, the Counterdefendants and one other couple, had issues with the fence.

Ms. KINION's Motion does not address the incident of May 27, 2012, when Mrs. Spencer called 911 to complain about EGON KLEMENTI coming on their property and taking photographs. Responding Officer Flagg spoke to EGON KLEMENTI to advise him of the complaint and that if he went on the Spencers' property he would be subject to arrest for trespassing. EGON KLEMENTI made no report about a supposed assault and/or battery upon him that day by Mr. SPENCER. Yet over half a year later, Ms. KINION wrote a letter to the District Attorney accusing Mr. SPENCER of threatening to punch EGON KLEMENTI in the face on May 27, 2012, even though she was not a witness to that alleged event. Exhibit 4, Trial Transcript of September 20, 2013 (hereinafter "TT 9/20/13"), pg 3, lns 17-23. The baseless accusation became one basis for amended charges against Mr. SPENCER of which he was acquitted.

Ms. KINION asserts that in the winter of 2012, excessively high berms of snow and ice appeared in driveways in "retaliation" for the fence dispute, implying Mr. SPENCER deliberately created berms. Motion pg 3, lns 3-6. She says that after she called KGID December 12, 2012, and a berm on her driveway was cleared, another snowplow which she "thinks was driven" by Mr. SPENCER put the berm of snow back. Motion, pg 3, lns 9-10 & 12-14. As Ms. KINION previously testified under oath, she NEVER saw Mr. SPENCER deliberately create a berm in her driveway or in any other driveway. Exhibit 4, 9/20/13, TT pg 29, lns 5-10. The alleged deliberate creation of berms was also one basis for amended charges against Mr. SPENCER of which he was acquitted.

Ms. KINION describes that on December 12, 2012, the snowplow which she "thinks" Mr. SPENCER was driving, sped up, picked up old snow and road debris which was propelled onto EGON KLEMENTI in his driveway. Motion, pg 3, lns 15-20. Ms. KINION claims she "immediately called" EGON KLEMENTI, and then "later" called 911 to advise that she was a witness. Motion, pg 3, lns 20-22. This allegation was investigated by Sheriff Officer Sanchez, who responded to the 911 call from EGON KLEMENTI, and the Officer found no evidence of a crime and did not even write a report. Exhibit 4, TT 9/20/13, pg 47, lns 2-24 & pg 49, lns 6-18. This accusation was one basis of a charge in the amended criminal complaint of which Mr. SPENCER was acquitted.

In addition to an officer finding no evidence of a crime, Ms. KINION's sworn testimony is in direct conflict with the sworn testimony of EGON KLEMENTI in the preliminary hearing on that incident. On February 22, 2013, EGON KLEMENTI testified under oath that he had called Ms. KINION, not the other way around. Exhibit 5, Transcript of Preliminary Hearing of February 22, 2013 (hereinafter "TPH 2/22/13"), pg 62, lns 6-9 & 16-17. A reasonable inference is that EGON KLEMENTI called Ms. KINION to create a "witness" for him.

This allegation of assaulting EGON KLEMENTI with ice and debris thrown by the snowplow, which had been investigated when it allegedly occurred and there was no evidence to support, was also included in the letter Ms. KINION wrote to Deputy District Attorney Maria Pence and testified the purpose of that letter was "to try and get her to prosecute Mr. Spencer." Exhibit 4, TT 9/20/13, pg 11, lns 5-8. Ms. KINION admitted that the Deputy District Attorney did not ask her to write that letter. Exhibit 6, Trial Transcript of September 18, 2013 (hereinafter "TT 9/18/13"), pg 266, lns 7-13.

Ms. KINION in her Motion admits that the following week, December 18, 2012, she attended a KGID meeting and claimed she had seen the alleged attack on EGON KLEMENTI of December 12, 2012, and complained that Mr. SPENCER was deliberately creating high berms. Motion, pg 3, ln 24 thru pg 4, ln 1. Not only did Ms. KINION never see Mr. SPENCER create any berm, nor see Mr. SPENCER driving the snowplow on December 12, 2012, at trial there was evidence presented that Ms. KINION could not have seen the alleged attack on EGON KLEMENTI as she described

based on the locations of her house and the KLEMENTI house, and the size of the snowplow vehicle.

Ms. KINION's Motion asserts that Deputy McKone, one of the Sheriff's Officers who responded to the 911 call on December 18, 2012, which Mr. SPENCER told Mrs. Spencer to make, and who arrested Mr. SPENCER, "never spoke with or obtained a statement from Kinion. In fact, he never had any interaction with Kinion whatsoever..." Motion, pg 4, lns 24-26. Yet Mr. SPENCER and his wife saw Ms. KINION come down the street, approach the Deputy, and speak with him. A surveillance video of that evening, produced in the second supplemental 16.1 production by David Zaniel, Esq. on September 23, 2015, shows Ms. KINION approached and spoke to Deputy McKone at 8:51p.m. and continued to be there in the street with the Deputies for ten minutes.

Ms. KINION's Motion asserts that in "preparation for the trial" of Mr. SPENCER, Deputy District Attorney Maria Pence "reached out to Kinion and asked her to provide whatever information she had in regards to the ongoing events." Motion, pg 6, lns 2-4. Since Mr. SPENCER was arrested for the December 18, 2012 incident, to which Ms. KINION was not a witness and was not listed in the arresting Officer's report, the District Attorney's Office would have had no reason to contact her regard the charges for that evening.

In addition to her communication with the District Attorney's Office, Ms. KINION called Mr. SPENCER's employer, for which the only conceivable reason would be trying to get him fired from his job. Exhibit 6, TT 9/18/13, pg 265, lns 4-19.

After criminal charges were filed against Ms. SPENCER, HELMUT, EGON and ELFRIEDE KLEMENTI filed for a restraining order against Mr. SPENCER. Ms. KINION, who was not a party to that proceeding, took it upon herself to write an exparte letter to the Justice of the Peace hearing that matter, Judge Glasson, trying to get more restrictive orders against Mr. SPENCER. Exhibit 7, April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq., attorney for Mr. SPENCER, with forwarded email from Ms. KINION to the Judge.

C. Statement of Relevant Facts

For facts to be relevant to a summary judgment motion, they must be undisputed facts, and

very few of these asserted facts are undisputed, and among the disputed facts are material facts to this case.

Mr. SPENCER does not dispute the facts as stated in ¶¶1 and 2. Motion, pg 6, lns 14-19.

Mr. SPENCER disputes ¶3 as implying that he and his wife do not get along with their neighbors collectively, when the disputes are almost exclusively with the Counterdefendants in this matter. Motion, pg 6, lns 20-21.

Mr. SPENCER disputes ¶4 that he sprayed EGON KLEMENTI with ice and debris on December 12, 2012, and his position is supported by the investigation conducted by the Sheriff's Office at that time, and his acquittal on all charges in the criminal trial. Motion, pg 6, lns 22-25. Further, Mr. SPENCER disputes that Ms. KINION did not make a written statement of this accusation since, upon information and belief, it is part of the letter she wrote to the District Attorney's Office. Motion, pg 6, lns 25-26; Exhibit 4, TT 9/20/13, pg 11, lns 5-8. Mr. SPENCER's counsel is not in possession of that letter, but expects to receive it in discovery. The entire criminal court file was recently obtained on April 26, 2016, consisting of over 800 pages, and is being reviewed. It appears that Ms. KINION's letter to the District Attorney's Office is not in that file. However, Mr. Zaniel previously served a subpoena on the District Attorney's Office for their file, which the District Attorney's Office refused to produce and, upon information and belief, he is preparing a Motion to Compel.

Mr. SPENCER does not dispute ¶5 that Ms. KINION attended a KGID meeting and made public accusations against him, which accusations were false. Motion, pg 7, lns 1-3.

Mr. SPENCER disputes ¶6 that he assaulted HELMUT KLEMENTI on December 18, 2012, and his position is supported by his acquittal of that charge. Motion, pg 7, lns 4-6.

Mr. SPENCER does not dispute ¶7 that he was arrested by Deputy McKone for the incident with HELMUT KLEMENTI on December 18, 2012, yet despite that Deputy's opinion, Mr. SPENCER was acquitted of that charge, as well as all other charges later brought against him in the criminal trial. Motion, pg 7, lns 7-16.

Mr. SPENCER does not dispute ¶8 that the Deputy did not obtain a written statement from Ms. KINION prior to his arrest, but does dispute the Deputy's claim he never spoke with her.

Motion, pg 7, lns 17-20.

Mr. SPENCER disputes ¶9 since, upon information and belief, Ms. KINION inserted herself into the criminal prosecution and was instrumental in getting additional charges filed against Mr. SPENCER for elder abuse associated with her untrue accusations of Mr. SPENCER deliberately creating berms in driveways and battering EGON KLEMENTI using his snowplow. Motion, pg 7, lns 21-24.

Mr. SPENCER does not dispute ¶10 that Ms. KINION was subpoenaed as a witness in the criminal prosecution. Motion, pg 7, lns 25-26.

Counterdefendants EGON KLEMENTI and ELFRIEDE KLEMENTI have filed a joinder in this Motion but have provided no specific facts regarding themselves to which Mr. SPENCER could respond.

4. Legal Claim for Malicious Prosecution

NRCP 56(c) requires that a party must set "forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies." As was shown above, many of the key facts set forth by Ms. KINION are disputed and shown to be unsupported by the evidence, including sworn testimony in court proceedings.

Ms. KINION's Motion cites to *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), defining the elements of malicious prosecution: (1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceeding; and (4) damage. Motion, pg 8, ln 27 thru pg 9, ln 2.

LaMantia defines the first element as requiring "that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." Motion, pg 9, lns 2-5. There is evidence that Ms. KINION was actively involved in the procuring of additional charges against Mr. SPENCER for elder abuse and of actively participating in the continuation of the criminal proceeding. She was not just a concerned "citizen responding to requests made to her from government officials through proper channels." Motion, pg 10, lns 2-8. This was an ongoing effort of Ms. KINION, in keeping with her calling 911 after the alleged battery

of EGON KLEMENTI on December 12, 2012, which the Sheriff's Officer found had not happened, with her lying under oath and saying she saw Mr. SPENCER driving the snowplow that day when she previous said under oath that she thought it was him. This was in keeping with Ms. KINION making reports to KGID in an attempt to smear his name in front of the neighbors and to compromise his employment. And, this was in keeping with her insinuating herself in a civil proceeding for a groundless protective order against Mr. SPENCER, in which she initiated an exparte communication with the Judge, and in keeping with her unsolicited letter to the District Attorney's Office repeating baseless accusations.

The second element of malicious prosecution is malice, and Ms. KINION argues that the facts do not demonstrate any malice. Motion, pg 10, lns 8-9. Malice is shown by the misrepresentations, even under oath, which means Ms. KINION was providing "evidence" with the knowledge that it was false and/or making such statements with a reckless disregard for the truth.

Ms. KINION then argues that her "communications with District Attorney's Office and testimony at trial would be protected" citing to *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983). Motion, pg 11, lns 18-26. She further asserts that her statements to the police or district attorney are immune from civil liability, citing to NRS 41.650 and *Sahara Gaming v. Culinary Workers Union*, 115 Nev. 212, 984 P.2d 164 (1999). Motion, pg 11, ln 18 thru pg 12, ln 2. The privilege claimed is not unlimited or there could never be a case successfully brought for malicious prosecution.

Circus Circus and *Sahara Gaming* are cases of defamation, not malicious prosecution. *Circus Circus,* 99 Nev. at 59; *Sahara Gaming,* P.2nd at 164. Further, in *Circus Circus* the Supreme Court ruled that:

> A **qualified or conditional privilege** exists where a defamatory statement is made in **good faith** on any subject matter in which the person communicating has an interest, or in reference to which he has a right or a duty, if it is made to a person with a corresponding interest or duty.

Id. at 62. In the criminal prosecution of Mr. SPENCER, Ms. KINION had no interest, right or duty, and her dishonesty shows a lack of good faith.

////

NRS §41.650, provides that:

> A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.

NRS §41.637 defines "good faith communication" as that which is which is "truthful or is made without knowledge of its falsehood." The false representations made by Ms. KINION in an effort to get Mr. SPENCER criminally convicted are issues of fact, and are not privileged.

One argument made regarding the conspiracy claim is that it requires an underlying tort, and if the malicious prosecution claim is struck, the conspiracy claim cannot stand. Motion, pg 10, lns 18-23 & pg 11, lns 3-5. However, the malicious prosecution claim has evidence in support. The other argument regarding the conspiracy claim is that "the idea is outrageous and completely unsupported by the facts." Motion, pg 11, lns 6-16. The facts presented, of Ms. KINION inserting herself into legal matters which were not her's and of conflicting testimony about whether she called EGON KLEMENTI or he called her, are factual matters from which a jury could conclude that Ms. KINION and the other counterdefendants were working in concert to get Mr. SPENCER criminally convicted.

Conclusion

JEFFERY SPENCER has provided evidence of his claims and demonstrated numerous genuine issues of fact to support his claims. NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Not only that, but discovery is ongoing, and Mr. SPENCER has brought a Motion to Amend his Counterclaim. The Motion for Summary Judgment should be denied.

The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 13th day of May, 2016.

Lynn G. Pierce, Esq., NV State Bar 3567
LYNN G. PIERCE, Attorney at Law, Ltd.
440 Ridge Street, Ste. 2
Reno, NV 89501
775-785-9100

Declaration of Jeffrey Spencer

Pursuant to NRS §53.045(1), I, Jeffrey Spencer, declare under penalty of perjury, that:

1. I am the Defendant/Counterclaimant in the above entitled matter;

2. I have read the foregoing Opposition to Motion for Summary Judgement;

3. The statements in this forgoing Opposition are true of my own personal knowledge, or if stated on information and belief, I believe them to be true;

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

Executed on the 13 day of May, 2016, in Reno, Nevada.

JEFFREY SPENCER

Declaration of Lynn G. Pierce, Esq.

Pursuant to NRS §53.045(1), I, Lynn G. Pierce, declare under penalty of perjury, that:

1. I am an attorney licensed to practice law in the states of Nevada and California.

2. I am the attorney for Jeffrey Spencer in the above entitled matter.

3. The facts in the foregoing Motion regarding the legal actions by Mr. Spencer's other attorneys are true of my own knowledge, except for those matters stated therein upon information and belief, and as to those matters, I believe them to be true.

4. Exhibits 1 through 6 attached hereto are true and correct copies of filed legal documents and transcripts of legal proceedings related to this matter.

5. Exhibit 7 is a true and correct copy of an email from the law office of Todd Torvinen, Esq.

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

Executed on the 13th day of May, 2016, in Reno, Nevada.

Lynn G. Pierce, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501

William J. Routsis, II, Esq.
1070 Monroe Street
Reno, Nevada 89509

Attorneys for Jeffrey D. Spencer

DATED this 13th day of May, 2016.

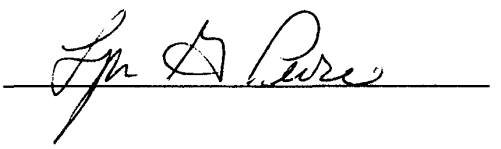

EXHIBIT LIST

Exhibit 1	Criminal Complaint filed January 16, 2013 for one misdemeanor count of battery of HELMUT KLEMENTI	2 pages
Exhibit 2	Amended Information filed May 9, 2013, with one felony count of abuse of HELMUT KLEMENTI, and two gross misdemeanor counts of abuse of EGON and ELFRIEDE KLEMENTI	3 pages
Exhibit 3	Executed Verdicts of Not Guilty on Counts One, Two and Three, filed September 27, 2013	3 pages
Exhibit 4	Portions of Trial Transcript of September 20, 2013, testimony of Ms. KINION	19 pages
Exhibit 5	Portions of Transcript of Preliminary Hearing of February 22, 2013	8 pages
Exhibit 6	Portions of Trial Transcript of September 18, 2013, testimony of Ms. KINION	4 pages
Exhibit 7	April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq., attorney for Mr. SPENCER, with forwarded email from Ms. KINION to the Judge	2 pages

Exhibit 1

Exhibit 1

A

FILED

2013 JAN 16 PM 2:32

TAHOE TOWNSHIP JUSTICE COURT

CLERK

CASE NO. 13-CR-0068

DA 12-2555Q

DCSO 12SO41608

JAN 11 2013

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

IN THE JUSTICE COURT OF TAHOE TOWNSHIP

COUNTY OF DOUGLAS, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

CRIMINAL COMPLAINT

JEFFREY DALE SPENCER,
DOB: 2/21/1963

Defendant.

_____/

Maria Pence, Deputy District Attorney, with the Douglas County District Attorney's Office, County of Douglas, State of Nevada, on information and belief, being first duly sworn, makes complaint and charges JEFFREY DALE SPENCER with the crime of BATTERY ON A PERSON OVER 60 YEARS OF AGE, a violation of NRS 200.481 and NRS 193.167, a misdemeanor, committed as follows:

The defendant, JEFFREY DALE SPENCER, on or about December 18, 2012, and prior to the filing of this complaint, in the County of Douglas, State of Nevada,

> did willfully and unlawfully use force and violence upon Helmut Klementi, a person over 60 years of age, to-wit: he struck Mr. Klementi in the back and knocked him to the ice covered road of Charles Avenue, all of which occurred in the County of Douglas, State of Nevada,

against the peace and dignity of the State of Nevada. Complainant prays the Defendant be dealt

\\\

\\\

with according to law.

COMPLAINANT

SUBSCRIBED and SWORN to before me

by Maria Renee, this 10th day of January, 2013.

Justice of the Peace/Notary Public

LEA WILLIAMS
Notary Public - State of Nevada
Appointment Recorded in Douglas County
No: 08-7029-5 - Expires April 26, 2014

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Exhibit 2

Exhibit 2

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MAY - 9 2013
DOUGLAS COUNTY
DISTRICT COURT CLERK
2013 MAY -9 PM 2:09

Case No.13-CR-0036

Dept. No. II

This document does not contain personal information of any person

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.

AMENDED

INFORMATION

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Maria Pence, Deputy District Attorney, within and for the County of Douglas, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that *JEFFREY DALE SPENCER*, has committed the crimes of *ABUSE OF AN OLDER PERSON RESULTING IN SUBSTANTIAL BODILY HARM*, a violation of NRS 200.5092 and NRS 200.5099(6), a category B felony, ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor, and ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor.

The defendant on or between April 2012 through December 18, 2012, and before the filing of this Information, at and within the County of Douglas, State of Nevada,

COUNT ONE: **ABUSE OF AN OLDER PERSON *RESULTING IN SUBSTANTIAL BODILY* HARM, a violation of NRS 200.5092 and NRS 200.5099(6), a B felony**

willfully and unlawfully abused an older person by inflicting pain, injury or mental anguish, such abuse resulting in substantial bodily harm, to wit: he struck, hit, pushed, shoved, and/or used force or violence on Helmut Klementi, a person who is 60 years of age or older, thereby inflicting injuries causing Helmut Klementi prolonged physical pain, all of which

occurred in Douglas County, Nevada,

COUNT TWO: **ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor**

willfully and unlawfully abused an older person by inflicting pain, injury or mental anguish, to wit: he yelled at and/or threatened Egon Klementi, a person who is 60 years of age or older; and/or using a snowplow, he sprayed, covered, and/or showered Egon Klementi with ice, snow, and debris, all of which occurred in Douglas County, Nevada,

COUNT THREE: **ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor**

willfully and unlawfully abused an older person by inflicting pain, injury or mental anguish, to wit: he caused Elfriede Klementi, a person who is 60 years of age or older, mental anguish by harming or threatening to harm her family, and/or by yelling at and/or threatening her husband Egon Klementi, and/or by physically attacking her brother-in-law Helmut Klementi, all of which occurred in Douglas County, Nevada,

against the peace and dignity of the State of Nevada. Complainant prays the defendant be dealt with according to law.

Marie Renee
Deputy District Attorney

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

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

Egon Alois Klementi	187 Meadow Ln. Stateline, NV 89449
Nate Almeida	1038 Buckeye Road Minden, NV 89423
Jesse Mckone	1038 Buckeye Road Minden, NV 89423
Paul Howell	1038 Buckeye Road Minden, NV 89423
Helmut Klementi	164 Pine Ridge Dr. Stateline, NV 89449
Marilyn Ann Spencer	321 Charles Ave. Stateline, NV 89449
Janet Wells	183 Juniper Dr. Stateline, NV 89449
Elfie Klementi	187 Meadow Lane Stateline, NV 89449
Daniel Norman, M.D.	2170 South Ave, South Lake Tahoe, CA 96150
Rowena Shaw, M.D.	185 Juniper Dr. Stateline, NV 89449
Steven L. Brooks, M.D.	Stateline Medical Center 155 Highway 50 Stateline, NV 89449

Marie Jenee
Deputy District Attorney

Douglas County District Attorney
Post Office Box 218
Minden, Nevada 89423
(775) 782-9800 Fax (775) 782-9807

Exhibit 3

Exhibit 3

Case No. 13-CR-0036

Dept. No. II

FILED

2013 SEP 27 PM 10: 22

TED THRAN
CLERK

BY [signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.

_____/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT ONE, ABUSE OF AN OLDER PERSON RESULTING IN SUBSTANTIAL BODILY HARM.

DATED this 27 day of September, 2013.

[signature]
FOREPERSON

Case No. 13-CR-0036

Dept. No. II

2013 SEP 27 PM 10:22

TED THRAN
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.

/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT TWO, ABUSE OF AN OLDER PERSON.

DATED this 27 day of September, 2013.

Kim Carr

FOREPERSON

Case No. 13-CR-0036

Dept. No. II

FILED

2013 SEP 27 PM 10:22

TED THRAN
CLERK

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

V E R D I C T

WE, the jury in the above-entitled matter, do find the defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT THREE, ABUSE OF AN OLDER PERSON.

DATED this 27 day of September, 2013.

Ken Carr
FOREPERSON

Exhibit 4

Exhibit 4

Case No. 13-CR-0036
Department No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

STATE OF NEVADA,

Plaintiff,

vs.

JEFFREY DALE SPENCER,

Defendant.
_____/

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
FRIDAY, SEPTEMBER 20, 2013
MINDEN, NEVADA

APPEARANCES:

For the Plaintiff:	Maria Pence, Deputy District Attorney Douglas County
For the Defendant:	William J. Routsis, II Attorney at Law Reno, Nevada
The Defendant:	Jeffrey Dale Spencer
Reported by:	Nicole J. Alexander Nevada CCR #446

MINDEN, NEVADA, FRIDAY, SEPTEMBER 20, 2013

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MR. ROUTSIS: Good morning, Your Honor.

THE COURT: Good morning. The Court is back in session. Welcome back, everyone. This is Friday, and Ms. Kinion was on the witness stand. If you could step forward, please.

Mr. Routsis, you may continue with the cross-examination.

CONTINUED CROSS-EXAMINATION

BY MR. ROUTSIS:

Q Ms. Kinion, we left off yesterday, and I think I was a bit tired, but there was just a few foundational questions that I wanted to go over before I get to the photographs. You wrote a letter to Ms. Pence, and in the letter, didn't you indicate on May 27th that Jeff threatened to punch Egon in the face?

A Yes.

Q Where did yes get -- You were not a witness to that event, were you?

A No. I told you --

Q No, no. Just yes or no. You were not a

witness to that event?

A No.

Q And where did you get those statements from?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) After getting those statements, you then put those statements in a letter directed and addressed and sent to Maria Pence, the prosecutor; correct?

A Correct.

Q Okay. And did you not assert in the letter that that event happened to Ms. Pence?

A Yes.

Q But you weren't there; right?

A Right.

Q Okay. And moving ahead to January 12th, we just marked a couple of photographs. I'd like to, if we can, publish what would be defense next in order, Q.

Ms. Kinion, is it Mrs. or Miss?

A Miss.

Q Excuse me?

A Miss.

Q Miss. Thank you. Miss Kinion, you indicated

this is your driveway here, or no? Now I'm confused.

A No.

Q Let me put on the other exhibit. At this time, Judge, we'd be publishing Exhibit P.

And, Ms. Kinion, is this your residence here? I think we went over it yesterday, and that's your driveway?

A Yes.

Q And you were out on the 12th. You were out plowing or shoveling your driveway?

A Shoveling.

Q About what time did you begin?

A I don't remember.

Q You don't remember? Okay. And we indicated going down the street is Charles Avenue, and the Klementies is on the right side of the street looking down; correct?

A Yes.

Q Now, you testified that you called Egon Klementi after you saw what you said you saw, a snowplow assault; correct?

A Correct.

Q And you called him because you were concerned that --

A I was concerned that he was hurt.

Q He was hurt. And did you discuss what happened?

MS. PENCE: Objection, Your Honor. Asked and answered.

MR. ROUTSIS: It's foundational at this point.

THE COURT: Overruled.

Q (BY MR. ROUTSIS:) Did you discuss with him what happened?

A I don't remember exactly what we said.

Q Did he inform you that he had called the police already?

A No.

Q Did he tell you he hadn't called them?

A No.

Q Did any conversation regarding that occur?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I suggested to him to call the police.

Q (BY MR. ROUTSIS:) He was assaulted, and it was your suggestion that he call the police?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) In any event, after that, about an hour and ten minutes later, you called the police; correct?

MS. PENCE: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

Q (BY MR. ROUTSIS:) Okay. And what was the delay of the hour and ten minutes when you called the police?

A I don't remember. I remember eating lunch, thinking about it, deciding to do it. I don't know that I would call it a delay. That's when I decided to do it.

Q Okay. And now I'd like to go -- Those plows are pretty big, aren't they?

A Yeah, I guess.

Q Pretty big snowplow?

A I guess. I don't know.

Q Do you know the difference between a snowplow and a loader?

A No.

Q Okay. So at some point in time during that

morning, it's your testimony that a snowplow was coming down Meadow Avenue; right?

A It wasn't -- There's a couple of snowplows, and it was a white one.

Q And it was coming down Meadow Avenue?

A Yes, Meadow Lane.

Q Meadow Lane. And you -- Where were you when it came down Meadow Lane in this picture?

A I was right at the end of my driveway.

Q Right there in this area?

A In that area. I was actually in the street because when we get a lot of snow, you get berms, you have to shovel all the street too.

Q So you were shoveling out the street when the plow came by?

A Part of the street, yeah.

Q And you saw Jeff Spencer driving the plow --

A Yes.

Q -- correct?

A Yes.

Q And he had a big smile on his face?

A Yes.

Q Well, at that point, Egon Klementi was -- Did you see where Mr. Klementi was?

already been plowed. I know that. And it seemed like the plow was down, but he wasn't really picking up any snow. He was just kind of going along with it, you know. It was kind of like I was wondering why he was there also.

Q Okay. So you're on the edge of your driveway, and the snowplow is coming down the street, but your memory is that he had already plowed the street earlier? The street was already plowed?

A The street was plowed. That's why I was out here shoveling.

Q So when the defendant drove by, you saw a big smile on Mr. Spencer's face, and was the plow down or up?

A I think it was down, but I don't remember exactly.

Q Okay. And the reason I'm asking, ma'am, because you're saying that as the plow went all the way down the street towards the -- past Charles or at some point near Charles, it's your testimony that Mr. Spencer put the plow down at that point; correct?

A I don't remember.

Q Excuse me?

A I don't remember whether he put it down or not. I remember him going by me, and I think the plow

was down at that time, and then he swerved into their property, into the Klementies' property. That's how he picked up snow. And then all of a sudden, the snow was sent all over.

Q Okay. You wrote a letter to Miss Pence, and the purpose of what you wrote to Ms. Pence was to try to get her to prosecute Mr. Spencer; correct? Yes or no.

A Yes.

Q Okay. And in that letter, you put down in the letter that Mr. Spencer put his blade down, did you not, as he approached Mr. Egon's driveway?

A I don't remember.

Q Well, would it refresh your recollection if you read your letter? Would it refresh your recollection, ma'am, if you read your letter?

A Probably.

Q Okay. It would be, for counsel's edification, one, two, three, four, five, six paragraphs.

A That's not what I wrote.

Q That's not what you what?

A What I wrote was --

Q Excuse me. Ms. Kinion, I didn't ask you a question, in all due respect. We've got procedures. You read --

A I'm sorry.

Q You read that paragraph; correct?

A Yes.

Q Can you -- will you turn the page. Is that your signature?

A Yes.

Q You're saying that's not what you wrote?

A I'm saying this is what I wrote, but what you said is not what I wrote.

Q Oh. Tell us what you wrote.

A Can I read it?

Q Please.

THE COURT: The original question was, does it refresh her recollection. That's why she was looking at it.

Q (BY MR. ROUTSIS:) Okay. Very good. Ma'am, does that refresh your recollection as to what you saw on that day?

A Yes.

Q And is that letter, could you go ahead, if you feel comfortable reading exactly what you wrote.

A Yes. "When Jeff drove past him, he turned the blade on the snowplow to spray Egon with ice and snow." It doesn't say anything about the blade being up

Q So if I get you right, as you're visualizing looking through the -- seeing through the plow, seeing the plow angle up, put snow on Egon, you're saying right before that on Charles Avenue, the defendant, Mr. Spencer, who had a big smile on his face, then took a turn into Charles to gather snow from Charles?

MS. PENCE: Objection, Your Honor. Compound. Complex. Asked and answered.

THE COURT: Overruled.

Q (BY MR. ROUTSIS:) Is that what happened, ma'am, or not?

A I'm sorry. Will you repeat the question?

Q (BY MR. ROUTSIS:) Yes. This happened -- today, I believe, is the 20th of September, correct, 2013?

A Yes.

Q This occurred December 12th, 2012; right? You wrote a letter to the prosecutor to try to get them to prosecute, as you testified, Mr. Spencer, you signed a letter, and it shows it received February 22nd, okay?

A Correct.

Q Can you show us -- Would it refresh your memory as to whether or not Jeff Spencer somehow drove onto Charles Avenue, gathered up the snow, and then drove

A Yeah.

Q Now, did you ever write that down in your letter? Did you ever think that he drove into the berm of Mr. Klementies' property prior to spraying snow on him?

A I don't think I wrote that down.

Q Why wouldn't you write that down?

A Well, for one thing, I was trying to keep it short. And no, I just did not write that down.

Q Okay. And then -- and we'll be done very shortly -- the snow you're saying you saw, you then saw the back of the plow go onto his property and angle, and somehow the snow went up? Was it snow, or was it rocks and tar?

A It was snow and probably ice because I know that day there was a lot of ice along the side of the road.

Q Okay. And you saw that material fly into -- Tell us what you saw because I don't know.

A I saw the snow fly up and hit Egon.

Q Where did it hit him?

A It hit him like all over. There was a large amount. It flew up. It went -- Part of it went over his head. It went onto his body.

about the blade.

THE COURT: Hold on. Ms. Kinion, there's no question pending. The question was please look at this, see if it refreshes -- Ms. Kinion, please listen.

The question was, please read the letter to see if it refreshes your recollection whether you made a complaint about Jeff Spencer to KGID for allegedly putting a berm in front of your house. That's the question. And the answer is either yes, no, or I don't know or I don't remember.

THE WITNESS: I'll say yes.

Q (BY MR. ROUTSIS:) Okay. Now, I just asked you under oath if you saw, when you made a complaint, if you saw the snowplow leave the berm in front of your residence, and you said no, you did not.

A Correct.

Q And now you admit that you've made complaints, and you specifically identified Jeffery Spencer as the individual that left the berm in front of your property.

A I made a complaint. I did not say Jeff Spencer. I said my driveway. I talked about my driveway being bermed. I did not say Jeff Spencer.

Q You testified on direct examination as well.

And do you recall your testimony on direct examination at this trial that you called somebody out, you said it was Jeff Spencer that left the berm, and they told you it was intentional? Do you remember that testimony?

A I don't remember saying Jeff Spencer, but I may have inferred that because I may have said he was driving a white truck.

Q So what's the relevance of bringing it up at a trial for Jeff Spencer if you don't know who left that berm?

A I was pretty sure it was him.

Q Excuse me, ma'am?

A I was pretty sure it was him.

Q Do you have any pictures of the berm?

A No.

Q And you've also testified under oath that somebody told you that it was intentional. You've testified under oath to that; correct?

A Yes.

Q Tell me exactly who told you it was intentional.

A It was a guy -- It says here his name was James, but I don't really remember his name. He came in a truck from KGID.